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

4448

2013-2014 Regular Sessions

I N S E N A T E

April 1, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law and the public authorities law, in relation to directing the out-of-state placement committee to develop a residential bed plan and in relation to authorizing the dormitory authority to finance new facilities

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

Section 1. Section 483-d of the social services law is amended by adding a new subdivision 7-a to read as follows:

7-A. RESIDENTIAL BED PLAN. (A) THE OUT-OF-STATE PLACEMENT COMMITTEE MEMBERS SHALL DEVELOP A RESIDENTIAL BED PLAN THAT INCLUDES RECOMMENDATIONS TO ADDRESS CURRENT AND FUTURE PROGRAMMATIC AND PHYSICAL PLANT NEEDS FOR RENOVATED AND NEW IN-STATE CAPACITY AT RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES, INCLUDING BUT NOT LIMITED TO: RESIDENTIAL INSTITUTIONS FOR CHILDREN, AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THE PUBLIC AUTHORITIES LAW AND ANY OTHER OFFICE OF CHILDREN AND FAMILY SERVICES LICENSED FACILITY; AND COMMUNITY RESIDENCES, AS DEFINED IN SUBDIVISION TWENTY-EIGHT OF SECTION 1.03 OF THE MENTAL HYGIENE LAW.

(I) THE COMMITTEE, IN CONSULTATION WITH THE DIVISION OF THE BUDGET, SHALL DEVELOP A RESIDENTIAL BED PLAN THAT WILL BE BASED ON AGENCY DATA REGARDING CHILDREN CURRENTLY IN NEED OF RESIDENTIAL SERVICES AND THE PROJECTED FUTURE NEED FOR SUCH SERVICES, AND CURRENT PHYSICAL STATE AND CAPACITY OF RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES. EACH MEMBER AGENCY THAT PLACES CHILDREN OR HAS OVERSIGHT RESPONSIBILITY FOR THE PLACEMENT OF CHILDREN IN RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES WILL PROVIDE THIS DATA TO THE COMMITTEE.

(II) THE COMMITTEE SHALL FORWARD THE PLAN TO THE GOVERNOR, THE MAJORITY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY, AS SOON AS

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

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PRACTICABLE, BUT NO LATER THAN THE ANNUAL PROGRESS REPORT REQUIRED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, WITH ANNUAL UPDATES ON ITS PROGRESS IN MEETING THE PLAN'S GOALS TO BE INCLUDED THEREAFTER IN SUCH REPORT.

(B) IN ACCORDANCE WITH THE RESIDENTIAL BED PLAN DEVELOPED BY THE COMMITTEE AND IN CONSULTATION WITH THE DIVISION OF THE BUDGET, INDIVIDUAL COMMITTEE MEMBER AGENCIES SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDERS OF NOT-FOR-PROFIT RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES WITHIN THE STATE FOR THE CONSTRUCTION OF NEW RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES AND THE RENOVATION OR REHABILITATION OF EXISTING RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, MEMBERS OF THE COMMITTEE SHALL AUTHORIZE OR SEEK AUTHORIZATION FOR CREATION OF A REIMBURSEMENT FACTOR FOR APPROVED CAPITAL COSTS FOR NEW FACILITIES AND RENOVATION OR REHABILITATION OF EXISTING FACILITIES WITHIN THE EXISTING RATE METHODOLOGIES OF SUCH MEMBER AGENCY, INCLUDING ANY SPECIAL RATE METHODOLOGIES ESTABLISHED FOR THE DORMITORY AUTHORITY FINANCED PROGRAMS, UPON ITS DETERMINATION AND WITH THE CONCURRENCE OF THE MEMBERS OF THE COMMITTEE, THAT THE CONSTRUCTION OR REHABILITATION OF SUCH RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY IS DESIRABLE AND IN KEEPING WITH THE RESIDENTIAL BED PLAN.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE DORMITORY AUTHORITY IS HEREBY AUTHORIZED TO PROVIDE FINANCING OF THE COSTS RELATED TO THE CONSTRUCTION OF NEW FACILITIES AND THE RENOVATION OR REHABILITATION OF EXISTING RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES, PURSUANT TO THE PLAN DEVELOPED IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION.

(E) NOTHING CONTAINED IN THIS SUBDIVISION SHALL REQUIRE THAT THE DORMITORY AUTHORITY BE THE SOLE OR ONLY FINANCIER OF SUCH NEW FACILITIES OR RENOVATION OR REHABILITATION OF EXISTING FACILITIES.

S 2. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

ANY RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDIVISION FORTY-SIX OF THIS SECTION FOR THE FINANCING, REFINANCING, DESIGN, REPLACEMENT (INCLUDING ACQUISITION AND CONSTRUCTION), RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENOVATION, AND EQUIPPING OF RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES.

