

# STATE OF NEW YORK

3535--B

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

Introduced by Sens. KENNEDY, BAILEY, BIAGGI, COMRIE, GOUNARDES, HARCKHAM, HOYLMAN, KAMINSKY, KAPLAN, KRUEGER, MAY, MAYER, REICHLIN-MELNICK, SEPULVEDA, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- 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 transportation law, in relation to the purchase of zero-emission buses; and to amend the public authorities law and the general municipal law, in relation to the procurement of electric-powered buses, vehicles or other related equipment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The transportation law is amended by adding a new section  
2 17-c to read as follows:

3 § 17-c. Zero-emission buses. 1. No later than January first, two thou-  
4 sand twenty-nine, every public transportation system eligible to receive  
5 operating assistance under the provisions of section eighteen-b of this  
6 article shall be required to purchase only zero-emission buses and  
7 related equipment and facilities as part of the normal replacement of  
8 its fleet.

9 2. For purposes of this section "zero-emission bus" shall mean a motor  
10 vehicle that has a seating capacity of fifteen or more passengers in  
11 addition to the driver and used for the transportation of persons; is  
12 propelled by an electric motor and associated power electronics which  
13 provide acceleration torque to the drive wheels during normal vehicle  
14 operation and draws electricity from a hydrogen fuel cell or from a  
15 battery which is capable of being recharged from an external source of  
16 electricity; or otherwise operates without direct emission of atmospher-  
17 ic pollutants.

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

LBD05744-04-1

1 3. (a) Notwithstanding any provision of law to the contrary, all  
2 rights or benefits, including terms and conditions of employment, and  
3 protection of civil service and collective bargaining status of all  
4 existing employees of authorized entities shall be preserved and  
5 protected. Nothing in this section shall result in the: (i) displacement  
6 of any currently employed worker or loss of position (including  
7 partial displacement such as a reduction in the hours of non-overtime  
8 work, wages, or employment benefits) or result in the impairment of  
9 existing collective bargaining agreements; (ii) transfer of existing  
10 duties and functions related to maintenance and operations currently  
11 performed by existing employees of authorized entities to a contracting  
12 entity; or (iii) transfer of future duties and functions ordinarily  
13 performed by employees of authorized entities to a contracting entity.

14 (b) Prior to the beginning of the procurement process for new zero-em-  
15 ission buses, the transit authority, agency or municipality shall create  
16 and implement a workforce development report that (i) forecasts the  
17 number of jobs provided by existing omnibuses, rolling stock, vehicles  
18 or equipment that would be eliminated or substantially changed after the  
19 purchase, as well as the number of jobs expected to be created at the  
20 transit provider by the proposed purchase over a five-year period from  
21 the date of the publication of the workforce development report, (ii)  
22 identifies gaps in skills needed to operate and maintain the new zero-  
23 emission buses, rolling stock, vehicles or related equipment, (iii)  
24 includes a comprehensive plan to transition, train, or retrain employees  
25 that are impacted by the proposed purchase, and (iv) contains an esti-  
26 mated budget to transition, train, or retrain employees that are  
27 impacted by the proposed purchase.

28 (c) Nothing contained herein shall be construed to affect (i) the  
29 existing rights of employees pursuant to an existing collective bargain-  
30 ing agreement, or (ii) the existing representational relationships among  
31 employee organizations or the bargaining relationships between the  
32 employer and an employee organization. Prior to beginning the procure-  
33 ment process for new zero-emission buses, rolling stock, vehicles or  
34 related equipment, the transit authority, agency or municipality shall  
35 inform the respective collective bargaining agent of any potential jobs  
36 that may be affected, altered, or eliminated as a result of the  
37 purchase, and it shall be a mandatory subject for collective bargaining.

