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

8019--C

Cal. No. 327

2015-2016 Regular Sessions

I N A S S E M B L Y

June 4, 2015

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:

Section 1. Statement of legislative findings and necessity. The legislature hereby finds that for three decades beginning in 1979, following a strike by school bus workers, the school bus contracts of the board of education of the city of New York included employee protection provisions requiring transportation contractors, among other things, to give priority in hiring to employees who became unemployed because of their employers' loss of bus contract work for such board and to pay such employees the same wages and benefits they had received prior to becoming unemployed.

Following the 2011 decision by the New York State Court of Appeals in L&M BUS CORP., ET AL., V. THE NEW YORK CITY DEPARTMENT OF EDUCATION, ET AL., the board of education of the city of New York did not include the employee protection provisions that had been part of the board's school bus contracts for over 30 years or any similar provisions in its solicitations for its school bus contracts. After the issuance of the first such Post-L&M solicitation; there was a school bus strike in January and February of 2013. During this strike, many children were either unable to attend school or were burdened, along with their families, with finding 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.

LBD10792-07-6

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

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

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

a. (1) All contracts for the transportation of school children, all contracts to maintain school buses owned or leased by a school district that are used for the transportation of school children, all contracts for mobile instructional units, and all contracts to provide, maintain and operate cafeteria or restaurant service by a private food service management company shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his OR HER opinion, the best interests of the district will be promoted thereby. Except as provided in paragraph e of this subdivision, all such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all bids if, in his OR HER opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the board of education or trustee of the district to seek, obtain and consider new proposals. All proposals for such transportation, maintenance, mobile instructional units, or cafeteria and restaurant service shall be in such form as the commissioner may prescribe. Advertisement for bids shall be published in a newspaper or newspapers designated by the board of education or trustee of the district having general circulation within the district for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such advertisement will be publicly opened and read either by the school authorities or by a person or persons designated by them. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids. The requirement for competitive bidding shall not apply to an award of a contract for the transportation of pupils or a contract for mobile instructional units, if such award is based on an evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision. The requirement for competitive bidding shall not apply to annual, biennial, or triennial extensions of a contract nor shall the requirement for competitive

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

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

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

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

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

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

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

G. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS A THROUGH F OF THIS SUBDIVISION AND ANY REGULATION PROMULGATED PURSUANT THERETO, THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE MILLION INHABITANTS AND A CONTRACTOR PROVIDING TRANSPORTATION SERVICES TO SUCH DISTRICT FOR SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE MAY AMEND A CONTRACT WITH MUTUAL CONSENT FOR SUCH TRANSPORTATION SERVICES, FOR SUCH CONSIDERATION AS APPROVED BY SUCH BOARD OF EDUCATION, TO INCLUDE IN SUCH CONTRACT PROVISIONS FOR THE RETENTION OR PREFERENCE IN HIRING OF SCHOOL BUS WORKERS AND FOR THE PRESERVATION OF WAGES, HEALTH, WELFARE AND RETIREMENT BENEFITS AND SENIORITY FOR SCHOOL BUS WORKERS WHO ARE HIRED PURSUANT TO SUCH PROVISIONS FOR RETENTION OR PREFERENCE IN HIRING, IN CONNECTION WITH SUCH CONTRACTS. FOR PURPOSES OF THIS PARAGRAPH, "SCHOOL BUS WORKER" SHALL MEAN AN OPERATOR, MECHANIC, DISPATCHER OR ATTENDANT WHO: (1) WAS EMPLOYED AS OF JUNE THIRTIETH, TWO THOUSAND TEN OR AT ANY TIME THEREAFTER BY (I) A CONTRACTOR THAT WAS A PARTY TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION WITH SUCH CONTRACT, OR (II) A SUBCONTRACTOR OF A CONTRACTOR THAT WAS A PARTY TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION WITH SUCH CONTRACT, AND (2) HAS BEEN FURLOUGHED OR BECOME UNEMPLOYED AS A RESULT OF A LOSS OF SUCH CONTRACT, OR A PART OF SUCH CONTRACT, BY SUCH CONTRACTOR OR SUCH SUBCONTRACTOR, OR AS THE RESULT OF A REDUCTION IN SERVICE DIRECTED BY SUCH BOARD OF EDUCATION DURING THE TERM OF SUCH CONTRACT.

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

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

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

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