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I N A S S E M B L Y

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Introduced by M. of A. O'DONNELL, COLTON, RAIA, BRONSON -- read once and referred to the Committee on Education -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the education law and the tax law, in relation to contracts for the transportation of school children

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

1 Section 1. Statement of legislative findings and necessity. The legis-
2 lature hereby finds that for three decades beginning in 1979, following
3 a strike by school bus workers, the school bus contracts of the board of
4 education of the city of New York included employee protection
5 provisions requiring transportation contractors, among other things, to
6 give priority in hiring to employees who became unemployed because of
7 their employers' loss of bus contract work for such board and to pay
8 such employees the same wages and benefits they had received prior to
9 becoming unemployed.
10 Following the 2011 decision by the New York State Court of Appeals in
11 L&M BUS CORP., ET AL., V. THE NEW YORK CITY DEPARTMENT OF EDUCATION, ET
12 AL., the board of education of the city of New York did not include the
13 employee protection provisions that had been part of the board's school
14 bus contracts for over 30 years or any similar provisions in its solic-
15 itations for its school bus contracts. After the issuance of the first
16 such Post-L&M solicitation; there was a school bus strike in January and
17 February of 2013. During this strike, many children were either unable
18 to attend school or were burdened, along with their families, with find-
19 ing alternative modes of transportation in the heart of winter.

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

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1 The legislature further finds that the board of education of the city
2 of New York contracts with 62 companies to provide vital school bus
3 transportation to 149,000 school-age children. Pursuant to the education
4 law, the state reimburses the board of education of the city of New York
5 for a substantial percentage of its school bus contract expenditures.

6 Accordingly, the legislature finds that the education law should be
7 amended to require the board of education of the city of New York to
8 include important employee protections in its procurements for school
9 bus transportation contracts and to authorize the board of education to
10 amend existing contracts to include these protections. Including these
11 protections in such board's contracts will aid in avoiding service
12 disruptions and pension withdrawal liability claims, while protecting
13 the experienced school bus contract workforce from significant wage and
14 benefit reductions and facilitating the retention of an experienced
15 workforce. Inclusion of such protections will secure more cost-effec-
16 tive, higher quality and efficient procurement and performance of school
17 bus transportation services.

18 S 2. Paragraph a of subdivision 14 of section 305 of the education
19 law, as amended by chapter 273 of the laws of 1999, is amended to read
20 as follows:

21 a. (1) All contracts for the transportation of school children, all
22 contracts to maintain school buses owned or leased by a school district
23 that are used for the transportation of school children, all contracts
24 for mobile instructional units, and all contracts to provide, maintain
25 and operate cafeteria or restaurant service by a private food service
26 management company shall be subject to the approval of the commissioner,
27 who may disapprove a proposed contract if, in his OR HER opinion, the
28 best interests of the district will be promoted thereby. Except as
29 provided in paragraph e of this subdivision, all such contracts involv-
30 ing an annual expenditure in excess of the amount specified for purchase
31 contracts in the bidding requirements of the general municipal law shall
32 be awarded to the lowest responsible bidder, which responsibility shall
33 be determined by the board of education or the trustee of a district,
34 with power hereby vested in the commissioner to reject any or all bids
35 if, in his OR HER opinion, the best interests of the district will be
36 promoted thereby and, upon such rejection of all bids, the commissioner
37 shall order the board of education or trustee of the district to seek,
38 obtain and consider new proposals. All proposals for such transporta-
39 tion, maintenance, mobile instructional units, or cafeteria and restau-
40 rant service shall be in such form as the commissioner may prescribe.
41 Advertisement for bids shall be published in a newspaper or newspapers
42 designated by the board of education or trustee of the district having
43 general circulation within the district for such purpose. Such adver-
44 tisement shall contain a statement of the time when and place where all
45 bids received pursuant to such advertisement will be publicly opened and
46 read either by the school authorities or by a person or persons desig-
47 nated by them. All bids received shall be publicly opened and read at
48 the time and place so specified. At least five days shall elapse between
49 the first publication of such advertisement and the date so specified
50 for the opening and reading of bids. The requirement for competitive
51 bidding shall not apply to an award of a contract for the transportation
52 of pupils or a contract for mobile instructional units, if such award is
53 based on an evaluation of proposals in response to a request for
54 proposals pursuant to paragraph e of this subdivision. The requirement
55 for competitive bidding shall not apply to annual, biennial, or trienni-
56 al extensions of a contract nor shall the requirement for competitive

