



MEMORANDUM OF OPPOSITION

SUBJECT: S.3984-A (DeFrancisco) A.6355-A (Peoples-Stokes) AN ACT to amend the state finance law and the education law, in relation to enacting the "New York state procurement integrity act"; and to repeal section 6283 of the education law relating to procurements of the Fund (Part A); to amend the public authorities law, in relation to requiring public authorities to comply with certain provisions of the state finance law relating to procurements (Part B); to amend the public authorities law, in relation to prohibiting certain third party contracts (Part C); to amend the state finance law, in relation to authorizing state comptroller to oversee certain contracts of the research foundation of the State University of New York (Part D); to amend the state finance law and the public authorities law, in relation to disqualifications of state and state authority contractors, prohibiting conflicts of interest by state officers and employees in state procurements; prohibiting conflicts of interest by state authority board members, officers and employees in authority procurements; requiring certification by state officers and employees of no undue influence; requiring certification by state authority board members, officers and employees of no undue influence; and establishing a state contractor and state authority contractor code of business ethics and conduct (Part E); and to amend the economic development law, in relation to expanding requirements for state authorities to publish procurement opportunities (Part F)

STATUS: Senate Calendar 1125
Assembly Governmental Operations

The State University of New York, the State University Construction Fund and The Research Foundation for SUNY are strongly opposed to the enactment of S.3984-A/A.6355-A.

SUNY, unlike other State agencies, operates in a competitive landscape that requires flexibility and promptness to procure the commodities and services needed to fulfill its essential academic mission. Wisely, the laws governing SUNY procurement were amended in 2011, and those changes were extended in 2016. These provisions continue to serve the best interests of our campuses, students, faculty, and staff. Since the enactment of the 2011 legislation, the Office of the State Comptroller (OSC) has maintained post-audit oversight of every SUNY transaction. In fact, an audit by OSC in 2015 found that *"SUNY officials have generally established good internal controls over procurement and have effectively communicated these procedures to the campuses."*

These recent changes to SUNY procurement flexibility were built upon the fundamental changes adopted by Governor Mario Cuomo and the Legislature in 1985 following the recommendations of the *Challenge and the Choice* report of the Independent Commission on the Future of the State University of New York. These changes began a process that enabled the University to manage its budget efficiently while ensuring that the University system remained accountable to the citizens of the state of New York.

S.3984-A/A.6355-A would in effect cause SUNY's procurement procedures to revert to pre-2011 processing. If S.3984-A/A.6355-A is passed and approved in its current form, this will undo the years of procurement operational progress and useful efficiencies that have served SUNY and the State of New York so well. Further, this change will negatively impact our campuses' ability to meet the overall academic and operational needs of the faculty and students and will greatly increase the costs and lead time of SUNY procurement.

The procurement changes in this legislation will neither remedy nor prevent the identified improprieties involving contracts related to economic development projects and not-for-profit entities. These transactions were fully outside of the direct SUNY procurement laws and procedures that this legislation would amend. Instead, this legislation targets SUNY, SUNY Construction Fund and Research Foundation procurements, which are already subject to

detailed policies, procedures, and oversight. In addition to SUNY-wide procurement policies,¹ many campuses have even more rigorous local policies in place. Further, OSC maintains post-audit authority to review SUNY and SUNY Construction Fund procurements to ensure diligent compliance with these strict policies. To address the concerns related to campus foundations and affiliates, the SUNY Board of Trustees recently adopted extremely stringent guidelines for these entities to ensure transparency. SUNY will continue to receive regular financial statements from each campus foundation and reserves the right to audit them at any time.

While the proposed legislation is divided into six parts (A through F), Parts A and D would be most problematic for SUNY, the SUNY Construction Fund, and the SUNY Research Foundation.

Part A would limit SUNY's procurement flexibility by setting a new statutory threshold of \$250,000 for contracting without prior approval of other state agencies for materials, equipment, supplies (including computer equipment), motor vehicles, construction, printing, and all services (including construction-related services). SUNY's three hospitals along with the SUNY Construction Fund are further impacted, with the removal of language exempting various procurements from prior approval.

Enactment of S.3984-A/A.6355-A will create the following adverse impacts resulting in:

- an increase in lead time for commodities and services contracts by one to three months,
- an increase in lead time for design and construction contracts by three months or more, resulting in escalation costs; and
- an increase in the cost of natural gas to SUNY due to the inability to bid and award contracts within 72 hours, which is the longest any energy supplier can hold a price. Gas companies either add significant cost as a protection or refuse to bid altogether, forcing campuses back to purchasing from the local utility.

In addition, parts A and D of S.3984-A/A.6355-A will delay the purchase of commodities, such as scientific equipment, impacting faculty and student research and creating unnecessary impediments which will also create new financial implications since campuses will need additional staff to handle increased administrative requirements. Delays in procurement for research grants could affect the principal investigator's ability to complete milestones on time and students' ability to graduate on time when completion of the degree is dependent up the research. In addition, sponsors of research grants often have the ability to discontinue funding if such milestones are not met in a timely manner. Delays in implementing construction contracts will impact the opening of facilities, which can also contribute to lengthening a student's academic completion goals.

Although OSC claims that it averages nine days per transaction review, this appears to be based on a contact load that does not include the numerous SUNY contracts that are currently exempt. Even now, SUNY campuses routinely report OSC contract review times of one to two months, and that time would only increase under this legislation. Average total turnaround time reported by campuses for all external reviews, when required, is often longer than the time period reported by OSC. It is of great importance to SUNY's mission that institutions can continue to be nimble and react quickly to student and faculty needs and to marketplace changes.

Enactment of S.3984-A/A.6355-A would be extremely detrimental to the academic mission and operations of our campuses, as well as the operations of the State University Construction Fund, increasing costs and slowing processing times for critical university procurements. The State University of New York respectfully requests that S.3984-A/A.6355-A not be approved.

5/9/2018

¹ Available at https://www.suny.edu/sunypp/documents.cfm?doc_id=428.