

3699

2011-2012 Regular Sessions

I N S E N A T E

March 2, 2011

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law and the state finance law, in relation to procurement in support of the state university; to amend the education law, in relation to operations of the state university construction fund; and to amend the civil service law and the education law, in relation to state university health care facilities

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

1 Section 1. Subdivision 5 of section 355 of the education law, as added
2 by chapter 552 of the laws of 1985, paragraph a as amended by chapter
3 682 of the laws of 2007, paragraph c as added by chapter 103 of the laws
4 of 1989 and paragraph d as added by chapter 537 of the laws of 1997, is
5 amended to read as follows:

6 5. Notwithstanding the provisions of [paragraph] SUBDIVISION two of
7 section one hundred twelve and sections one hundred fifteen, one hundred
8 sixty-one, AND one hundred sixty-three [and one hundred seventy-four] of
9 the state finance law and sections three and six of the New York state
10 printing and public documents law or any other law to the contrary, the
11 state university trustees are authorized and empowered to:

12 a. (i) purchase materials, equipment and supplies, including computer
13 equipment and motor vehicles, [where the amount for a single purchase
14 does not exceed twenty thousand dollars,] (ii) execute [contracts for
15 services and] construction contracts [to an amount not exceeding twenty
16 thousand dollars], INCLUDING CONTRACTS FOR CONSTRUCTION-RELATED
17 SERVICES, and (iii) contract for printing [to an amount not exceeding
18 five thousand dollars], without prior approval by any other state offi-
19 cer or agency, but subject to rules and regulations of the state comp-
20 troller not otherwise inconsistent with the provisions of this section
21 and in accordance with [the] GUIDELINES, rules [and] OR regulations
22 promulgated by the state university board of trustees after consultation

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

LBD09894-01-1

1 with the state comptroller. [In addition, the trustees, after consulta-
2 tion with the commissioner of general services, are authorized to annu-
3 ally negotiate with the state comptroller increases in the aforemen-
4 tioned dollar limits and the exemption of any articles, categories of
5 articles or commodities from these limits. Rules and] CONTRACTS FOR
6 SERVICES SHALL BE SUBJECT TO THE APPROVAL OF THE STATE COMPTROLLER IN
7 ACCORDANCE WITH THE PROVISIONS AND DOLLAR THRESHOLD OF SUBDIVISION TWO
8 OF SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW; PROVIDED, THAT
9 THE TRUSTEES ARE AUTHORIZED TO NEGOTIATE ANNUALLY WITH THE STATE COMP-
10 TROLLER INCREASES IN THE DOLLAR THRESHOLD FOR CONTRACTS FOR SERVICES.
11 GUIDELINES, RULES OR regulations promulgated by the state university
12 board of trustees shall, to the extent practicable, require that compet-
13 itive proposals be solicited for purchases, and shall include require-
14 ments that purchases and contracts authorized under this section be at
15 the lowest available price, including consideration of prices available
16 through other state agencies, consistent with quality requirements, and
17 as will best promote the public interest. Such purchases may be made
18 directly from any contractor pursuant to any contract for commodities
19 let by the office of general services or any other state agency;

20 b. to establish cash advance accounts for the purpose of purchasing
21 materials, supplies, or services, for cash advances for travel expenses
22 and per diem allowances, or for advance payment of wages and salary. The
23 account may be used to purchase such materials, supplies, or services
24 where the amount of a single purchase does not exceed two hundred fifty
25 dollars, in accordance with such guidelines as shall be prescribed by
26 the state university trustees after consultation with the state comp-
27 troller.

28 c. establish guidelines in consultation with the commissioner of
29 general services authorizing participation by the state university in
30 programs administered by the office of general services for the purchase
31 of available New York state food products. The commissioner of general
32 services shall provide assistance to the state university necessary to
33 enable the university to participate in these programs.

34 d. [(1)] Award contract extensions for campus transportation without
35 competitive bidding where such contracts were secured either through
36 competitive bidding or through evaluation of proposals in response to a
37 request for proposals [pursuant to subparagraph (2) of this paragraph],
38 however such extensions may be rejected if the amount to be paid to the
39 contractor in any year of such proposed extension fails to reflect any
40 decrease in the regional consumer price index for the New York, New
41 York-Northeastern, New Jersey area, based upon the index for all urban
42 consumers (CPI-U) during the preceding twelve-month period. At the time
43 of any contract extension, consideration shall be given to any compet-
44 itive proposal offered by a public transportation agency. Such contract
45 may be increased for each year of the contract extension by an amount
46 not to exceed the regional consumer price index increase for the New
47 York, New York-Northeastern, New Jersey area, based upon the index for
48 all urban consumers (CPI-U), during the preceding twelve-month period,
49 provided it has been satisfactorily established by the contractor that
50 there has been at least an equivalent increase in the amount of his cost
51 of operation, during the period of the contract.

