



THE STATE UNIVERSITY of New York

REVISED #2

MEMORANDUM

Office of the
Chancellor

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November 18, 2008

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To: Members of the Board of Trustees

From: Dr. John B. Clark, Interim Chancellor

**Subject: 2009 Legislative Proposal
(Management and Operational Reforms and Efficiencies
(MORE))**

I recommend that the Board of Trustees adopt the following resolution:

Whereas the State University of New York operates in a highly regulated and bureaucratic environment that limits both its efficiency and responsiveness and causes redundancy, delays, lost opportunities and wasted resources; and

Whereas SUNY's progress toward deregulation began with the Blue Ribbon Commission in 1985 and continued with Rethinking SUNY of the mid 1990s; and

Whereas the 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that "statutory change should be sought to lessen regulation...for SUNY and CUNY..."; and

Whereas if SUNY is to take its place as a world-leading university system and help New York emerge from its current fiscal crisis, SUNY needs to adopt dynamic solutions that align internal processes with the external environment while simultaneously maintaining integrity and commitment to core ideologies and mission; and

Whereas the current period of serious fiscal constraint amplifies the urgent need for substantial increases in administrative and budgetary flexibility critical to SUNY's ability to address the needs of its students and the State; and

Whereas SUNY is seeking enhanced operational responsibility and fully accepts the public accountability, through our internal processes and a post-audit review that comes with such responsibility; and

Whereas SUNY seeks statutory authority for enhanced administrative and operational flexibility through legislation entitled "Management and Operational Reforms and Efficiencies (MORE)," which would provide the University with flexibility in the following areas:

- Control of income from tuition, fees and other University revenue,
- Post-audit of expenditures,
- Procurement and contracts,
- Personnel, and
- Capital construction; now, therefore, be it

Resolved that the Board endorses the attached document entitled "Management and Operational Reforms and Efficiencies (MORE), Enhanced Flexibility for the State University of New York"; and, be it further

Resolved that the legislative proposal relating to procurement and operational flexibility for the State University and State University Construction Fund set forth in the document entitled "Management and Operational Reforms and Efficiencies (MORE), Enhanced Flexibility for the State University of New York"

be, and hereby is, approved for submission to the 2009 Legislature: and, be it further

Resolved that the Chancellor, or designee, be, and hereby is authorized to take such steps for and on behalf of the Board that he deems necessary or appropriate to promote enactment and implementation of such legislative proposal.

Background

The purpose of the legislative proposal is to improve the ability of the State University to effect its mission.

The 1985 Independent Commission on the Future of the State University of New York identified over-regulation as an impediment to the

State University's effectiveness in fulfilling its mission. The Commission concluded as follows:

What we criticize is a tradition of over-regulation that has its roots in the legal conception of SUNY as a state agency, a tradition that dates from 1948 but which, the Commission is convinced, SUNY has now outgrown Over-regulation pervades every aspect of SUNY's operation, in ways large and small. (The Challenge & The Choice, pp. 32-33 (1985)).

The observations of the Commission are as apt today as in 1985, despite the enactment of flexibility provisions in 1985. Many government agencies have approval authority over the State University's day-to-day operations, principally because State University continues to be treated as a State agency. The State University's interests as an academic institution are not given priority over general State process issues by control agencies in New York State government and the Legislature.

Moreover, the 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that "statutory change should be sought to lessen regulation in three areas. SUNY's Board of Trustees should have authority to lease SUNY property for purposes that support SUNY's mission without prior legislative approval, the SUNY Construction Fund should be granted necessary operational flexibility and the procurement process for SUNY and CUNY should be streamlined".

The legislation addresses these concerns.

Part A. The purpose of this Part is to eliminate burdens on State University procurement activities that impose delay, unnecessary record keeping and reporting, increased transactional costs and expenditure of staff time without concomitant value. Sections 1 and 2 eliminate approval by the Attorney General and State Comptroller of contracts of the State University, a process that can take months, and that is an anomaly among public higher education institutions. Most public systems are subject to post-audit of expenditures, as the State University would continue to be, rather than to both pre-approval and post-audit. For the State University, the burden of complying with the provisions of State Finance Law §163(4)(g), relating to personal services contracts, and Tax Law §5-a, relating to vendor sales and compensating use tax certifications, eliminated by sections 5 and 7 of Part A, respectively, has outweighed the potential benefits of such legislation.

Sections 3 and 4 allow affiliates of the State University to gain the benefit of centralized purchases by the Office of General Services, increasing efficiency and reducing transactional costs. Sections 163(3)(a)(iv) and 163(4)(e) of the State Finance Law provide that the Office of General Services

may permit State agencies to purchase services and commodities, respectively, through its centralized contracts. Over the years, these sections have been amended to authorize local governments and schools, volunteer fire companies and ambulance services, county extension service associations, and others to purchase commodities through OGS centralized contracts. Authority to purchase services through OGS centralized contracts has been extended to public authorities and public benefit corporations. Although many of these organizations are not governmental, they all fulfill a public purpose. Providing them the opportunity to purchase through OGS contracts has therefore been determined to mutually benefit both the State and the authorized parties, by increasing the negotiating power of OGS when entering into centralized contracts and at the same time simplifying the procurement of required goods and services by these organizations.

Section 6 gives the State University more flexibility in the use of single and sole source procurement.

Part B. By exempting the State University from the requirement to publish procurement opportunities in the Procurement Opportunities Newsletter, the State University is relieved from the current requirement to publish when competitive procurement is not required because of the low dollar value of the contract. With respect to competitive procurements, the State University's publication of requests for proposals is an effective way to assure competition, making redundant Procurement Opportunities Newsletter publication unnecessary. Publication in the Procurement Opportunities Newsletter entails unnecessary delay.

Part C. By eliminating restrictions on the use of State appropriations and funds generated by activities of the State University, including its health care facilities, the State University will gain flexibility in the use of its resources to address changing needs and to respond to emerging opportunities.

Part D. The purpose of establishing a risk management fund is to reduce costs the State would otherwise incur as the result of litigation. Court of Claims appropriations are available to pay claims against the State University only after litigation has commenced. The existence of the fund will allow earlier settlement of cases that otherwise would be litigated, as well as settlement of administrative disputes.

Part E. Pursuant to Education Law §237, the Board of Regents prepares a master plan for higher education in New York, and for such purpose solicits and reviews plans submitted by State University, City University, and all independent and proprietary colleges and universities. The Regents submit the master plan or general revisions to the Governor and the Legislature, and the plan is subject to the approval of the Governor.

The proposal realizes the intent of the Legislature and assures the implementation of Ch. 82, §137, L. 1995 which changed the planning cycle of the Board of Regents from four to eight years and directed the Regents and the Commissioner to streamline the master plan amendment process "thereby . . . providing increased flexibility and mandate relief for New York's public, independent and proprietary colleges and universities." The provisions of Ch. 82, §137, L. 1995 in effect, therefore, altered the planning cycle of the Regents in Education Law §237 without change to the corresponding planning cycles set forth in §§354 and 6206 for the State University and City University of New York, respectively. This proposal will allow flexibility and efficiency for both State University and City University without loss of responsibility of the planning process of the Board of Regents and the two public university systems.

Part F. The proposal eliminates Attorney General approval of leases between the State University and its alumni associations, and provides through the Dormitory Authority financing options for the State University's foundations, auxiliary services corporations and alumni associations.

Part G. The purpose of sections 1-6 of Part G is to enhance the operational and procurement flexibility of the State University's health sciences centers. The legislation augments and clarifies legislation enacted in 1998 to give State University hospitals more management flexibility and the ability to enter into management care and other joint and cooperative health care ventures. The legislation builds upon the recommendations of the Price Waterhouse Study commissioned by the State University to enhance State University hospitals. The legislation eliminates the thresholds for the purchase of goods and services without compliance with statutory procurement requirements and Attorney General and State Comptroller approvals, so long as contracts comply with State University procurement, comparative review and conflict-of-interest guidelines, and collective bargaining agreements where applicable. This legislation strengthens strategic and operational initiatives of the State University hospitals which will enable the hospitals to better compete in the health care marketplace.

Section 7. The purpose of the proposal is to allow patients who are medical assistance recipients, now required to participate in managed care programs, to obtain optometric services at the clinics of the College of Optometry. The effects of the proposal are to increase patient choices for optometric services and, potentially, to increase the patient base of the College of Optometry.

Part H. The definition of the term "lobbyist" for purposes of the State's Lobbying Act excludes officers, trustees, employees and other agents of the State and municipalities when such persons are discharging their official

duties, but does not exclude representatives of public colleges and universities.

The proposal amends the Legislative Law to exclude from the definition of "lobbyist" officers, directors, trustees, employees, counsel and agents of the State's public colleges and universities, including the State University, CUNY and community colleges.

It is anomalous for the Lobbying Act to exclude State and local entities from the registration and reporting requirements applicable to lobbyists and to include the State University, CUNY and community colleges. Like State agencies and local governments, the objective of the advocacy efforts of the State University, CUNY and the community colleges is to promote development and enactment of our agency budgets and legislation related to our public functions and programs.

The proposal does not affect the status of the State University, CUNY and the community colleges with respect to requirements of the Lobbying Act relating to clients and gifts to public officials. If the State University, CUNY or a community college retains a private lobbyist to lobby on its behalf, the State University, CUNY or community college would be subject to the client reporting requirements set forth in Legislative Law §1-j(a)(2) and to the gift prohibition set forth in Legislative Law §1-m.

Part I. The proposal allows the State University to avoid insurance premiums with respect to liability insurance policies that otherwise must be obtained by the State University for such students.

Currently, the State University obtains liability insurance for any students enrolled in clinical and other experiential course work at an affiliate's site. Increasing numbers of affiliation sites, clinical and non-clinical, where students are placed, are requiring such insurance. There are approximately 10,000 students currently enrolled in such clinical or other experiential programs throughout the State. The cost of liability insurance for the same population of 10,000 students has escalated from \$180,000 in 1994 to over \$753,000 in 2004. The cost of insurance for FY 2008-09 is \$436,000. To date, there have been fewer than ten (10) claims filed against such students for injuries sustained to patients or others during a clinical or experiential program. Such claims have amounted to less than two hundred thousand dollars (\$200,000) in the aggregate.

Part J. New York is one of only fifteen states which include the university's non-professional staff in the state's civil service system. New York's civil service system can be inflexible, with outdated position classifications that do not meet the State University's needs or do not respond

to changing workforce requirements. The present requirement for Civil Service Department review of any new positions or position reclassifications introduces a level of oversight that is often counterproductive, causes delays or disapprovals and severely limits the ability of campuses to deploy personnel resources effectively in response to changing work requirements, professional standards and shifting workload.

Part K. The participation of medical, dental and optometric residents and interns in residency and internship programs of health-related facilities of the State University of New York is not of a "continuing or permanent nature". The residencies and intern-ships are necessary for satisfaction of medical, dental and optometric education programs only. Typically, these students must perform one year as an intern and two years as a resident. Generally, they would not participate in internships and residencies for a period that would allow them to vest with the Employees' Retirement System (ERS), which generally require five years for vesting purposes. Thus, mandatory membership is not appropriate or advisable. Optional membership is consistent with the current practice of allowing anyone who is not a permanent, full-time employee the option of joining the ERS.

Part L. The statutory mission of the State University Construction Fund is to expedite the construction of facilities for the State University.

Although the Fund was established as a public benefit corporation, its operating budget is annually appropriated in the State budget even though all of the Fund's operating expenses are paid from the proceeds of bonds issued by the Dormitory Authority to fund the State University capital budget. Since the Fund's operating budget is appropriated (unlike almost all other public authorities), it is subject to appropriation limitations, position limitations and line item controls. These limitations and controls will impede the Fund's ability to quickly make operating adjustments necessary to deliver the new multi-year capital program for the State University. In addition, and unlike almost all other public authorities, Fund procurements are subject to State rules and regulations, and its contracts must be approved by the Attorney General and State Comptroller.

As the State University strives to compete with the nation's best public university systems for students and research dollars, it must be able to have facilities on line in the quickest possible time. Giving the Fund operational and procurement flexibility will allow the Fund to deliver these facilities in a time frame that will match the State University's need for them. Included in the operating flexibility is the ability to utilize all project delivery methods available in the construction industry. This will put the Fund on a level playing field with some other public construction entities and will enhance the Fund's statutory mission and assist the State University in achieving its goals.



MANAGEMENT AND OPERATIONAL REFORMS AND EFFICIENCIES (MORE)
Enhanced Flexibility for the State University of New York

Introduction

The State University of New York (SUNY) operates in a highly regulated and cumbersome administrative environment which limits both its efficiency and responsiveness. New York's current system of oversight of SUNY cause redundancy, delays, lost opportunities and wasted resources. Moreover, multiple layers of administrative review and approval at System Administration and state agency levels must necessarily be more costly than a decentralized devolution of responsibility to the campuses.