38 § 2. The transportation law is amended by adding a new section 18-c to  
39 read as follows:

40 § 18-c. Capital plan requirements. In formulating the five-year  
41 department of transportation capital plans, the department shall: (a)  
42 consider the requirement of section seventeen-c of this article in its  
43 disbursement of payment for the costs of mass transportation capital  
44 projects and facilities and give preference in the form of payments to  
45 public transportation systems eligible to receive operating assistance  
46 under the provisions of section eighteen-b of this article that are able  
47 to demonstrate commitments made towards purchasing zero-emission buses  
48 and related equipment and facilities; and (b) facilitate for purposes of  
49 meeting the requirement of section seventeen-c of this article the coor-  
50 ordination of purchasing, installation and sharing services between public  
51 transportation systems serving primarily outside the city of New York.

52 § 3. Section 2878-a of the public authorities law is amended by adding  
53 a new subdivision 3 to read as follows:

54 3. (a) A transportation authority established under this chapter may,  
55 by resolution approved by a two-thirds vote of its members then in  
56 office, or by a declaration that competitive bidding is impractical or

1 inappropriate with respect to electric-powered omnibuses, rolling stock,  
2 vehicles or other related equipment because the item is available  
3 through an existing contract between a vendor and (i) another public  
4 authority provided that such other authority utilized a process of  
5 competitive bidding or a process of competitive requests for proposals  
6 to award such contracts, or (ii) the state of New York, or (iii) a poli-  
7 tical subdivision of the state of New York, provided that in any case  
8 when under this subdivision the authority determines that obtaining such  
9 item thereby would be in the public interest and sets forth the reasons  
10 for such determination. The authority shall accept sole responsibility  
11 for any payment due the vendor as a result of the authority's order. In  
12 each case where the authority declares competitive bidding impractical  
13 or inappropriate, it shall state the reason therefor in writing and  
14 summarize any negotiations that have been conducted. The authority shall  
15 not award any contract pursuant to this subdivision earlier than thirty  
16 days from the date on which the authority declares that competitive  
17 bidding is impractical or inappropriate. All procurements approved  
18 pursuant to this subdivision shall be subject to audit and inspection by  
19 the department of audit and control or any successor agencies. For  
20 purposes of this subdivision, "transportation authority" shall not  
21 include transportation authorities governed under titles nine, nine-A  
22 and eleven of article five of this chapter or title three of article  
23 three of this chapter. For the purposes of this subdivision, "electric-  
24 powered omnibuses" shall include any bus owned, leased, rented or other-  
25 wise controlled by the authority that otherwise meets the definition of  
26 bus provided in section five hundred nine-a of the vehicle and traffic  
27 law that is propelled by an electric motor and associated power elec-  
28 tronics which provide acceleration torque to the drive wheels during  
29 normal vehicle operation and draws electricity from a hydrogen fuel cell  
30 or from a battery which is capable of being recharged from an external  
31 source of electricity; or otherwise operates without direct emission of  
32 atmospheric pollutants.

33 (b) (i) Notwithstanding any provision of law to the contrary, all  
34 rights or benefits, including terms and conditions of employment, and  
35 protection of civil service and collective bargaining status of all  
36 existing employees of authorized entities shall be preserved and  
37 protected. Nothing in this section shall result in the: (1) displacement  
38 of any currently employed worker or loss of position, including partial  
39 displacement such as a reduction in the hours of non-overtime work,  
40 wages, or employment benefits, or result in the impairment of existing  
41 collective bargaining agreements; (2) transfer of existing duties and  
42 functions related to maintenance and operations currently performed by  
43 existing employees of authorized entities to a contracting entity; or  
44 (3) transfer of future duties and functions ordinarily performed by  
45 employees of authorized entities to a contracting entity.

