

S T A T E O F N E W Y O R K

11081--B

I N A S S E M B L Y

May 13, 2010

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize the lease of lands located at the State University of New York, Upstate Medical University

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the devel-
2 opment of housing, offices, and retail space on the grounds of the
3 former Kennedy Square public housing project ("Kennedy Square") and now
4 part of the Upstate Medical University campus is appropriate to further
5 the objectives and purposes of the state university of New York. The
6 legislature further finds that granting the trustees of the state
7 university of New York the authority and power to lease and otherwise
8 contract to make available grounds and facilities of the Upstate Medical
9 University campus comprised of the former Kennedy Square will ensure the
10 availability of such development, will promote the effective use of such
11 grounds and facilities, and will further the mission of Upstate Medical
12 University.

13 S 2. Notwithstanding any provision of law to the contrary, the trus-
14 tees of the state university of New York are hereby authorized to lease
15 without any public bidding a portion of the Upstate Medical University
16 lands described in section three of this act to a developer selected
17 pursuant to a request for proposals, upon such terms and conditions as
18 the trustees deem advisable, for an initial term not to exceed forty
19 years. In the event that the real property which is the subject of such
20 lease or contract shall cease to be used for the purposes described in
21 this act, said lease shall immediately terminate and the real property
22 and any improvements thereon shall revert to the state university of New
23 York. Any contract or lease entered into pursuant to this act shall
24 provide that the real property which is the subject of such lease or

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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contract and any improvements thereon shall revert to the state university of New York upon the expiration of such lease.

S 3. The property authorized by this act to be leased to the developer is generally described as follows:

(a) All that tract or parcel of land situated in the City of Syracuse, County of Onondaga, State of New York and being more precisely described as commencing at a concrete monument with a 1/4-inch drill hole extending 1.5 feet below grade with a 10-inch cover flush with grade found at the intersection of the southerly bounds of East Water Street (66-foot width) and the easterly bounds of Foreman Avenue (66-foot width), said rebar also being at the northwesterly corner of a parcel of land conveyed by Syracuse Urban Renewal Agency to Empire Flower Supply, Inc. by deed dated August 6, 1987 and recorded in the Onondaga County Clerk's Office on August 12, 1987 in Liber 3376 of Deeds at Page 114, said rebar having New York State plane coordinates (NAD83 - Central Zone) of 1,111,701.24 feet north and 938,763.56 feet east; thence South 89 degrees 19 minutes 56 seconds East, along the southerly bounds of East Water Street, a distance of 253.00 feet to a set 5/8-inch rebar. Said rebar having New York State plane coordinates (NAD83 - Central Zone) of 1,111,698.20 feet north and 939,016.54 feet east, said rebar being the Point of Beginning; thence continuing South 89 degrees 19 minutes 56 seconds East, along the southerly bounds of East Water Street, a distance of 275.54 feet to a 5/8-inch rebar set on the proposed westerly bounds of Irving Avenue (66-foot width); thence South 00 degrees 40 minutes 04 seconds West, along the proposed westerly bounds of Irving Avenue, a distance of 264.10 feet to a 5/8-inch rebar set on the proposed northerly bounds of Washington Street (66-foot width); thence North 89 degrees 19 minutes 56 seconds West, along the proposed northerly bounds of Washington Street, a distance of 274.85 feet to a 5/8-inch rebar set at the southeasterly corner of a parcel of land conveyed by Syracuse Urban Renewal Agency to People's Equal Action and Community Effort, Inc. by deed dated June 16, 2004 and recorded in the Onondaga County Clerk's Office on July 1, 2004 in Liber 4838 of Deeds at Page 412; thence North 00 degrees 31 minutes 04 seconds East, along the easterly line of People's Equal Action and Community Effort Inc., and along the easterly line of Empire Flower Supply, Inc., a distance of 264.10 feet to the Point of Beginning.