With today's environment of economic challenges, along with diminishing budgets and increased public scrutiny, it is tempting to follow a familiar path and rely on timeworn solutions. However, if SUNY is to take its rightful place as a world-leading university system and help New York emerge from its current fiscal crisis, it needs to adopt dynamic solutions that align internal processes with the external environment while simultaneously maintaining integrity and commitment to core ideologies and mission.

There is an urgent need for substantial increases in administrative and budgetary flexibility, which are critical to SUNY campuses' continued ability to address the State's needs, particularly during this period of serious fiscal constraint. SUNY is not asking for this enhanced flexibility "carte blanche". SUNY understands the need to protect the public trust in the state funds that are appropriated for our use. SUNY has internal controls via a System Administration Controller's Office which oversees all contracts and financial transactions at System and at all SUNY campuses. While we are seeking increased operational responsibility, SUNY fully accepts the accountability, through our internal processes and a post-audit review that comes with the increased administrative flexibility the University seeks.

SUNY's progress in this area has been slow and incremental, beginning with the Blue Ribbon Commission in 1985 that resulted in the SUNY flexibility legislation, which freed SUNY from a burdensome line-item budgeting system, State controls on total positions and hiring levels, and increased flexibility over procurement and contracting. The Rethinking SUNY initiatives of the mid 1990s also resulted in greater devolution of responsibility to the campuses for personnel decisions, established self-sufficiency for dormitory operations, and updated other financial practices. Despite this progress, SUNY continues to lag behind most public university systems in its ability to manage its resources effectively free of burdensome State oversight and regulation.

In recent years, the value of increased administrative discretion for public colleges and universities has become widely recognized. According to the National Association of College and University Business Officers (NACUBO), "While intended to prevent the loss of state dollars, the majority of process control systems introduced by state governments are cumbersome, bureaucratic, and expensive, and frequently result in processing delays, strained vendor relationships misdirected management practices, limited financial flexibility, and overall loss of responsibility, with little or no demonstrated positive impact."

Moreover, the 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that "statutory change should be sought to lessen regulation in three areas. SUNY's Board of Trustees should have authority to lease SUNY property for purposes that support SUNY's mission without prior legislative approval, the SUNY Construction Fund should be granted necessary operational flexibility and the procurement process for SUNY and CUNY should be streamlined".

As New York's largest public university system, SUNY is a public trust. It represents a significant investment by the State, its students and their families, and other stakeholders who do business with the University and benefit from its programs and services. That public investment requires accountability and effective stewardship of those assets. In return, SUNY provides tremendous benefits to New York in the form of an educated citizenry, economic development, cultural enrichment and social mobility.

New York versus Other States on Operational and Regulatory Flexibility

There are a number of areas where New York lags behind other states in the extent to which they allow their public universities to manage resources and perform administrative functions free of state oversight or control.

1 Control of income from tuition, fees and other university revenue:

SUNY revenues from tuition, fees, dormitory operations and income from sales and services (e.g. Income Fund Reimbursable accounts) are currently appropriated by the State and treated as State revenue, allocated by the State Division of Budget (DOB), with pre-audit of expenditures by the State Comptroller, and expended via the State's accounting system. This is not the pattern nationally. Tuition revenue is appropriated in only 28 states, 20 states appropriate income from university sales and services, and only 14 states appropriate dormitory income. In addition, state expenditure controls are applied to non-state revenues in fewer than half the states.

SUNY's recent experience with DOB expenditure caps applied to non-state income from tuition, fees, dorm income and other IFRs underscores the need to remove these revenues from the State appropriation structure. It is recommended that tuition revenue and other non-tax dollar supported revenue generated by SUNY be controlled by SUNY and not deposited in the State's general fund, as is the case with the City University of New York (CUNY). This would include tuition and fee revenue, dormitory income, and IFR income.

2 Pre-audit of expenditures:

New York is one of only four states, including Kansas, Mississippi and South Dakota, which still require a pre-audit of university expenditures. The more common practice is a post-audit of institutional expenditures by a state auditor (29 states), or an independent financial audit (13 states).

State audits of SUNY should be limited to post-audits of the propriety and effectiveness of its expenditures. The current system creates unnecessary delays in authorizing payment for common university expenditures. SUNY recommends a shift in orientation from pre-audit to post audit. Responsibility for certifying the appropriateness of University expenditures should be devolved to SUNY. Accountability could be ensured by an annual financial audit or periodic post-audit reviews, and by strengthening the University's internal audit function at the system and campus levels to assure compliance with general State policies and procedures where applicable.

3 Procurement and Contract Review:

These are the most common areas for regulatory relief in states where improvements in flexibility have been granted. Recent developments for higher education in Florida and Virginia are examples. New York's oversight is particularly burdensome due to unnecessary layers of review and approval and delays for routine administrative functions that can better be managed at the campus level with some form of post audit at the system level.

SUNY should be delegated authority to develop its own procurement and property management rules and systems, consistent with sound business practices and the State finance law. The following are improvements that should be pursued:

- a. Qualifications for single source purchases should be expanded and liberalized.
- b. SUNY purchases should be exempted from advertising in the State Opportunities Newsletter.
- c. Policies for procurement of special services such as printing should be liberalized and updated.
- d. The authority to approve SUNY contracts for form should be devolved to the SUNY Trustees.
- e. Review of SUNY contracts should be subject only to post-audit by the Office of the State Comptroller.
- f. Expanding the SUNY health science centers ability to enter into managed care and other joint and cooperative health care ventures.

4 Personnel:

New York is one of only fifteen states which include the university's non-professional staff in the state's civil service system. The state civil service system can be inflexible, with outdated position classifications that do not meet SUNY's needs or respond to changing workforce requirements.

SUNY needs the authority to classify its non-professional workforce into unique SUNY titles and salary ranges without review or approval by the State. This type of position classification authority rests with public university systems in the majority of the states. The requirement for Civil Service review of any new positions or position reclassifications introduces a level of oversight and control that is often counterproductive, causes long delays or disapprovals, and severely limits the ability of SUNY campuses to deploy its personnel resources effectively in response to changing work requirements, professional standards, or shifting workload.

A broad devolution of authority to the SUNY Trustees to establish a parallel personnel system for classified personnel within the University is recommended. SUNY's authority should include the ability to classify positions, set salary ranges, and recruitment /promotion policies consistent with the spirit of Civil Service law and the provisions of applicable union contracts.

5 Capital Construction:

Flexibility for construction is necessary as the SUNY Construction Fund manages over \$4 billion in construction projects for the University. Previously proposed initiatives for project delivery methods such as design-build and construction managers at risk would help to deliver projects in a faster and cost efficient manner, especially in this time of increasing construction costs. The option for University sponsored not-for-profit corporations and associations to use the finance and construction services of the Dormitory Authority of New York (DASNY) would allow these entities to provide their services, which are critical to helping the campuses achieve their mission in a more cost effective manner.

In addition, one of the most significant constraints to timely completion of SUNY capital projects is the current requirements for OSC review and approval of design and construction contracts.

For SUNY campuses, the window for non-disruptive construction is generally limited to the mid-May to mid-August period, but campuses must also allow 8 to 12 weeks for AG and OSC review of each design and construction contract. Such review causes further delay, increased costs, or cancellation. Lengthy pre-audit review time is compounded for construction projects requiring extensive lead time for order and delivery of large, complex pieces of equipment. Despite many months of planning, approval delays can cause equipment to arrive too late to meet occupancy deadlines. The University has cancelled and delayed construction projects in the past because approval arrived too late in the spring to begin non-disruptive work.

Review of SUNY Construction Fund design and construction contracts should be subject only to post-audit by the Office of the State Comptroller.

Summary of the Requested Flexibility

The following recommendations are important elements of a comprehensive program to enhance SUNY's effectiveness. Acceptance and implementation of these recommendations will require a bold rethinking of SUNY's relationship to State government, which can provide mutual benefits for SUNY and the State of New York. The primary benefits for SUNY would be more control over its destiny in the form of a SUNY tuition policy, more effective control over its resources, and streamlined administrative policies and procedures free of burdensome constraints that do not add value to the students who we serve. The benefits to the State includes some cost savings arising from greater efficiencies, but more importantly, a more effective University System with enhanced responsiveness to the educational and financial interests of our citizens and the critical needs of New York State.

Control of Special Revenue Accounts and Administrative Relief:

- Expand budgetary flexibility to permit monies derived from tuition, fees, sales of products, health care services and the like to be held by the University as non-state funds and expended without appropriation
- Increase ability to interchange and transfer funds within the University
- Amend the State's master plan cycle for public universities
- Exclude SUNY, CUNY and community colleges from the definition of "lobbyist" in the State's Lobbying Act

Pre-Audit of Expenditures; Procurement and Contract Review:

- Eliminate approval by the Attorney General and State Comptroller for contracts, a process that can take months and that is an anomaly among public higher education institutions
- Eliminate the requirement of the University to publish procurement opportunities in the State Procurement Opportunities Newsletter

- Expand OGS centralized purchasing opportunities to affiliate organization of the University which will increase efficiencies and reduce transactional costs
- Expand opportunities for health science centers to enter into managed care and other joint and cooperative health care ventures
- Allow medical assistance patients access to optometric services at the SUNY College of Optometry

Personnel:

- Provide the University the ability to manage position control for unionized (classified service) employees
- Establish a risk management fund to reduce costs the State would otherwise incur as the result of litigation
- Permit students enrolled in required clinical or internship programs to be indemnified under the Public Officers Law, negating the need for the University to purchase liability insurance
- Eliminate the ORP option for students who are in residency and internship programs in the health-related facilities of the University, limiting retirement options only to ERS

Capital Construction:

- Give the SUNY Construction Fund the same flexibility and efficiencies in procurement and operations that are proposed for SUNY
- Enable the Construction Fund to utilize all project delivery methods available in the construction industry
- Provide an option to not-for-profit corporations and associations sponsored by SUNY to use the finance and construction services of the Dormitory Authority

Legislative Solution to Flexibility

The University is bound by numerous New York State statutes from accomplishing any of the administrative flexibility outlined above. Many of these recommendations have been presented to the Executive and Legislature over the years as omnibus and individual bills. Some have received Executive Departmental Status and some have passed either the Senate or Assembly, but not both houses. The current fiscal situation warrants another review of these proposals. The following bill draft represents the flexibility sought by the State University:

Draft Management and Operational Reforms and Efficiencies (MORE) Legislation:
 AN ACT to amend the education law, the state finance law and the tax law in relation to procurements by or for the state university of New York (Part A); to amend the economic development law in relation to procurement opportunities (Part B); to amend the education law and state finance law in relation to moneys of the state university (Part C); to amend the state finance law to establish a risk management fund (Part D); to amend the education law in relation to master plans for higher education (Part E); to amend the education law and public authorities law in relation to real property transactions (Part F); to amend the civil service law, the education law, chapter 363 of the laws of 1998 and the social services law in relation to health

care facilities of the state university (Part G); to amend the legislative law in relation to the state university as lobbyist (Part H); to amend the public officers law in relation to indemnity for students (Part I); to amend the civil service law and education law in relation to employees of the state university in the classified service (Part J); to amend the education law and the retirement and social security law, in relation to retirement system eligibility of medical, dental and optometric residents and interns of the state university (Part K); and to amend the education law in relation to the state university construction fund (Part L).

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

Section 1. This act shall be known as the "Management and Operational Reforms and Efficiencies (MORE), Enhanced Flexibility for the State University of New York Act."

