STATE OF NEW YORK

5366

2023-2024 Regular Sessions

IN SENATE

March 3, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the transportation law, in relation to the purchase of zero-emission capable hybrid and 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; and providing for the repeal of such provisions upon the expiration thereof

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

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

§ 17-c. Zero-emission capable hybrid buses and zero-emission buses. 1. For the five-year period commencing January first, two thousand twenty-five and ending December thirty-first, two thousand twenty-nine, every public transportation system eligible to receive operating assistance under the provisions of section eighteen-b of this article shall be required to purchase only zero-emission capable hybrid buses or zero-emission buses and related equipment and facilities as part of the normal replacement of its fleet.

2. (a) For purposes of this section "zero-emission capable hybrid bus" shall mean a motor vehicle that has a seating capacity of fifteen or more passengers in addition to the driver and used for transportation of persons; is capable of being propelled by an electric motor and associated power electronics which provide acceleration torque to the drive wheels during normal vehicle operation and draws electricity from an onboard battery or electric generator; has an internal combustion engine for extended driving range where recharging infrastructure is not readily accessible, and otherwise as needed for safe and effective travel; and is capable of operating on demand without direct emission of atmo-

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

LBD09967-01-3

spheric pollutants, and being paired with geofencing technology to automatically shut down the engine in specified locations.

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

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

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

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

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

§ 18-c. Capital plan requirements. In formulating the five-year department of transportation capital plans, the department shall: (a) consider the requirement of section seventeen-c of this article in its disbursement of payment for the costs of mass transportation capital

projects and facilities and give preference in the form of payments to public transportation systems eligible to receive operating assistance under the provisions of section eighteen-b of this article that are able to demonstrate commitments made towards purchasing zero-emission capable hybrid buses and zero-emission buses and related equipment and facilities; and (b) facilitate for purposes of meeting the requirement of section seventeen-c of this article the coordination of purchasing, installation and sharing services between public transportation systems serving primarily outside the city of New York.

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

3. (a) A transportation authority established under this chapter may, by resolution approved by a two-thirds vote of its members then in office, or by a declaration that competitive bidding is impractical or inappropriate with respect to electric-powered omnibuses, rolling stock, vehicles or other related equipment because the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (ii) the state of New York, or (iii) a political subdivision of the state of New York, provided that in any case when under this subdivision the authority determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted. The authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares that competitive bidding is impractical or inappropriate. All procurements approved pursuant to this subdivision shall be subject to audit and inspection by the department of audit and control or any successor agencies. For purposes of this subdivision, "transportation authority" shall not include transportation authorities governed under titles nine, nine-A and eleven of article five of this chapter or title three of article three of this chapter. For the purposes of this subdivision, "electric-powered omnibuses" shall include any bus owned, leased, rented or otherwise controlled by the authority that otherwise meets the definition of bus provided in section five hundred nine-a of the vehicle and traffic law that is propelled by an electric motor and associated power electronics which provide acceleration torque to the drive wheels during normal vehicle operation and draws electricity from a hydrogen fuel cell or from a battery which is capable of being recharged from an external source of electricity; or otherwise operates without direct emission of atmospheric pollutants.

(b) (i) Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all existing employees of authorized entities shall be preserved and protected. Nothing in this section shall result in the: (1) displacement of any currently employed worker or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits, or result in the impairment of existing collective bargaining agreements; (2) transfer of existing duties and functions related to maintenance and operations currently

performed by existing employees of authorized entities to a contracting entity; or (3) transfer of future duties and functions ordinarily performed by employees of authorized entities to a contracting entity.

(ii) Prior to the beginning of the procurement process for new electric-powered omnibuses, rolling stock, vehicles or related equipment, the authority shall create and implement a workforce development report that (1) forecasts the number of jobs provided by existing omnibuses, rolling stock, vehicles or equipment that would be eliminated or substantially changed after the purchase, as well as the number of jobs expected to be created at the authority by the proposed purchase over a five-year period from the date of the publication of the workforce development report, (2) identifies gaps in skills needed to operate and maintain the new electric-powered omnibuses, rolling stock, vehicles or related equipment, (3) includes a comprehensive plan to transition, train, or retrain employees that are impacted by the proposed purchase, and (4) contains an estimated budget to transition, train, or retrain employees that are impacted by the proposed purchase.

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

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

3. (a) Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any chief executive officer of a political subdivision or agency which operates a public transportation system is authorized to make purchases of electric-powered omnibuses or other related equipment upon a resolution approved by a two-thirds vote of its board then in office because the item is available through an existing contract between a vendor and (i) a public authority of the state provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (ii) the state of New York, or (iii) a political subdivision of the state of New York, provided that in any case when under this subdivision the political subdivision determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination. The political subdivision shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the political subdivision declares that competitive bidding is impractical or inappropriate. All purchases shall be subject to audit and inspection by the political subdivision for which made, in addition to the department of audit and control of New York state. For purposes of this subdivision, "political subdivision or agency which operates a public transportation system" shall not include transportation authorities governed under titles nine, nine-A and eleven of article five of the public authorities law or title three of article three of the public authorities law. For the purposes of this subdivision, "electric-powered omnibuses" shall include any bus owned, leased, rented or otherwise controlled by the political subdivision that otherwise meets the defi-

nition of bus provided in section five hundred nine-a of the vehicle and traffic law that is propelled by an electric motor and associated power electronics which provide acceleration torque to the drive wheels during normal vehicle operation and draws electricity from a hydrogen fuel cell or from a battery which is capable of being recharged from an external source of electricity; or otherwise operates without direct emission of atmospheric pollutants.