1 bidding apply to quadrennial or quinquennial year extensions of a
2 contract involving transportation of pupils, maintenance of school buses
3 or mobile instructional units secured either through competitive bidding
4 or through evaluation of proposals in response to a request for
5 proposals pursuant to paragraph e of this subdivision, when such exten-
6 sions [(1)] (I) are made by the board of education or the trustee of a
7 district, under rules and regulations prescribed by the commissioner,
8 and, [(2)] (II) do not extend the original contract period beyond five
9 years from the date cafeteria and restaurant service commenced there-
10 under and in the case of contracts for the transportation of pupils, for
11 the maintenance of school buses or for mobile instructional units, that
12 such contracts may be extended, except that power is hereby vested in
13 the commissioner, in addition to his OR HER existing statutory authority
14 to approve or disapprove transportation or maintenance contracts, [(i)]
15 (A) to reject any extension of a contract beyond the initial term there-
16 of if he OR SHE finds that amount to be paid by the district to the
17 contractor in any year of such proposed extension fails to reflect any
18 decrease in the regional consumer price index for the N.Y.,
19 N.Y.-Northeastern, N.J. area, based upon the index for all urban consum-
20 ers (CPI-U) during the preceding twelve month period, OR FOR ALL
21 CONTRACTS FOR SCHOOL BUSES USED FOR THE TRANSPORTATION OF SCHOOL CHIL-
22 DREN, MAINTENANCE, AND ALL CONTRACTS FOR MOBILE INSTRUCTIONAL UNITS, IF
23 THE AMOUNT TO BE PAID BY THE DISTRICT TO THE CONTRACTOR IN ANY YEAR OF
24 SUCH PROPOSED EXTENSION FAILS TO REFLECT ANY PERCENTAGE DECREASE IN THE
25 EMPLOYMENT COST INDEX (ECI) FOR TOTAL COMPENSATION FOR PRIVATE INDUSTRY
26 WORKERS IN THE NORTHEAST REGION (NOT SEASONALLY ADJUSTED) FOR THE FOURTH
27 QUARTER OF THE PRECEDING YEAR; [and (ii)] (B) to reject any extension of
28 a contract after ten years from the date transportation or maintenance
29 service commenced thereunder, or mobile instructional units were first
30 provided, if in his OR HER opinion, the best interests of the district
31 will be promoted thereby. Upon such rejection of any proposed extension,
32 the commissioner may order the board of education or trustee of the
33 district to seek, obtain and consider bids pursuant to the provisions of
34 this section; AND (C) TO REJECT ANY EXTENSION OF A CONTRACT FOR TRANS-
35 PORTATION, OR NEW CONTRACT, IF HE OR SHE FINDS THAT THE AMOUNT TO BE
36 PAID BY THE DISTRICT TO THE CONTRACTOR IN ANY YEAR OF SUCH PROPOSED
37 CONTRACT FAILS TO REFLECT THE SAVINGS REALIZED FROM THE SALES TAX
38 EXEMPTION ON SCHOOL BUSES, PARTS, EQUIPMENT, LUBRICANTS AND FUEL USED
39 FOR SCHOOL PURPOSES PURSUANT TO PARAGRAPH FORTY-FOUR OF SUBDIVISION (A)
40 OF SECTION ELEVEN HUNDRED FIFTEEN OF THE TAX LAW. The board of education
41 or the trustee of a school district electing to extend a contract as
42 provided herein, may, in its discretion, increase the amount to be paid
43 in each year of the contract extension by an amount not to exceed the
44 regional consumer price index increase for the N.Y., N.Y.-Northeastern,
45 N.J. area, based upon the index for all urban consumers (CPI-U), during
46 the preceding twelve month period, OR FOR ALL CONTRACTS FOR SCHOOL BUSES
47 USED FOR THE TRANSPORTATION OF SCHOOL CHILDREN, MAINTENANCE, AND ALL
48 CONTRACTS FOR MOBILE INSTRUCTIONAL UNITS, BY AN AMOUNT NOT TO EXCEED THE
49 PERCENTAGE INCREASE IN THE EMPLOYMENT COST INDEX (ECI) TOTAL COMPEN-
50 SATION FOR PRIVATE INDUSTRY WORKERS IN THE NORTHEAST REGION (NOT
51 SEASONALLY ADJUSTED) FOR THE FOURTH QUARTER OF THE PRECEDING YEAR,
52 provided it has been satisfactorily established by the contractor that
53 there has been at least an equivalent increase in the amount of his OR
54 HER cost of operation, during the period of the contract.