PART A

§1. Subdivisions 5 and 6 of section 355 of the education law, as amended by chapter 682 of the laws of 2007, are amended to read as follows:

3. Notwithstanding the provisions of paragraph two of section one hundred twelve and sections one hundred fifteen, one hundred sixty-one, and hundred sixty-three [and one hundred seventy-four] of the state finance law and sections three and six of the New York state printing and public documents law or any other law to the contrary, the state university trustees are authorized and empowered to:

a. (i) purchase materials, equipment and supplies, including computer equipment and motor vehicles[, where the amount for a single purchase does not exceed twenty thousand dollars], (ii) execute contracts for services, permits, licenses, leases, contracts for the purchase or sale of real property and construction contracts [to an amount not exceeding twenty thousand dollars], and (iii) contract for printing [to an amount not exceeding five thousand dollars], without prior approval by any other state officer or agency[, but subject to rules and regulations of the state comptroller not otherwise inconsistent with the provisions of this section and] in accordance with [the] guidelines, rules [and] or regulations promulgated by the state university board of trustees [after consultation with the state comptroller. In addition, the trustees, after consultation with the commissioner of general services, are authorized to annually negotiate with the state comptroller increases in the aforementioned dollar limits and the exemption of any articles, categories of articles or commodities from these limits]. Guidelines, [Rules and] rules or regulations promulgated by the state university board of trustees shall, to the extent practicable, require that competitive proposals be solicited for purchases, other than sole source and single source purchases, and shall include requirements that purchases and contracts authorized under this section be at the lowest available price, including consideration of prices available through other state agencies, consistent with quality requirements, and as will best promote the public interest. Such purchases may be made directly from any contractor pursuant to any contract for commodities let by the office of general services or any other state agency;

b. to establish cash advance accounts for the purpose of purchasing materials, supplies, or services, for cash advances for travel expenses and per diem allowances, or for advance payment of wages and salary. The account may be used to purchase such materials, supplies, or services where the amount of a single purchase does not exceed two hundred fifty dollars, in accordance with such guidelines as shall be prescribed by the state university trustees [after consultation with the state comptroller].

c. establish guidelines in consultation with the commissioner of general services authorizing participation by the state university in programs administered by the office of

general services for the purchase of available New York state food products. The commissioner of general services shall provide assistance to the state university necessary to enable the university to participate in these programs.

[d. (1) Award contract extensions for campus transportation without competitive bidding where such contracts were secured either through competitive bidding or through evaluation of proposals in response to a request for proposals pursuant to subparagraph (2) of this paragraph, however such extensions may be rejected if the amount to be paid to the contractor in any year of such proposed extension fails to reflect any decrease in the regional consumer price index for the New York, New York-Northeastern, New Jersey area, based upon the index for all urban consumers (CPI-U) during the preceding twelve-month period. At the time of any contract extension, consideration shall be given to any competitive proposal offered by a public transportation agency. Such contract may be increased for each year of the contract extension by an amount not to exceed the regional consumer price index increase for the New York, New York-Northeastern, New Jersey area, based upon the index for all urban consumers (CPI-U), during the preceding twelve-month period, provided it has been satisfactorily established by the contractor that there has been at least an equivalent increase in the amount of his cost of operation, during the period of the contract.
(2) [Expired]]

6. To enter into any contract or agreement deemed necessary or advisable after consultation with appropriate state agencies for carrying out the objects and purposes of state university without prior review or approval by any state officer or agency [other than the state comptroller and the attorney general] including contracts with non-profit corporations organized by officers, employees, alumni or students of state university for the furtherance of its objects and purposes. Contracts or agreements entered into with the federal government to enable participation in federal student loan programs, including any and all instruments required thereunder, shall not be subject to the requirements of section forty-one of the state finance law; provided, however, that the state shall not be liable for any portion of any defaults which it has agreed to assume pursuant to any such agreement in an amount in excess of money appropriated or otherwise lawfully available therefor at the time the liability for payment arises.

§2. Subdivisions 2 and 3 of section 112 of the state finance law, as amended by chapter 56, pt. D, of the laws of 2006, are amended to read as follows:

2. (a) Before any contract made for or by any state agency, department, board, officer, commission, or institution, except the office of general services and the state university of New York, shall be executed or become effective, whenever such contract exceeds fifty thousand dollars in amount and before any contract made for or by the office of general services shall be executed or become effective, whenever such contract exceeds eighty-five thousand dollars in amount, it shall first be approved by the comptroller and filed in his or her office, provided, however, that the comptroller shall make a final written determination with respect to approval of such contract within ninety days of the submission of such contract to his or her office unless the comptroller shall notify, in writing, the state agency, department, board, officer, commission, or institution, prior to the expiration of the ninety day period, and for good cause, of the need for an extension of not more than fifteen days, or a reasonable period of time agreed to by such state agency, department, board, officer, commission, or institution and provided, further, that such written determination or extension shall be made part of the procurement record pursuant to paragraph f of subdivision one of section one hundred sixty-three of this chapter.

(b) Whenever any liability of any nature shall be incurred by or for any state department, board, officer, commission, or institution other than the state university of New York, notice that such liability has been incurred shall be immediately given in writing to the state comptroller.

3. A contract or other instrument wherein the state or any of its officers, agencies, boards or commissions other than the state university of New York agrees to give a consideration other than the payment of money, when the value or reasonably estimated

value of such consideration exceeds ten thousand dollars, shall not become a valid enforceable contract unless such contract or other instrument shall first be approved by the comptroller and filed in his office.

§3. Subparagraph (iv) of paragraph a of subdivision 3 of section 163 of the state finance law, as amended by chapter 430 of the laws of 1997, is amended to read as follows:

(iv) The commissioner is authorized to permit any officer, body or agency of the state or of a political subdivision or a district therein, or fire company or volunteer ambulance service as such are defined in section one hundred of the general municipal law, to make purchases of commodities through the office of general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law. The commissioner is authorized to permit any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law, or any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law, or any non-profit corporation organized in furtherance of the objects and purposes of the state university of New York, or any other association or entity as specified in state law, to make purchases of commodities through the office of general services' centralized contracts; provided, however, that such entity so empowered shall accept sole responsibility for any payment due with respect to such purchase; and provided further, however, that commodities so purchased by a non-profit corporation organized in furtherance of the objects and purposes of the state university of New York shall not be used directly or indirectly by a for-profit corporation or other entity which contracts with the non-profit corporation, nor shall such commodities so purchased by such non-profit corporation be offered for resale.

§4. Paragraph e of subdivision 4 of section 163 of the state finance law, as amended by chapter 95 of the laws of 2000, is amended to read as follows:

e. Any officer, body or agency of a political subdivision as defined in section one hundred of the general municipal law or a district therein, may make purchases of services through the office of general services' centralized contracts for services, subject to the provisions of section one hundred four of the general municipal law. The commissioner may permit and prescribe the conditions for the purchase of services through the office of general services' centralized contracts for services by any public authority or public benefit corporation of the state including the port authority of New York and New Jersey, or any non-profit corporation organized in furtherance of the objects and purposes of the state university of New York; provided, however, that services so purchased by a non-profit corporation organized in furtherance of the objects and purposes of the state university of New York shall not be used directly or indirectly by a for-profit corporation or other entity which contracts with the non-profit organization. The commissioner is authorized to permit any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities, to make purchases of services through the office of general services' centralized contracts; provided, however, that such entity so empowered shall accept sole responsibility for any payment due with respect to such purchase.

§5. Paragraph g of subdivision 4 of section 163 of the state finance law is amended to read as follows:

g. All state agencies shall require all contractors, including subcontractors, that provide services for state purposes pursuant to a contract, to submit an annual employment report for each contract for services that includes for each employment category within the contract the number of employees employed to provide services under the contract, the number of hours they work and their total compensation under the contract. Employment reports shall be submitted to the agency that awarded the contract, the department of civil service and the department of audit and control and shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in

disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document. The provisions of this paragraph shall not apply to the state university of New York.

§6. Paragraph b of subdivision 10 of section 163 of the state finance law is amended to read as follows:

b. (i) Single or sole source procurements for services or commodities, or procurements made to meet emergencies arising from unforeseen causes, may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the commissioner or the state agency that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The purchasing agency shall document in the procurement record, subject to review by the state comptroller, the bases for a determination to purchase from a single source or sole source, or the nature of the emergency giving rise to the procurement.

(ii) State agencies shall minimize the use of single source procurements and shall use single source procurements only when a formal competitive process is not feasible. State agencies shall document in the procurement record the circumstances and the material and substantial reasons why a formal competitive process is not feasible. The term of a single source procurement contract shall be limited to the minimum period of time necessary to ameliorate the circumstances which created the material and substantial reasons for the single source award. Not later than thirty days after the contract award, state agencies shall, for all single source procurement contracts, make available for public inspection on the agency website, a summary of the circumstances and material and substantial reasons why a competitive procurement is not feasible. Any information which the contracting agency is otherwise prohibited by law from disclosing pursuant to sections eighty-seven and eighty-nine of the public officers law, shall be redacted from the documentation published on the agency website.

(iii) The provisions of this paragraph shall not apply to the state university of New York.

§7. Paragraph (e) of subdivision 1 of section 5-a of the tax law is amended to read as follows:

(e) "Covered agency" means a "state agency" for purposes of article eleven of the state finance law, the legislature, the judiciary, or a public authority or public benefit corporation at least one of whose members is appointed by the governor; provided, however, that the term "covered agency" shall not include the state university of New York.

§8. This act shall take effect immediately; provided, however, that the amendments to paragraph a of subdivision 1 of section 139-j of the state finance law made by section 3 of Part A of this act and the amendments to paragraph a of subdivision 1 of section 139-k of the state finance law made by section 4 of Part A of this act shall not affect the repeal of said sections and shall be deemed repealed therewith; and provided further, however, that the amendments to paragraph g of subdivision 4 of section 163 of the state finance law made by section 7 of Part A of this act shall not affect the repeal of said section and shall be deemed repealed therewith.

End of Part A

PART B

§1. Subdivision 1 of section 141 of the economic development law, as added by chapter 564 of the laws of 1988, is amended to read as follows:

1. "Agency" shall mean any agency, department, board, bureau, commission a majority of whose members are appointed by the governor, division, office, council, committee, or officer of the state, [or the state university of New York] or the city university of New York, or any public benefit corporation or public authority, a majority of whose members are appointed by the governor. Such term shall not include the legislature or the state university of New York.

§2. Paragraph (b) of subdivision 2 of section 142 of the economic development law, as added by chapter 564 of the laws of 1988, is amended to read as follows:

(b) for procurement contracts in excess of ten thousand dollars and less than twenty thousand dollars to be awarded by [the state university of New York or] the city university of New York, (i) a quarterly listing of projected procurement purchases by commodity for each institution of [the state university of New York or] the city university of New York; (ii) an explanation of how to apply for placement on any bidder lists maintained by [the state university of New York or] the city university of New York; and (iii) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by [the state university or] the city university; and

§3. Paragraph (d) of subdivision 1 of section 144 of the economic development law, as amended by chapter 862 of the laws of 1990, is amended to read as follows:

(d) Procurement contracts in an amount less than ten thousand dollars awarded by [the state university of New York or] the city university of New York ; and

§4. This act shall take effect immediately.

End of Part B

PART C

§1. Paragraph c of subdivision 4 of section 355 of the education law is amended to read as follows:

c. To increase or decrease appropriations by transfer or interchange pursuant to a certificate of allocation submitted by the state university to the state comptroller, with copies of such certificates to be sent to the chairs of the senate finance committee and the assembly ways and means committee and the director of the budget for informational purposes only [as follows:

(1) Amounts appropriated for the programs or purposes or for any item or items within such programs or purposes of any individual state-operated institution and the statutory or contract colleges of the state university, including state university central administration within the schedules of such units or for any individual hospital within the schedule of hospitals of the state university from a particular fund or funds in a fiscal year may be interchanged between such programs or purposes of such unit or hospital of state university, or between items within the same program or purpose, or with other items appropriated from such fund not in the same program or purpose, but which are contained in the state comptroller's classification of items as last promulgated pursuant to a certificate of allocation. Such certificate shall be submitted by such units to the board of trustees of the state university. Such certificate shall be submitted by the board of trustees to the state comptroller with copies to be sent to the chairs of the senate finance committee and the assembly ways and means committee and the director of the budget for informational purposes only. The total amount appropriated for any program or purpose may be decreased by not more than the aggregate of five percent of such appropriation for a program or purpose with the approval of the units or hospitals or such amounts may be decreased by more than the aggregate of five percent of such appropriation with the approval of the state university trustees.

(2) Amounts appropriated to state-operated institutions and statutory or contract colleges within the schedule of such units or to hospitals within the schedule of hospitals of the state university from a particular fund or funds in a fiscal year for the programs or purposes of such units or hospitals of the state university may be transferred between and among such units or hospitals pursuant to a certificate of allocation, submitted directly by the state university to the state comptroller, with copies of such certificates to be sent to the chairs of the senate finance committee and the assembly ways and means committee and the director of the budget for informational purposes only. The total amount appropriated for any unit may not be decreased by more than the aggregate of three percent of an appropriation for a unit or the aggregate of ten percent of an appropriation for a hospital.

(3) Amounts appropriated for programs or purposes, or for any item within such programs or purposes, within the university-wide program schedule of state university from a particular fund or funds in a fiscal year shall not be decreased by means of transfer or interchange by more than the aggregate of four percent of an appropriation for a program or purpose within such schedule.

(4) Amounts appropriated for hospitals within the hospital schedule of the state university from a particular fund or funds in a fiscal year for programs or purposes of such hospitals shall not be increased or decreased by means of transfer or interchange from the amounts appropriated to the state-operated institutions and the statutory or contract colleges, university-wide programs, or central administration of the state university. The aggregate appropriation for the hospital schedule shall not be increased or decreased by such transfers of appropriations.

