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

7574

I N  S E N A T E

May 15, 2014

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the regulation of bus privatization contracts

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

Section 1. Legislative intent. The legislature hereby finds and declares that decisions to use private contractors to provide public transportation service must be based on factors which promote the public interest. To ensure that citizens of the state receive high quality transit services at low cost, with due regard for the taxpayers of the state and the needs of public and private workers, the legislature finds it necessary to regulate such privatization contracts.

S 2. The public authorities law is amended by adding a new section 2875-c to read as follows:

S 2875-C. REGULATION OF PRIVATIZATION CONTRACTS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

A. "PUBLIC TRANSPORTATION SYSTEM" MEANS ANY PASSENGER TRANSPORTATION SERVICE PROVIDED BY BUS, WHICH, DURING ITS HOURS OF OPERATION, IS AVAILABLE ON AN EQUAL OPPORTUNITY BASIS TO ANY PERSON, WITHOUT PREFERENCE FOR SERVICE AVAILABILITY, ELIGIBILITY OR DESIGN BEING GIVEN TO ANY PERSON OR POPULATION SUB-GROUP BECAUSE OF AGE, GENDER, RACE, NATIONAL ORIGIN, CREED OR AGENCY CLIENT STATUS, AND WHICH IS REGULARLY ADVERTISED AND MARKETED AS AVAILABLE TO THE GENERAL PUBLIC. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO MEAN THAT THE TRANSPORTATION SERVICES OPERATED OR PROVIDED BY HUMAN OR SOCIAL SERVICE AGENCIES SOLELY FOR THEIR CLIENTS OR PROGRAMS CONSTITUTE, IN AND OF THEMSELVES, PUBLIC TRANSPORTATION SERVICES.

B. "PRIVATIZATION CONTRACT" SHALL MEAN AGREEMENT OR COMBINATION OR SERIES OF AGREEMENTS BY WHICH A PRIVATE PERSON OR ENTITY AGREES WITH A PUBLIC TRANSPORTATION SYSTEM TO PROVIDE SERVICES, VALUED AT ONE HUNDRED THOUSAND DOLLARS OR MORE, WHICH ARE SUBSTANTIALLY SIMILAR TO AND IN LIEU

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

LBD15227-01-4

OF, SERVICES HERETOFORE PROVIDED, IN WHOLE OR IN PART, BY REGULAR EMPLOYEES OF THE PUBLIC TRANSPORTATION SYSTEM. AN AGREEMENT SOLELY TO PROVIDE LEGAL, MANAGEMENT CONSULTING, PLANNING, ENGINEERING OR DESIGN SERVICES SHALL NOT BE CONSIDERED A PRIVATIZATION CONTRACT.

2. REQUIREMENTS. A. A PUBLIC TRANSPORTATION SYSTEM SHALL NOT MAKE ANY PRIVATIZATION CONTRACT AND NO SUCH CONTRACT SHALL BE VALID UNLESS THE PUBLIC TRANSPORTATION SYSTEM COMPLIES WITH EACH OF THE FOLLOWING REQUIREMENTS:

(1) THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A SPECIFIC WRITTEN STATEMENT OF THE SERVICES PROPOSED TO BE THE SUBJECT OF THE PRIVATIZATION CONTRACT, INCLUDING THE SPECIFIC QUANTITY AND STANDARD OF QUALITY OF THE SUBJECT SERVICES;

(2) THE PUBLIC TRANSPORTATION SYSTEM SHALL INCLUDE IN THE WRITTEN STATEMENT A SUMMARY OF THE EMPLOYEES' SALARIES, PENSION BENEFITS AND HEALTH CARE COVERAGE AND HOW THOSE SALARIES, PENSION BENEFITS AND HEALTH CARE COVERAGE WILL BE AFFECTED BY THE PRIVATIZATION CONTRACT;

(3) THE ORGANIZATION SHALL SOLICIT COMPETITIVE SEALED BIDS FOR THE PRIVATIZATION CONTRACTS BASED UPON THIS STATEMENT;

(4) THE DAY DESIGNATED BY THE PUBLIC TRANSPORTATION SYSTEM UPON WHICH IT WILL ACCEPT THESE SEALED BIDS SHALL BE THE SAME FOR ANY AND ALL PARTIES;

(5) THIS STATEMENT SHALL BE A PUBLIC RECORD, SHALL BE FILED AT THE PUBLIC TRANSPORTATION SYSTEM, AND SHALL BE TRANSMITTED TO THE STATE COMPTROLLER FOR REVIEW PURSUANT TO SUBDIVISION THREE OF THIS SECTION;

(6) THE TERM OF ANY PRIVATIZATION CONTRACT SHALL NOT EXCEED THREE YEARS; AND

(7) NO AMENDMENT TO A PRIVATIZATION CONTRACT SHALL BE VALID IF IT HAS THE PURPOSE OR EFFECT OF AVOIDING ANY REQUIREMENT OF THIS SECTION.

B. AFTER SOLICITING AND RECEIVING BIDS, THE PUBLIC TRANSPORTATION SYSTEM SHALL PUBLICLY DESIGNATE THE BIDDER TO WHICH IT PROPOSES TO AWARD THE CONTRACT. THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A COMPREHENSIVE WRITTEN ANALYSIS OF THE CONTRACT COST BASED UPON THE DESIGNATED BID, SPECIFICALLY INCLUDING THE COSTS OF TRANSITION FROM PUBLIC TO PRIVATE OPERATION, OF ADDITIONAL UNEMPLOYMENT AND RETIREMENT BENEFITS, IF ANY, AND OF MONITORING AND OTHERWISE ADMINISTERING CONTRACT PERFORMANCE. IF THE DESIGNATED BIDDER IS HEADQUARTERED OUTSIDE THE STATE, SAID CONTRACT COST SHALL BE INCREASED BY THE AMOUNT OF INCOME TAX REVENUE, IF ANY, WHICH WILL BE LOST TO THE STATE.

