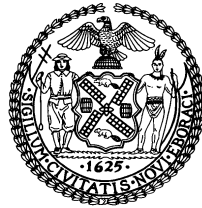


Staff: Aysha Schomburg, Counsel  
Matthew Carlin, Counsel  
Jan Atwell, Policy Analyst  
Joan Povolny, Policy Analyst  
Gafar Zaaloff, Policy Analyst  
Christina Perrotti, Finance Analyst  
Madina Nizamitidin, Finance Analyst



## **THE COUNCIL**

### **REPORT OF THE HUMAN SERVICES DIVISION**

Matthew Gewolb, Legislative Director

### **COMMITTEE ON EDUCATION**

Council Member Daniel Dromm, Chair

August 21, 2014

**PRECONSIDERED INT. NO. \_\_\_\_ :**

By Council Members Miller and Eugene (by request of the Mayor)

**TITLE:**

A local law to establish a program in relation to the employment of school bus drivers, attendants, dispatchers, and mechanics by qualified employers.

**INTRODUCTION**

On Thursday August 21, 2014, the City Council's Committee on Education, chaired by Council Member Daniel Dromm, will consider Preconsidered Int. No.\_\_\_\_ , a local law to

establish a program in relation to the employment of school bus drivers, attendants, dispatchers, and mechanics by qualified employers. The Committee held a hearing on this bill Tuesday August 19, 2014.

### **School Buses in NYC**

The New York City Department of Education's (DOE) Office of Pupil Transportation is the largest school transportation department in the country.<sup>1</sup> Over 600,000 New York City students attending both public and non-public schools located within the five boroughs and neighboring counties in New York, New Jersey and Connecticut use these services.<sup>2</sup>

Pursuant to State Education Law, City school districts are not required to provide transportation for students residing within that school district.<sup>3</sup> However, if a City school district decides to provide transportation, it must be "offered equally to such children in like circumstances."<sup>4</sup> State Education Law further mandates that the City provide transportation for special education children residing in New York City to and from the school they legally attend.<sup>5</sup> The type of transportation provided (yellow bus or MetroCard for public transportation) is determined by the student's Individualized Education Program, which is developed by the Committee on Special Education.<sup>6</sup> Additionally, while general education students must travel to an assigned bus stop for pick up, special education students receive door-to-door bus transportation from and to their home.<sup>7</sup> The DOE contracts out all school bus services, and as of March 2014, there were twenty Early Intervention and Special Education pre-kindergarten

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<sup>1</sup> DOE website, "Pupil Transportation," <http://schools.nyc.gov/Offices/Transportation/default.htm>, accessed on August 15, 2014.

<sup>2</sup> *Id.*

<sup>3</sup> NY Ed. Law § 3635(1) (C).

<sup>4</sup> *Id.*

<sup>5</sup> DOE website, "Door-to-Door (SE) Busing," <http://schools.nyc.gov/Offices/Transportation/ServicesandEligibility/DoortoDoor/default.htm>, accessed Mar. 24, 2014.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

school bus contractors,<sup>8</sup> while thirty-seven companies provide K-12 General and Special Education busing.<sup>9</sup>

### **Employee Protection Provisions**

Between 1979 and 2011, contracts for buses between the City and unions included Employee Protection Provisions (EPP). Initially, these provisions went into effect in a 1979 agreement negotiated between Local 1181 Amalgamated Transit Union and the DOE after New York City bus drivers and escorts (also called matrons) went on strike. The EPPs require the DOE to maintain a “Master Seniority List” of drivers, escorts and mechanics; school bus companies that win new routes or hire more drivers must hire from this list, in order of seniority, and maintain the workers’ wages and pensions.

In 2006, the DOE solicited bids for school bus services for new routes that included EPPs. Twenty-seven bus companies sued, claiming, amongst other things, that the EPPs would inflate bids and increase the costs for school bus services in contravention of bidding laws. The case was decided in 2011, when the New York Court of Appeals held that the provisions were subject to heightened scrutiny and the “DOE has not proven that the EPPs are designed to save the public money, encourage robust competition, or prevent favoritism,” striking them down. In *L & M Bus Corp. v. New York City Dep’t of Educ.*<sup>10</sup> (hereinafter *L & M Bus Corp.*), the court found these provisions were “unique,” and held that the DOE had failed to demonstrate cost savings in violation of competitive bidding laws.

From 2008 to 2011, while this case was pending, the Bloomberg Administration worked with the State legislature to pass legislation codifying the EPPs in school bus contracts. The

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<sup>8</sup> DOE website:

<http://schools.nyc.gov/Offices/Transportation/ParentResources/KeyDocuments/prekbusdirectory.htm>

<sup>9</sup> DOE website: <http://schools.nyc.gov/NR/rdonlyres/E11B866B-0B8E-4F4D-9461-A9569C6C229A/0/SchoolAgeBusCompanyDirectoryupdated9282012.pdf>.

