

5618

2015-2016 Regular Sessions

I N S E N A T E

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Introduced by Sens. FELDER, GOLDEN -- read twice and ordered printed,
and when printed to be committed to the Committee on Education

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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 solici-
15 tations 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.
20 The legislature further finds that the board of education of the city
21 of New York contracts with 62 companies to provide vital school bus
22 transportation to 149,000 school-age children. Pursuant to the education
23 law, the state reimburses the board of education of the city of New York
24 for a substantial percentage of its school bus contract expenditures.

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

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

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

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

1 sions [(1)] (I) are made by the board of education or the trustee of a
2 district, under rules and regulations prescribed by the commissioner,
3 and, [(2)] (II) do not extend the original contract period beyond five
4 years from the date cafeteria and restaurant service commenced there-
5 under and in the case of contracts for the transportation of pupils, for
6 the maintenance of school buses or for mobile instructional units, that
7 such contracts may be extended, except that power is hereby vested in
8 the commissioner, in addition to his existing statutory authority to
9 approve or disapprove transportation or maintenance contracts, [(i)] (A)
10 to reject any extension of a contract beyond the initial term thereof if
11 he finds that amount to be paid by the district to the contractor in any
12 year of such proposed extension fails to reflect any decrease in the
13 regional consumer price index for the N.Y., N.Y.-Northeastern, N.J.
14 area, based upon the index for all urban consumers (CPI-U) during the
15 preceding twelve month period; and [(ii)] (B) to reject any extension of
16 a contract after ten years from the date transportation or maintenance
17 service commenced thereunder, or mobile instructional units were first
18 provided, if in his opinion, the best interests of the district will be
19 promoted thereby. Upon such rejection of any proposed extension, the
20 commissioner may order the board of education or trustee of the district
21 to seek, obtain and consider bids pursuant to the provisions of this
22 section. The board of education or the trustee of a school district
23 electing to extend a contract as provided herein, may, in its
24 discretion, increase the amount to be paid in each year of the contract
25 extension by an amount not to exceed the regional consumer price index
26 increase for the N.Y., N.Y.-Northeastern, N.J. area, based upon the
27 index for all urban consumers (CPI-U), during the preceding twelve month
28 period, provided it has been satisfactorily established by the contrac-
29 tor that there has been at least an equivalent increase in the amount of
30 his cost of operation, during the period of the contract.

31 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, THE BOARD
32 OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A CITY WITH AT LEAST ONE
33 MILLION INHABITANTS SHALL INCLUDE IN CONTRACTS FOR THE TRANSPORTATION OF
34 SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, WHETHER AWARDED
35 THROUGH COMPETITIVE BIDDING OR THROUGH EVALUATION OF PROPOSALS IN
36 RESPONSE TO A REQUEST FOR PROPOSALS PURSUANT TO PARAGRAPH E OF THIS
37 SUBDIVISION, PROVISIONS FOR THE RETENTION OR PREFERENCE IN HIRING OF
38 SCHOOL BUS WORKERS AND FOR THE PRESERVATION OF WAGES, HEALTH, WELFARE
39 AND RETIREMENT BENEFITS AND SENIORITY FOR SCHOOL BUS WORKERS WHO ARE
40 HIRED PURSUANT TO SUCH PROVISIONS FOR RETENTION OR PREFERENCE IN HIRING,
41 IN CONNECTION WITH SUCH CONTRACTS. FOR PURPOSES OF THIS SUBPARAGRAPH,
42 "SCHOOL BUS WORKER" SHALL MEAN AN OPERATOR, MECHANIC, DISPATCHER OR
43 ATTENDANT WHO: (I) WAS EMPLOYED AS OF JUNE THIRTIETH, TWO THOUSAND TEN
44 OR AT ANY TIME THEREAFTER BY (A) A CONTRACTOR THAT WAS A PARTY TO A
45 CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED IN A
46 CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION OF
47 SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION WITH
48 SUCH CONTRACT, OR (B) A SUBCONTRACTOR OF A CONTRACTOR THAT WAS A PARTY
49 TO A CONTRACT WITH THE BOARD OF EDUCATION OF A SCHOOL DISTRICT LOCATED
50 IN A CITY WITH AT LEAST ONE MILLION INHABITANTS FOR THE TRANSPORTATION
51 OF SCHOOL CHILDREN IN KINDERGARTEN THROUGH GRADE TWELVE, IN CONNECTION
52 WITH SUCH CONTRACT, AND (II) HAS BEEN FURLOUGHED OR BECOME UNEMPLOYED AS
53 A RESULT OF A LOSS OF SUCH CONTRACT, OR A PART OF SUCH CONTRACT, BY SUCH
54 CONTRACTOR OR SUCH SUBCONTRACTOR, OR AS A RESULT OF A REDUCTION IN
55 SERVICE DIRECTED BY SUCH BOARD OF EDUCATION DURING THE TERM OF SUCH
56 CONTRACT.

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

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

29 S 4. Separability. If any item, clause, subparagraph, paragraph,
30 subdivision or section of this act shall be adjudged by any court of
31 competent jurisdiction to be invalid, such judgment shall not affect,
32 impair or invalidate the remainder thereof, but shall be confined in its
33 operation to this item, clause, subparagraph, paragraph, subdivision or
34 section thereof that was adjudged to be invalid.

35 S 5. This act shall take effect immediately.