(5) Amounts appropriated for the central administration of the state university within the central administration schedule from a particular fund or funds in a fiscal year for programs or purposes including, but not limited to, administration of state-operated institutions and statutory or contract colleges, university-wide programs, and hospitals of the state university shall not be increased by means of transfer or interchange by more than five percent of the aggregate appropriation within such schedule.

(6) Notwithstanding the foregoing provisions of this subdivision, whenever the director of the budget, pursuant to section forty-nine of the state finance law, shall establish an aggregate amount less than that contained in the state operations appropriations act, the trustees may transfer or interchange any or all of such lesser amount among any of the programs or purposes or items without regard to the restrictions provided in this subdivision].

[(7)] On the fifteenth day of October, January, April and July of each year, the state university shall provide the chair of the senate finance committee and the assembly ways and means committee, the state comptroller and the director of the budget with quarterly reports of all transfers or interchanges made by the state university pursuant to this section, with such reports to include the program impact of each transfer or interchange. [The allocation of lump sum appropriations from a fund or funds made to the state university for later distribution to state operated institutions, statutory or contract colleges, hospitals and/or central administration of the state university or the allocation of lump sum appropriations made to all state departments and agencies for later allocation for specific programs or purposes or units of the state university shall not be deemed to be part of any total increase or decrease authorized by this section.]

§2. Subdivisions 8 and 8-a of section 355 of the education law are amended to read as follows:

8. All moneys received by the state university of New York and by state-operated institutions thereof from [appropriations,] tuition, fees, user charges, sales of products and services and from [all other sources, including] sources and activities of the state university which are intended by law to be self-supporting may be credited to an appropriate fund or funds [to be designated by the state comptroller] held by the state university. The amounts so paid into such fund or funds which were received by or for the state university shall be used for expenses of the state university in carrying out any of its objects and purposes and such amounts received by or for state-operated institutions of the state university shall be used for expenses of the state university under regulations prescribed by the state university trustees.

8-a. All monies received by state university health care facilities from fees, charges, and reimbursement and from all other sources, other than appropriations, shall be credited to a state university health care account in a fund [to be designated by the state comptroller] held by the state university. Monies to establish reserves for long-term expenses of state university health care facilities and to fulfill obligations required for any contract for health care services authorized pursuant to subdivision sixteen of this section may be designated by the state university as a reserve and transferred to a separate contractual reserve

account. The amounts in such accounts shall be available for use in accordance with paragraph b of subdivision four and subdivision eight of this section. Monies shall [only] be expended from the state university health care account and the contractual reserve account [pursuant to] without appropriation. [Notwithstanding any provision of this chapter, the state finance law or any other law to the contrary, such appropriations shall remain in full force and effect for two years from the effective date of the appropriation act making the appropriation. Monies so transferred may be returned to the state university health care account; provided, however, that funds in such contractual reserve account must be sufficient to meet the obligations of all such contracts.]

§3. Section 4 of the state finance law is amended to add subdivision 11 to read as follows:

11. Notwithstanding subdivision one of this section, moneys held by the state university of New York derived from tuition, fees, user charges, sales of products and services, sources and activities of the state university that are intended to be self-supporting, and all moneys received by state university health care facilities from fees, charges, reimbursement and from all other sources, other than appropriations, shall be paid without an appropriation.

§4. Subdivision 2 of section 121 of the state finance law is amended to read as follows:

2. There are excepted from payment to the treasury as provided by subdivision one of this section: (i) all moneys to which the provisions of subdivision four of section four of this chapter apply unless such moneys are held in a fund subject to appropriation; (ii) moneys held as part of the principal of an endowment of the state university of New York, units thereof and other state agencies; (iii) moneys received by the state university of New York derived from tuition, fees, user charges, sales of products and services and from sources and activities of the state university that are intended to be self-supporting; and [(iii)] (iv) moneys received pursuant to a clinical practice plan established pursuant to subdivision fourteen of section two hundred six of the public health law. In those cases where such moneys are held in the custody of the state officer other than the comptroller, the officer shall file with the comptroller, at such times as the comptroller shall determine, a detailed statement, in such form and content as the comptroller shall prescribe, for the period covered by the statement. The comptroller shall from time to time, but not less than once in every three years, examine the books and accounts relating to such moneys heretofore or hereinafter established, including its receipts, disbursements, investments, and any financial matters. An independent audit of such moneys may be authorized by the comptroller in lieu of his own examination, which examination shall be undertaken within twelve months of such authorization.

§5. This act shall take effect immediately.

End of Part C

PART D

§1. The state finance is amended to add section 99-t to read as follows:

§99-t. State University risk management fund

1. There is hereby established within the custody and control of the state comptroller a fund to be known as the "State University risk management fund."

2. The fund shall consist of all moneys appropriated for its purpose, and moneys transferred to such fund pursuant to law.

3. Moneys in the fund shall be available only to the state university of New York, following appropriation, for (i) costs and expenses of the state university in relation to litigation and administrative proceedings in which the state university is not a named party, and in relation to pre-litigation and pre-administrative proceedings involving the state university; and (ii) for the monetary compromise by the state university of matters and disputes involving the state university in advance of the initiation of litigation with respect to such matters and disputes. Notwithstanding section forty of the state finance law, section

355 of the education law or any other law to the contrary, all appropriations made from this fund to the state university shall remain in full force and effect for two years from the effective date of the chapter in which the appropriations were made. Moneys shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the chancellor, or designee, of the state university.

§2. This act shall take effect immediately.

End of Part D

PART E

§1. Subdivisions 2, 3, 4, 5 and 6 of section 237 of the education law, subdivisions 2, 3 and 4 as amended by chapter 186 of the laws of 1977 and subdivisions 5 and 6 as amended by chapter 567 of the laws of 1971, are amended to read as follows:

2. The regents shall, on or before the twenty-fifth day of April [nineteen hundred seventy-one] two thousand eleven and each [fourth] eighth year thereafter, request the state university trustees, the board of higher education of the city of New York, and all independent higher educational institutions to submit long-range master plans for their development. Such request shall specify the nature of the information, plans and recommendations to be submitted, shall describe statewide needs, problems, societal conditions and interests of the citizens and discuss their priorities, and provide appropriate information which may be useful in the formulation of such plans.

3. The regents shall, once every [four] eight years, review the proposed plan and recommendations required to be submitted by the state university trustees pursuant to section three hundred fifty-four of this chapter, the proposed plan and recommendations of the board of higher education in the city of New York required to be submitted pursuant to section sixty-two hundred [two] six of this chapter, and the plans of independent institutions of higher education and, upon approval by the regents of the plans submitted by the state university trustees and the board of higher education, they shall be incorporated into a regents plan or general revision thereof for the development of higher education in the state. Such regents plan shall include the plan and recommendations proposed by the state university trustees and the plan and recommendations proposed by the board of higher education in the city of New York and may include plans with respect to other matters not comprehended within the plan of the state and city universities, including but not limited to improving institutional management and resources, instruction and guidance programs, financial assistance to students and extension of educational opportunities. In determining the need for additional educational facilities in a particular area, the plans and facilities of existing public and independent institutions shall be fully evaluated. Such statewide plan shall include for information purposes a summary of all recommendations appearing in the prior statewide plan and subsequent amendments thereof containing a brief statement of action taken and progress toward achievement of each such recommendation.

4. During the calendar year [nineteen hundred sixty-four] two thousand twelve and each [fourth] eighth year thereafter the regents shall evaluate all available information with respect to the plans and facilities of independent institutions and shall review and act upon the proposed plan and recommendations of the state university trustees and upon the proposed plan and recommendations of the board of higher education in the city of New York and incorporate such information, recommendations and each of the component plans so acted upon into a tentative regents plan or general revision thereof for the development of higher education in the state. Copies of such tentative regents plan or general revision thereof, as the case may be, shall be made available to the trustees of the state university, the board of higher education in the city of New York and the governing boards of all other institutions of higher education admitted to the university of the state of New York. Thereafter, after giving due notice, the regents shall conduct one or more hearings on such tentative regents plan or general revision thereof.

5. The regents shall transmit their plan or general revision thereof for the development of higher education in the state to the governor and the legislature on or before the first day of November, [nineteen hundred sixty-four] two thousand twelve and each [fourth] eighth year thereafter. The governor may disapprove or conditionally approve any part of the plan or general revision thereof after notifying the regents of such disagreements at least sixty days prior to such action during which time they may revise their recommendations relating to such items and requests the governor to adopt such revised recommendations in lieu of such action. Such plan or general revision thereof or so much thereof as shall be approved and upon such terms and conditions as the governor may impose, shall become effective upon such approval by the governor.

6. Any modification recommended by the state university trustees or by the board of higher education in the city of New York to their respective plans, theretofore formulated and approved pursuant to section three hundred fifty-four or section sixty-two hundred [two] six of this chapter shall be reviewed by the regents who may hold one or more hearings thereon after giving due notice thereof. As approved by the regents, such modification shall be made a part of the respective plans of the state university and of the city university and shall, together with any modifications the regents may make to that portion of their plan for the development of higher education in the state not comprehended in the plans of the state and city universities, be transmitted to the governor and the legislature, all of which shall then become effective upon approval by the governor as modifications of the regents plan. By the first day of November in [nineteen hundred seventy-four] two thousand eight and each [fourth] eighth year thereafter the regents shall summarize and report to the governor and the legislature any modifications made pursuant to this subdivision and shall include in such report a statement on the progress made in implementing the regents plan and their general recommendations with respect to higher education.

§2. Subdivisions 1, 2 and 3 of section 354 of the education law, as amended by chapter 552 of the laws of 1985, are amended to read as follows:

1. The state university trustees shall, once every [four] eight years, formulate a long-range state university plan or general revision thereof and make recommendations to the board of regents and the governor for the organization, development, coordination and expansion of the state university and for the establishment of community colleges in areas suitable for and in need of such institutions, which plan and recommendations shall include the following:

- a. plans for new curricula;
- b. plans for new facilities;
- c. plans for change in policies with respect to student admissions;
- d. projected student enrollments; and
- e. comments upon its relationship to other colleges and universities, public, independent and proprietary, within the state.

f. For informational purposes only, projection standards and overall expenditure projections of capital and operating costs. Prior to transmitting their long-range state university plan or general revision thereof to the board of regents and the governor the state university trustees may, after giving due notice, conduct one or more hearings on such plan.

2. During the calendar year [nineteen hundred sixty-four] two thousand twelve and each [fourth] eighth year thereafter the state university trustees shall transmit their proposed plan or general revision thereof to the board of regents and the governor on or before the first day of June in each such year. Such plan shall be reviewed by the board of regents and shall be subject to approval by such board. As approved by the board of regents and incorporated into the regents plan or general revision thereof for the development of higher education in the state and, upon approval thereafter by the governor, such plan shall guide and determine the development of the state university and its community colleges until such plan is modified or revised in the manner provided herein.

3. By the first day of June in [nineteen hundred seventy-four] two thousand eight and every [fourth] eighth year thereafter, the state university trustees shall report in writing

to the board of regents, to the governor and to the legislature on the progress made in carrying out their responsibilities under such plan and their general recommendations with respect to public higher education, including recommendations as to modifications of such plan which the trustees deem essential to meet the then current demands upon public higher education. The state university trustees may also at any other time propose modifications which they then deem essential or desirable with respect to such plan. They may, after giving due notice, conduct one or more hearings on such modifications and shall transmit their recommendations therefor to the board of regents and the governor. Such modifications shall be subject to approval by the regents and thereafter by the governor in the same manner as such plan or general revisions thereof.

§3. Subdivision 3 of section 6206 of the education law, as added by chapter 305 of the laws of 1979, is amended to read as follows:

4. a. The board of trustees shall, once every [four] eight years, formulate a long-range city university plan or general revision thereof and make recommendations to the board of regents, for the organization, development and coordination of the city university. The plan and recommendations shall include but not be limited to the following:

- (1) Plans for new curricula,
- (2) Plans for new facilities,
- (3) Plans for change in policies with respect to student admissions,
- (4) Potential student enrollments,
- (5) Comments upon its relationship to other colleges and universities, public and private, within the state, and
- (6) For informational purposes only, projection standards and overall expenditure projections of capital and operating costs.