C. THE PUBLIC TRANSPORTATION SYSTEM SHALL PROVIDE A COPY OF THE PROPOSED PRIVATIZATION CONTRACT AS WELL AS CERTIFY IN WRITING TO THE STATE COMPTROLLER THAT:

(1) IT HAS COMPLIED WITH ALL PROVISIONS OF THIS SECTION AND OF ALL OTHER APPLICABLE LAWS;

(2) THE QUALITY OF THE PUBLIC TRANSPORTATION SERVICES TO BE PROVIDED BY THE DESIGNATED BIDDER IS LIKELY TO SATISFY THE QUALITY REQUIREMENTS OF THE STATEMENT PREPARED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SUBDIVISION AND TO EQUAL OR EXCEED THE QUALITY OF SERVICES WHICH COULD BE PROVIDED BY REGULAR PUBLIC TRANSPORTATION SYSTEM EMPLOYEES;

(3) THE CONTRACT COST WILL BE AT LEAST FIFTEEN PERCENT LESS THAN THE ESTIMATED CURRENT YEAR COST OF THE PUBLIC SYSTEM;

(4) THE DESIGNATED BIDDER AND ITS SUPERVISORY EMPLOYEES, WHILE IN THE EMPLOY OF SAID DESIGNATED BIDDER, HAVE NO ADJUDICATED RECORD OF SUBSTANTIAL OR REPEATED WILLFUL NONCOMPLIANCE WITH ANY RELEVANT FEDERAL OR STATE REGULATORY STATUTE INCLUDING, BUT NOT LIMITED TO, STATUTES CONCERNING LABOR RELATIONS, OCCUPATIONAL SAFETY AND HEALTH, NONDISCRIMI-

NATION AND AFFIRMATIVE ACTION, ENVIRONMENTAL PROTECTION AND CONFLICTS OF INTEREST;

(5) THE PROPOSED PRIVATIZATION CONTRACT IS IN THE PUBLIC INTEREST, IN THAT IT MEETS THE APPLICABLE QUALITY AND FISCAL STANDARDS SET FORTH HEREIN; AND

(6) THE CONTRACT IS IN CONFORMANCE WITH THE PROVISIONS OF ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT AND SUBJECT TO THE PROVISIONS OF ANY EMPLOYEE PROTECTION ARRANGEMENTS ESTABLISHED UNDER 49 U.S.C. 5333(B).

3. REVIEW BY STATE COMPTROLLER; APPROVAL OR OBJECTION; PROCEDURES; PROMULGATION OF REGULATIONS. A. NO PRIVATIZATION CONTRACT SHALL BE VALID IF WITHIN THIRTY BUSINESS DAYS AFTER RECEIVING THE CERTIFICATION FROM THE PUBLIC TRANSPORTATION SYSTEM, THE STATE COMPTROLLER NOTIFIES THE PUBLIC TRANSPORTATION SYSTEM OF ITS OBJECTION. SUCH OBJECTION SHALL BE IN WRITING AND SHALL STATE SPECIFICALLY THE STATE COMPTROLLER'S FINDING THAT THE PUBLIC TRANSPORTATION SYSTEM HAS FAILED TO COMPLY WITH ONE OR MORE REQUIREMENT FOR PRIVATIZATION, INCLUDING THAT THE STATE COMPTROLLER FINDS INCORRECT, BASED ON INDEPENDENT REVIEW OF ALL THE RELEVANT FACTS, ANY OF THE FINDINGS REACHED BY THE PUBLIC TRANSPORTATION SYSTEM. THE STATE COMPTROLLER MAY EXTEND THE TIME FOR SUCH OBJECTION FOR AN ADDITIONAL PERIOD OF THIRTY BUSINESS DAYS BEYOND THE ORIGINAL THIRTY BUSINESS DAYS BY WRITTEN NOTICE TO THE PUBLIC TRANSPORTATION SYSTEM, STATING THE REASON FOR SUCH EXTENSION.

B. FOR THE PURPOSE OF REVIEWING THE PUBLIC TRANSPORTATION SYSTEM'S COMPLIANCE AND CERTIFICATION, THE STATE COMPTROLLER OR HIS OR HER DESIGNEE MAY REQUIRE BY SUMMONS THE ATTENDANCE AND TESTIMONY UNDER OATH OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS AND OTHER RECORDS RELATING TO SUCH REVIEW.

C. THE STATE COMPTROLLER MAY ADOPT REGULATIONS AND PRESCRIBE FORMS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

D. THE OBJECTION OF THE STATE COMPTROLLER PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION SHALL BE FINAL AND BINDING ON THE PUBLIC TRANSPORTATION SYSTEM, UNLESS THE STATE COMPTROLLER THEREAFTER IN WRITING WITHDRAWS THE OBJECTION, STATING THE SPECIFIC REASONS, BASED UPON A REVISED CERTIFICATION BY THE PUBLIC TRANSPORTATION SYSTEM AND UPON THE STATE COMPTROLLER'S REVIEW THEREOF.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.