S 3. Section 1676 of the public authorities law is amended by adding a new subdivision 46 to read as follows:

46. THE TERM "RESIDENTIAL FACILITY" OR "RESIDENTIAL SCHOOL" SHALL MEAN A NOT-FOR-PROFIT CORPORATION THAT IS LICENSED OR CERTIFIED BY A STATE AGENCY OR DEPARTMENT TO OPERATE A RESIDENTIAL SCHOOL OR A RESIDENTIAL FACILITY FOR CHILDREN PLACED BY STATE AND LOCAL AGENCIES OR DEPARTMENTS, INCLUDING BUT NOT LIMITED TO, THE COMMITTEE ON SPECIAL EDUCATION OF A SCHOOL DISTRICT OR LOCAL SOCIAL SERVICES DISTRICT.

S 4. Subdivision l of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

ANY RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDIVISION FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THIS TITLE FOR THE FINANCING, REFINANCING, DESIGN, REPLACEMENT (INCLUDING ACQUISITION AND CONSTRUCTION), RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENOVATION AND EQUIPPING OF SUCH RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES THAT HAVE BEEN APPROVED IN ACCORDANCE WITH SUBDIVISION SEVEN-A OF SECTION FOUR HUNDRED EIGHTY-THREE-D OF THE SOCIAL SERVICES LAW AND THAT

ARE CONSISTENT WITH THE RESIDENTIAL BED PLAN ADVANCED IN ACCORDANCE WITH SUCH SUBDIVISION.

S 5. Section 1680 of the public authorities law is amended by adding a new subdivision 41 to read as follows:

41. A. ANY LEASE, SUBLEASE OR OTHER AGREEMENT BY AND BETWEEN THE AUTHORITY AND A NOT-FOR-PROFIT CORPORATION OPERATING A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY SHALL, IN ADDITION TO ANY OTHER PROVISIONS DEEMED NECESSARY BY THE AUTHORITY, CONTAIN THE FOLLOWING:

(1) A REQUIREMENT THAT SUCH NOT-FOR-PROFIT CORPORATION ESTABLISH AN ACCOUNT WITH A BANK OR TRUST COMPANY ACCEPTABLE TO THE AUTHORITY INTO WHICH THE NOT-FOR-PROFIT CORPORATION SHALL DEPOSIT, OR CAUSE TO BE DEPOSITED, ALL AMOUNTS RECEIVED BY SUCH NOT-FOR-PROFIT CORPORATION FROM ANY SCHOOL DISTRICT, SOCIAL SERVICES DISTRICT, OR ANY OTHER PAYOR ON ACCOUNT OF THE RESIDENTIAL AND EDUCATIONAL SERVICES PROVIDED BY SUCH NOT-FOR-PROFIT CORPORATION. THE NOT-FOR-PROFIT CORPORATION SHALL GRANT TO THE AUTHORITY A SECURITY INTEREST IN SUCH ACCOUNT AND THE MONEYS ON DEPOSIT THEREIN SHALL BE SUBJECT TO WITHDRAWAL BY THE NOT-FOR-PROFIT CORPORATION ONLY AFTER PAYMENT OF AMOUNTS THEN DUE TO THE AUTHORITY AS PROVIDED IN SUCH LEASE, SUBLEASE OR OTHER AGREEMENT;

(2) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION GRANT TO THE AUTHORITY EITHER A MORTGAGE ON THE REAL PROPERTY USED BY SUCH NOT-FOR-PROFIT CORPORATION TO PROVIDE RESIDENTIAL AND EDUCATIONAL SERVICES OR SUCH OTHER INTEREST IN REAL PROPERTY AS IS ACCEPTABLE TO THE AUTHORITY;

(3) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION CONTINUE TO OPERATE A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY FOR CHILDREN PLACED BY STATE AND LOCAL AGENCIES AND DEPARTMENTS (INCLUDING BUT NOT LIMITED TO THE COMMITTEE ON SPECIAL EDUCATION OF A SCHOOL DISTRICT OR A LOCAL SOCIAL SERVICES DISTRICT) FOR THE TERM OF THE LEASE, SUBLEASE OR OTHER AGREEMENT AND IN THE EVENT SUCH NOT-FOR-PROFIT CORPORATION FAILS TO DO SO, PROVIDE FOR THE TRANSFER AND OPERATION OF THE RESIDENTIAL PROGRAMS OR EDUCATIONAL PROGRAMS TO A REPLACEMENT NOT-FOR-PROFIT OPERATOR THAT IS QUALIFIED TO PROVIDE SUCH SERVICES AND THAT HAS ASSUMED THE OBLIGATIONS OF SUCH NOT-FOR-PROFIT CORPORATION PURSUANT TO SUCH AGREEMENT;