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

(ii) Prior to the beginning of the procurement process for new electric-powered omnibuses, rolling stock, vehicles or related equipment, the transit agency or municipality shall create and implement a workforce development report that (1) forecasts the number of jobs provided by existing omnibuses, rolling stock, vehicles or equipment that would be eliminated or substantially changed after the purchase, as well as the number of jobs expected to be created at the transit provider by the proposed purchase over a five-year period from the date of the publication of the workforce development report, (2) identifies gaps in skills needed to operate and maintain the new electric-powered omnibuses, rolling stock, vehicles or related equipment, (3) includes a comprehensive plan to transition, train, or retrain employees that are impacted by the proposed purchase, and (4) contains an estimated budget to transition, train, or retrain employees that are impacted by the proposed purchase.

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

§ 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 follows:

§ 104. Purchase through office of general services. 1. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, of a district therein, of a fire company or of a voluntary ambulance service is authorized to make purchases of commodities and services available pursuant to section one hundred sixty-three of the state finance law, may make such purchases through the office of general services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance

law or through the general services administration pursuant to section 1555 of the federal acquisition streamlining act of 1994, P.L. 103-355; provided that any such purchase shall exceed five hundred dollars and that the political subdivision, district, fire company or voluntary ambulance service for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the political subdivision, district, fire company or voluntary ambulance service for which made. No officer, board or agency of a political subdivision, or a district therein, of a fire company or of a voluntary ambulance service shall make any purchase through such office when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through such office. Two or more fire companies or voluntary ambulance services may join in making purchases pursuant to this section, and for the purposes of this section such groups shall be deemed "fire companies or voluntary ambulance services."

2. (a) Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any chief executive officer of a political subdivision or agency which operates a public transportation system is authorized to make purchases of electric-powered omnibuses or other related equipment upon a resolution approved by a two-thirds vote of its board then in office because the item is available through an existing contract between a vendor and (a) a public authority of the state provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (b) the state of New York, or (c) a political subdivision of the state of New York, provided that in any case when under this subdivision the political subdivision determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination. The political subdivision shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the political subdivision declares that competitive bidding is impractical or inappropriate. All purchases shall be subject to audit and inspection by the political subdivision for which made, in addition to the department of audit and control of New York state. For purposes of this subdivision, "political subdivision or agency which operates a public transportation system" shall not include transportation authorities governed under titles nine, nine-A and eleven of article five of the public authorities law or title three of article three of the public authorities law. For purposes of this subdivision, "electric-powered omnibuses" shall include any bus owned, leased, rented or otherwise controlled by the political subdivision that otherwise meets the definition of bus provided in section five hundred nine-a of the vehicle and traffic law that is propelled by an electric motor and associated power electronics which provide acceleration torque to the drive wheels during normal vehicle operation and draws electricity from a hydrogen fuel cell or from a battery which is capable of being recharged from an external source of electricity; or otherwise operates without direct emission of atmospheric pollutants.

(b) (i) Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all existing employees of authorized entities shall be preserved and protected. Nothing in this section shall result in the: (1) displace-

ment of any currently employed worker or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits, or result in the impairment of existing collective bargaining agreements; (2) transfer of existing duties and functions related to maintenance and operations currently performed by existing employees of authorized entities to a contracting entity; or (3) transfer of future duties and functions ordinarily performed by employees of authorized entities to a contracting entity.

(ii) Prior to the beginning of the procurement process for new electric-powered omnibuses, rolling stock, vehicles or related equipment, the transit agency or municipality shall create and implement a workforce development report that (1) forecasts the number of jobs provided by existing omnibuses, rolling stock, vehicles or equipment that would be eliminated or substantially changed after the purchase, as well as the number of jobs expected to be created at the transit provider by the proposed purchase over a five-year period from the date of the publication of the workforce development report, (2) identifies gaps in skills needed to operate and maintain the new electric-powered omnibuses, rolling stock, vehicles or related equipment, (3) includes a comprehensive plan to transition, train, or retrain employees that are impacted by the proposed purchase, and (4) contains an estimated budget to transition, train, or retrain employees that are impacted by the proposed purchase.

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

§ 6. This act shall take effect immediately and shall expire and be deemed repealed December 31, 2029; provided, however, that the amendments to section 104 of the general municipal law made by section four of this act shall be subject to the expiration and reversion of such section pursuant to section 9 of subpart A of part C of chapter 97 of the laws of 2011, as amended, when upon such date the provisions of section five of this act shall take effect.