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I N   S E N A T E

May 15, 2014

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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:

1     Section 1. Legislative intent. The legislature hereby finds and  
2 declares that decisions to use private contractors to provide public  
3 transportation service must be based on factors which promote the public  
4 interest. To ensure that citizens of the state receive high quality  
5 transit services at low cost, with due regard for the taxpayers of the  
6 state and the needs of public and private workers, the legislature finds  
7 it necessary to regulate such privatization contracts.  
8     S 2. The public authorities law is amended by adding a new section  
9 2875-c to read as follows:  
10     S 2875-C. REGULATION OF PRIVATIZATION CONTRACTS. 1. DEFINITIONS. AS  
11 USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEAN-  
12 INGS:  
13     A. "PUBLIC TRANSPORTATION SYSTEM" MEANS ANY PASSENGER TRANSPORTATION  
14 SERVICE PROVIDED BY BUS, WHICH, DURING ITS HOURS OF OPERATION, IS AVAIL-  
15 ABLE ON AN EQUAL OPPORTUNITY BASIS TO ANY PERSON, WITHOUT PREFERENCE FOR  
16 SERVICE AVAILABILITY, ELIGIBILITY OR DESIGN BEING GIVEN TO ANY PERSON OR  
17 POPULATION SUB-GROUP BECAUSE OF AGE, GENDER, RACE, NATIONAL ORIGIN,  
18 CREED OR AGENCY CLIENT STATUS, AND WHICH IS REGULARLY ADVERTISED AND  
19 MARKETING AS AVAILABLE TO THE GENERAL PUBLIC. NOTHING IN THIS ARTICLE  
20 SHALL BE DEEMED TO MEAN THAT THE TRANSPORTATION SERVICES OPERATED OR  
21 PROVIDED BY HUMAN OR SOCIAL SERVICE AGENCIES SOLELY FOR THEIR CLIENTS OR  
22 PROGRAMS CONSTITUTE, IN AND OF THEMSELVES, PUBLIC TRANSPORTATION  
23 SERVICES.  
24     B. "PRIVATIZATION CONTRACT" SHALL MEAN AGREEMENT OR COMBINATION OR  
25 SERIES OF AGREEMENTS BY WHICH A PRIVATE PERSON OR ENTITY AGREES WITH A  
26 PUBLIC TRANSPORTATION SYSTEM TO PROVIDE SERVICES, VALUED AT ONE HUNDRED  
27 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.

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

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

9 (1) THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A SPECIFIC WRITTEN  
10 STATEMENT OF THE SERVICES PROPOSED TO BE THE SUBJECT OF THE PRIVATIZA-  
11 TION CONTRACT, INCLUDING THE SPECIFIC QUANTITY AND STANDARD OF QUALITY  
12 OF THE SUBJECT SERVICES;

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

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

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

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

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

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

29 B. AFTER SOLICITING AND RECEIVING BIDS, THE PUBLIC TRANSPORTATION  
30 SYSTEM SHALL PUBLICLY DESIGNATE THE BIDDER TO WHICH IT PROPOSES TO AWARD  
31 THE CONTRACT. THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A COMPRE-  
32 HENSIVE WRITTEN ANALYSIS OF THE CONTRACT COST BASED UPON THE DESIGNATED  
33 BID, SPECIFICALLY INCLUDING THE COSTS OF TRANSITION FROM PUBLIC TO  
34 PRIVATE OPERATION, OF ADDITIONAL UNEMPLOYMENT AND RETIREMENT BENEFITS,  
35 IF ANY, AND OF MONITORING AND OTHERWISE ADMINISTERING CONTRACT PERFORM-  
36 ANCE. IF THE DESIGNATED BIDDER IS HEADQUARTERED OUTSIDE THE STATE, SAID  
37 CONTRACT COST SHALL BE INCREASED BY THE AMOUNT OF INCOME TAX REVENUE, IF  
38 ANY, WHICH WILL BE LOST TO THE STATE.

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

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

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

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

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

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

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

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

9 3. REVIEW BY STATE COMPTROLLER; APPROVAL OR OBJECTION; PROCEDURES;  
10 PROMULGATION OF REGULATIONS. A. NO PRIVATIZATION CONTRACT SHALL BE VALID  
11 IF WITHIN THIRTY BUSINESS DAYS AFTER RECEIVING THE CERTIFICATION FROM  
12 THE PUBLIC TRANSPORTATION SYSTEM, THE STATE COMPTROLLER NOTIFIES THE  
13 PUBLIC TRANSPORTATION SYSTEM OF ITS OBJECTION. SUCH OBJECTION SHALL BE  
14 IN WRITING AND SHALL STATE SPECIFICALLY THE STATE COMPTROLLER'S FINDING  
15 THAT THE PUBLIC TRANSPORTATION SYSTEM HAS FAILED TO COMPLY WITH ONE OR  
16 MORE REQUIREMENT FOR PRIVATIZATION, INCLUDING THAT THE STATE COMPTROLLER  
17 FINDS INCORRECT, BASED ON INDEPENDENT REVIEW OF ALL THE RELEVANT FACTS,  
18 ANY OF THE FINDINGS REACHED BY THE PUBLIC TRANSPORTATION SYSTEM. THE  
19 STATE COMPTROLLER MAY EXTEND THE TIME FOR SUCH OBJECTION FOR AN ADDI-  
20 TIONAL PERIOD OF THIRTY BUSINESS DAYS BEYOND THE ORIGINAL THIRTY BUSI-  
21 NESS DAYS BY WRITTEN NOTICE TO THE PUBLIC TRANSPORTATION SYSTEM, STATING  
22 THE REASON FOR SUCH EXTENSION.

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

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

30 D. THE OBJECTION OF THE STATE COMPTROLLER PURSUANT TO PARAGRAPH A OF  
31 THIS SUBDIVISION SHALL BE FINAL AND BINDING ON THE PUBLIC TRANSPORTATION  
32 SYSTEM, UNLESS THE STATE COMPTROLLER THEREAFTER IN WRITING WITHDRAWS THE  
33 OBJECTION, STATING THE SPECIFIC REASONS, BASED UPON A REVISED CERTIF-  
34 ICATION BY THE PUBLIC TRANSPORTATION SYSTEM AND UPON THE STATE COMP-  
35 TROLLER'S REVIEW THEREOF.

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