52 S 2. Subdivision 2 of section 112 of the state finance law, as amended
53 by chapter 319 of the laws of 1992, paragraph (a) as amended by section
54 2 of part D of chapter 56 of the laws of 2006, is amended to read as
55 follows:

1 2. (a) Before any contract made for or by any state agency, depart-
2 ment, board, officer, commission, or institution, except the office of
3 general services, shall be executed or become effective, whenever such
4 contract exceeds fifty thousand dollars in amount and before any
5 contract made for or by the office of general services shall be executed
6 or become effective, whenever such contract exceeds eighty-five thousand
7 dollars in amount, it shall first be approved by the comptroller and
8 filed in his or her office, provided, however, that the comptroller
9 shall make a final written determination with respect to approval of
10 such contract within ninety days of the submission of such contract to
11 his or her office unless the comptroller shall notify, in writing, the
12 state agency, department, board, officer, commission, or institution,
13 prior to the expiration of the ninety day period, and for good cause, of
14 the need for an extension of not more than fifteen days, or a reasonable
15 period of time agreed to by such state agency, department, board, offi-
16 cer, commission, or institution and provided, further, that such written
17 determination or extension shall be made part of the procurement record
18 pursuant to paragraph f of subdivision one of section one hundred
19 sixty-three of this chapter. THE FOREGOING NOTWITHSTANDING, ANY CONTRACT
20 MADE FOR OR BY THE STATE UNIVERSITY OF NEW YORK FOR GOODS SHALL NOT BE
21 SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH.

22 (b) Whenever any liability of any nature shall be incurred by or for
23 any state department, board, officer, commission, or institution, notice
24 that such liability has been incurred shall be immediately given in
25 writing to the state comptroller.

26 S 3. Subparagraph (iv) of paragraph a of subdivision 3 of section 163
27 of the state finance law, as amended by chapter 430 of the laws of 1997,
28 is amended to read as follows:

29 (iv) The commissioner is authorized to permit any officer, body or
30 agency of the state or of a political subdivision or a district therein,
31 or fire company or volunteer ambulance service as such are defined in
32 section one hundred of the general municipal law, to make purchases of
33 commodities through the office of general services' centralized
34 contracts, pursuant to the provisions of section one hundred four of the
35 general municipal law. The commissioner is authorized to permit any
36 county extension service association as authorized under subdivision
37 eight of section two hundred twenty-four of the county law, or any asso-
38 ciation or other entity as specified in and in accordance with section
39 one hundred nine-a of the general municipal law, OR ANY NON-PROFIT
40 CORPORATION ORGANIZED IN FURTHERANCE OF THE OBJECTS AND PURPOSES OF THE
41 STATE UNIVERSITY OF NEW YORK, or any other association or entity as
42 specified in state law, to make purchases of commodities through the
43 office of general services' centralized contracts; provided, however,
44 that such entity so empowered shall accept sole responsibility for any
45 payment due with respect to such purchase; AND PROVIDED FURTHER, HOWEV-
46 ER, THAT COMMODITIES SO PURCHASED BY A NON-PROFIT CORPORATION ORGANIZED
47 IN FURTHERANCE OF THE OBJECTS AND PURPOSES OF THE STATE UNIVERSITY OF
48 NEW YORK SHALL NOT BE USED DIRECTLY OR INDIRECTLY BY A FOR-PROFIT CORPO-
49 RATION OR OTHER ENTITY WHICH CONTRACTS WITH THE NON-PROFIT CORPORATION,
50 NOR SHALL SUCH COMMODITIES SO PURCHASED BY SUCH NON-PROFIT CORPORATION
51 BE OFFERED FOR RESALE.

52 S 4. Paragraph e of subdivision 4 of section 163 of the state finance
53 law, as amended by chapter 95 of the laws of 2000, is amended to read as
54 follows:

55 e. Any officer, body or agency of a political subdivision as defined
56 in section one hundred of the general municipal law or a district there-

