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A.3127-A – by M. of A. O'Donnell

AN ACT to amend the family court act, in
relation to contracts for the transportation of
children

DISAPPROVAL RECOMMENDED

Hon. Andrew Cuomo
Governor of the State of New York
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

The above-referenced bill is now before you for executive action.

This legislation would amend §236 of the Family Court Act to require that the New York City Department of Education (DOE) include employee protection provisions (EPPs) in requests for proposals issued for the transportation of pre-kindergarten special education students and children in Early Intervention programs.

On June 14, 2011, the New York State Court of Appeals ruled in the matter of L&M Bus Corp., et al., v. the New York City Department of Education, et al., and largely upheld lower court rulings, which concluded that EPPs are atypical bid specifications that have anti-competitive consequences, such as inviting cost-inflation and discouraging new bidders from attempting to compete with long-term contract holders. The Court ruled, therefore, that EPPs are subject to a more stringent review than is applied to most specifications, in considering their relationship to competitive bidding goals.

This legislation would be inconsistent with the Court of Appeals' recent ruling because it would make the inclusion of EPPs mandatory and would not allow DOE to exercise its discretion. The mandatory nature of the legislation would force DOE to include EPPs in any

request for proposals, without taking into account the concerns expressed by the Court, and without regard to the particular circumstances impacting cost and competition that might exist at the time of any given request for proposals.

In addition, the Court of Appeals made clear in its ruling that DOE should generally be permitted to use its own business judgment in assessing how best to advance the public interest in connection with procurement matters – and this legislation would undermine the Department’s ability to do just that.

Accordingly, it is urged that this bill be disapproved.

Very truly yours,

MICHAEL R. BLOOMBERG, Mayor

By: Micah C. Lasher
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NSC