



Legislation Text

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By Council Members Miller, Eugene, Crowley, Kallos, Barron, Chin, Constantinides, King, Lander and Mealy
(by request of the Mayor)

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

Be it enacted by the Council as follows:

Section 1. School bus driver, attendant, dispatcher and mechanic employment program.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

“Department” shall mean the department of small business services.

“Department of education” shall mean the department of education of the city of New York.

“School bus driver” shall mean any person employed as a school bus driver by a company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

“Attendant” shall mean a person employed as a school bus attendant by a company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

“Dispatcher” shall mean a person employed as a school bus dispatcher by any company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation

services for children in grades kindergarten through twelve.

“Master seniority lists” shall mean the industry-wide lists established pursuant to contractual employee protection provisions with the department of education to provide transportation services for children in grades kindergarten through twelve.

“Master seniority lists qualified employee” shall mean a person who:

(1) is a resident of the city of New York;

(2) is certified by the department of education’s office of pupil transportation as a school bus driver or attendant, in the event such person is employed as a school bus driver or attendant;

(3) was a school bus driver, attendant, dispatcher or mechanic on, or eligible for placement on, the master seniority lists as of June 30, 2014;

(4) is a school bus driver, attendant, dispatcher or mechanic for a qualified employer in connection with such employer’s contract or subcontract pursuant to request for bids number B2321 with the department of education during the 2014-15 school year; and

(5) is paid by a qualified employer a 2014-15 regular rate that is less than the regular rate dating to the placement on master seniority lists.

“Mechanic” shall mean a person employed as a school bus mechanic by any company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with a company that has a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

“Provider of transportation services” shall mean an entity or a subsidiary of such entity that (i) had a contract with the department of education or (ii) a subcontract with any entity that had a contract with the department of education, to provide transportation services for children in grades kindergarten through twelve which expired on June 30, 2014.

“Qualified employer” shall mean any entity that has a contract with the department of education or a

subcontract with an entity that has a contract with the department of education to provide transportation services for children in grades kindergarten through twelve for the 2014-15 school year pursuant to request for bids number B2321.

“Regular rate” shall mean “regular rate” as defined pursuant to 29 U.S.C. § 207, and further specified in 29 C.F.R. § 778.109, or any succeeding provisions.

“Regular rate dating to the placement on master seniority lists” shall mean the regular rate of pay earned by any master seniority lists qualified employee on the last date of employment prior to being placed on, or becoming eligible for, the master seniority lists.

“Recess adjustment payment” shall mean any additional compensation received for five days during winter and spring recess.

“2014 qualified employee” shall mean any person who:

- (1) is a resident of the city of New York;
- (2) is certified by the department of education’s office of pupil transportation as a school bus driver or attendant, in the event such person is employed as a school bus driver or attendant;
- (3) was a school bus driver, attendant, dispatcher or mechanic employed by a provider of transportation services on June 30, 2014 in connection with such provider’s contracts with the department of education;
- (4) is a school bus driver, attendant, dispatcher or mechanic for a qualified employer in connection with such employer’s contract or subcontract pursuant to request for bids number B2321 with the department of education during the 2014-15 school year; and
- (5) is paid by a qualified employer a 2014-15 regular rate that is less than the 2013-14 regular rate.

“2013-14 regular rate” shall mean the regular rate paid by any provider of transportation services to any 2014 qualified employee.

“2014-15 regular rate” shall mean the regular rate paid by any qualified employer to any 2014 qualified employee or any master seniority lists qualified employee during the 2014-15 school year. Provided, that, for

any 2014 qualified employee or master seniority lists qualified employee covered by a collective bargaining agreement or to whom a best and final offer has been imposed, the regular rate shall mean either the hourly rate pursuant to (i) the collective bargaining agreement in effect at the time payment is due or (ii) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher.

b. The department may establish a program that shall provide monetary grants to any qualified employer for each 2014 qualified employee hired by such qualified employer in an amount equal to the sum of:

(i) the product of: (A) the excess, if any, of the 2013-14 regular rate over the 2014-15 regular rate; and (B) the number of hours for which such 2014 qualified employee was paid, less any hours for which such employee was paid overtime, by such qualified employer in connection with such employer's contracts with the department of education during the 2014-15 school year; and

(ii) the product of: (A) the excess, if any, of the 2013-14 regular rate over the 2014-15 regular rate; and (B) one-and-a-half; and (C) the number of overtime hours for which such 2014 qualified employee was paid by such qualified employer in connection with such employer's contracts with the department of education during the 2014-15 school year; and

(iii) such qualified employer's portion of all legally required city, state and federal payroll taxes associated with the amounts described in paragraphs (i) and (ii) of this subdivision; and

(iv) the costs incurred by such qualified employer to maintain the recess adjustment payment for such 2014 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the recess adjustment payment for the 2014-15 school year for such employee would have been lower than the recess adjustment payment in place during the 2013-14 school year, provided, that, for a 2014 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the recess adjustment payment for the 2014-15 school year shall be either the recess adjustment payment pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(v) the costs incurred by such qualified employer to maintain the payment for holiday and vacation days for such 2014 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the payment for holiday and vacation days for the 2014-15 school year for such employee would have been lower than the payment in place during the 2013-14 school year, provided, that, for a 2014 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the payment for holiday and vacation days in place during the 2014-15 school year shall be either the payment for holiday and vacation days pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(vi) the costs incurred by such qualified employer to maintain the contributions for the retirement and health benefits of such 2014 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the contributions for the 2014-15 school year for such employee would have been lower than those in place during the 2013-14 school year, provided, that, for a 2014 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the contributions for the 2014-15 school year shall be either the contributions pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(vii) the costs associated with any increase in workers' compensation insurance for such employee associated with the amounts described in paragraphs (i) and (ii) of this subdivision.