1 in, may make purchases of services through the office of general
2 services' centralized contracts for services, subject to the provisions
3 of section one hundred four of the general municipal law. The commis-
4 sioner may permit and prescribe the conditions for the purchase of
5 services through the office of general services' centralized contracts
6 for services by any public authority or public benefit corporation of
7 the state including the port authority of New York and New Jersey, OR
8 ANY NON-PROFIT CORPORATION ORGANIZED IN FURTHERANCE OF THE OBJECTS AND
9 PURPOSES OF THE STATE UNIVERSITY OF NEW YORK, OTHER THAN THE RESEARCH
10 FOUNDATION OF THE STATE UNIVERSITY OF NEW YORK; PROVIDED, HOWEVER, THAT
11 SERVICES SO PURCHASED BY A NON-PROFIT CORPORATION ORGANIZED IN FURTHER-
12 ANCE OF THE OBJECTS AND PURPOSES OF THE STATE UNIVERSITY OF NEW YORK,
13 OTHER THAN THE RESEARCH FOUNDATION OF THE STATE UNIVERSITY OF NEW YORK,
14 SHALL NOT BE USED DIRECTLY OR INDIRECTLY BY A FOR-PROFIT CORPORATION OR
15 OTHER ENTITY WHICH CONTRACTS WITH THE NON-PROFIT ORGANIZATION. The
16 commissioner is authorized to permit any public library, association
17 library, library system, cooperative library system, the New York
18 Library Association, and the New York State Association of Library
19 Boards or any other library except those which are operated by for
20 profit entities, to make purchases of services through the office of
21 general services' centralized contracts; provided, however, that such
22 entity so empowered shall accept sole responsibility for any payment due
23 with respect to such purchase.

24 S 5. Subdivisions 12 and 15 of section 373 of the education law, as
25 added by chapter 251 of the laws of 1962, are amended and a new subdivi-
26 sion 20 is added to read as follows:

27 12. To [make] PROCURE and execute contracts, lease agreements, and all
28 other instruments necessary or convenient for the exercise of its corpo-
29 rate powers and the fulfillment of its corporate purposes under this
30 article. NOTWITHSTANDING SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE
31 LAW OR ANY OTHER LAW TO THE CONTRARY, ALL SUCH FUND PROCUREMENTS SHALL
32 BE SUBJECT ONLY TO PROCUREMENT GUIDELINES THAT ARE ANNUALLY ADOPTED BY
33 THE FUND TRUSTEES, WHICH SHALL CONFORM TO THE PROVISIONS OF TITLE FOUR
34 OF ARTICLE NINE OF THE PUBLIC AUTHORITIES LAW EXCEPT SECTION
35 TWENTY-EIGHT HUNDRED SEVENTY-NINE-A OF SUCH LAW;

36 15. To engage the services of construction, engineering, architect-
37 tural, legal and financial consultants, surveyors and appraisers, on a
38 contract basis or as employees, for professional service and technical
39 assistance and advice AND NOTWITHSTANDING SECTION ONE HUNDRED TWELVE OF
40 THE STATE FINANCE LAW OR ANY OTHER LAW TO THE CONTRARY, TO DETERMINE ITS
41 STAFFING, SUPPORT SERVICES AND EQUIPMENT NEEDS WHICH IN THE JUDGMENT OF
42 THE FUND ARE NECESSARY TO FULFILL ITS PURPOSES AS SET FORTH IN SECTION
43 THREE HUNDRED SEVENTY-TWO OF THIS ARTICLE; and

44 20. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ALL RIGHTS AND BENEFITS,
45 INCLUDING TERMS AND CONDITIONS OF EMPLOYMENT, AND PROTECTION OF CIVIL
46 SERVICE AND COLLECTIVE BARGAINING STATUS OF ALL EMPLOYEES OF THE FUND
47 SHALL BE PRESERVED AND PROTECTED. EMPLOYEES IN ANY NEWLY CREATED POSI-
48 TIONS WITHIN THE FUND SHALL BE CONSIDERED PUBLIC EMPLOYEES FOR ALL
49 PURPOSES OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

50 S 6. Subdivision 8 of section 376 of the education law, as added by
51 chapter 251 of the laws of 1962, the opening paragraph and paragraph a
52 as amended by chapter 877 of the laws of 1990 and paragraph f as added
53 by chapter 769 of the laws of 1978, is amended to read as follows:

54 8. All contracts which are to be awarded pursuant to this subdivision
55 shall be awarded by public letting in accordance with the following
56 provisions, notwithstanding any contrary provision of section ONE

