

[Third Reprint]

ASSEMBLY, No. 1645

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Co-Sponsored by:

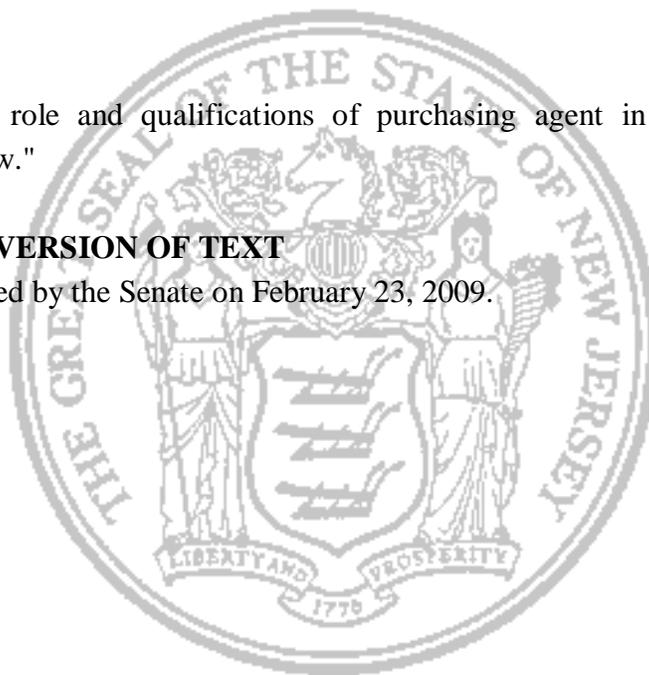
**Assemblywoman Vandervalk, Assemblymen Cryan, Giblin,
Assemblywomen Vainieri Huttle, Jasey, Pou, Senators Rice, Van Drew and
Oroho**

SYNOPSIS

Redefines role and qualifications of purchasing agent in "Local Public Contracts Law."

CURRENT VERSION OF TEXT

As amended by the Senate on February 23, 2009.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning public contracts and amending P.L.1971, c.198.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to
7 read as follows:

8 2. As used herein the following words have the following
9 definitions, unless the context otherwise indicates:

10 (1) "Contracting unit" means:

11 (a) Any county; or

12 (b) Any municipality; or

13 (c) Any board, commission, committee, authority or agency,
14 which is not a State board, commission, committee, authority or
15 agency, and which has administrative jurisdiction over any district
16 other than a school district, project, or facility, included or
17 operating in whole or in part, within the territorial boundaries of
18 any county or municipality which exercises functions which are
19 appropriate for the exercise by one or more units of local
20 government, and which has statutory power to make purchases and
21 enter into contracts awarded by a contracting agent for the provision
22 or performance of goods or services.

23 The term shall not include a private firm that has entered into a
24 contract with a public entity for the provision of water supply
25 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Contracting unit" shall not include a private firm or public
27 authority that has entered into a contract with a public entity for the
28 provision of wastewater treatment services pursuant to P.L.1995,
29 c.216 (C.58:27-19 et al.).

30 "Contracting unit" shall not include a duly incorporated
31 nonprofit association that has entered into a contract with the
32 governing body of a city of the first class for the provision of water
33 supply services or wastewater treatment services pursuant to section
34 2 of P.L.2002, c.47 (C.40A:11-5.1).

35 (2) "Governing body" means:

36 (a) The governing body of the county, when the purchase is to
37 be made or the contract or agreement is to be entered into by, or in
38 behalf of, a county; or

39 (b) The governing body of the municipality, when the purchase
40 is to be made or the contract or agreement is to be entered into by,
41 or on behalf of, a municipality; or

42 (c) Any board, commission, committee, authority or agency of
43 the character described in subsection (1) (c) of this section.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted January 24, 2008.

²Assembly AAP committee amendments adopted June 5, 2008.

³Senate floor amendments adopted February 23, 2009.

1 (3) "Contracting agent" means the governing body of a
2 contracting unit, or its authorized designee, which has the power to
3 prepare the advertisements, to advertise for and receive bids and, as
4 permitted by this act, to make awards for the contracting unit in
5 connection with purchases, contracts or agreements.

6 (4) "Purchase" means a transaction, for a valuable
7 consideration, creating or acquiring an interest in goods, services
8 and property, except real property or any interest therein.

9 (5) (Deleted by amendment, P.L.1999, c.440.)

10 (6) "Professional services" means services rendered or
11 performed by a person authorized by law to practice a recognized
12 profession, whose practice is regulated by law, and the performance
13 of which services requires knowledge of an advanced type in a field
14 of learning acquired by a prolonged formal course of specialized
15 instruction and study as distinguished from general academic
16 instruction or apprenticeship and training. Professional services
17 may also mean services rendered in the provision or performance of
18 goods or services that are original and creative in character in a
19 recognized field of artistic endeavor.

20 (7) "Extraordinary unspecifiable services" means services which
21 are specialized and qualitative in nature requiring expertise,
22 extensive training and proven reputation in the field of endeavor.

23 (8) (Deleted by amendment, P.L.1999, c.440.)