(4) ALL STATE AND LOCAL OFFICERS ARE HEREBY AUTHORIZED AND REQUIRED TO PAY ALL FUNDS PAYABLE TO A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY ON ACCOUNT OF THE RESIDENTIAL AND EDUCATIONAL SERVICES PROVIDED BY SUCH NOT-FOR-PROFIT CORPORATION INTO THE ACCOUNT ESTABLISHED PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH. IN THE EVENT OF THE FAILURE OF THE APPLICABLE PAYOR TO MAKE A MAINTENANCE RATE PAYMENT (OR OTHER SIMILAR RATE COMPONENT ESTABLISHED BY THE STATE AGENCY OR DEPARTMENT WHICH LICENSED OR CERTIFIED THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY) TO THE NOT-FOR-PROFIT CORPORATION FOR RESIDENTIAL CARE AND EDUCATIONAL SERVICES PROVIDED TO A CHILD IN THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY, THE STATE COMPTROLLER SHALL WITHHOLD STATE REIMBURSEMENT TO THE APPLICABLE PAYOR IN AN AMOUNT EQUAL TO THE UNPAID OBLIGATION FOR THE CAPITAL FINANCING ADD-ON RATE (OR OTHER SIMILAR RATE COMPONENT ESTABLISHED BY THE STATE AGENCY OR DEPARTMENT WHICH LICENSED OR CERTIFIED THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY) AND PAY OVER SUCH SUM TO THE AUTHORITY OR ITS TRUSTEE UPON CERTIFICATION OF THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE STATE EDUCATION DEPARTMENT OR ANY OTHER STATE GOVERNMENTAL PAYOR, AS APPLICABLE; AND

(5) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION PAY TO THE AUTHORITY THE AMOUNT REQUIRED TO PAY THE PRINCIPAL OF AND INTEREST ON OBLIGATIONS OF THE AUTHORITY ISSUED IN RELATION TO PROVIDING SUCH RESI-

DENTIAL SCHOOLS AND RESIDENTIAL FACILITIES AND ALL INCIDENTAL EXPENSES OF THE AUTHORITY INCURRED IN RELATION THERETO.

B. THE AUTHORITY SHALL NOT ENTER INTO ANY AGREEMENT AUTHORIZED BY PARAGRAPH A OF THIS SUBDIVISION UNLESS AND UNTIL THE STATE AGENCY OR DEPARTMENT WHICH CERTIFIED THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY, TOGETHER WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, HAVE APPROVED IN WRITING THE PROJECT TO BE FINANCED WITH THE PROCEEDS OF BONDS ISSUED BY THE AUTHORITY.

C. THE AUTHORITY SHALL NOT ISSUE ANY BONDS OR NOTES IN EXCESS OF THIRTY MILLION DOLLARS FOR THE PURPOSE OF FINANCING THE COSTS RELATED TO RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES AS DEFINED IN SUBDIVISION FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THIS TITLE, WHICH BONDS AND NOTES SHALL BE IN ADDITION TO ANY BONDS OR NOTES WHICH THE AUTHORITY MAY ISSUE PURSUANT TO SUBDIVISION FORTY OF THIS SECTION. IN CALCULATING THE AMOUNT OF BONDS OR NOTES ISSUED OR OUTSTANDING PURSUANT TO THIS SUBDIVISION, THE FOLLOWING SHALL BE EXCLUDED THEREFROM: (1) THE PRINCIPAL AMOUNT OF BONDS OR NOTES ISSUED TO FUND ONE OR MORE DEBT SERVICE RESERVE FUNDS; (2) THE PRINCIPAL AMOUNT OF BONDS OR NOTES ISSUED TO PAY THE COSTS OF ISSUANCE OF SUCH BONDS OR TO PROVIDE FOR THE PAYMENT OF INTEREST ON THE BONDS DURING CONSTRUCTION; AND (3) THE PRINCIPAL AMOUNT OF BONDS OR NOTES ISSUED TO REFUND OR OTHERWISE REPAY SUCH BONDS AND BONDS OR NOTES PREVIOUSLY ISSUED. EXCEPT FOR PURPOSES OF COMPLYING WITH THE INTERNAL REVENUE CODE, ANY INTEREST INCOME EARNED ON BOND PROCEEDS SHALL ONLY BE USED TO PAY DEBT SERVICE ON SUCH BONDS OR NOTES.