46 (ii) Prior to the beginning of the procurement process for new elec-  
47 tric-powered omnibuses, rolling stock, vehicles or related equipment,  
48 the authority shall create and implement a workforce development report  
49 that (1) forecasts the number of jobs provided by existing omnibuses,  
50 rolling stock, vehicles or equipment that would be eliminated or  
51 substantially changed after the purchase, as well as the number of jobs  
52 expected to be created at the authority by the proposed purchase over a  
53 five-year period from the date of the publication of the workforce  
54 development report, (2) identifies gaps in skills needed to operate and  
55 maintain the new electric-powered omnibuses, rolling stock, vehicles or  
56 related equipment, (3) includes a comprehensive plan to transition,

1 train, or retrain employees that are impacted by the proposed purchase,  
2 and (4) contains an estimated budget to transition, train, or retrain  
3 employees that are impacted by the proposed purchase.

4 (c) Nothing contained herein shall be construed to affect (i) the  
5 existing rights of employees pursuant to an existing collective bargain-  
6 ing agreement, or (ii) the existing representational relationships among  
7 employee organizations or the bargaining relationships between the  
8 employer and an employee organization. Prior to beginning the procure-  
9 ment process for new electric-powered omnibuses, rolling stock, vehicles  
10 or related equipment, the transit agency or municipality shall inform  
11 the respective collective bargaining agent of any potential jobs that  
12 may be affected, altered, or eliminated as a result of the purchase, and  
13 it shall be a mandatory subject for collective bargaining.

14 § 4. Section 104 of the general municipal law is amended by adding a  
15 new subdivision 3 to read as follows:

16 3. (a) Notwithstanding the provisions of section one hundred three of  
17 this article or of any other general, special or local law, any chief  
18 executive officer of a political subdivision or agency which operates a  
19 public transportation system is authorized to make purchases of elec-  
20 tric-powered omnibuses or other related equipment upon a resolution  
21 approved by a two-thirds vote of its board then in office because the  
22 item is available through an existing contract between a vendor and (i)  
23 a public authority of the state provided that such other authority  
24 utilized a process of competitive bidding or a process of competitive  
25 requests for proposals to award such contracts, or (ii) the state of New  
26 York, or (iii) a political subdivision of the state of New York,  
27 provided that in any case when under this subdivision the political  
28 subdivision determines that obtaining such item thereby would be in the  
29 public interest and sets forth the reasons for such determination. The  
30 political subdivision shall not award any contract pursuant to this  
31 subdivision earlier than thirty days from the date on which the poli-  
32 tical subdivision declares that competitive bidding is impractical or  
33 inappropriate. All purchases shall be subject to audit and inspection by  
34 the political subdivision for which made, in addition to the department  
35 of audit and control of New York state. For purposes of this subdivi-  
36 sion, "political subdivision or agency which operates a public transpor-  
37 tation system" shall not include transportation authorities governed  
38 under titles nine, nine-A and eleven of article five of the public  
39 authorities law or title three of article three of the public authori-  
40 ties law. For the purposes of this subdivision, "electric-powered omni-  
41 buses" shall include any bus owned, leased, rented or otherwise  
42 controlled by the political subdivision that otherwise meets the defi-  
43 nition of bus provided in section five hundred nine-a of the vehicle and  
44 traffic law that is propelled by an electric motor and associated power  
45 electronics which provide acceleration torque to the drive wheels during  
46 normal vehicle operation and draws electricity from a hydrogen fuel cell  
47 or from a battery which is capable of being recharged from an external  
48 source of electricity; or otherwise operates without direct emission of  
49 atmospheric pollutants.

50 (b) (i) Notwithstanding any provision of law to the contrary, all  
51 rights or benefits, including terms and conditions of employment, and  
52 protection of civil service and collective bargaining status of all  
53 existing employees of authorized entities shall be preserved and  
54 protected. Nothing in this section shall result in the: (1) displacement  
55 of any currently employed worker or loss of position, including  
56 partial displacement such as a reduction in the hours of non-overtime

1 work, wages, or employment benefits, or result in the impairment of  
2 existing collective bargaining agreements; (2) transfer of existing  
3 duties and functions related to maintenance and operations currently  
4 performed by existing employees of authorized entities to a contracting  
5 entity; or (3) transfer of future duties and functions ordinarily  
6 performed by employees of authorized entities to a contracting entity.