The plan shall be in such form as to provide a basis for the development of the regents statewide plan for higher education as defined in section two hundred thirty-seven of this chapter. Prior to transmitting their long-range plan or general revisions thereof to the board of regents, to the temporary president of the senate, and to the speaker of the assembly, the board of trustees shall, after giving due notice, conduct one or more hearings on such plan.

b. During the calendar year [nineteen hundred eighty] two thousand twelve and each [fourth] eighth year thereafter the board of trustees shall transmit their proposed plan or general revisions thereof to the board of regents, on or before the first day of June in each such year. Such plan shall be reviewed by the board of regents and shall be subject to approval by such board. As approved by the board of regents and incorporated into the regents plan or general revision thereof for the development of higher education in the state and, upon approval thereafter by the governor, such plan shall guide and determine the development, organization and coordination of the city university.

c. By the first day of June in [nineteen hundred eighty-two] two thousand eight and each [fourth] eighth year thereafter, the board of trustees shall report in writing to the board of regents, a copy of which report shall be furnished to the temporary president of the senate, and the speaker of the assembly, the mayor and the president of the city council for information and comment, on the progress made in carrying out its responsibilities under such plan and its general recommendations with respect to the city university or its component colleges or other institutions in the city of New York including recommendations as to modifications of such plan which the board of trustees deems essential to meet the then current demands upon public higher education in the city of New York. The board of trustees may also at any other time propose modifications which it deems essential or desirable with respect to such plan. The board of trustees may, after giving due notice, conduct one or more hearings on such modifications and shall transmit its recommendations therefor to the board of regents, to the temporary president of the senate, the speaker of the assembly, the mayor and the president of the city council for information and comment. Such modifications shall be subject to approval by the regents and thereafter by the governor in the same manner as such plan or general revisions thereof.

§4. This act shall take effect immediately.

End of Part E

PART F

§1. Paragraph i of subdivision 2 of section 355 of the education law are amended to read as follows:

i. To lease to alumni associations of institutions of the state university a portion of the grounds occupied by any institution of the state university, for the erection thereon of dormitories to be used by students in attendance at such institutions. The terms of any lease and the character of the building to be erected shall be determined by the state university trustees. [Such lease, prior to its execution, shall be submitted to the attorney general for his approval as to its form, contents and legal effect.] Nothing contained in this paragraph shall affect the provisions of any lease heretofore executed by a board of visitors of any state-operated institution pursuant to law. The state university trustees may similarly enter into an agreement with an alumni association of an institution of the state university to furnish heat from a central heating plant to any dormitory erected by such alumni association. Any such dormitory shall not be subject to taxation for any purpose.

§2. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law, as amended by chapter 701 of the laws of 2005, is amended by adding a new undesignated subparagraph to read as follows:

Any not-for-profit corporation or association organized by officers, employees, alumni or students of the state university of New York to further the purposes of the state university of New York, in connection with the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for, facilities for the benefit of the state university of New York.

§3. Subdivision 1 of section 1680 of the public authorities law, as amended by chapter 698 of the laws of 2005, is amended by adding a new undesignated paragraph to read as follows:

Any not-for-profit corporation or association organized by officers, employees, alumni or students of the state university of New York to further the purposes of the state university of New York, in connection with the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for, facilities for the benefit of the state university of New York; provided however, that any such facilities to be financed, refinanced, acquired, designed, constructed, reconstructed, rehabilitated, improved, furnished or equipped pursuant to this paragraph shall be approved by the state university of New York.

§4. Any contracts entered into by the dormitory authority pursuant to this act shall be deemed state contracts within the meaning of that term as set forth in article 15-A of the executive law; and the authority shall be deemed, for the purposes of this act, a contracting agency as that term is used in article 15-A of the executive law.

§5. This act shall take effect immediately.

End of Part F

PART G

§1. Subdivision 14 of section 130 of the civil service law, as added by chapter 685 of the laws of 1995, is amended to read as follows:

14. Notwithstanding any foregoing provisions of this section to the contrary, wage rates and/or pay differentials paid by the state pursuant to subdivision thirteen of section three hundred fifty-five-a of the education law to teaching and research center nurses of the state university of New York [pursuant to subdivision thirteen of section three hundred fifty-five-a of the education law] may be based on a study of representative peer institutions in private or other public hospitals in the same geographic area as a hospital of the state university which shows that wage rates and/or pay differentials of nurses employed by such

peer institutions are higher than the wage rates and/or pay differentials paid by the state to teaching and research center nurses of the state university. Whenever, in the opinion of the chief administrative officer of the health science centers at which teaching and research center nurses are employed, additional compensation for such employees is necessary to maintain adequate support to protect the health, safety and welfare of patients, such chief administrative officer or president shall request the state university board of trustees to conduct such a study.

§2. Subdivision 6 of section 350 of the education law, as added by chapter 363 of the laws of 1998, is amended to read as follows:

6. "Clinic" shall mean a facility licensed under article twenty-eight of the public health law as a diagnostic and treatment center which is located either within or outside of a state university health care facility providing services related to the medical education mission of the university, but shall not include state university student health services.

§3. Subdivision 16 of section 355 of the education law, as added by chapter 363 of the laws of 1998, is amended and new subdivision 19 is added to read as follows:

16. Subject to laws and regulations applicable to the state university as a health care provider, the state university trustees may:

a. Notwithstanding section one hundred sixty-three of the state finance law and section sixty-three of the executive law, authorize [contracts for] a state university health care facility [for participation] to participate in managed care networks and other joint and cooperative arrangements with public, non-profit or business entities [including entering into a maximum of twenty network arrangements per year,] as partners, joint venturers, members of non-profit corporations, members of limited liability companies and shareholders of business corporations, and for the provision of management and administrative services by or for state university. Any contract for the provision of management services shall be subject to any provision of the public health law and health regulations applicable to the state university as a health care provider, including any review by the commissioner of health pursuant to 10 NYCRR section 405.3(f). In addition, the commissioner of health shall provide for public comment within thirty days of a submission of any management contract required to be reviewed pursuant to regulation. The trustees may also authorize contracts, including [capitation] risk-sharing contracts, for a state university health care facility for the provision of general comprehensive and specialty health care services, directly or through contract with other service providers or entities, including state university employees or entities comprised thereof. Contracts authorized hereunder shall be:

(1) consistent with trustee guidelines respecting all terms and conditions necessary and appropriate for managed care networks and other [network,] joint or cooperative arrangements, including guidelines governing the awarding of such contracts, guidelines for comparative review where appropriate, and conflict-of-interest guidelines;

(2) subject to laws and regulations applicable to the state university as a health care provider, including with respect to rates and certificates of need; and

(3) subject to article fourteen of the civil service law and the applicable provisions of agreements between the state and employee organizations pursuant to article fourteen of the civil service law.

b. (1) Notwithstanding the provisions of [subdivision two of section one hundred twelve of the state finance law relating to the dollar threshold requiring the comptroller's approval of contracts and] subdivision six of section one hundred sixty-three of the state finance law and section sixty-three of the executive law, authorize contracts for the purchase of goods and services for state university health care facilities without prior approval by any other state officer or agency:

[(1)] (A) for any contract [which does not exceed seventy-five thousand] for goods or services or for any revenue contract; or

[(2)] (B) for joint or group purchasing arrangements [which do not exceed seventy-five thousand dollars without prior approval by any other state, officer or agency] in accordance with procedures and requirements found in paragraph a of subdivision five of this section.

[(3) contracts] (2) Contracts authorized hereunder shall be subject to article fourteen of the civil service law and the applicable provisions of agreements between the state and employee organizations pursuant to article fourteen of the civil service law and shall be consistent with trustee guidelines governing the awarding such of contracts, comparative review where appropriate, and conflict-of-interest guidelines.

[The trustees are authorized to negotiate annually with the state comptroller increases in the aforementioned dollar limits.]

Notwithstanding the provisions of section one hundred sixty-two of the state finance law, state university health care facilities shall not be required to purchase goods or services from preferred sources.

c. Authorize contracts for the acquisition by state university health care facilities of facilities suitable for the delivery of health care services, by purchase, lease, sublease, transfer of jurisdiction or otherwise[, of facilities suitable for the delivery of health care services] and for the construction, repair, maintenance, equipping, rehabilitation or improvement thereof. Such facilities may be acquired in whole or in part by state university health care facilities, either directly or through ownership in a joint or cooperative arrangement authorized by paragraph a of this subdivision. Such contracts shall be [subject to approval by the attorney general as to form and by the director of the budget and the state comptroller] consistent with trustee guidelines governing the awarding of such contracts, including guidelines requiring comparative review where appropriate and conflict of interest guidelines. Contracts under this paragraph shall be funded from any moneys lawfully available for the expenses of the state university health care facilities.

d. Contracts under this subdivision, including leases, shall not be subject to the dollar threshold or public notice and competitive bidding provisions of subdivision four of section seventy-three of the public officers law.

e. The state university shall provide by July fifteenth of each year to the director of the budget and to the chairs of the senate finance committee and the assembly ways and means committee a report which sets forth with respect to contracts entered into during the prior year by state university health care facilities (i) the amount, purpose, and duration of contracts and arrangements entered into pursuant to paragraphs a and c of this subdivision, (ii) a listing of contracts over the amount of two hundred fifty thousand dollars entered into pursuant to clause (A) of subparagraph one of paragraph b of this subdivision, and (iii) the amount, purpose and duration of contracts over the amount of two hundred fifty thousand dollars entered into pursuant to clause (B) of subparagraph one of paragraph b of this subdivision.

§4. Notwithstanding any inconsistent provision in section eight of the court of claims act, subdivision ten of this section or any other provision of law, a state university health care facility may include in a contract authorized by paragraph a of subdivision sixteen of this section, other than a contract with state employees relating to terms and conditions of their employment, a provision that some or all disputes arising under or related to such contract shall be resolved by binding arbitration in accordance with the rules of a nationally-recognized arbitration association.

§5. Section 8 of chapter 363 of the laws of 1998, amending the education law relating to state university health care services and facilities, is amended to read as follows:

§8. 1 Nothing contained in the public officers law or in any other law, rule or regulation, shall be construed or applied to: (a) prohibit state university officers and employees from [(i)] engaging in activities for which no compensation is paid as designees of the state university of New York in managed care networks or other joint and cooperative programs and arrangements including serving as designees of the state university as directors on boards or other governing bodies of corporations or other entities which may be under contract with

state university pursuant to subdivision 16 of section 355 of the education law; or [(ii)] (b) prohibit state university officers and employees from, or prescribe the requirements for, entering into contracts, including, but not limited to, leases, agreements or other arrangements with state university directly, or through professional corporations or other entities organized or operated by such officers and employees for the delivery of health care services for compensation in furtherance of subdivision 16 of section 355 of the education law; provided, however, that any such contracts, agreements or other arrangements, including any compensation to such officers and employees, shall be subject to article 14 of the civil service law and the applicable provisions of any agreement between the state and any employee organization pursuant to article 14 of the civil service law and policies and guidelines of the state university board of trustees and provided, further, that such state university officers and employees shall continue to be subjected to all appropriate financial disclosure and reporting requirements as defined in section 73-a of the public officers law.

§6. Confidential information gained by state university officers and employees while serving as designees of the state university on boards or other governing bodies of corporations or other entities which may be under contract with the state university or of which the state university may be a member, partner, joint venturer or shareholder pursuant to subdivision 16 of section 355 of the education law shall not be considered a "record" as defined in subdivision 4 of section 86 of the public officers law.

§7. Clause (E) of subparagraph (iii) of paragraph (a) of subdivision 4 of section 364-j of the social services law, relettered by chapter 697 of the laws of 2003, is relettered clause (F) and a new clause (E) is added to read as follows:

(E) the services are optometric services and are provided by a diagnostic and treatment center licensed under article twenty-eight of the public health law which is affiliated with the college of optometry of the state university of New York and which has been granted an operating certificate pursuant to article twenty-eight of the public health law to provide such optometric services. Any diagnostic and treatment center providing optometric services pursuant to this clause shall prior to June first of each year report to the governor, temporary president of the senate and speaker of the assembly on the following: the total number of visits made by medical assistance recipients during the immediately preceding calendar year; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs that provide optometric benefits as a covered service; and the number of visits made by the uninsured during the immediately preceding calendar year; or

§8. This act shall take effect immediately; provided, however, that the amendments to sub-paragraph (iii) of paragraph (a) of subdivision 4 of section 364-j of the social services law, made by section 7 of Part I of this act, shall not affect the repeal of such section and shall be deemed repealed therewith.

End of Part G

PART H

§1. Subdivision (a) of section 1-c of the legislative law, as added by chapter 2 of the laws of 1999, is amended to read as follows:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer, director, trustee, employee, counsel or agent of the state, or any municipality or subdivision thereof of New York when discharging their official duties[; except those officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law].

