

3687

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 28, 2009

---

Introduced by M. of A. BRADLEY, SPANO, LUPARDO -- read once and referred  
to the Committee on Higher Education

AN ACT to authorize the lease of lands located at the state university  
of New York at Purchase

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

1     Section 1. Legislative findings. The legislature finds that the  
2     provision of a senior learning community upon the grounds of the state  
3     university of New York at Purchase is appropriate to further the objec-  
4     tives and purposes of the state university of New York. The legislature  
5     further finds that granting the trustees of the state university of New  
6     York the authority and power to lease and otherwise contract to make  
7     available grounds and facilities of the campus of the state university  
8     of New York at Purchase will ensure the availability of such senior  
9     learning community, and also promote the effective use of such grounds  
10    and facilities.

11    S 2. The trustees of the state university of New York are hereby  
12    authorized to lease without any public bidding a portion of the lands of  
13    the state university of New York at Purchase generally described in this  
14    act to the Purchase college advancement corporation, a not-for-profit  
15    corporation, upon such terms and conditions as the trustees deem advis-  
16    able, for an initial term not to exceed thirty-five years or for such  
17    time as may be necessary to complete repayment of any debt related to  
18    the projects described in this act, whichever is shorter. In the event  
19    that the real property which is the subject of such lease or contract  
20    shall cease to be used for the purposes described in this act, said  
21    lease shall immediately terminate and the real property and any improve-  
22    ments thereon shall revert to the state university of New York. Any  
23    contract or lease entered into pursuant to this act shall provide that  
24    the real property which is the subject of such lease or contract and any  
25    improvements thereon shall revert to the state university of New York

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

LBD03526-02-9

1 upon the expiration of such lease. The description of the parcels to be  
2 leased pursuant to such section are not meant to be legal descriptions,  
3 but are intended only to identify the parcels and improvements to be  
4 leased for purposes consistent with the mission of the state university  
5 of New York at Purchase.

6 S 3. For the purposes of this act: (a) "project" shall mean work at  
7 the property authorized by this act to be leased to the Purchase college  
8 advancement corporation as described in section fourteen of this act  
9 that involves the design, construction, reconstruction, demolition,  
10 excavating, rehabilitation, repair, renovation, alteration or improve-  
11 ment of a senior learning community.

12 (b) "project labor agreement" shall mean a pre-hire collective  
13 bargaining agreement between a contractor and a labor organization,  
14 establishing the labor organization as the collective bargaining repre-  
15 sentative for all persons who will perform work on the project, and  
16 which provides that only contractors and subcontractors who sign a pre-  
17 negotiated agreement with the labor organization can perform project  
18 work.

19 S 4. Notwithstanding the provisions of any general, special, or local  
20 law or judicial decision to the contrary:

21 (a) The Purchase college advancement corporation may require a  
22 contractor awarded a contract, subcontract, lease, grant, bond, covenant  
23 or other agreement for a project to enter into a project labor agreement  
24 during and for the work involved with such project when such requirement  
25 is part of the Purchase college advancement corporation's request for  
26 proposals for the project and when the Purchase college advancement  
27 corporation determines that the record supporting the decision to enter  
28 into such an agreement establishes that the interests underlying the  
29 competitive bidding laws are best met by requiring a project labor  
30 agreement including: obtaining the best work at the lowest possible  
31 price; preventing favoritism, fraud and corruption; the impact of delay;  
32 the possibility of cost savings; and any local history of labor unrest.

33 (b) If the Purchase college advancement corporation does not require a  
34 project labor agreement, then any contractor, subcontractor, lease,  
35 grant, bond, covenant or other agreements for a project shall be awarded  
36 pursuant to section 135 of the state finance law.