7 (ii) Prior to the beginning of the procurement process for new elec-  
8 tric-powered omnibuses, rolling stock, vehicles or related equipment,  
9 the transit agency or municipality shall create and implement a work-  
10 force development report that (1) forecasts the number of jobs provided  
11 by existing omnibuses, rolling stock, vehicles or equipment that would  
12 be eliminated or substantially changed after the purchase, as well as  
13 the number of jobs expected to be created at the transit provider by the  
14 proposed purchase over a five-year period from the date of the publica-  
15 tion of the workforce development report, (2) identifies gaps in skills  
16 needed to operate and maintain the new electric-powered omnibuses, roll-  
17 ing stock, vehicles or related equipment, (3) includes a comprehensive  
18 plan to transition, train, or retrain employees that are impacted by the  
19 proposed purchase, and (4) contains an estimated budget to transition,  
20 train, or retrain employees that are impacted by the proposed purchase.

21 (c) Nothing contained herein shall be construed to affect (i) the  
22 existing rights of employees pursuant to an existing collective bargain-  
23 ing agreement, or (ii) the existing representational relationships among  
24 employee organizations or the bargaining relationships between the  
25 employer and an employee organization. Prior to beginning the procure-  
26 ment process for new electric-powered omnibuses, rolling stock, vehicles  
27 or related equipment, the transit agency or municipality shall inform  
28 the respective collective bargaining agent of any potential jobs that  
29 may be affected, altered, or eliminated as a result of the purchase, and  
30 it shall be a mandatory subject for collective bargaining.

31 § 5. Section 104 of the general municipal law, as amended by section  
27 of part L of chapter 55 of the laws of 2012, is amended to read as  
33 follows:

34 § 104. Purchase through office of general services. 1. Notwithstanding  
35 the provisions of section one hundred three of this article or of any  
36 other general, special or local law, any officer, board or agency of a  
37 political subdivision, of a district therein, of a fire company or of a  
38 voluntary ambulance service is authorized to make purchases of commod-  
39 ities and services available pursuant to section one hundred sixty-three  
40 of the state finance law, may make such purchases through the office of  
41 general services subject to such rules as may be established from time  
42 to time pursuant to section one hundred sixty-three of the state finance  
43 law or through the general services administration pursuant to section  
44 1555 of the federal acquisition streamlining act of 1994, P.L. 103-355;  
45 provided that any such purchase shall exceed five hundred dollars and  
46 that the political subdivision, district, fire company or voluntary  
47 ambulance service for which such officer, board or agency acts shall  
48 accept sole responsibility for any payment due the vendor. All purchases  
49 shall be subject to audit and inspection by the political subdivision,  
50 district, fire company or voluntary ambulance service for which made. No  
51 officer, board or agency of a political subdivision, or a district ther-  
52 ein, of a fire company or of a voluntary ambulance service shall make  
53 any purchase through such office when bids have been received for such  
54 purchase by such officer, board or agency, unless such purchase may be  
55 made upon the same terms, conditions and specifications at a lower price  
56 through such office. Two or more fire companies or voluntary ambulance

1 services may join in making purchases pursuant to this section, and for  
2 the purposes of this section such groups shall be deemed "fire companies  
3 or voluntary ambulance services."