§2. This act shall take effect immediately; provided, however, that the amendments to subdivision (a) of section 1-c of the legislative law made by section 1 of Part J of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

End of Part H

PART I

§1. Subdivision 1 of section 17 of the public officers law, as last amended by chapter 460 of the laws of 2004, is amended by adding a new paragraph (t) to read as follows:

(t) For the purposes of this section, the term "employee" shall include any student enrolled full-time or part-time in a credit bearing course offered by a state-operated institution in the state university of New York for which there is a course requirement to complete a supervised clinical or experienced-based affiliation at an affiliate's site, as specified in a valid affiliation contract, including but not limited to internships and services provided to other entities by student volunteers at university-sponsored clinics.

§2. This act shall take effect immediately.

End of Part I

PART J

§1. Subdivision (h) of section 35 of the civil service law is amended to read as follows:

(h) all positions in the state university in the professional service as defined in subdivision three of section three hundred fifty-five-a of the education law, which positions shall be determined by the chancellor of the state university and certified by him to the civil service commission; [provided, however, that any state university position in the classified service which the chancellor seeks to designate as unclassified must be approved by the civil service commission before such change in designation;]

§2. Subdivision 1 of section 355-a of the education law is amended to read as follows:

1. (a) The state university trustees are authorized and empowered to classify and reclassify all positions in the state university determined pursuant to section thirty-five of the civil service law to be in the professional service as defined in subdivision three of this section, except those of the New York state colleges, schools and experiment stations administered by Cornell university and Alfred university.

(b) The provisions of the civil service law notwithstanding, the state university trustees are authorized and empowered to determine the jurisdictional classification and reclassification of positions in the state university in the classified service among the exempt, non-competitive, labor and competitive classes, to determine the allocation and reallocation of positions within each such class, and to prescribe rules for the examination, appointment and promotion of employees in the classified service. [To the fullest extent possible consistent with its authority under the civil service law, and after consultation with the state university trustees, the state civil service commission shall consider the unique educational mission and operating requirements of the state university when making any determination relating to the jurisdictional classification of positions in the state university in the classified service. The director of the classification and compensation division of the department of civil service shall similarly consider the unique educational mission and operating requirements of the state university when making determinations concerning the classification and reclassification and the allocation and reallocation of the positions in the state university in the classified service.]

§3. This act shall take effect immediately.

End of Part J

PART K

§1. Subdivision 3 of section 390 of the education law is amended to read as follows:

3. The term "eligible employees" means those employees in positions requiring the performance of educational functions in teacher education, agriculture, home economics, forestry, ceramics, liberal and applied arts and sciences, engineering, technical skills, crafts, business education, labor and industrial relations, medicine, dentistry, veterinary medicine, pharmacy, nursing, law, public affairs, maritime officer training, academic administration,

library service, student activities, student personnel service and other professions required to carry on the work of the state university and the colleges, schools, institutes, research centers, facilities and institutions comprising it and of the community colleges; provided, that the term "eligible employees" shall include medical, dental and optometric residents and interns who render services at health sciences centers of the state university and who may opt to participate in the New York state employees' retirement system but not in the optional retirement program or the New York state teachers' retirement system. Such positions in the state university, including those at the state colleges of agriculture, home economics, veterinary medicine or industrial and labor relations, the state agricultural experiment station at Geneva, or any other institution or agency under the management and control of Cornell university as representative of the board, and at the state college of ceramics under the management and control of Alfred university as the representative of the board, and such positions in the community colleges shall be those certified to the board by the chancellor of state university as requiring the performance of such functions. No person receiving a benefit by reason of his retirement from any retirement or pension system of New York State or any political subdivision thereof shall be eligible to elect the optional retirement program.

§ 2. Paragraph a of subdivision 1 of section 393 of the education law is amended to read as follows:

1. Election of the optional retirement program.

(a) Each eligible employee initially appointed on or after July first, nineteen hundred sixty-four, within thirty days of his entry into service, shall elect (i) to join either the New York state teachers' retirement system or the New York state employees' retirement system or other public retirement system in this state in accordance with the provisions of law applicable thereto or (ii) to elect the optional retirement program established pursuant to this article; provided that a medical, dental or optometric resident or intern who renders services at a health sciences center of the state university may elect to join the New York state employees' retirement system, but may not elect the optional retirement program or the New York state teachers' retirement program; provided, further, however, that (1) such persons initially entering service during the period July first, nineteen hundred sixty-four through November fourth, nineteen hundred sixty-four may defer such election until December fourth, nineteen hundred sixty-four, and (2) eligible employees of an electing employer initially appointed on or after the effective date of the election to offer such program may defer such election until the ninetieth day following such effective date of the election to offer such program established by an electing employer. Any such deferred election shall be effective as of the date of entry into service or the effective date of such offer, whichever is later.

§ 3. Subdivision 4 of section 501 of the education law is amended to read as follows:

4. "Teacher" shall mean any regular teacher, special teacher, including any school librarian or physical training teacher, principal, vice-principal, supervisor, supervisory principal, director, superintendent, city superintendent, assistant city superintendent, district superintendent and other member of the teaching or professional staff of any class, public school, vocational school, truant reformatory school or parental school, and of any or all classes of schools within the state of New York, including schools on the Indian reservation, conducted under the order and superintendence of and wholly or partly at the expense of the New York state education department or of a duly elected board of education, board of school directors or board of trustees of the state or of any city or school district thereof, provided that no person shall be deemed a teacher within the meaning of this article who is not so employed for full time outside vacation periods. The word, "teacher," shall also include any person employed in the state education department who at the time he entered such employment, or within one year prior thereto, was a teacher within the foregoing definition, or who was engaged in such department in the performance of duties pertaining to instructional services prior to September first, nineteen hundred eighty-six or who provides instructional services at the New York state school for the blind or the New York state school

for the deaf, but shall not include a person who is a teacher within the foregoing definition, and who elects to become a member of the New York state employees' retirement system pursuant to paragraph five ~~or paragraph ten~~ of subdivision c of section forty of the retirement and social security law upon his entry, on or after April first, nineteen hundred fifty, into his employment as such a teacher in a state-operated institution or community college under the jurisdiction of the board of trustees of the state university, or who is a teacher within the foregoing definition, and who elects to become a member of the New York city employees' retirement system, upon his entry, on or after April first, nineteen hundred fifty-six, into his employment as such a teacher in a community college operated by the city of New York, or who is a teacher within the foregoing definition, and who elects the optional retirement program established either by article eight-b or by article three, part V of this chapter. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this article.

§ 4. Subdivision c of section 40 of the retirement and social security law is amended by adding paragraph 10 to read as follows:

10. A person who is a medical, dental or optometric resident or intern who renders services at a health sciences center of the state university.

§ 5. Paragraph 3 of subdivision b of section 600 of the retirement and social security law is amended to read as follows:

3. Enter the employment of a public employer which participates for such employees in the New York state employees' retirement system in positions in which they shall work full time shall be required to become members;

(a) Provided, however, persons in the employ of such employers after such date in positions in which they work less than full time shall be permitted to become members of the New York state employees' retirement system by filing an application therefor in the manner provided for by section forty of this chapter;

(b) Provided further that an employee of a county extension service association or Cornell university appointed for the first time on or after August first, nineteen hundred seventy-seven who holds a federal cooperative appointment with the United States department of agriculture as designated by the director of the New York state cooperative extension service and who is eligible for participation in the federal retirement system shall be excluded from membership in the state employees' retirement system; and

(c) Provided further that any employee of a county extension service association and any employee of Cornell university appointed for the first time on or after July first, nineteen hundred seventy-six but on or before July thirty-first, nineteen hundred seventy-seven, who holds a state cooperative appointment as designated by the director of the New York state cooperative extension service may elect to receive a federal cooperative appointment in the manner provided for by the relevant federal laws, rules and regulations and to participate in the federal retirement system and discontinue his participation in the state retirement system by filing a written notice of termination on or before December thirty-first, nineteen hundred eighty-three with the comptroller. Any employee who is a member of the state employees' retirement system at the time he or she elects coverage in the federal retirement program shall be deemed to be a person who discontinues service on the effective date of such election, for the purpose of determining his or her eligibility for rights and benefits in such state system; provided, however, that if he or she does not withdraw accumulated contributions, (i) continued service with the county extension service association or Cornell university while under the federal retirement program shall be deemed to be member service in the New York state employees' retirement system for the purpose of determining eligibility for any vested retirement allowance, retirement allowance or ordinary death benefit under such system dependent upon a specified period of total service or upon attainment of a specified age while in service or upon death while in service; and (ii) the amount of any such benefit to which the person or his or her estate or person designated by him or her may

become entitled under either such system shall be computed only on the basis of service otherwise creditable to him or her therein and his or her compensation during such service. Electing employees and their beneficiaries shall not be entitled to any right or benefit under the New York state employees' retirement system other than a vested retirement allowance, retirement allowance or ordinary death benefit to the extent expressly provided for in this chapter[.] ; and

(d) Provided, further that medical, dental and optometric residents and interns who render services at health sciences centers of the state university of New York shall be permitted to become members of the New York state employees' retirement system by filing an application therefor in the manner provided for by section forty of this chapter.

§ 6. This act shall take effect immediately.

End of Part K

PART L

§1. Subdivisions 8, 12 and 15 of section 373 of the education law, as added by chapter 251 of the laws of 1962, are amended to read as follows:

8. To design, construct, acquire, reconstruct, rehabilitate and improve academic buildings, dormitories and other facilities for the state university [in accordance with sections three hundred seventy-five and three hundred seventy-six of this chapter] using any project delivery method, including but not limited to, design, bid, build, design/build, or construction manager at risk, that will assist the fund in fulfilling its purposes under section three hundred seventy-two of this chapter;

12. To [make] procure and execute contracts, lease agreements, and all other instruments necessary and convenient for the exercise of its corporate powers and the fulfillment of its corporate purposes under this article[;]. Notwithstanding any other law to the contrary, all such fund procurements shall be subject only to procurement guidelines that are annually adopted by the fund trustees;

15. To engage the services of construction, engineering, architectural, legal and financial consultants, surveyors and appraisers on a contract basis or as employees, for professional services and technical assistance and advice, and notwithstanding any other law to the contrary, to determine within amounts made available to the fund, its staffing, support services and equipment needs which in the judgment of the fund are necessary to fulfill its purposes as set forth in section three hundred seventy-two of this chapter;

§2. Subdivision 8 of section 376 of the education law, as amended by chapter 652 of the laws of 1981, is amended to read as follows:

8. All contracts which are to be awarded pursuant to this subdivision shall be awarded by public letting or pursuant to procurement guidelines approved annually by the fund trustees and in accordance with the following provisions, notwithstanding any contrary provision of section one hundred twelve, one hundred thirty-five, one hundred thirty-six, one hundred thirty-nine or one hundred forty of the state finance law or any other law, provided, however that where the estimated expense of any contract which may be awarded pursuant to this subdivision is less than two hundred fifty thousand dollars, a performance bond and a bond for the payment of labor and material may, in the discretion of the fund, not be required, and except that in the discretion of the fund, a contract may be entered into for such purposes without public letting where the estimated expense thereof is less than twenty thousand dollars, or where in the judgment of the fund an emergency condition exists as a result of damage to an existing academic building, dormitory or other facility which has been caused by an act of God, fire or other casualty, or any other unanticipated, sudden and unexpected occurrence, that has resulted in damage to or a malfunction in an existing academic building, dormitory or other facility and involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of the use or function of such facility, or to protect the facility or the life, health or safety of any person, and the nature of the work is such that in the judgment of the fund it would be

impractical and against the public interest to have public letting; provided, however, that the fund, prior to awarding a contract hereunder because of an emergency condition notify the comptroller of its intent to award such a contract:

a. [If contracts are to be publicly let, the] The letting agency shall advertise the invitation to bid or the request for proposals in [a newspaper published in the city of Albany and in] such [other] newspaper[s] as will be most likely in its opinion to give adequate notice to contractors of the work required [and of the invitation to bid] provided, however, that where the estimated expense of any contract which may be awarded pursuant to this subdivision is less than two hundred fifty thousand dollars, the letting agency may advertise the invitation to bid solely through the procurement opportunities newsletter published pursuant to section one hundred forty-two of the economic development law. The invitation to bid or request for proposals shall contain such information as the letting agency shall deem appropriate [and a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read].

b. The letting agency shall not award any contract after public bidding except to the lowest bidder who in its opinion is qualified to perform the work required and is responsible and reliable. The letting agency may, however, reject any or all bids, again advertise for bids, or waive any informality in a bid if it believes that the public interest will be promoted thereby.

c. The invitation to bid, request for proposals and the contract awarded shall contain such other terms and conditions, and such provisions for penalties, as the letting agency may deem desirable.

d. [The form of any] Any contract awarded pursuant to this subdivision shall [be approved by the attorney general and by the comptroller and shall contain a clause that the contract shall] be deemed executory to the extent of the moneys available and that no liability shall be incurred by the fund beyond the moneys available therefor.

e. The letting agency shall require such deposits, bonds and security in connection with the submission of bids or request for proposals, the award of contracts and the performance of work as it shall determine to be in the public interest and for the protection of the state, the state university, the fund and the letting agency.

f. Notwithstanding the provisions of any other law to the contrary, all contracts for public work awarded by the state university construction fund pursuant to this subdivision shall be in accordance with section one hundred thirty-nine-f of the state finance law.