S 6. The social services law is amended by adding a new section 462-c to read as follows:

S 462-C. STANDARDS OF PAYMENT. 1. (A) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL ESTABLISH, SUBJECT TO CONSULTATION WITH THE APPROPRIATE STATE AGENCIES, THE APPROVAL OF THE DIRECTOR OF THE BUDGET AND FEDERAL APPROVAL, STANDARDS OF PAYMENT FOR THE CAPITAL COSTS OF APPROVED PROJECTS FOR RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES WHICH ENTER INTO A LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE DORMITORY AUTHORITY PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN HUNDRED EIGHTY OF THE PUBLIC AUTHORITIES LAW. THE MAINTENANCE RATE ESTABLISHED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR SUCH RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES SHALL BE ESTABLISHED IN TWO PARTS, ONE PART OF WHICH WILL BE THE CAPITAL FINANCING ADD-ON RATE, WHICH SHALL BE THE COST PER CHILD OF THE ANNUAL PAYMENT PURSUANT TO SUCH LEASE, SUBLEASE OR OTHER AGREEMENT. THE APPLICABLE SOCIAL SERVICES DISTRICT, SCHOOL DISTRICT OR OTHER PAYOR RESPONSIBLE FOR THE MAINTENANCE COST OF A CHILD PLACED IN SUCH RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY, SHALL AGREE TO PAY AND IS RESPONSIBLE FOR PAYING THE NOT-FOR-PROFIT CORPORATION OPERATING THE RESIDENTIAL SCHOOL OR THE RESIDENTIAL FACILITY ONE HUNDRED PERCENT OF THE CAPITAL FINANCING ADD-ON RATE FOR EACH SUCH CHILD PLACED IN SUCH INSTITUTION. TO THE EXTENT PERMISSIBLE UNDER FEDERAL LAW AND REGULATION, THE CAPITAL FINANCING ADD-ON RATE SHALL NOT BE SUBJECT TO ANY COST SCREENS, CAPS OR PARAMETERS LIMITING OR REDUCING THE AMOUNT OF SUCH COST REQUIRED BY THIS SECTION.

(B) THE EXPENDITURES MADE BY THE APPLICABLE PAYOR FOR THE CAPITAL FINANCING ADD-ON RATE FOR CHILDREN PLACED IN A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY WHICH HAS A LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE AUTHORITY PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN HUNDRED EIGHTY OF THE PUBLIC AUTHORITIES LAW, SHALL BE SUBJECT TO STATE REIMBURSEMENT IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER AND ARTICLE EIGHTY-NINE OF THE EDUCATION LAW, AS APPLICABLE.

S 7. Subdivision l of section 462 of the social services law is amended by adding a new paragraph (g) to read as follows:

(G) NO RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDIVISION FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THE PUBLIC AUTHORITIES LAW SHALL ENTER INTO A LEASE, SUB-LEASE OR OTHER AGREEMENT WITH THE AUTHORITY PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN HUNDRED EIGHTY OF THE PUBLIC AUTHORITIES LAW UNLESS AND UNTIL:

(I) THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DIRECTOR OF THE DIVISION OF THE BUDGET AND ANY OTHER STATE AGENCY WHICH LICENSES, CERTIFIES OR ISSUES OPERATING CERTIFICATES TO SUCH RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY FIRST DETERMINES THAT THE PROJECT IS CONSISTENT WITH THE RESIDENTIAL BED PLAN DEVELOPED PURSUANT TO SUBDIVISION SEVEN-A OF SECTION FOUR HUNDRED EIGHTY-THREE-D OF THIS CHAPTER AND APPROVES THE PROJECT COST ON THE BASIS THAT SUCH COSTS ARE REASONABLE, NECESSARY AND COST EFFECTIVE BASED UPON THE APPLICATION OF COST PER SQUARE FOOT GUIDELINES AND ANY OTHER STANDARDS APPLICABLE TO THE TYPE OF PROGRAM OR TO THE CLINICALLY-REQUIRED NEEDS OF A SPECIALIZED GROUP OF CHILDREN TO BE SERVED BY THE PROJECT; AND

(II) THE OFFICE OF CHILDREN AND FAMILY SERVICES OR SUCH OTHER STATE AGENCY WHICH LICENSES, CERTIFIES OR ISSUES OPERATING CERTIFICATES TO SUCH RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES APPROVES THE PLANS AND SPECIFICATIONS OF THE FACILITIES TO BE REPLACED, RECONSTRUCTED, REHABILITATED, IMPROVED, RENOVATED, OR OTHERWISE PROVIDED FOR, FURNISHED OR EQUIPPED.

S 8. This act shall take effect immediately; provided that section seven of this act shall take effect on the same date as section 16 of Part D of chapter 501 of the laws of 2012, takes effect.