55 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, THE BOARD
56 OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE

1 MILLION INHABITANTS SHALL INCLUDE IN CONTRACTS FOR THE TRANSPORTATION OF
2 SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, WHETHER AWARDED
3 THROUGH COMPETITIVE BIDDING OR THROUGH EVALUATION OF PROPOSALS IN
4 RESPONSE TO A REQUEST FOR PROPOSALS PURSUANT TO PARAGRAPH E OF THIS
5 SUBDIVISION, PROVISIONS FOR THE RETENTION OR PREFERENCE IN HIRING OF
6 SCHOOL BUS WORKERS AND FOR THE PRESERVATION OF WAGES, HEALTH, WELFARE
7 AND RETIREMENT BENEFITS AND SENIORITY FOR SCHOOL BUS WORKERS WHO ARE
8 HIRED PURSUANT TO SUCH PROVISIONS FOR RETENTION OR PREFERENCE IN HIRING,
9 IN CONNECTION WITH SUCH CONTRACTS. FOR PURPOSES OF THIS SUBPARAGRAPH,
10 "SCHOOL BUS WORKER" SHALL MEAN AN OPERATOR, MECHANIC, DISPATCHER OR
11 ATTENDANT WHO: (I) WAS EMPLOYED AS OF JUNE THIRTIETH, TWO THOUSAND TEN
12 OR AT ANY TIME THEREAFTER BY (A) A CONTRACTOR THAT WAS A PARTY TO A
13 CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A
14 CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION OF
15 SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION WITH
16 SUCH CONTRACT, OR (B) A SUBCONTRACTOR OF A CONTRACTOR THAT WAS A PARTY
17 TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED
18 IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION
19 OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION
20 WITH SUCH CONTRACT, AND (II) HAS BEEN FURLOUGHED OR BECOME UNEMPLOYED AS
21 A RESULT OF A LOSS OF SUCH CONTRACT, OR A PART OF SUCH CONTRACT, BY SUCH
22 CONTRACTOR OR SUCH SUBCONTRACTOR, OR AS A RESULT OF A REDUCTION IN
23 SERVICE DIRECTED BY SUCH BOARD OF EDUCATION DURING THE TERM OF SUCH
24 CONTRACT.

25 S 3. Paragraph c of subdivision 14 of section 305 of the education
26 law, as amended by chapter 15 of the laws of 2005, is amended to read as
27 follows:

28 c. Each board of education, or the trustees, of a school district
29 which elected or elects to extend one or more pupil transportation
30 contracts may extend a contract in an amount which is in excess of the
31 maximum increase allowed by use of the [CPI] ECI referenced in paragraph
32 a of this subdivision. Such excess amount shall not be greater than the
33 sum of the following: (i) the sum of the actual cost of qualifying crim-
34 inal history and driver licensing testing fees attributable to special
35 requirements for drivers of school buses pursuant to articles nineteen
36 and nineteen-A of the vehicle and traffic law plus the actual cost of
37 any diagnostic tests and physical performance tests that are deemed to
38 be necessary by an examining physician or the chief school officer to
39 determine whether an applicant to drive a school bus under the terms of
40 the contract has the physical and mental ability to operate a school
41 transportation conveyance and to satisfactorily perform the other
42 responsibilities of a school bus driver pursuant to regulations of the
43 commissioner; (ii) in a school district located in a city with at least
44 one million inhabitants, the actual cost of clean air technology filters
45 and Global Positioning System (GPS) technology; (iii) in a school
46 district located in a city with at least one million inhabitants, with
47 respects only to any extension beginning in fiscal year two thousand
48 five--two thousand six, the sum of the actual cost of providing school
49 bus attendants including the actual cost of criminal history record
50 checks for school bus attendant applicants and training and instruction
51 for school bus attendants pursuant to section twelve hundred twenty-
52 nine-d of the vehicle and traffic law plus up to five percent of such
53 cost for necessary administrative services; and (iv) the actual cost of
54 equipment or vehicle modification, or training required, by any state or
55 local legislation or regulation promulgated or effective on or after
56 June first, two thousand five. Such costs shall be approved by the

1 commissioner upon documentation provided by the school district and
2 contractor as required by the commissioner.