§3. This act shall take effect immediately.

End of Part L

Supporting Memorandum:

1. Purpose:

To improve the ability of the State University to effect its mission.

2. Summary of Provisions:

Part A creates efficiency in State University procurement activities. Sections 1 and 2 amend Education Law §355(5) and (6) and State Finance Law §112(2) and (3) to provide that the State University may enter into agreements of every nature, including contracts for goods and services, revenue contracts, and agreements relating to real property transactions, without prior review or approval by the State Comptroller, Attorney General or other State officers or agencies, and to provide that the State University may promulgate its own procurement guidelines, including guidelines related to sole source and single source procurement. Sections 3 and 4 amend State Finance Law §163(3)(a)(iv) and (4)(e) to authorize auxiliary services corporations, campus-related

foundations and other non-profit corporations organized in furtherance of the objects and purposes of the State University to make purchases of commodities and services through centralized contracts of the New York State Office of General Services. The proposal bars the use of commodities and services so purchased by for-profit entities, and bars the resale of such commodities. Section 5 amends State Finance Law §163(4)(g) to exempt the State University from reporting requirements relating to contracts for personal services. Section 6 amends State Finance Law §163(10)(b) to exempt the State University from statutory requirements related to sole source and single source procurements. Section 7 amends Tax Law §5-a(1)(e) to exempt the State University from the requirement to collect from contractors certifications related to the contractor's registration with the Department of Taxation and Finance with respect to sales and compensating use tax purposes.

Part B creates efficiency in State University procurement activities. Sections 1, 2 and 3 amend Economic Development Law §§141(1), 142(2)(b) and 144(1)(d), respectively, to eliminate the requirement that the State University publish procurement opportunities in the State Procurement Opportunities Newsletter.

Part C gives the State University budgetary flexibility. Section 1 amends Education Law §355(4)(c) to authorize the State University to transfer or interchange appropriations without limit upon notice to the State Comptroller, Director of the Division of the Budget, and chairs of the legislative finance committees. Sections 2, 3 and 4 amend Education Law §355(8) and (8-a), State Finance Law §4 and State Finance Law §121(2), respectively, to provide that moneys of the State University derived tuition, fees, user charges, sales of products and services, including health care services, and from activities intended to be self-supporting, shall be held by the State University as non-State funds and shall be expended without appropriation.

Part D creates a mechanism to allow the State University to avoid costly litigation and administrative proceedings. Section 1 adds State Finance Law §99-t to create the State University risk management fund, held by the State Comptroller and funded by appropriations. Moneys in the risk management fund are available to compromise disputes and to pay State University costs and expenses in advance of litigation and administrative proceedings, and to pay costs and expenses in matters in which State University is not a named party.

Part E conforms the master planning activities of the State University and City University of New York, now conducted every four years, to the eight-year master planning cycle of the Board of Regents and independent colleges and universities, thereby streamlining the statutory planning process.

Section 1 amends Education Law §237(2) through (6) to provide that the Board of Regents shall prepare and transmit to the Governor and Legislature their master plan for higher education every eight years, commencing 2012, and shall submit to the Governor and the Legislature a progress report every eight years, commencing 2008. This technical amendment conforms the provisions of Education Law §237 to the provisions of Ch. 82, §137, L. 1995, which established an eight-year master planning cycle which commenced 1996.

Section 2 amends Education Law §354(1), (2) and (3) to provide that the State University shall prepare and submit to the Board of Regents and Governor a long-range State University plan or general revisions every eight years, rather than four years, commencing 2012, and shall submit to the Board of Regents, Governor and Legislature every eight years, rather than four years, commencing 2008, a progress report and recommendations for modifications to the Board of Regents master plan. Such

modifications shall be subject to the approval of the Regents and Governor, as presently.

Section 3 amends Education Law §6206(3) to make conforming changes with respect to the planning and reporting cycles of City University.

Part F creates efficiency and expands opportunities in certain State University real property transactions. Section 1 amends Education Law §355(2)(i) to delete the requirement for Attorney General approval of a lease between the State University and a campus alumni association to support the construction of student housing. Sections 2 and 3 amend Public Authorities Law §§1676(2)(b) and 1680(1) to authorize construction and financing by the Dormitory Authority of the State of New York of facilities for the benefit of the State University by not-for-profit corporations and associations organized by State University officers, employees, alumni and students to further the purposes of the State University.

Part G enhances the operational and procurement flexibility of the State University's health sciences centers. Sections 1 and 2 of the legislation make technical and clarifying amendments to Civil Service Law §130(14) and Education Law §350(6), respectively. Section 3 amends Education Law §355(16) to make technical amendments relating to State University hospital participation in managed care networks and other joint and cooperative health care arrangements, and deletes the cap of twenty such network arrangements annually. Approvals of these arrangements by the Attorney General and the State Comptroller are eliminated. Proposed arrangements must comply with State University guidelines for contract award, comparative review and conflict-of-interest. Consistent with the proposed amendments to the Education Law and State Finance Law set forth in Part A of the legislation, approval by the Attorney General and State Comptroller of contracts by the State University health sciences centers is not required. The acquisition of facilities for the delivery of health care services is authorized through joint and cooperative arrangements. Section 4 authorizes the inclusion in contracts for managed care and other joint and cooperative arrangements of provisions to resolve disputes through binding arbitration. Section 5 amends Ch. 363 §8 L. 1998 to authorize State University officers and employees to contract individually or through professional corporations or other organizations to provide goods and services to the State University, notwithstanding the conflict-of-interest provisions of the Public Officers Law notwithstanding, subject to State University guidelines, collective bargaining agreements, and statutory financial disclosure and reporting requirements. Section 6 protects from disclosure under the Freedom of Information Law confidential information gained by State University officers and employees in the course of cooperative health care ventures with other parties. Section 7 amends Social Services Law §364-j(4)(a)(iii) to reletter paragraph (E), as added by Ch. 697 L. 2003, and to add new paragraph (E) to require managed care programs to establish procedures to assure to participants who are medical assistance recipients access to optometric services provided by licensed clinics of the College of Optometry of the State University.

Part H amends the Legislative Law to exclude from the definition of "lobbyist" officers, directors, trustees, employees, counsel and agents of the State's public colleges and universities, including the State University, CUNY and community colleges.

Part I amends Public Officers Law §17(1) to provide that the State shall defend and indemnify students of the State University who are enrolled in required clinical or other experiential programs as part of their course of study.

Part J creates efficiency in the administration of State University employees in the classified service. Section 1 amends Civil Service Law §35(h) to delete a requirement

that the Civil Service Commission approve determinations by the Chancellor to classify a position in the classified service as a position in the unclassified service. Section 2 amends Education Law §355-a to authorize the State University, rather than the Civil Service Commission, to determine the jurisdictional classification of positions in the unclassified service among the exempt, non-competitive, labor and competitive classes, to determine the allocation of positions within each such class, and to prescribe rules for the examination, appointment and promotion of employees in the classified service.

Part K amends Education Law §§390(3), 393(1) and 501(4) and Retirement and Social Security Law §§40(c) and 600(b)(3) to provide that medical, dental and optometric residents and interns who provide services at the health-related facilities of the State University may opt to participate in the State and Local Employees' Retirement System, but are not eligible to participate in the Optional Retirement Program or the Teachers' Retirement System.

Part L creates flexibility and efficiencies in procurement, construction activities and operations of the State University Construction Fund. Section 1 amends Education Law §373(8) to authorize the Fund to implement capital projects by any delivery method the Fund deems appropriate, including by the design/build and construction manager at risk delivery methods. Section 1 amends Education Law §373(12) to provide that the Fund's procurement activities shall be governed by the Fund's procurement guidelines as adopted annually by the trustees of the Fund; section 2 amends Education Law §376(8) to make a corresponding change. Section 1 amends Education Law §373(15) to allow the Fund to determine its own staffing, support services and equipment needs within lump sum amounts made available to the Fund for its operations. Section 2 amends Education Law §376(8) to authorized the Fund to waive performance and labor and material bonds for contracts less than \$250,000. Section 2 amends Education Law §376(8)(a) to eliminate the requirement to publish procurement solicitations in a newspaper published in the City of Albany, and to authorize the Fund to publish procurement solicitations involving contracts less than \$250,000 in the Procurement Opportunity Newsletter in lieu of newspaper publication. Section 2 amends Education Law §376(8)(c) to provide that contracts of the Fund shall not be subject to the approval of the Attorney General and State Comptroller.

3. Existing Law:

Part A. State Finance Law §112(2) and (3) provide, respectively, that contracts by State agencies in excess of \$50,000 and revenue contracts by State agencies in excess of \$10,000 (e.g. a franchise), involving State agency consideration other than money, are subject to prior approval by the State Comptroller. The provisions of State Finance Law §112 notwithstanding, State University is authorized by Education Law §355(5) to negotiate with the State Comptroller higher thresholds for contract approval. Presently, the negotiated thresholds require State University to obtain approval by the State Comptroller of contracts for goods and services by approved campuses over \$125,000, if single or sole source procurements, and \$250,000 otherwise, and for leases over \$50,000 for the lease term.

State Finance Law §163(3)(a)(iv) authorizes State and local entities, fire companies and volunteer ambulance services to participate in centralized commodities contracts of the Office of General Services. State Finance Law §163(4)(e) authorizes political subdivisions, the Port Authority and State public authorities to participate in centralized services contracts. The non-profit affiliates of the State University are not authorized presently to participate in Office of General Services centralized contracts for commodities and services.

Part B. Economic Development Law §142(2)(c) requires the State University to publish weekly in the Procurement Opportunities Newsletter notice of projected procurements of goods or services in excess of \$20,000. Economic Development Law §142(2)(b) requires the State University to publish quarterly with respect to contracts in excess of \$10,000 but less than \$20,000. Per Economic Development Law §144(1)(d), publication with respect to a State University contract involving less than \$10,000 is not required.

Part C. Section 1. Generally, Education Law §355(4)(c)(1) allows interchange of appropriated moneys (increase and decrease) among sectors greater than 5% with State University Board of Trustees approval. Section 355(4)(c)(2) holds each campus harmless by limiting change to a campus appropriation to 3% (10% for a hospital). For the past several years, the introductory language to State University operating appropriations has modified the effect of Education Law §355(4)(c), so that interchange to each sector is limited to 3% (that is, Education Law §355(4)(c)(2) applies) and line items to each campus may be changed by the State University Board of Trustees in excess of 5% (that is, Education Law §355(4)(c)(1) applies).

Sections 2-4. Pursuant to State Finance Law §§4 and 121 and Education Law §355(8) and (8-a), all moneys of the State University, other than endowment funds, are held by the State, treated as State funds, and expended only pursuant to appropriation.

Part D. Per Court of Claims Act §§20 and 20-a, State funds, rather than agency appropriations, are available to pay claims against the State University and State agencies only after litigation has been initiated in the Court of Claims, and the litigation has resulted in a judgment or has been settled.

Part E. Ch. 82, §137, L. 1995 sets forth an eight-year master planning cycle for the Board of Regents, commencing 1996, "notwithstanding any other provision of law." Education Law §237 sets forth a four-year planning cycle for the Board of Regents. Education Law §§354 and 6206 require State University and City University, respectively, to prepare master plans every four years, and to submit progress reports and proposed master plan modifications two years after each four-year master plan submission.

Part F. Pursuant to Education Law §355(2)(i), leases between the State University and its alumni associations relating to the development of dormitories are subject to approval by the Attorney General. Pursuant to Public Authorities Law §§1676(2)(a) and 1678(8), the Dormitory Authority is authorized to finance and construct State University dormitories. Pursuant to Public Authorities Law §§1676(28) and 1680(19), the Dormitory Authority is authorized to finance State University educational facilities.

Part G. Sections 1-6. Pursuant to Education Law §355(16), State University health care facilities may participate in up to twenty network arrangements annually. Pursuant to said section and negotiations with the State Comptroller authorized thereby, State University health care facilities may enter into contracts for goods and services up to \$250,000, including joint or group purchasing arrangements, without approval by the State Comptroller and Attorney General. Contracts relating to real property transactions are subject to the approval of the Attorney General, State Comptroller and Director of the Division of the Budget. Public Officers Law §73(4) prohibits a State employee from selling goods or services worth more than \$25 to a State agency except pursuant to competitive process. Public Officers Law §74 prohibits a State employee from having a financial or other interest or engaging in any business or transaction in substantial conflict with his public employment.

