STATE OF NEW YORK

9183

IN ASSEMBLY

February 12, 2024

Introduced by M. of A. SMULLEN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to authorizing school districts to opt-out of zero-emission school bus requirements

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

Section 1. Section 3638 of the education law, as added by section 1 of subpart A of part B of chapter 56 of the laws of 2022, subdivision 7 as added by section 19 of part A of chapter 56 of the laws of 2023, is amended to read as follows:

§ 3638. Zero-emission school buses. 1. For the purposes of this section [~~"zero-emission~~]**:**

(a) "Zero-emission school bus" shall mean a school bus that: is propelled by an electric motor and associated power electronics which provide acceleration torque to the drive wheels during normal vehicle operations and draws electricity from a hydrogen fuel cell or battery; or otherwise operates without direct emission of atmospheric pollutants.

(b) "Opt-out waiver" shall mean a formal instrument prescribed by the commissioner that a school district may submit once to the commissioner to secure a permanent exemption from the requirements of this section.

2. (a) No later than July first, two thousand twenty-seven, **unless an opt-out waiver has been submitted,** every school district shall:

(i) only purchase or lease zero-emission school buses when purchasing or leasing new buses;

(ii) include requirements in any procurement for school transportation services that any contractors providing transportation services for the school district must only purchase or lease zero-emission school buses when purchasing or leasing new school buses; and

(iii) include requirements in any procurement for the manufacturing or retrofitting of a zero-emission school bus and charging or fueling infrastructure that the components and parts used or supplied in the performance of the contract or any subcontract thereto shall be produced or made in whole or substantial part in the United States, its territories or possessions and that final assembly of the zero-emission school

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

LBD14464-01-4

bus and charging or fueling infrastructure shall occur in the United States, its territories or possessions.

(b) The commissioner, in consultation with the New York state energy research and development authority and office of general services, may waive the contracting requirements set forth in subparagraph (iii) of paragraph (a) of this subdivision if the commissioner determines that the requirements would not be in the public interest, would result in unreasonable costs, or that obtaining such zero-emission school buses and charging or fueling infrastructure components and parts in the United States would increase the cost of a school district's contract for zero-emission school buses and charging or fueling infrastructure by an unreasonable amount, or such zero-emission school busses and charging or fueling infrastructure components and parts cannot be produced, made, or assembled in the United States in sufficient and reasonably available quantities or of satisfactory quality. Such determination must be made on an annual basis no later than December thirty-first, after providing notice and an opportunity for public comment, and be made publicly available, in writing, on the department's website with a detailed explanation of the findings leading to such determination. If the commissioner has issued determinations for three consecutive years that no such waiver is warranted pursuant to this paragraph, then the commissioner shall no longer be required to provide the annual determinations required by this paragraph.

3. No later than July first, two thousand thirty-five, **unless an opt-out waiver has been submitted,** every school district shall:

(a) only operate and maintain zero-emission school buses; and

(b) include requirements in any procurement for school transportation services that any contractors providing transportation services for the school district must only operate zero-emission school buses when providing such transportation services to the school district.

4. A school district **that has not submitted an opt-out waiver** may apply to the commissioner, and the department may grant a one-time extension of up to twenty-four months to comply with the requirements of subdivision two of this section. The commissioner shall consider a school district's effort to meet the requirements of subdivision two of this section when granting an extension, including but not limited to, procurement efforts made by the school district, applications for state or federal funds, changes needed to school district operations to meet the requirements of this section, employee training, and receipt of technical assistance, if any. Upon a school district receiving an extension, the New York state energy research and development authority, in consultation with the department, shall provide any additional technical assistance necessary to the district to meet the requirements of subdivision two of this section.

5. (a) Nothing in this section shall alter the rights or benefits, and privileges, including, but not limited to terms and conditions of employment, civil service status, and collective bargaining unit membership, of any current employees of school districts or any entity contracted to provide pupil transportation services, or services attendant thereto, including but not limited to drivers, attendants, dispatchers, and mechanics.

(b) Nothing in this section shall result in: (i) the discharge, displacement, or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits; (ii) the impairment of existing collective bargaining agreements; (iii) the transfer of existing duties and functions; or (iv) the

transfer of future duties and functions, of any currently employed worker impacted by the proposed purchase or lease who agrees to be retrained.

(c) Prior to the beginning of the procurement process for new zero-emission school buses, omnibuses, vehicles, charging infrastructure or equipment, fueling infrastructure or equipment, or other equipment, the school district, private school bus company, or other employer whose workers provide pupil transportation services or services attendant thereto, shall create and implement a workforce development report that: (i) estimates the number of current positions that would be eliminated or substantially changed as a result of the purchase or lease, and the number of positions expected to be created at the school district, private school bus company or other employer whose workers provide pupil transportation services or services attendant thereto by the proposed purchase or lease over the intended life of the proposed purchase or lease; (ii) identifies gaps in skills of its current workforce that are needed to operate and maintain zero-emission school buses, omnibuses, vehicles, charging infrastructure or equipment, fueling infrastructure or equipment, or other equipment; (iii) includes a comprehensive plan to transition, train, or retrain employees that are impacted by the proposed purchase or lease; and (iv) contains an estimated budget to transition, train, or retrain employees that are impacted by the proposed purchase or lease.

(d) Nothing in this section shall: (i) limit rights of employees pursuant to a collective bargaining agreement, or (ii) alter the existing representational relationships among collective bargaining representatives or the bargaining relationships between the employer and any collective bargaining representative. Employees of public entities serving in positions in newly created titles shall be assigned to the appropriate bargaining unit.

(e) Prior to beginning the procurement process for zero-emission school buses, omnibuses, vehicles, charging infrastructure or equipment, fueling infrastructure or equipment, or other equipment, any employer of workers covered by this section shall inform its employees' collective bargaining representative of any potential impact on its members or unit, including positions that may be affected, altered, or eliminated as a result of the purchase.

6. When purchasing zero-emission school buses and charging or fueling infrastructure, school districts are encouraged to utilize the centralized contracts for zero emission school buses and charging or fueling infrastructure established by the office of general services.

7. Beginning in the two thousand twenty-four--two thousand twenty-five school year, **unless an opt-out waiver has been submitted,** every school district shall annually submit to the commissioner a progress report on the implementation of zero-emission school buses as required under this section in a format prescribed by the commissioner and approved by the director of the budget. The report shall include, but not be limited to, (i) sufficiency of the school district's electric infrastructure to support anticipated electrical needs, (ii) the availability and installation of charging or fueling stations and other components and capital infrastructure required to support the transition to and full implementation of zero-emission school buses, (iii) whether the workforce development report pursuant to paragraph (c) of subdivision five of this section has been created and implemented, (iv) the number and proportion of zero-emission school buses the school district or any contractor providing transportation services is utilizing in the current school

year, and (v) the number and proportion of zero-emission school buses purchased or leased by the school district or any contractor providing transportation services in the current school year and the total anticipated number for the next two years. The progress report shall be due on or before August first of each year. Beginning October first, two thousand twenty-four, the commissioner shall annually submit a report to the governor, the temporary president of the senate and the speaker of the assembly on the progress of implementation of zero-emission school buses as reported by the school districts.

§ 2. This act shall take effect immediately; provided, however, that the amendments to subdivision 7 of section 3638 of the education law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.