3 S 4. Subdivision 14 of section 305 of the education law is amended by
4 adding a new paragraph g to read as follows:

5 G. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS A THROUGH F OF THIS
6 SUBDIVISION AND ANY REGULATION PROMULGATED PURSUANT THERETO, THE BOARD
7 OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE
8 MILLION INHABITANTS AND A CONTRACTOR PROVIDING TRANSPORTATION SERVICES
9 TO SUCH DISTRICT FOR SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE
10 TWELVE MAY AMEND A CONTRACT WITH MUTUAL CONSENT FOR SUCH TRANSPORTATION
11 SERVICES, FOR SUCH CONSIDERATION AS APPROVED BY SUCH BOARD OF EDUCATION,
12 TO INCLUDE IN SUCH CONTRACT PROVISIONS FOR THE RETENTION OR PREFERENCE
13 IN HIRING OF SCHOOL BUS WORKERS AND FOR THE PRESERVATION OF WAGES,
14 HEALTH, WELFARE AND RETIREMENT BENEFITS AND SENIORITY FOR SCHOOL BUS
15 WORKERS WHO ARE HIRED PURSUANT TO SUCH PROVISIONS FOR RETENTION OR PREF-
16 ERENCE IN HIRING, IN CONNECTION WITH SUCH CONTRACTS. FOR PURPOSES OF
17 THIS PARAGRAPH, "SCHOOL BUS WORKER" SHALL MEAN AN OPERATOR, MECHANIC,
18 DISPATCHER OR ATTENDANT WHO: (1) WAS EMPLOYED AS OF JUNE THIRTIETH, TWO
19 THOUSAND TEN OR AT ANY TIME THEREAFTER BY (I) A CONTRACTOR THAT WAS A
20 PARTY TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT
21 LOCATED IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANS-
22 PORTATION OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN
23 CONNECTION WITH SUCH CONTRACT, OR (II) A SUBCONTRACTOR OF A CONTRACTOR
24 THAT WAS A PARTY TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL
25 DISTRICT LOCATED IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE
26 TRANSPORTATION OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE,
27 IN CONNECTION WITH SUCH CONTRACT, AND (2) HAS BEEN FURLOUGHED OR BECOME
28 UNEMPLOYED AS A RESULT OF A LOSS OF SUCH CONTRACT, OR A PART OF SUCH
29 CONTRACT, BY SUCH CONTRACTOR OR SUCH SUBCONTRACTOR, OR AS THE RESULT OF
30 A REDUCTION IN SERVICE DIRECTED BY SUCH BOARD OF EDUCATION DURING THE
31 TERM OF SUCH CONTRACT.

32 S 5. Subdivision (a) of section 1115 of the tax law is amended by
33 adding a new paragraph 44 to read as follows:

34 (44) SCHOOL BUSES AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED
35 FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW, AND PARTS, EQUIPMENT, LUBRI-
36 CANTS AND FUEL PURCHASED AND USED IN THEIR OPERATION.

37 S 6. Separability. If any item, clause, subparagraph, paragraph,
38 subdivision or section of this act shall be adjudged by any court of
39 competent jurisdiction to be invalid, such judgment shall not affect,
40 impair or invalidate the remainder thereof, but shall be confined in its
41 operation to this item, clause, subparagraph, paragraph, subdivision or
42 section thereof that was adjudged to be invalid.

43 S 7. This act shall take effect immediately; provided, however, that
44 the provisions of section five of this act shall take effect on the
45 first day of a quarterly sales tax period, as set forth in subdivision
46 (b) of section 1136 of the tax law, next succeeding April 1, 2017.