

3480

2011-2012 Regular Sessions

I N S E N A T E

February 23, 2011

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed 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 faculty and staff housing 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 faculty and
9 staff housing, and also promote the effective use of such grounds and
10 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.

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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 faculty and staff housing.

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 faculty and staff housing
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 faculty and staff housing 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 2 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 D shall be leased for the development of not more than 35 units
33 of faculty and staff apartments.

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 14.31 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 on the westerly bounds of the herein described
5 Lease Parcel, being a point on the easterly side of Lincoln Avenue, and
6 a point on the easterly bounds of Parcel #3 as shown on a map entitled,
7 "Department of Education, State University of New York, State University
8 College at Westchester, Map #1, Parcels 1, 2 and 3", dated and filed in
9 the office of the Department of Public Works, May 27, 1966, said point
10 being located, N 00°59'25" E 5288.86 feet from the point of beginning of
11 said Parcel #3; thence along the westerly bounds of Parcel #3 and the
12 westerly bounds of the herein described Lease Parcel and the easterly
13 bounds of Lincoln Avenue, N 00°01'21"E 476.91 feet to a point; thence
14 through Parcel #3 and along the easterly bounds of Lincoln Avenue, as it
15 has been relocated, northeasterly on a curve to the right of radius
16 180.00 feet, an arc length of 162.77 feet, having a chord bearing N
17 25°55'40"E 157.28 feet, N 51°50'00"E 104.91 feet and southeasterly on a
18 curve to the right of radius 15.00 feet, an arc length of 21.64 feet,
19 having a chord bearing S 86°50'00"E 19.81 feet to a point at the south-
20 erly bounds of East Road; thence continuing through Parcel #3 along the
21 southerly bounds of East Road, S 45°30'00"E 27.23 feet, southeasterly on
22 a curve to the left of radius 500.00 feet, an arc length of 327.69 feet,
23 having a chord bearing S 64°16'30"E 321.85 feet, S 83°03'00"E 384.75
24 feet and southeasterly on a curve to the right of radius 500.00 feet, an
25 arc length of 238.47 feet, having a chord bearing S 69°23'11"E 236.22
26 feet to a point; thence leaving the southerly side of East Road and
27 continuing through Parcel #3, S 88°00'00"W 128.38 feet, S 44°00'00"W
28 251.11 feet, N 83°00'00"W 203.89 feet, S 00°14'59"E 670.88 feet, due
29 west 445.79 feet, due north 437.57 feet and due west 135.64 feet to the
30 point or place of beginning.

31 CONTAINING 14.31 ACRES OF LAND

32 S 15. The state university of New York shall not lease lands described
33 in this act unless a contract or a lease is executed by the Purchase
34 college advancement corporation for a project pursuant to this act with-
35 in two years of the effective date of this act.

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

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

51 S 18. This act shall take effect immediately.