<sup>10</sup> *L & M Bus Corp. v. New York City Dep’t of Educ.*, 17 N.Y. 3<sup>rd</sup> 149, 153 (N.Y. Ct. App. 2011).

Bloomberg Administration had also argued alongside union attorneys in the lawsuit in support of the EPPs, saying that they would lead to a more experienced work force and lower costs. The law was passed by the legislature on June, 2011. However, in July, Mayor Bloomberg wrote a letter urging Governor Cuomo to veto the measure, stating that the protections were costly and anticompetitive. The Governor subsequently vetoed the measure.

It is of note, however, that the Court of Appeals decision did not declare that EPPs are illegal. The holding was that the DOE did not show that the EPPs would save costs and reduce service disruptions.

### **2013 School Bus Driver and Matron Strike**

When the next contracts came up for renewal in late 2012, the Bloomberg Administration had already decided that EPPs would not be in the renewal contracts. In January 2013, bus drivers and matrons, mostly members of Local 1181 of the Amalgamated Transit Union, went on strike, demanding that EPPs be included in their new contract.<sup>11</sup> The Mayor countered that they were illegal under the *L & M Bus Corp.* decision and stated that the dispute was actually between the union and the bus companies.<sup>12</sup> The union countered that the *L & M Bus Corp.* decision was being misconstrued.<sup>13</sup> After a five week standoff in a bitter cold month during which there were numerous problems with students getting to school, and high absenteeism, the strike was called off on February 14, 2013, without a contract.<sup>14</sup> The union said that it planned to negotiate further with the new mayor, who would take office on January 1, 2014, as several candidates had expressed support for the strikers.<sup>15</sup>

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<sup>11</sup> Al Baker, "School Bus Drivers End Strike, in Win for New York Mayor," N.Y. Times, Feb. 15, 2013.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

The DOE reported that on February 4, 2013, during the strike, 2,973 bus routes out of approximately 7,700 routes were running, including 13 percent of general education bus routes and 40.6 percent of special education bus routes.<sup>16</sup> A *New York Daily News* article reported on February 5, 2013 that only about 50,000 of the students who normally use DOE’s busing services were getting bused to and from school.<sup>17</sup> The remaining 100,000 students had to use alternative means of transportation. The article cited City officials as saying the City “spent as much as \$17 million on MetroCards, taxi vouchers and mileage reimbursements for personal vehicles” as of February 4, 2013, but at the same time DOE had achieved \$50 million in savings by withholding payments to bus companies for the services that were not provided.<sup>18</sup>

### **Atlantic Express Bankruptcy**

In December of last year, Local 1181 voted not to accept a new scaled down contract from the City’s largest school bus contractor, Atlantic Express, which then announced it was going out of business.<sup>19</sup> Atlantic Express filed for Chapter 11 bankruptcy<sup>20</sup> and operated its last trips at the end of 2013.<sup>21</sup> It had operated twenty-five percent of the City’s school bus routes—approximately 1,600 routes<sup>22</sup>—and it employed about two thousand drivers and matrons. According to the company, it was unable to reach a deal with the union that reduced labor costs.<sup>23</sup> The workers were unwilling to accept a contract without EPPs and for lower wages and

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<sup>16</sup> New York City Department of Education, email to City Council staff on February 4, 2013

<sup>17</sup> Ben Chapman, “School bus strike actually saving the city money, despite payouts to parents,” *N.Y. Daily News*, Feb 6, 2013.

<sup>18</sup> *Id.*

<sup>19</sup> Tracy Porpora, “Union votes 'No' -- Atlantic Express says it will close by the end of the year,” *Staten Island Advance* website, Dec. 4, 2013, available at: [http://www.silive.com/news/index.ssf/2013/12/union\\_votes\\_no\\_--atlantic\\_ezp.html](http://www.silive.com/news/index.ssf/2013/12/union_votes_no_--atlantic_ezp.html).