1 HUNDRED TWELVE, one hundred thirty-five, one hundred thirty-six, one
2 hundred thirty-nine or one hundred forty of the state finance law OR ANY
3 OTHER LAW, provided, however, that where the estimated expense of any
4 contract which may be awarded pursuant to this subdivision is less than
5 TWO HUNDRED fifty thousand dollars, a performance bond and a bond for
6 the payment of labor and material may, in the discretion of the fund,
7 not be required, and except that in the discretion of the fund, a
8 contract may be entered into for such purposes without public letting
9 where the estimated expense thereof is less than twenty thousand
10 dollars, or where in the judgment of the fund an emergency condition
11 exists as a result of damage to an existing academic building, dormitory
12 or other facility which has been caused by an act of God, fire or other
13 casualty, or any other unanticipated, sudden and unexpected occurrence,
14 that has resulted in damage to or a malfunction in an existing academic
15 building, dormitory or other facility and involves a pressing necessity
16 for immediate repair, reconstruction or maintenance in order to permit
17 the safe continuation of the use or function of such facility, or to
18 protect the facility or the life, health or safety of any person, and
19 the nature of the work is such that in the judgment of the fund it would
20 be impractical and against the public interest to have public letting;
21 provided, however, that the fund, prior to awarding a contract hereunder
22 because of an emergency condition notify the comptroller of its intent
23 to award such a contract:

24 a. [If contracts are to be publicly let, the] THE letting agency shall
25 advertise the invitation to bid OR THE REQUEST FOR PROPOSALS in [a news-
26 paper published in the city of Albany and in] such [other newspapers]
27 NEWSPAPER as will be most likely in its opinion to give adequate notice
28 to contractors of the work required [and of the invitation to bid]
29 provided, however, that where the estimated expense of any contract
30 which may be awarded pursuant to this subdivision is less than TWO
31 HUNDRED fifty thousand dollars, the letting agency may advertise the
32 invitation to bid solely through the procurement opportunities newslet-
33 ter published pursuant to section one hundred forty-two of the economic
34 development law. The invitation to bid OR REQUEST FOR PROPOSALS shall
35 contain such information as the letting agency shall deem appropriate
36 [and a statement of the time and place where all bids received pursuant
37 to such notice will be publicly opened and read].

38 b. The letting agency shall not award any contract after public
39 bidding except to the lowest bidder who in its opinion is qualified to
40 perform the work required and is responsible and reliable. The letting
41 agency may, however, reject any or all bids, again advertise for bids,
42 or waive any informality in a bid if it believes that the public inter-
43 est will be promoted thereby.

44 c. The invitation to bid, REQUEST FOR PROPOSALS and the contract
45 awarded shall contain such other terms and conditions, and such
46 provisions for penalties, as the letting agency may deem desirable.

47 d. [The form of any] ANY contract awarded pursuant to this subdivision
48 shall [be approved by the attorney general and by the comptroller and
49 shall] contain a clause that the contract shall be deemed executory to
50 the extent of the moneys available and that no liability shall be
51 incurred by the fund beyond the moneys available therefor.

52 e. The letting agency shall require such deposits, bonds and security
53 in connection with the submission of bids OR REQUEST FOR PROPOSALS, the
54 award of contracts and the performance of work as it shall determine to
55 be in the public interest and for the protection of the state, the state
56 university, the fund and the letting agency.

1 f. Notwithstanding the provisions of any other law to the contrary,
2 all contracts for public work awarded by the state university
3 construction fund pursuant to this subdivision shall be in accordance
4 with section one hundred thirty-nine-f of the state finance law.

5 G. EXCEPT AS PROVIDED IN THE COLLECTIVE BARGAINING AGREEMENT BETWEEN
6 THE FUND AND ITS REPRESENTED EMPLOYEES, ALL WORK CURRENTLY PERFORMED BY
7 REPRESENTED EMPLOYEES OF THE FUND UPON THE EFFECTIVE DATE OF THIS PARA-
8 GRAPH SHALL CONTINUE TO BE PERFORMED BY SUCH EMPLOYEES. NOTHING IN THE
9 CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS PARAGRAPH
10 SHALL RESULT IN A DISPLACEMENT OF ANY CURRENTLY EMPLOYED REPRESENTED
11 WORKER OR LOSS OF POSITION, INCLUDING PARTIAL DISPLACEMENT SUCH AS A
12 REDUCTION IN WORK HOURS, WAGES OR OTHER BENEFITS.

13 S 7. Subdivision 4 of section 377 of the education law, as added by
14 chapter 624 of the laws of 1999, is amended to read as follows:

15 4. Monies received by the fund, FOR ALL OF ITS OPERATING AND ADMINIS-
16 TRATIVE COSTS OR in connection with approved university-related economic
17 development facilities, [other than state appropriations to the fund,]
18 may be deposited in a general account and other such accounts as the
19 fund may deem necessary, for the transaction of its business [or in
20 relation to construction or property management activities undertaken in
21 connection with such projects] and shall be paid out on checks signed by
22 the chairman of the fund or such other person or persons as the trustees
23 of the fund may authorize.