37 (c) Any contract to which the Purchase college advancement corporation  
38 is a party, and any contract entered into by a third party acting in  
39 place of, on behalf of and for the benefit of the Purchase college  
40 advancement corporation pursuant to any lease, permit or other agreement  
41 between such third party and the Purchase college advancement corpo-  
42 ration, for a project deemed a public works project for the purposes of  
43 article 8 of the labor law, and shall be subject to all of the  
44 provisions of article 8 of the labor law, including the enforcement of  
45 prevailing wage requirements by the fiscal officer as defined in para-  
46 graph e of subdivision 5 of section 220 of the labor law to the same  
47 extent as a contract of the state.

48 (d) Every contract entered into by the Purchase college advancement  
49 corporation for a project shall contain a provision that the contractor  
50 shall furnish a labor and material bond guaranteeing prompt payment of  
51 moneys that are due to all persons furnishing labor and materials pursu-  
52 ant to the requirements of any contracts for a project undertaken pursu-  
53 ant to this section and a performance bond for the faithful performance  
54 of the project, which shall conform to the provisions of section 103-f  
55 of the general municipal law, and that a copy of such performance and

1 payment bonds shall be kept by the Purchase college advancement corpo-  
2 ration and shall be open to public inspection.

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

11 (f) Whenever the Purchase college advancement corporation enters into  
12 a contract, subcontract, lease, grant, bond, covenant or other agreement  
13 for a project undertaken pursuant to this act, the Purchase college  
14 advancement corporation shall consider the financial and organizational  
15 capacity of contractors and subcontractors in relation to the magnitude  
16 of work they may perform, the record of performance of contractors and  
17 subcontractors on previous work, the record of contractors and subcon-  
18 tractors in complying with existing labor standards and maintaining  
19 harmonious labor relations, and the commitment of contractors to work  
20 with minority and women owned business enterprises pursuant to article  
21 15-A of the executive law through joint ventures or subcontractor  
22 relationships.

23 S 5. The Purchase college advancement corporation shall require that  
24 whenever work is performed under this section, the contractors and  
25 subcontractors shall have apprenticeship programs appropriate for the  
26 type and scope of work to be performed, that have been registered with  
27 and approved by the commissioner of labor pursuant to article 23 of the  
28 labor law. Additionally, it must be demonstrated that the apprenticeship  
29 program has made significant efforts to attract and retain minority  
30 apprentices, as determined by affirmative action goals established for  
31 such programs by the department of labor.

32 S 6. Whenever the Purchase college advancement corporation enters into  
33 a contract under which employees are employed to perform building  
34 service work, as that term is defined in section 230 of the labor law,  
35 such work shall be subject to article 9 of the labor law to the same  
36 extent as building services work performed pursuant to a contract with a  
37 public agency.

38 S 7. Whenever employees perform work at the senior learning community  
39 other than work performed under sections four and six of this act, such  
40 employees shall be paid by their employer no less than the median hourly  
41 wage for "all occupations" in the metropolitan statistical area closest  
42 to the project location, published by the United States bureau of labor  
43 statistics, for the duration of the lease term. All of the provisions  
44 of article 9 of the labor law shall apply. Employers shall be subject to  
45 the requirements of contractors under article 9 of the labor law.

46 S 8. All developers must have entered into an agreement with the labor  
47 organization or organizations that is/are actively engaged in represent-  
48 ing and attempting to represent food and beverage, housekeeping, or  
49 other service employees in the state university of New York at Purchase  
50 area that is valid and enforceable under 29 U.S.C. section 185(a) and  
51 that prohibits any strikes, picketing or other economic interference  
52 with such food and beverage, housekeeping, or other service operations  
53 and ensures that any such operations that are conducted by contractors,  
54 subcontractors, licensees, assignees, tenants or subtenants, shall be  
55 done under contracts enforceable under 29 U.S.C. section 185(a) contain-  
56 ing the same provisions as specified above.