<sup>20</sup> *Id.*

<sup>21</sup> Ben Chapman, “New York City’s top school bus operator to give last ride at end of year,” *N.Y. Daily News*, Dec, 5, 2013.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

benefits.<sup>24</sup> Atlantic Express stated that it was unable to compete for bus contracts under the changed bidding rules, unless the union agreed to competitive compensation to new bidders; new contractors could bid significantly lower because non-union companies typically have lower labor costs.<sup>25</sup>

### **Pension Fund Liability**

According to Local 1181, the removal of the EPPs from school busing contracts could create a huge deficiency in pension funds for current and retired workers.<sup>26</sup> Under federal law, generally when a company pulls out of a pension fund it must pay in “withdrawal liability.”<sup>27</sup> Several years ago, the pension fund for school bus workers received a “special exception” from the United States (U.S.) Pension Benefit Guarantee Corporation, whereby bus companies could stop contributing to the fund without paying withdrawal liability.<sup>28</sup> The reason for this exception was that, because of the EPPs, the workers contributing to the fund would retain their salary and benefits if they went to work for a different or new bus company.<sup>29</sup> Now that bus companies may go bankrupt, like Atlantic Express, and new companies are coming into the industry that do not provide pension plans, the pension fund is in danger of being depleted.<sup>30</sup> The union also maintains that the DOE may be liable for this withdrawal liability, which could be in the hundreds of millions of dollars, and would negate any cost savings anticipated by changes in the bidding process that would allow non-union bus companies to provide school bus services.<sup>31</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Emmanuel Felton, “School busing giant files for bankruptcy,” N.Y. World, Nov. 7, 2013, available at: <http://www.thenewyorkworld.com/2013/11/07/atlantic-express-bankruptcy/>.

<sup>26</sup> Letters to Local 1181 members from Robert D’ulisse, Director of the local, dated Jan. 22, 2013 and letter to DOE Chancellor Dennis Walcott from Barry Slevin, attorney for Local 1181 dated Jan. 16, 2013 available at: <http://atu1181.org/wp-content/uploads/2013/01/effect-of-strike-on-pension.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* A copy of the exception is attached as Exhibit A.

<sup>29</sup> *Id.* n. 37 *supra*.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

## ANALYSIS

This preconsidered legislation would establish a grant program in relation to the employment of school bus drivers, attendants, dispatchers and mechanics by qualified employers. Bill section one contains a definitional provision in the first subdivision. This section would allow the Department of Small Business Services (SBS) to establish a program that would provide grants to employers that provide transportation services for children in grades kindergarten through twelve for the 2014-2015 school year pursuant to request for bids number B2321, if such employers hire certain school bus drivers, attendants, dispatchers or mechanics that fall into two categories. The first category of eligible workers are school bus drivers, attendants, dispatchers and mechanics who: (i) are residents of New York City; (ii) were employed on June 30, 2014 by entities that had a contract expiring June 30, 2014 with the Department of Education (DOE) to provide transportation services for children in grades kindergarten through twelve, or had a subcontract with a company that had such a contract with DOE; and (iii) are paid an hourly rate in the 2014-15 school year that is less than they were paid in the 2013-14 school year. The second category of eligible workers are school bus drivers, attendants, dispatchers and mechanics who: (i) are residents of New York City; (ii) were on, or were eligible to be on, the master seniority lists as of June 30, 2014; and (iii) are paid a lower hourly rate in the 2014-15 school year than they were paid dating to the placement on master seniority lists.

Pursuant to the provisions of the bill, the grant that SBS would provide to a qualified employer that hires a worker from either group would make up the difference between the hourly rate the worker was paid in 2013-14 and the hourly rate the worker is paid in 2014-15 multiplied by the worker's hours in 2014-15, and the difference in costs to maintain employer contributions

for employees' health and retirement benefits received in 2013-14. Other components of the grant would include costs associated with payroll taxes and workers' compensation insurance.

Pursuant to the bill's provisions, the bill would condition the award of the grant upon the qualified employer providing: (i) retirement and health benefits to each 2014 qualified employee from the same health and retirement funds from which such employee received retirement and health benefits during the 2013-14 school year, provided that such employee is represented by the same employee organization during the 2013-14 and 2014-15 school years; (ii) thirty-nine weeks of employment during the school year to each qualified employee; and (iii) a customary work day of eight hours to each qualified employee, to the extent the work day of such employee was eight hours during the 2013-14 school year. The bill also provides that, to be eligible for an award of a grant, qualified employers must agree that, following the effective date of this local law, they will hire workers from the master seniority lists in the order of their seniority. However, this requirement does not apply to hiring by qualified employers that occurs prior to the effective date of this local law, and the grant shall be reduced if the employee has been employed by such employer for less than ten months.

Further, the bill provides that SBS shall make monthly installments of the grant only after receiving satisfactory proof from the qualified employer that the qualified employer has paid the required portions of the grant to the qualified employee.

The legislation would establish a cap of \$42 million for the grants authorized by this legislation. The bill would authorize SBS to promulgate rules to implement this local law.

Bill section two provides that this bill will take effect immediately, and would sunset on December 31, 2015.