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

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:

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

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

a. (i) purchase materials, equipment and supplies, including computer equipment and motor vehicles, [where the amount for a single purchase does not exceed twenty thousand dollars,] (ii) execute [contracts for services and] construction contracts [to an amount not exceeding twenty thousand dollars], INCLUDING CONTRACTS FOR CONSTRUCTION-RELATED SERVICES, and (iii) contract for printing [to an amount not exceeding five thousand dollars], without prior approval by any other state officer or agency, but subject to rules and regulations of the state comptroller not otherwise inconsistent with the provisions of this section and in accordance with [the] GUIDELINES, rules [and] OR regulations 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.

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with the state comptroller. [In addition, the trustees, after consultation with the commissioner of general services, are authorized to annually negotiate with the state comptroller increases in the aforementioned dollar limits and the exemption of any articles, categories of articles or commodities from these limits. Rules and] CONTRACTS FOR SERVICES SHALL BE SUBJECT TO THE APPROVAL OF THE STATE COMPTROLLER IN ACCORDANCE WITH THE PROVISIONS AND DOLLAR THRESHOLD OF SUBDIVISION TWO OF SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW; PROVIDED, THAT THE TRUSTEES ARE AUTHORIZED TO NEGOTIATE ANNUALLY WITH THE STATE COMPTROLLER INCREASES IN THE DOLLAR THRESHOLD FOR CONTRACTS FOR SERVICES. GUIDELINES, RULES OR regulations promulgated by the state university board of trustees shall, to the extent practicable, require that competitive proposals be solicited for purchases, and shall include requirements that purchases and contracts authorized under this section be at the lowest available price, including consideration of prices available through other state agencies, consistent with quality requirements, and as will best promote the public interest. Such purchases may be made directly from any contractor pursuant to any contract for commodities let by the office of general services or any other state agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The trustees are authorized to negotiate annually with the state comptroller increases in the aforementioned dollar [limits] LIMIT.

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

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