

4164--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 1, 2013

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Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- 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,  
18    finance or own a school building facility designed with a student capac-  
19    ity not to exceed three thousand.  
20    (b) Notwithstanding the provisions of any general, special or local  
21    law, a contract entered into between a school district and any person

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

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

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

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

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

54 (c) All requests for proposals by the school district pursuant to this  
55 act shall be subject to review and approval by the commissioner of

1 education prior to the issuance of such request for proposal by the  
2 school district.

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

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

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

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

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

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

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

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

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