1 S 9. Notwithstanding any other provision of this act, an employer and  
2 employee organization of the senior learning community may enter into an  
3 agreement which shall: (1) confer jurisdiction of the New York state  
4 employment relations board; (2) provide for participation in an agree-  
5 ment for the designation of collective bargaining under subdivision 1 of  
6 section 705 of the labor law, commonly known as card check; and (3)  
7 impose no strike provisions as set forth in subdivision two of this  
8 section. Upon execution of such an agreement by both parties containing  
9 all of the provisions set forth in this subdivision, the agreement shall  
10 be binding and enforceable against both parties.

11 S 10. Nothing in this act shall be deemed to waive or impair any  
12 rights or benefits of employees of the state university of New York that  
13 otherwise would be available to them pursuant to the terms of agreements  
14 between the certified representatives of such employees and the state of  
15 New York pursuant to article 14 of the civil service law; all work  
16 performed on such property that would ordinarily be performed by employ-  
17 ees subject to article 14 of the civil service law shall continue to be  
18 performed by such employees.

19 S 11. Without limiting the determination of such terms and conditions  
20 by said trustees, such terms and conditions may provide for leasing,  
21 construction, reconstruction, rehabilitation, improvement, operation and  
22 management of and provision of services and assistance and granting of  
23 licenses, easements and other arrangements with regard to such grounds  
24 and facilities by the Purchase college advancement corporation and  
25 parties contracting with the Purchase college advancement corporation  
26 and, in connection with such activities, the obtaining of financing,  
27 whether public or private or secured (including but not limited to,  
28 secured by leasehold mortgages and assignments of rents and leases), by  
29 the Purchase college advancement corporation and parties contracting  
30 with the Purchase college advancement corporation, for the purposes of  
31 completing the projects described in this act.

32 Parcel C shall be leased for the development of not more than 385  
33 units of a senior learning community.

34 S 12. Any contracts entered into pursuant to this act between the  
35 Purchase college advancement corporation and parties contracting with  
36 the Purchase college advancement corporation shall be awarded by a  
37 competitive process.

38 S 13. Any contracts or leases entered into by the state university of  
39 New York or the Purchase college advancement corporation pursuant to  
40 this act shall be subject to approval of the attorney general as to form  
41 as well as by the director of the budget and the state comptroller. Any  
42 and all proceeds relating to the leases authorized by this act shall be  
43 applied in the following manner: seventy-five percent to student schol-  
44 arships for educationally and economically disadvantaged students as  
45 defined by the board of regents and twenty-five percent to support addi-  
46 tional full-time faculty positions.

47 S 14. The property authorized by this act to be leased to the Purchase  
48 college advancement corporation is generally described as a parcel of  
49 real property with improvements thereon, consisting of approximately  
50 40.5 acres, situated on the campus of the state university of New York  
51 at Purchase. The description in this section of the land to be leased is  
52 not a legal description, but is intended only to identify the premises  
53 to be leased for purposes consistent with the mission of the state  
54 university of New York at Purchase:

1 ALL that plot, piece or parcel of land situate and being in the Town of  
2 Harrison, County of Westchester and State of New York, bounded and  
3 described as follows:

4 BEGINNING at a point at the southeasterly corner of the herein described  
5 Lease Parcel C, said point being located, N 80° 51' 39" W 163.33 feet, N  
6 81° 12' 39" W 4.91 feet, N 02° 00' 00" W 407.31 feet and N 00° 19' 17" E  
7 62.93 feet from the point of beginning of Parcel #1 as shown on a map  
8 entitled, "Department of Education, State University of New York, State  
9 University College at Westchester, Map #1, Parcels 1, 2 and 3", dated  
10 and filed in the office of the Department of Public Works, May 27, 1966;  
11 thence through Parcel #1 along the northerly and easterly side of West  
12 Road, N 79° 50' 00" W 285.54 feet, northwesterly on a curve to the right  
13 of radius 743.00 feet, an arc length of 988.36 feet, having a chord  
14 bearing N 41° 43' 30" W 917.09 feet, N 03° 37' 00" W 178.77 feet, N 06°  
15 55' 00" E 1326.17 feet and northwesterly on a curve to the left of radi-  
16 us 592.00 feet, an arc length of 172.61 feet, having a chord bearing N  
17 01° 26' 11" W 172.00 feet to a point; thence leaving the easterly side  
18 of West Road and continuing through Parcel #1, N 77° 18' 00" E 130.00  
19 feet, N 82° 12' 00" E 140.00 feet, S 09° 47' 00" E 364.83 feet, S 69°  
20 00' 00" E 463.42 feet, S 00° 02' 00" E 369.54 feet, S 27° 40' 00" W  
21 194.81 feet, S 79° 51' 00" E 154.52 feet, S 10° 39' 00" W 325.93 feet, S  
22 03° 48' 00" E 310.96 feet, S 04° 45' 00" W 271.62 feet, S 01° 38' 00" E  
23 142.45 feet and S 03° 04' 00" W 311.20 feet to the point or place of  
24 beginning.