4 2. (a) Notwithstanding the provisions of section one hundred three of  
5 this article or of any other general, special or local law, any chief  
6 executive officer of a political subdivision or agency which operates a  
7 public transportation system is authorized to make purchases of elec-  
8 tric-powered omnibuses or other related equipment upon a resolution  
9 approved by a two-thirds vote of its board then in office because the  
10 item is available through an existing contract between a vendor and (a)  
11 a public authority of the state provided that such other authority  
12 utilized a process of competitive bidding or a process of competitive  
13 requests for proposals to award such contracts, or (b) the state of New  
14 York, or (c) a political subdivision of the state of New York, provided  
15 that in any case when under this subdivision the political subdivision  
16 determines that obtaining such item thereby would be in the public  
17 interest and sets forth the reasons for such determination. The poli-  
18 tical subdivision shall not award any contract pursuant to this subdivi-  
19 sion earlier than thirty days from the date on which the political  
20 subdivision declares that competitive bidding is impractical or inappro-  
21 priate. All purchases shall be subject to audit and inspection by the  
22 political subdivision for which made, in addition to the department of  
23 audit and control of New York state. For purposes of this subdivision,  
24 "political subdivision or agency which operates a public transportation  
25 system" shall not include transportation authorities governed under  
26 titles nine, nine-A and eleven of article five of the public authorities  
27 law or title three of article three of the public authorities law. For  
28 the purposes of this subdivision, "electric-powered omnibuses" shall  
29 include any bus owned, leased, rented or otherwise controlled by the  
30 political subdivision that otherwise meets the definition of bus  
31 provided in section five hundred nine-a of the vehicle and traffic law  
32 that is propelled by an electric motor and associated power electronics  
33 which provide acceleration torque to the drive wheels during normal  
34 vehicle operation and draws electricity from a hydrogen fuel cell or  
35 from a battery which is capable of being recharged from an external  
36 source of electricity; or otherwise operates without direct emission of  
37 atmospheric pollutants.

38 (b) (i) Notwithstanding any provision of law to the contrary, all  
39 rights or benefits, including terms and conditions of employment, and  
40 protection of civil service and collective bargaining status of all  
41 existing employees of authorized entities shall be preserved and  
42 protected. Nothing in this section shall result in the: (1) displacement  
43 of any currently employed worker or loss of position, including  
44 partial displacement such as a reduction in the hours of non-overtime  
45 work, wages, or employment benefits, or result in the impairment of  
46 existing collective bargaining agreements; (2) transfer of existing  
47 duties and functions related to maintenance and operations currently  
48 performed by existing employees of authorized entities to a contracting  
49 entity; or (3) transfer of future duties and functions ordinarily  
50 performed by employees of authorized entities to a contracting entity.

51 (ii) Prior to the beginning of the procurement process for new elec-  
52 tric-powered omnibuses, rolling stock, vehicles or related equipment,  
53 the transit agency or municipality shall create and implement a work-  
54 force development report that (1) forecasts the number of jobs provided  
55 by existing omnibuses, rolling stock, vehicles or equipment that would  
56 be eliminated or substantially changed after the purchase, as well as

1 the number of jobs expected to be created at the transit provider by the  
2 proposed purchase over a five-year period from the date of the publica-  
3 tion of the workforce development report, (2) identifies gaps in skills  
4 needed to operate and maintain the new electric-powered omnibuses, roll-  
5 ing stock, vehicles or related equipment, (3) includes a comprehensive  
6 plan to transition, train, or retrain employees that are impacted by the  
7 proposed purchase, and (4) contains an estimated budget to transition,  
8 train, or retrain employees that are impacted by the proposed purchase.

9 (c) Nothing contained herein shall be construed to affect (i) the  
10 existing rights of employees pursuant to an existing collective bargain-  
11 ing agreement, or (ii) the existing representational relationships among  
12 employee organizations or the bargaining relationships between the  
13 employer and an employee organization. Prior to beginning the procure-  
14 ment process for new electric-powered omnibuses, rolling stock, vehicles  
15 or related equipment, the transit agency or municipality shall inform  
16 the respective collective bargaining agent of any potential jobs that  
17 may be affected, altered, or eliminated as a result of the purchase, and  
18 it shall be a mandatory subject for collective bargaining.

19 § 6. This act shall take effect immediately, provided, however, that  
20 the amendments to section 104 of the general municipal law made by  
21 section four of this act shall be subject to the expiration and rever-  
22 sion of such section pursuant to section 9 of subpart A of part C of  
23 chapter 97 of the laws of 2011, as amended, when upon such date the  
24 provisions of section five of this act shall take effect.