

STATE OF NEW YORK

5366--A

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 -- 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 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:

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 capable hybrid buses and zero-emission buses.
4 1. For the four-year period commencing January first, two thousand twen-
5 ty-five and ending December thirty-first, two thousand twenty-eight,
6 every public transportation system eligible to receive operating assist-
7 ance under the provisions of section eighteen-b of this article shall be
8 required to purchase only zero-emission capable hybrid buses or zero-em-
9 ission buses and related equipment and facilities as part of the normal
10 replacement of its fleet.

11 2. (a) For purposes of this section "zero-emission capable hybrid bus"
12 shall mean a motor vehicle that has a seating capacity of fifteen or
13 more passengers in addition to the driver and used for transportation of
14 persons; is capable of being propelled by an electric motor and associ-
15 ated power electronics which provide acceleration torque to the drive
16 wheels during normal vehicle operation and draws electricity from an
17 onboard battery or electric generator; has an internal combustion engine
18 for extended driving range where recharging infrastructure is not readi-
19 ly accessible, and otherwise as needed for safe and effective travel;

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

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1 and is capable of operating on demand without direct emission of atmo-
2 spheric pollutants, and being paired with geofencing technology to auto-
3 matically shut down the engine in specified locations.

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

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

26 (b) Prior to the beginning of the procurement process for new zero-em-
27 ission capable hybrid buses and zero-emission buses, the transit author-
28 ity, agency or municipality shall create and implement a workforce
29 development report that (i) forecasts the number of jobs provided by
30 existing omnibuses, rolling stock, vehicles or equipment that would be
31 eliminated or substantially changed after the purchase, as well as the
32 number of jobs expected to be created at the transit provider by the
33 proposed purchase over a five-year period from the date of the publica-
34 tion of the workforce development report, (ii) identifies gaps in skills
35 needed to operate and maintain the new zero-emission capable hybrid
36 buses and zero-emission buses, rolling stock, vehicles or related equip-
37 ment, (iii) includes a comprehensive plan to transition, train, or
38 retrain employees that are impacted by the proposed purchase, and (iv)
39 contains an estimated budget to transition, train, or retrain employees
40 that are impacted by the proposed purchase.

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

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

54 § 18-c. Capital plan requirements. In formulating the five-year
55 department of transportation capital plans, the department shall: (a)
56 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

1 duties and functions related to maintenance and operations currently
2 performed by existing employees of authorized entities to a contracting
3 entity; or (3) transfer of future duties and functions ordinarily
4 performed by employees of authorized entities to a contracting entity.

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

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

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

31 3. (a) Notwithstanding the provisions of section one hundred three of
32 this article or of any other general, special or local law, any chief
33 executive officer of a political subdivision or agency which operates a
34 public transportation system is authorized to make purchases of elec-
35 tric-powered omnibuses or other related equipment upon a resolution
36 approved by a two-thirds vote of its board then in office because the
37 item is available through an existing contract between a vendor and (i)
38 a public authority of the state provided that such other authority
39 utilized a process of competitive bidding or a process of competitive
40 requests for proposals to award such contracts, or (ii) the state of New
41 York, or (iii) a political subdivision of the state of New York,
42 provided that in any case when under this subdivision the political
43 subdivision determines that obtaining such item thereby would be in the
44 public interest and sets forth the reasons for such determination. The
45 political subdivision shall not award any contract pursuant to this
46 subdivision earlier than thirty days from the date on which the poli-
47 tical subdivision declares that competitive bidding is impractical or
48 inappropriate. All purchases shall be subject to audit and inspection by
49 the political subdivision for which made, in addition to the department
50 of audit and control of New York state. For purposes of this subdivi-
51 sion, "political subdivision or agency which operates a public transpor-
52 tation system" shall not include transportation authorities governed
53 under titles nine, nine-A and eleven of article five of the public
54 authorities law or title three of article three of the public authori-
55 ties law. For the purposes of this subdivision, "electric-powered omni-
56 buses" shall include any bus owned, leased, rented or otherwise

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

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

22 (ii) Prior to the beginning of the procurement process for new elec-
23 tric-powered omnibuses, rolling stock, vehicles or related equipment,
24 the transit agency or municipality shall create and implement a work-
25 force development report that (1) forecasts the number of jobs provided
26 by existing omnibuses, rolling stock, vehicles or equipment that would
27 be eliminated or substantially changed after the purchase, as well as
28 the number of jobs expected to be created at the transit provider by the
29 proposed purchase over a five-year period from the date of the publica-
30 tion of the workforce development report, (2) identifies gaps in skills
31 needed to operate and maintain the new electric-powered omnibuses, roll-
32 ing stock, vehicles or related equipment, (3) includes a comprehensive
33 plan to transition, train, or retrain employees that are impacted by the
34 proposed purchase, and (4) contains an estimated budget to transition,
35 train, or retrain employees that are impacted by the proposed purchase.

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

46 § 5. Section 104 of the general municipal law, as amended by section
47 27 of part L of chapter 55 of the laws of 2012, is amended to read as
48 follows:

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

1 to time pursuant to section one hundred sixty-three of the state finance
2 law or through the general services administration pursuant to section
3 1555 of the federal acquisition streamlining act of 1994, P.L. 103-355;
4 provided that any such purchase shall exceed five hundred dollars and
5 that the political subdivision, district, fire company or voluntary
6 ambulance service for which such officer, board or agency acts shall
7 accept sole responsibility for any payment due the vendor. All purchases
8 shall be subject to audit and inspection by the political subdivision,
9 district, fire company or voluntary ambulance service for which made. No
10 officer, board or agency of a political subdivision, or a district ther-
11 ein, of a fire company or of a voluntary ambulance service shall make
12 any purchase through such office when bids have been received for such
13 purchase by such officer, board or agency, unless such purchase may be
14 made upon the same terms, conditions and specifications at a lower price
15 through such office. Two or more fire companies or voluntary ambulance
16 services may join in making purchases pursuant to this section, and for
17 the purposes of this section such groups shall be deemed "fire companies
18 or voluntary ambulance services."

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

53 (b) (i) Notwithstanding any provision of law to the contrary, all
54 rights or benefits, including terms and conditions of employment, and
55 protection of civil service and collective bargaining status of all
56 existing employees of authorized entities shall be preserved and

1 protected. Nothing in this section shall result in the: (1) displace-
2 ment of any currently employed worker or loss of position, including
3 partial displacement such as a reduction in the hours of non-overtime
4 work, wages, or employment benefits, or result in the impairment of
5 existing collective bargaining agreements; (2) transfer of existing
6 duties and functions related to maintenance and operations currently
7 performed by existing employees of authorized entities to a contracting
8 entity; or (3) transfer of future duties and functions ordinarily
9 performed by employees of authorized entities to a contracting entity.

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

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

34 § 6. This act shall take effect immediately and shall expire and be
35 deemed repealed December 31, 2028; provided, however, that the amend-
36 ments to section 104 of the general municipal law made by section four
37 of this act shall be subject to the expiration and reversion of such
38 section pursuant to section 9 of subpart A of part C of chapter 97 of
39 the laws of 2011, as amended, when upon such date the provisions of
40 section five of this act shall take effect.