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

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Cal. No. 898

2009-2010 Regular Sessions

I N S E N A T E

April 14, 2009

Introduced by Sens. OPPENHEIMER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature finds that the provision of a senior learning community upon the grounds of the state university of New York at Purchase is appropriate to further the objectives and purposes of the state university of New York. The legislature further finds that granting the trustees of the state university of New York the authority and power to lease and otherwise contract to make available grounds and facilities of the campus of the state university of New York at Purchase will ensure the availability of such senior learning community, and also promote the effective use of such grounds and facilities.

S 2. The trustees of the state university of New York are hereby authorized to lease without any public bidding a portion of the lands of the state university of New York at Purchase generally described in this act to the Purchase college advancement corporation, a not-for-profit corporation, upon such terms and conditions as the trustees deem advisable, for an initial term not to exceed forty years or for such time as may be necessary to complete repayment of any debt related to the projects described in this act, whichever is shorter. In the event that the real property which is the subject of such lease or contract shall

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

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cease to be used for the purposes described in this act, said lease shall immediately terminate and the real property and any improvements thereon shall revert to the state university of New York. Any contract or lease entered into pursuant to this act shall provide that the real property which is the subject of such lease or contract and any improvements thereon shall revert to the state university of New York upon the expiration of such lease. The description of the parcels to be leased pursuant to such section are not meant to be legal descriptions, but are intended only to identify the parcels and improvements to be leased for purposes consistent with the mission of the state university of New York at Purchase.

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

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

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

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

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

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

(d) Every contract entered into by the Purchase college advancement corporation for a project shall contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment of

moneys that are due to all persons furnishing labor and materials pursuant to the requirements of any contracts for a project undertaken pursuant to this section and a performance bond for the faithful performance of the project, which 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 Purchase college advancement corporation and shall be open to public inspection.

(e) For the 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 section 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.

(f) Whenever the Purchase college advancement corporation enters into a contract, subcontract, lease, grant, bond, covenant or other agreement for a project undertaken pursuant to this act, the Purchase college advancement corporation 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.

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

S 6. Whenever the Purchase college advancement corporation 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.

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

S 8. All developers must have entered into an agreement with the labor organization or organizations that is/are actively engaged in representing and attempting to represent food and beverage, housekeeping, or other service employees in the state university of New York at Purchase area that is valid and enforceable under 29 U.S.C. section 185(a) and that prohibits any strikes, picketing or other economic interference

with such food and beverage, housekeeping, or other service operations and ensures that any such operations that are conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants, shall be done under contracts enforceable under 29 U.S.C. section 185(a) containing the same provisions as specified above.

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

S 10. 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.

S 11. 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 Purchase college advancement corporation and parties contracting with the Purchase college advancement corporation 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 Purchase college advancement corporation and parties contracting with the Purchase college advancement corporation, for the purposes of completing the projects described in this act.

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

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

S 13. Any contracts or leases entered into by the state university of New York or the Purchase college advancement corporation pursuant to this act shall be subject to 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 allocated by the board of trustees for Purchase college, state university of New York, in the following manner: seventy-five percent to the student financial aid for students who are eligible to receive a tuition assistance award or supplement tuition assistance pursuant to sections 667 or 667-a of the education law and twenty-five percent to support additional full-time faculty positions.

S 14. The property authorized by this act to be leased to the Purchase college advancement corporation is generally described as a parcel of real property with improvements thereon, consisting of approximately

40.5 acres, situated on the campus of the state university of New York at Purchase. The description in this section of the land to be leased is not a legal description, but is intended only to identify the premises to be leased for purposes consistent with the mission of the state university of New York at Purchase:

Parcel C

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

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

CONTAINING 40.05 ACRES OF LAND

S 15. The state university of New York shall not lease lands described in this act unless a contract is executed by the Purchase college advancement corporation or lessee for a project pursuant to this act within five years of the effective date of this act.

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

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

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

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

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

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

S 20. (a) The state university trustees shall cause to be undertaken a survey of the real property included in section nineteen of this act. Such survey shall be completed and made available to the legislature and the public not later than six months after the effective date of this act.

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

S 21. (a) Any contract or leases entered into by the state university of New York or the Purchase college advancement corporation pursuant to this act shall provide that not less than 20 percent of the units in the senior learning community must, upon the initial rental of the units and upon all subsequent rentals of the units after a vacancy, be affordable to and occupied or available for occupancy by individuals or families whose incomes at the time of initial occupancy do not exceed 80 percent of the household income for the county of Westchester as calculated by the United States census bureau.

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

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

S 22. This act shall take effect immediately.