

5984--C

2015-2016 Regular Sessions

I N   S E N A T E

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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-effective,  
16 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 involving  
30 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 transportation,  
39 maintenance, mobile instructional units, or cafeteria and restaurant  
40 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 advertisement  
44 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 designated  
47 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 triennial  
56 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.