Section 7. The provisions of Social Services Law §364-j do not presently require managed care providers to offer optometric services through the College of Optometry.

Part H. The definition of "lobbyist" set forth in Legislative Law §1-c(a) excludes representatives of the State, any municipality or any subdivision thereof, but includes representatives of the State's public colleges and universities.

Part I. Pursuant to Public Officers Law §17, the State defends and indemnifies State employees and appointees, volunteers who participate in State-sponsored volunteer programs, and directors, officers and employees of certain State-related entities enumerated in the statute with respect to acts or omissions alleged to have occurred in the course of public duties. Because Section 17 does not apply presently to State University students who participate in required clinical or experienced-based affiliations off-campus, State University purchases liability insurance policies with respect to such students.

Part J. Pursuant to the Civil Service Law, the Civil Service Commission determines the jurisdictional classification of employee positions in the State University in the classified service among the exempt, non-competitive, labor and competitive classes, determines the allocation of positions within each class, and provides for the examination, appointment and promotion of such employees.

Part K. It is unclear whether medical, dental and optometric interns and residents who provide services at the health-related facilities of the State University are eligible to participate in the Optional Retirement Program, the Teachers' Retirement System or the State and Local Employees' Retirement System. The State University's medical, dental and optometric interns and residents do not now participate in such retirement systems and program. The Office of the State Comptroller has taken the position that the State University's interns and residents are required to participate in the Optional Retirement System, the Teachers' Retirement System or the State and Local Employees' Retirement System.

Part L. Although the State University Construction Fund was created as a public benefit corporation, it is treated by the Division of the Budget, the Attorney General's Office and the Office of the State Comptroller like a State agency. The Fund's operating budget is appropriated in the State budget even though there is no statute that requires an operating appropriation. The Fund, therefore, is subject to appropriation limitations, position-limitations and line item controls. Under Education Law §376(8)(d), the Attorney General and the State Comptroller must approve all Fund construction contracts. Since the appropriations to the Fund for the State University capital budget are advance appropriations, the Attorney General and State Comptroller also approve Fund design and all other contracts as they do with State agencies. All Fund procurements, therefore, are subject to State procurement rules. Other than design, bid, build, the only other project delivery method the Fund is authorized to use is design/build and that method may be utilized only for the construction of academic incubators. The Fund was granted the authority to do that in 1999 and has been able to use this project delivery method twice.

Education Law §376(8)(a) requires the Fund to advertise all of its construction projects in a newspaper published in the City of Albany even if the projects are to be constructed elsewhere in the State.

4. Legislative History:

Parts, but not all, of the legislative proposal have been introduced previously.

5. Statement in Support:

The 1985 Independent Commission on the Future of the State University of New York identified over-regulation as an impediment to the State University's effectiveness in fulfilling its mission. The Commission concluded as follows:

What we criticize is a tradition of over-regulation that has its roots in the legal conception of SUNY as a state agency, a tradition that dates from 1948 but which, the Commission is convinced, SUNY has now outgrown Over-regulation pervades every aspect of SUNY's operation, in ways large and small. (The Challenge & The Choice, pp. 32-33 (1985)).

The observations of the Commission are as apt today as in 1985, despite the enactment of flexibility provisions in 1985. Many government agencies have approval authority over the State University's day-to-day operations, principally because State University continues to be treated as a State agency. The State University's interests as an academic institution are not given priority over general State process issues by control agencies in New York State government and the Legislature. The legislation addresses these concerns.

Part A. The purpose of this Part is to eliminate burdens on State University procurement activities that impose delay, unnecessary record keeping and reporting, increased transactional costs and expenditure of staff time without concomitant value. Sections 1 and 2 eliminate approval by the Attorney General and State Comptroller of contracts of the State University, a process that can take months, and that is an anomaly among public higher education institutions. Most public systems are subject to post-audit of expenditures, as the State University would continue to be, rather than to both pre-approval and post-audit. For the State University, the burden of complying with the provisions of State Finance Law §163(4)(g), relating to personal services contracts, and Tax Law §5-a, relating to vendor sales and compensating use tax certifications, eliminated by sections 5 and 7 of Part A, respectively, has outweighed the potential benefits of such legislation.

Sections 3 and 4 allow affiliates of the State University to gain the benefit of centralized purchases by the Office of General Services, increasing efficiency and reducing transactional costs. Sections 163(3)(a)(iv) and 163(4)(e) of the State Finance Law provide that the Office of General Services may permit State agencies to purchase services and commodities, respectively, through its centralized contracts. Over the years, these sections have been amended to authorize local governments and schools, volunteer fire companies and ambulance services, county extension service associations, and others to purchase commodities through OGS centralized contracts. Authority to purchase services through OGS centralized contracts has been extended to public authorities and public benefit corporations. Although many of these organizations are not governmental, they all fulfill a public purpose. Providing them the opportunity to purchase through OGS contracts has therefore been determined to mutually benefit both the State and the authorized parties, by increasing the negotiating power of OGS when entering into centralized contracts and at the same time simplifying the procurement of required goods and services by these organizations.

Section 6 gives the State University more flexibility in the use of single and sole source procurement.

Part B. By exempting the State University from the requirement to publish procurement opportunities in the Procurement Opportunities Newsletter, the State University is relieved from the current requirement to publish when competitive procurement is not required because of the low dollar value of the contract. With respect to competitive procurements, the State University's publication of requests for proposals is an effective

to way to assure competition, making redundant Procurement Opportunities Newsletter publication unnecessary. Publication in the Procurement Opportunities Newsletter entails unnecessary delay.

Part C. By eliminating restrictions on the use of State appropriations and funds generated by activities of the State University, including its health care facilities, the State University will gain flexibility in the use of its resources to address changing needs and to respond to emerging opportunities.

Part D. The purpose of establishing a risk management fund is to reduce costs the State would otherwise incur as the result of litigation. Court of Claims appropriations are available to pay claims against the State University only after litigation has commenced. The existence of the fund will allow earlier settlement of cases that otherwise would be litigated, as well as settlement of administrative disputes.

Part E. Pursuant to Education Law §237, the Board of Regents prepares a master plan for higher education in New York, and for such purpose solicits and reviews plans submitted by State University, City University, and all independent and proprietary colleges and universities. The Regents submit the master plan or general revisions to the Governor and the Legislature, and the plan is subject to the approval of the Governor.

The proposal realizes the intent of the Legislature and assures the implementation of Ch. 82, §137, L. 1995 which changed the planning cycle of the Board of Regents from four to eight years and directed the Regents and the Commissioner to streamline the master plan amendment process "thereby . . . providing increased flexibility and mandate relief for New York's public, independent and proprietary colleges and universities." The provisions of Ch. 82, §137, L. 1995 in effect, therefore, altered the planning cycle of the Regents in Education Law §237 without change to the corresponding planning cycles set forth in §§354 and 6206 for the State University and City University of New York, respectively. This proposal will allow flexibility and efficiency for both State University and City University without loss of responsibility of the planning process of the Board of Regents and the two public university systems.

Part F. The proposal eliminates Attorney General approval of leases between the State University and its alumni associations, and provides through the Dormitory Authority financing options for the State University's foundations, auxiliary services corporations and alumni associations.

Part G. The purpose of sections 1-6 of Part G is to enhance the operational and procurement flexibility of the State University's health sciences centers. The legislation augments and clarifies legislation enacted in 1998 to give State University hospitals more management flexibility and the ability to enter into management care and other joint and cooperative health care ventures. The legislation builds upon the recommendations of the Price Waterhouse Study commissioned by the State University to enhance State University hospitals. The legislation eliminates the thresholds for the purchase of goods and services without compliance with statutory procurement requirements and Attorney General and State Comptroller approvals, so long as contracts comply with State University procurement, comparative review and conflict-of-interest guidelines, and collective bargaining agreements where applicable. This legislation strengthens strategic and operational initiatives of the State University hospitals which will enable the hospitals to better compete in the health care marketplace.

Section 7. The purpose of the proposal is to allow patients who are medical assistance recipients, now required to participate in managed care programs, to obtain optometric services at the clinics of the College of Optometry. The effects of the proposal are to

increase patient choices for optometric services and, potentially, to increase the patient base of the College of Optometry.

Part H. The definition of the term "lobbyist" for purposes of the State's Lobbying Act excludes officers, trustees, employees and other agents of the State and municipalities when such persons are discharging their official duties, but does not exclude representatives of public colleges and universities.

The proposal amends the Legislative Law to exclude from the definition of "lobbyist" officers, directors, trustees, employees, counsel and agents of the State's public colleges and universities, including the State University, CUNY and community colleges.

It is anomalous for the Lobbying Act to exclude State and local entities from the registration and reporting requirements applicable to lobbyists and to include the State University, CUNY and community colleges. Like State agencies and local governments, the objective of the advocacy efforts of the State University, CUNY and the community colleges is to promote development and enactment of our agency budgets and legislation related to our public functions and programs.

The proposal does not affect the status of the State University, CUNY and the community colleges with respect to requirements of the Lobbying Act relating to clients and gifts to public officials. If the State University, CUNY or a community college retains a private lobbyist to lobby on its behalf, the State University, CUNY or community college would be subject to the client reporting requirements set forth in Legislative Law §1-j(a)(2) and to the gift prohibition set forth in Legislative Law §1-m.

Part I. The proposal allows the State University to avoid insurance premiums with respect to liability insurance policies that otherwise must be obtained by the State University for such students.

Currently, the State University obtains liability insurance for any students enrolled in clinical and other experiential course work at an affiliate's site. Increasing numbers of affiliation sites, clinical and non-clinical, where students are placed, are requiring such insurance. There are approximately 10,000 students currently enrolled in such clinical or other experiential programs throughout the State. The cost of liability insurance for the same population of 10,000 students has escalated from \$180,000 in 1994 to over \$753,000 in 2004. To date, there have been fewer than ten (10) claims filed against such students for injuries sustained to patients or others during a clinical or experiential program. Such claims have amounted to less than two hundred thousand dollars (\$200,000) in the aggregate.

Part J. New York is one of only fifteen states which include the university's non-professional staff in the state's civil service system. New York's civil service system can be inflexible, with outdated position classifications that do not meet the State University's needs or do not respond to changing workforce requirements. The present requirement for Civil Service Department review of any new positions or position reclassifications introduces a level of oversight that is often counterproductive, causes delays or disapprovals and severely limits the ability of campuses to deploy personnel resources effectively in response to changing work requirements, professional standards and shifting workload.

Part K. The participation of medical, dental and optometric residents and interns in residency and internship programs of health-related facilities of the State University of New York is not of a "continuing or permanent nature". The residencies and internships are necessary for satisfaction of medical, dental and optometric education programs

only. Typically, these students must perform one year as an intern and two years as a resident. Generally, they would not participate in internships and residencies for a period that would allow them to vest with the Employees' Retirement System (ERS), which generally require five years for vesting purposes. Thus, mandatory membership is not appropriate or advisable. Optional membership is consistent with the current practice of allowing anyone who is not a permanent, full-time employee the option of joining the ERS.

Part L. The statutory mission of the State University Construction Fund is to expedite the construction of facilities for the State University. The Governor has indicated that he will propose a new five-year capital plan for the State University, and it is anticipated that the plan will be larger than the previous multi-billion dollar plans.

Although the Fund was established as a public benefit corporation, its operating budget is annually appropriated in the State budget even though all of the Fund's operating expenses are paid from the proceeds of bonds issued by the Dormitory Authority to fund the State University capital budget. Since the Fund's operating budget is appropriated (unlike almost all other public authorities), it is subject to appropriation limitations, position limitations and line item controls. These limitations and controls will impede the Fund's ability to quickly make operating adjustments necessary to deliver the new multi-year capital program for the State University. In addition, and unlike almost all other public authorities, Fund procurements are subject to State rules and regulations, and its contracts must be approved by the Attorney General and State Comptroller.

As the State University strives to compete with the nation's best public university systems for students and research dollars, it must be able to have facilities on line in the quickest possible time. Giving the Fund operational and procurement flexibility will allow the Fund to deliver these facilities in a time frame that will match the State University's need for them. Included in the operating flexibility is the ability to utilize all project delivery methods available in the construction industry. This will put the Fund on a level playing field with some other public construction entities and will enhance the Fund's statutory mission and assist the State University in achieving its goals.

6. Possible Objections:

None known.

7. Other State Agencies Interested:

State Education Department; City University of New York; Office of the State Comptroller; Attorney General; Department of State, Department of Civil Service.

8. Known Positions of Others:

None.

9. Budget Implications:

The proposal should reduce costs of the State University.