24 S 8. Subdivision 14 of section 130 of the civil service law, as added
25 by chapter 685 of the laws of 1995, is amended to read as follows:

26 14. Notwithstanding any foregoing provisions of this section to the
27 contrary, wage rates and/or pay differentials paid by the state PURSUANT
28 TO SUBDIVISION THIRTEEN OF SECTION THREE HUNDRED FIFTY-FIVE-A OF THE
29 EDUCATION LAW, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-FIVE OF THE LAWS
30 OF NINETEEN HUNDRED NINETY-FIVE, to teaching and research center nurses
31 of the state university of New York [pursuant to subdivision thirteen of
32 section three hundred fifty-five-a of the education law] may be based on
33 a study of representative peer institutions in private or other public
34 hospitals in the same geographic area as a hospital of the state univer-
35 sity which shows that WAGE RATES AND/OR pay differentials of nurses
36 employed by such peer institutions are higher than the wage rates and/or
37 pay differentials paid by the state to teaching and research center
38 nurses of the state university. Whenever, in the opinion of the chief
39 administrative officer of the health science centers at which teaching
40 and research center nurses are employed, additional compensation for
41 such employees is necessary to maintain adequate support to protect the
42 health, safety and welfare of patients, such chief administrative offi-
43 cer OR PRESIDENT shall request the state university board of trustees to
44 conduct such a study.

45 S 9. Subdivision 6 of section 350 of the education law, as added by
46 chapter 363 of the laws of 1998, is amended to read as follows:

47 6. "Clinic" shall mean a facility LICENSED UNDER ARTICLE TWENTY-EIGHT
48 OF THE PUBLIC HEALTH LAW AS A DIAGNOSTIC AND TREATMENT CENTER WHICH IS
49 located either within or outside of a state university health care
50 facility providing services related to the medical education mission of
51 the university, but shall not include state university student health
52 services.

53 S 10. Paragraph b of subdivision 16 of section 355 of the education
54 law, as added by chapter 363 of the laws of 1998, is amended to read as
55 follows:

1 b. Notwithstanding the provisions of subdivision two of section one
2 hundred twelve of the state finance law [relating to the dollar thresh-
3 old requiring the comptroller's approval of contracts and], subdivision
4 six of section one hundred sixty-three of the state finance law[,] AND
5 SECTION SIXTY-THREE OF THE EXECUTIVE LAW, (I) authorize contracts for
6 the purchase of goods [and services] for state university health care
7 facilities WITHOUT PRIOR APPROVAL BY ANY OTHER STATE OFFICER OR AGENCY,
8 INCLUDING CONTRACTS:

9 [(1) for any contract which does not exceed seventy-five thousand
10 dollars; or

11 (2)] for joint or group purchasing [arrangements which do not exceed
12 seventy-five thousand dollars without prior approval by any other state,
13 officer or agency] OF GOODS, in accordance with procedures and require-
14 ments found in paragraph a of subdivision five of this section, AND (II)
15 AUTHORIZE CONTRACTS FOR JOINT OR GROUP PURCHASING OF SERVICES WHICH DO
16 NOT EXCEED SEVENTY-FIVE THOUSAND DOLLARS WITHOUT PRIOR APPROVAL BY ANY
17 OTHER STATE, OFFICER OR AGENCY IN ACCORDANCE WITH PROCEDURES AND
18 REQUIREMENTS FOUND IN PARAGRAPH A OF SUBDIVISION FIVE OF THIS SECTION.

19 [(3) contracts] CONTRACTS authorized [hereunder] PURSUANT TO THIS
20 PARAGRAPH shall be subject to article fourteen of the civil service law
21 and the applicable provisions of agreements between the state and
22 employee organizations pursuant to article fourteen of the civil service
23 law.

24 The trustees are authorized to negotiate annually with the state comp-
25 troller increases in the aforementioned dollar [limits] LIMIT.

26 S 11. Notwithstanding any inconsistent provision in section 8 of the
27 court of claims act, subdivision 10 of section 355 of the education law
28 or any other provision of law, a state university health care facility
29 may include in a contract authorized by paragraph a of subdivision 16 of
30 section 355 of the education law, other than a contract with state
31 employees relating to terms and conditions of their employment, a
32 provision that some or all disputes arising under or related to such
33 contract shall be resolved by binding arbitration in accordance with the
34 rules of a nationally-recognized arbitration association.

35 S 12. This act shall take effect immediately provided that the amend-
36 ments to section 163 of the state finance law made by sections three and
37 four of this act shall not affect the repeal of such section and shall
38 be deemed repealed therewith.