c. Notwithstanding any provision to the contrary in this local law, the department shall not award a grant for any 2014 qualified employee unless:

(i) any such 2014 qualified employee receives retirement and health benefits from the same health and retirement funds from which such employee received such benefits during the 2013-14 school year, provided that such employee is represented by the same employee organization for the 2013-14 and 2014-15 school

years;

(ii) thirty-nine weeks of employment during the school year are provided by such qualified employer to such employee; and

(iii) the customary work day of such employee is eight hours, if the work day of such employee was eight hours during the 2013-14 school year.

d. The department may establish a program that shall provide monetary grants to any qualified employer for each master seniority list's qualified employee hired by such qualified employer in an amount equal to the sum of:

(i) the product of: (A) the excess, if any, of the regular rate during the school year dating to the placement on master seniority lists over the 2014-15 regular rate; and (B) the number of hours for which such master seniority lists qualified employee was paid, less any hours for which such employee was paid overtime, by such qualified employer in connection with such employer's contracts with the department of education during the 2014-15 school year; and

(ii) the product of: (A) the excess, if any, of the regular rate during the school year dating to the placement on master seniority lists over the 2014-15 regular rate; and (B) one-and-a-half; and (C) the number of overtime hours for which such master seniority lists qualified employee was paid by such qualified employer in connection with such employer's contracts with the department of education during the 2014-15 school year; and

(iii) such qualified employer's portion of all legally required city, state and federal payroll taxes associated with the amounts described in paragraphs (i) and (ii) of this subdivision; and

(iv) the costs incurred by such qualified employer to maintain the recess adjustment payment for such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the recess adjustment payment for the 2014-15 school year for such employee would have been lower than the payment in place during the school year dating

to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the recess adjustment payment for the 2014-15 school year shall be either the recess adjustment payment pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(v) the costs incurred by such qualified employer to maintain the payment for holiday and vacation days for such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the payment for holiday and vacation days for the 2014-15 school year for such employee would have been lower than the payment in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the payment for holiday and vacation days in place for the 2014-15 school year shall be either the payment for holiday and vacation days pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(vi) the costs incurred by such qualified employer to maintain the contributions for the retirement and health benefits of such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the contributions for the 2014-15 school year for such employee would have been lower than those in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the contributions for the 2014-15 school year shall be either the contributions pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the 2014-15 school year, whichever is higher; and

(vii) the costs associated with any increase in workers' compensation insurance for such master seniority lists qualified employee associated with the amounts described in paragraphs (i) and (ii) of this subdivision.

e. Notwithstanding any provision to the contrary in this local law, the department shall not award a grant for a master seniority lists qualified employee unless:

(i) any such master seniority lists qualified employee receives retirement and health benefits from the same health and retirement funds from which such employee received such benefits for the school year dating to placement on master seniority lists, provided that such employee is represented by the same employee organization as of the school year dating to placement on master seniority lists and the 2014-15 school year;

(ii) thirty-nine weeks of employment during the school year are provided by such qualified employer to such employee; and

(iii) the customary work day of such employee is eight hours, if the work day of such employee was eight hours as of the last date of employment prior to being placed on master seniority lists.

f. Each qualified employer shall provide written notice to the department upon the hiring any 2014 qualified employee or master seniority lists qualified employee for whom the qualified employer seeks a monetary grant.

g. The department shall provide the grant authorized by this section to qualified employers in monthly installments over a ten-month period for each 2014 qualified employee or master seniority lists qualified employee who is employed in connection with such qualified employer's contract pursuant to request for bids number B2321 with the department of education. Any such grant to the qualified employer shall be reduced if the employee is employed by such qualified employer for a period of less than ten months.

h. The department shall provide the grant described in subdivisions b and d in monthly installments after receiving satisfactory proof from the qualified employer that:

(i) the qualified employer has paid the 2014 qualified employee or the master seniority lists qualified

employee the amounts described in paragraphs (i) and (ii) of subdivisions b and d respectively; and

(ii) the qualified employer has made payments of the amounts described in paragraphs (iii) through (vii) of subdivisions b and d respectively in a manner consistent with those paragraphs.

i. No qualified employer shall be eligible for an award of a grant pursuant to this section unless such qualified employer agrees that during the 2014-15 school year every school bus driver, attendant, dispatcher and mechanic shall be hired from the master seniority lists in the order of his or her seniority, provided that this requirement shall not apply to hiring by qualified employers for the 2014-15 school year that occurs prior to the effective date of this local law.

j. The award by the department of a grant to a qualified employer pursuant to this local law shall not make the city of New York, the department or the department of education the employer of any 2014 qualified employee or master seniority lists qualified employee.

k. The grant authorized by this local law shall not: (i) impair the terms of any collective bargaining agreement to which any qualified employer and employee may be subject, and shall not (ii) interfere with any rights a school bus driver, attendant, dispatcher or mechanic has pursuant to any collective bargaining agreement.

l. The qualified employer and 2014 qualified employee or master seniority lists qualified employee, as applicable, shall be solely responsible for withholding and payment of any taxes and other government required payments.

m. Notwithstanding any provision to the contrary in this local law, the total amount of the grants authorized by this local law shall be a maximum of forty-two million dollars (\$42,000,000). The department shall allocate such amount based on the order of receipt by the department of the notifications required by subdivision f.

n. The commissioner of the department shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this local law.

§ 2. This local law shall take effect immediately and shall expire and have no further force and effect on and after December 31, 2015.