25 CONTAINING 40.05 ACRES OF LAND

26 S 15. The state university of New York shall not lease lands described  
27 in this act unless contract is executed by the Purchase college advance-  
28 ment corporation or lessee for a project pursuant to this act within two  
29 years of the effective date of this act.

30 S 16. Any lease or other agreement executed pursuant to this act shall  
31 include an indemnity provision whereby the lessee or sublessee promises  
32 to indemnify, hold harmless, and defend the lessor against all claims,  
33 suits, actions, and liability to all persons on the leased premises,  
34 including tenant, tenant's agents, contractors, subcontractors, employ-  
35 ees, customers, guests, licensees, invitees, and members of the public,  
36 for damage to any such person's property, whether real or personal, or  
37 for personal injuries arising out of tenant's use or occupation of the  
38 demised premises.

39 S 17. Insofar as the provisions of this act are inconsistent with the  
40 provisions of any law, general, special or local, the provisions of this  
41 act shall be controlling; provided, however, that all leases, contracts,  
42 financing, granting of licenses, easements, and other arrangements with  
43 regard to a project pursuant to this act shall be subject to the  
44 provisions of article 8 of the environmental conservation law.

45 S 18. The state university trustees are hereby authorized and directed  
46 to designate and maintain a minimum of 80 acres of real property located  
47 within the boundaries of the campus of the state university of New York  
48 at Purchase for permanent preservation as open space lands.

49 S 19. All real property included in section fourteen of this act shall  
50 be maintained for one or more of the following purposes:

51 (a) open space lands and natural areas for maintaining plants, animals  
52 and natural communities; and

53 (b) an area of natural or historic interest and beauty which provides  
54 the public with passive recreational opportunities.

55 S 20. (a) The state university trustees shall cause to be undertaken a  
56 survey of the real property included in section nineteen of this act.

1 Such survey shall be completed and made available to the legislature and  
2 the public not later than six months after the effective date of this  
3 act.

4 (b) The state university trustees shall develop, in consultation with  
5 the department of environmental conservation, a stewardship plan for the  
6 maintenance of the real property included in section nineteen of this  
7 act as open lands. Such plan shall be completed and made available to  
8 the public not later than six months after the effective date of this  
9 act.

10 S 21. (a) Any contract or leases entered into by the state university  
11 of New York or the Purchase college advancement corporation pursuant to  
12 this act shall provide that not less than 20 percent of the units in the  
13 senior learning community must, upon the initial rental of the units and  
14 upon all subsequent rentals of the units after a vacancy, be affordable  
15 to and occupied or available for occupancy by individuals or families  
16 whose incomes at the time of initial occupancy do not exceed 80 percent  
17 of the area median incomes adjusted for family size.

18 (b) All affordable units must be geographically integrated with the  
19 market rate units and residents of such units shall be provided with and  
20 have access to the services and amenities available to other residents  
21 in the development.

22 (c) Residents of the community where the development is located shall  
23 have priority for the rental of 50 percent of the affordable units,  
24 provided they meet the income requirements of this section.

25 S 22. This act shall take effect immediately.