(b) All that tract or parcel of land situated in the City of Syracuse, County of Onondaga, State of New York, and being more precisely described as commencing at a concrete monument with a 1/4-inch drill hole extending 1.5 feet below grade with a 10-inch cover flush with grade found at the intersection of the southerly bounds of East Water Street (66-foot width) and the easterly bounds of Foreman Avenue (66-foot width), said rebar also being at the northwesterly corner of a parcel of land conveyed by Syracuse Urban Renewal Agency to Empire Flower Supply, Inc. by deed dated August 6, 1987 and recorded in the Onondaga County Clerk's Office on August 12, 1987 in Liber 3376 of Deeds at Page 114, said rebar having New York State plane coordinates (NAD83 - Central Zone) of 1,111,701.24 feet north and 938,763.56 feet east; thence South 89 degrees 19 minutes 56 seconds East, along the southerly bounds of East Water Street, a distance of 594.40 feet to a 5/8-inch rebar set on the proposed easterly bounds of Irving Avenue (66-foot width), said rebar having New York State plane coordinates (NAD83 - Central Zone) of 1,111,694.22 feet north and 939,357.92 feet east, said rebar being the Point of Beginning; thence continuing South 89 degrees 19 minutes 56 seconds East, along the southerly bounds of East Water

1 Street, a distance of 234.21 feet to a 5/8-inch rebar set on the wester-
2 ly bounds of South Crouse Street (variable width); thence along the
3 westerly bounds of South Crouse Street, the following courses and
4 distances: South 44 degrees 19 minutes 36 seconds East a distance of
5 20.27 feet to a set 5/8-inch rebar; South 00 degrees 40 minutes 34
6 seconds West a distance of 249.76 feet to a 5/8-inch rebar set on the
7 proposed northerly bounds of Irving Street (66-foot width); thence North
8 89 degrees 19 minutes 56 seconds West, along the proposed northerly
9 bounds of Irving Street, a distance of 248.51 feet to a 5/8-inch rebar
10 set on the proposed easterly bounds of Irving Avenue; thence North 00
11 degrees 40 minutes 04 seconds East, along the proposed easterly bounds
12 of Irving Avenue, a distance of 264.10 feet to the Point of Beginning.

13 S 4. For the purposes of this act:

14 (a) "project" shall mean work at the property authorized by this act
15 to be leased to the developer selected through the request for proposals
16 process noted above that involves the design, construction, demolition,
17 excavating, alteration or improvement of housing, office and retail
18 space.

19 (b) "project labor agreement" shall mean a pre-hire collective
20 bargaining agreement between a contractor and a labor organization,
21 establishing the labor organization as the collective bargaining repre-
22 sentative for all persons who perform work on the project, and which
23 provides that only contractors and subcontractors who sign a pre-negoti-
24 ated agreement with the labor organization can perform project work.

25 S 5. Notwithstanding any provisions of law to the contrary:

26 (a) The developer selected pursuant to section two of this act may
27 require a contractor to award a contract, subcontract, lease, grant,
28 bond, covenant or other agreement for a project to enter into a project
29 labor agreement during and for the work involved with such project when
30 such requirement is part of the developer's request for proposals for
31 the project and when the developer determines that the record supporting
32 the decision to enter into such an agreement establishes that the inter-
33 ests underlying the competitive bidding laws are best met by requiring a
34 project labor agreement including: obtaining the best work at the lowest
35 possible price; preventing favoritism, fraud and corruption; the impact
36 of delay; the possibility of cost savings; and any local history of
37 labor unrest.

38 (b) If the developer does not require a project labor agreement, then
39 any contractor, subcontractor, lease, grant, bond, covenant or other
40 agreements for a project shall be awarded pursuant to section 135 of the
41 state finance law.

42 (c) Any contract to which the developer is a party, and any contract
43 entered into by a third party acting in place of, on behalf of and for
44 the benefit of the developer pursuant to any lease, permit or other
45 agreement between such third party and the developer for a project
46 deemed a public works project for the purposes of article 8 of the labor
47 law, and shall be subject to all of the provisions of article 8 of the
48 labor law, including the enforcement of prevailing wage requirements by
49 the fiscal officer as defined in paragraph e of subdivision 5 of section
50 220 of the labor law to the same extent as a contract of the state.

51 (d) Every contract entered into by the developer for a project shall
52 contain a provision that the contractor shall furnish a labor and mate-
53 rial bond guaranteeing prompt payment of moneys that are due to all
54 persons furnishing labor and materials pursuant to the requirements of
55 any contracts for a project undertaken pursuant to this act and a
56 performance bond for the faithful performance of the project, which

1 shall conform to the provisions of section 103-f of the general municipal law, and that a copy of such performance and payment bonds shall be kept by the developer and shall be open to public inspection.

