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

8403--A

2011-2012 Regular Sessions

I N  A S S E M B L Y

June 15, 2011

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize the construction of new school facilities utilizing facility alternatives for schools; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. This act shall be known and may be cited as the "2012 facility alternatives for schools act".

S 2. For the purposes of this act the terms:

1. "School district" shall mean any union free school district, central school district, central high school district or city school district.

2. "Person" shall mean a municipality or other governmental body, public corporation or authority, private corporation, partnership or individual.

S 3. (a) Notwithstanding the provisions of any other law, general, special or local, relating to the length, duration and terms of contracts a school district may enter into, any school district is hereby authorized and empowered to enter into contracts, leases or rental agreements with any person, upon such terms and conditions for such consideration and for such terms or duration, not to exceed thirty years, as may be agreed upon by the school district, and such person, whereby such person is granted the right to construct, reconstruct, finance or own a school building facility designed with a student capacity not to exceed three thousand.

(b) Notwithstanding the provisions of any general, special or local law, a contract entered into between a school district and any person

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

LBD01807-04-2

pursuant to this act may be awarded pursuant to public bidding in compliance with section 103 of the general municipal law or pursuant to the following provisions for the award of a contract based on evaluation of proposals submitted in response to a request for proposals prepared by or for a school district. The school district shall require that each proposal to be submitted shall include information relating to the experience of the proposer, the ability of the proposer to secure adequate financing, identification and specification of all elements of cost which would become a charge to the school district, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to the cost of planning, design, construction, reconstruction, financing, ownership and/or maintenance of such school building facility and such other information as the school district may determine to have a material bearing on its ability to evaluate any proposal for such school building facility.

Prior to the issuance of a request for proposals pursuant to this act, the school district shall publish notice of such issuance in the official newspaper of the school district, if any, and in at least one newspaper of general circulation. Concurrent with the publication of such notice of a draft request for proposals shall be filed with the clerk of the school district or the chief executive officer of such school district. After allowing a thirty day comment period and an additional thirty days to review such comments, the school district may publish the final request for proposals and concurrent with such publication shall publish notice of such issuance in the manner specified in this paragraph. Concurrent with the publication of the final request for proposals a set of comments filed in relation to the draft request for proposals and findings related to the substantive elements of such comments shall be filed along with the request for proposals with the clerk or chief executive officer of such school district and in the public library or libraries in proximity to the proposed school building facility site.

Proposals received in response to such request for proposals shall be evaluated by the school district as to net cost and in a manner consistent with provisions set forth in the request for proposals, may be evaluated on the basis of additional factors, including, but not limited to, facility design incorporating systems and approaches which provide maximum facility value at the lowest possible cost using the best current development life cycle costs, construction, reconstruction, leasing and financing techniques available.

The school district may make a contract award to any responsible proposer selected based on a determination by the school district that the selected proposal is most responsive to the request for proposals and may negotiate with any proposer; provided, however, that if an award is made to any proposer whose total proposal does not provide either the lowest net cost, the school district shall adopt a resolution after public hearing which includes particularized findings relevant to factors evaluated indicating that the school district's requirements are met by such award and that such action is in the public interest. Such contract may be a single guaranteed maximum price general contract or utilize a full construction management contract approach.

(c) All requests for proposals by the school district pursuant to this act shall be subject to review and approval by the commissioner of

education prior to the issuance of such request for proposal by the school district.

(d) Whenever the school district enters into a contract for the construction of a school building facility pursuant to this act, the provisions of section 220 of the labor law shall be applicable to such construction work.

(e) Every contract entered into by the school district for construction of a school building facility shall contain provisions that the design and construction standards of such facility shall be subject to the review and approval of the school district, that the project developer shall furnish a bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of any construction contracts, and a security bond for the faithful performance of the school district 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 school district and shall be open to public inspection.

S 4. Notwithstanding the provisions of section 3602 of the education law or any other provision of law, the school district shall be entitled to an apportionment for capital outlays and debt service for a school building facility constructed pursuant to the provisions of this act in the same manner as such school district would otherwise be entitled pursuant to law for the construction of a new school building facility.

S 5. Contracts to be issued by the school district for the design, construction, reconstruction, lease, financing or ownership of a school building facility pursuant to the provisions of this act shall be subject to the provisions of section 109-b of the general municipal law, except for paragraph (a) of subdivision 3 and subdivision 5 of such section and except to the extent section 109-b of the general municipal law is inconsistent with the provisions of this act.

S 6. Contracts issued by the school district for the design, construction, reconstruction, lease, financing or ownership of a school building facility pursuant to the provisions of this act may be funded by certificates of participation.

S 7. All contracts awarded or entered into by the school district for the construction, reconstruction, alteration, lease or lease-purchase of a school building facility pursuant to this act shall not be subject to section 101 of the general municipal law.

S 8. Notwithstanding any other provision of law, a school building facility constructed pursuant to the provisions of this act shall be exempt from real property taxation when such facility is leased by the school district and actually used for school purposes by such school district.

S 9. Nothing in this act shall be construed to exempt a school construction or reconstruction project undertaken pursuant to this act from the review and approval procedures applied to such projects by the education department when undertaken pursuant to the education law.

S 10. This act shall take effect immediately and shall expire and be deemed repealed 5 years after such effective date.