

1429--B

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. RANZENHOFER, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

1 Section 1. This act shall be known and may be cited as the "2014
2 facility alternatives for schools act".
3 S 2. For the purposes of this act the terms:
4 1. "School district" shall mean any union free school district,
5 central school district, central high school district or city school
6 district.
7 2. "Person" shall mean a municipality or other governmental body,
8 public corporation or authority, private corporation, partnership or
9 individual.
10 S 3. (a) Notwithstanding the provisions of any other law, general,
11 special or local, relating to the length, duration and terms of
12 contracts a school district may enter into, any school district is here-
13 by authorized and empowered to enter into contracts, leases or rental
14 agreements with any person, upon such terms and conditions for such
15 consideration and for such terms or duration, not to exceed thirty
16 years, as may be agreed upon by the school district, and such person,
17 whereby such person is granted the right to construct, reconstruct,

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

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1 finance or own a school building facility designed with a student capac-
2 ity not to exceed three thousand.

3 (b) Notwithstanding the provisions of any general, special or local
4 law, a contract entered into between a school district and any person
5 pursuant to this act may be awarded pursuant to public bidding in
6 compliance with section 103 of the general municipal law or pursuant to
7 the following provisions for the award of a contract based on evaluation
8 of proposals submitted in response to a request for proposals prepared
9 by or for a school district. The school district shall require that each
10 proposal to be submitted shall include information relating to the expe-
11 rience of the proposer, the ability of the proposer to secure adequate
12 financing, identification and specification of all elements of cost
13 which would become a charge to the school district, in whatever form, in
14 return for the fulfillment by the proposer of all tasks and responsibil-
15 ities established by the request for the proposal for the full lifetime
16 of a proposed contract, including, as appropriate, but not limited to
17 the cost of planning, design, construction, reconstruction, financing,
18 ownership and/or maintenance of such school building facility and such
19 other information as the school district may determine to have a materi-
20 al bearing on its ability to evaluate any proposal for such school
21 building facility.

22 Prior to the issuance of a request for proposals pursuant to this act,
23 the school district shall publish notice of such issuance in the offi-
24 cial newspaper of the school district, if any, and in at least one news-
25 paper of general circulation. Concurrent with the publication of such
26 notice of a draft request for proposals shall be filed with the clerk of
27 the school district or the chief executive officer of such school
28 district. After allowing a thirty day comment period and an additional
29 thirty days to review such comments, the school district may publish the
30 final request for proposals and concurrent with such publication shall
31 publish notice of such issuance in the manner specified in this para-
32 graph. Concurrent with the publication of the final request for
33 proposals a set of comments filed in relation to the draft request for
34 proposals and findings related to the substantive elements of such
35 comments shall be filed along with the request for proposals with the
36 clerk or chief executive officer of such school district and in the
37 public library or libraries in proximity to the proposed school building
38 facility site.

39 Proposals received in response to such request for proposals shall be
40 evaluated by the school district as to net cost and in a manner consist-
41 ent with provisions set forth in the request for proposals, may be eval-
42 uated on the basis of additional factors, including, but not limited to,
43 facility design incorporating systems and approaches which provide maxi-
44 mum facility value at the lowest possible cost using the best current
45 development life cycle costs, construction, reconstruction, leasing and
46 financing techniques available.

47 The school district may make a contract award to any responsible
48 proposer selected based on a determination by the school district that
49 the selected proposal is most responsive to the request for proposals
50 and may negotiate with any proposer; provided, however, that if an award
51 is made to any proposer whose total proposal does not provide either the
52 lowest net cost, the school district shall adopt a resolution after
53 public hearing which includes particularized findings relevant to
54 factors evaluated indicating that the school district's requirements are
55 met by such award and that such action is in the public interest. Such

1 contract may be a single guaranteed maximum price general contract or
2 utilize a full construction management contract approach.

3 (c) All requests for proposals by the school district pursuant to this
4 act shall be subject to review and approval by the commissioner of
5 education prior to the issuance of such request for proposal by the
6 school district.

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

11 (e) Every contract entered into by the school district for
12 construction of a school building facility shall contain provisions that
13 the design and construction standards of such facility shall be subject
14 to the review and approval of the school district, that the project
15 developer shall require its contractor or contractors to furnish a bond
16 guaranteeing prompt payment of moneys that are due to all persons
17 furnishing labor and materials pursuant to the requirements of any
18 construction contracts, and a security bond for the faithful performance
19 of the school district project which shall conform to the provisions of
20 section 103-f of the general municipal law and that a copy of such
21 performance and payment bonds shall be kept by the school district and
22 shall be open to public inspection.

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

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

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

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

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

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

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