2
3 (e) For all purposes of article 15-A of the executive law, any individual, public corporation or authority, private corporation, limited liability company or partnership, or other entity entering into a contract, subcontract, lease, grant, bond, covenant or other agreement for a project authorized pursuant to this act shall be deemed a state agency as that term is defined in such article and such contracts shall be deemed state contracts within the meaning of that term as set forth in such article.

4
5 (f) Whenever the developer enters into a contract, subcontract, lease, grant, bond, covenant or other agreement for a project undertaking pursuant to this act, the developer shall consider the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women owned business enterprises pursuant to article 15-A of the executive law through joint ventures or subcontractor relationships.

6
7 S 6. Whenever the developer enters into a contract under which employees are employed to perform building service work, as that term is defined in section 230 of the labor law, such work shall be subject to article 9 of the labor law to the same extent as building services work performed pursuant to a contract with a public agency.

8
9 S 7. Nothing in this act shall be deemed to waive or impair any rights or benefits of employees of the state university of New York that otherwise would be available to them pursuant to the terms of agreements between the certified representatives of such employees and the state of New York pursuant to article 14 of the civil service law; all work performed on such property that would ordinarily be performed by employees subject to article 14 of the civil service law shall continue to be performed by such employees.

10
11 S 8. Without limiting the determination of such terms and conditions by said trustees, such terms and conditions may provide for leasing, construction, reconstruction, rehabilitation, improvement, operation and management of and provision of services and assistance and granting of licenses, easements and other arrangements with regard to such grounds and facilities by the developer and parties contracting with the developer and, in connection with such activities, the obtaining of financing, whether public or private or secured (including, but not limited to, secured by leasehold mortgages and assignments of rents and leases), by the developer for the purposes of completing the projects described in this act.

12
13 S 9. Any contracts entered into pursuant to this act between the developer and parties contracting with the developer for work on this project as defined in section five of this act shall be awarded by a competitive process.

14
15 S 10. Any contracts or leases entered into by the state university of New York with the developer pursuant to this act shall be subject to the approval of the attorney general as to form as well as by the director of the budget and the state comptroller. Any and all proceeds relating to the leases authorized by this act shall be applied for and in furtherance of the mission of Upstate Medical University and shall include,

1 but not be limited to the following: student scholarships for educa-
2 tionally and economically disadvantaged students; additional full-time
3 faculty positions; funds for the construction and rehabilitation of new
4 and existing Upstate Medical University buildings; and funds to support
5 the teaching, research and service missions of Upstate Medical Universi-
6 ty.

7 S 11. The state university of New York shall not lease lands described
8 in this act unless a contract is executed by the developer or lessee for
9 a project pursuant to this act within two years of the effective date of
10 this act.

11 S 12. Any lease or other agreement executed pursuant to this act shall
12 include an indemnity provision whereby the lessee or sublessee promises
13 to indemnify, hold harmless and defend the lessor against all claims,
14 suits, actions, and liability to all persons on the leased premises,
15 including tenant, tenant's agents, contractors, subcontractors, employ-
16 ees, customers, guests, licensees, invitees, and members of the public,
17 for personal injuries arising out of tenant's use or occupation of the
18 demised premises.

19 S 13. Insofar as the provisions of this act are inconsistent with the
20 provisions of any law, general, special or local, the provisions of this
21 act shall be controlling; provided, however, that all leases, contracts,
22 financing, granting of licenses, easements, and other arrangements with
23 regard to a project pursuant to this act shall be subject to the
24 provisions of article 8 of the environmental conservation law.

25 S 14. Severability. If any section, subdivision, paragraph, subpara-
26 graph, clause or other part of this act or its application is held to be
27 invalid by final judgment of a court of competent jurisdiction, such
28 invalidity shall not be deemed to impair or otherwise affect the validi-
29 ty of the remaining provisions or applications of this act that can be
30 given effect without such invalid provision or application, but such
31 invalidity shall be confined to the section, subdivision, paragraph,
32 subparagraph, clause or other part of this act or its application
33 directly held invalid thereby, which are declared to be severable from
34 the remainder of this act. It is declared to be the intent of the legis-
35 lature that this act would have been enacted but for any such invalid
36 provision or application thereof.

37 S 15. This act shall take effect immediately.