24 (9) "Work" includes services and any other activity of a tangible
25 or intangible nature performed or assumed pursuant to a contract or
26 agreement with a contracting unit.

27 (10) "Homemaker--home health services" means at home
28 personal care and home management provided to an individual or
29 members of the individual's family who reside with the individual,
30 or both, necessitated by the individual's illness or incapacity.
31 "Homemaker--home health services" includes, but is not limited to,
32 the services of a trained homemaker.

33 (11) "Recyclable material" means those materials which would
34 otherwise become municipal solid waste, and which may be
35 collected, separated or processed and returned to the economic
36 mainstream in the form of raw materials or products.

37 (12) "Recycling" means any process by which materials which
38 would otherwise become solid waste are collected, separated or
39 processed and returned to the economic mainstream in the form of
40 raw materials or products.

41 (13) "Marketing" means the sale, disposition, assignment, or
42 placement of designated recyclable materials with, or the granting
43 of a concession to, a reseller, processor, materials recovery facility,
44 or end-user of recyclable material, in accordance with a district
45 solid waste management plan adopted pursuant to P.L.1970, c.39
46 (C.13:1E-1 et seq.) and shall not include the collection of such
47 recyclable material when collected through a system of routes by

1 local government unit employees or under a contract administered
2 by a local government unit.

3 (14) "Municipal solid waste" means, as appropriate to the
4 circumstances, all residential, commercial and institutional solid
5 waste generated within the boundaries of a municipality; or the
6 formal collection of such solid wastes or recyclable material in any
7 combination thereof when collected through a system of routes by
8 local government unit employees or under a contract administered
9 by a local government unit.

10 (15) "Distribution" (when used in relation to electricity) means
11 the process of conveying electricity from a contracting unit that is a
12 generator of electricity or a wholesale purchaser of electricity to
13 retail customers or other end users of electricity.

14 (16) "Transmission" (when used in relation to electricity) means
15 the conveyance of electricity from its point of generation to a
16 contracting unit that purchases it on a wholesale basis for resale.

17 (17) "Disposition" means the transportation, placement, reuse,
18 sale, donation, transfer or temporary storage of recyclable materials
19 for all possible uses except for disposal as municipal solid waste.

20 (18) "Cooperative marketing" means the joint marketing by two
21 or more contracting units of the source separated recyclable
22 materials designated in a district recycling plan required pursuant to
23 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written
24 cooperative agreement entered into by the participating contracting
25 units thereof.

26 (19) "Aggregate" means the sums expended or to be expended
27 for the provision or performance of any goods or services in
28 connection with the same immediate purpose or task, or the
29 furnishing of similar goods or services, during the same contract
30 year through a contract awarded by a contracting agent.

31 (20) "Bid threshold" means the dollar amount set in section 3 of
32 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
33 advertise for and receive sealed bids in accordance with procedures
34 set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

35 (21) "Contract" means any agreement, including but not limited
36 to a purchase order or a formal agreement, which is a legally
37 binding relationship enforceable by law, between a vendor who
38 agrees to provide or perform goods or services and a contracting
39 unit which agrees to compensate a vendor, as defined by and subject
40 to the terms and conditions of the agreement. A contract also may
41 include an arrangement whereby a vendor compensates a
42 contracting unit for the vendor's right to perform a service, such as,
43 but not limited to, operating a concession.

44 (22) "Contract year" means the period of 12 consecutive months
45 following the award of a contract.

46 (23) "Competitive contracting" means the method described in
47 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
48 4.5) of contracting for specialized goods and services in which

1 formal proposals are solicited from vendors; formal proposals are
2 evaluated by the purchasing agent or counsel or administrator; and
3 the governing body awards a contract to a vendor or vendors from
4 among the formal proposals received.

5 (24) “Goods and services” or “goods or services” means any
6 work, labor, commodities, equipment, materials, or supplies of any
7 tangible or intangible nature, except real property or any interest
8 therein, provided or performed through a contract awarded by a
9 contracting agent, including goods and property subject to
10 N.J.S.12A:2-101 et seq.

11 (25) “Library and educational goods and services” means
12 textbooks, copyrighted materials, student produced publications and
13 services incidental thereto, including but not limited to books,
14 periodicals, newspapers, documents, pamphlets, photographs,
15 reproductions, microfilms, pictorial or graphic works, musical
16 scores, maps, charts, globes, sound recordings, slides, films,
17 filmstrips, video and magnetic tapes, other printed or published
18 matter and audiovisual and other materials of a similar nature,
19 necessary binding or rebinding of library materials, and specialized
20 computer software used as a supplement or in lieu of textbooks or
21 reference material.

22 (26) “Lowest price” means the least possible amount that meets
23 all requirements of the request of a contracting agent.

24 (27) “Lowest responsible bidder or vendor” means the bidder or
25 vendor: (a) whose response to a request for bids offers the lowest
26 price and is responsive; and (b) who is responsible.

27 (28) “Official newspaper” means any newspaper designated by
28 the contracting unit pursuant to R.S.35:1-1 et seq.

29 (29) “Purchase order” means a document issued by the
30 contracting agent authorizing a purchase transaction with a vendor
31 to provide or perform goods or services to the contracting unit,
32 which, when fulfilled in accordance with the terms and conditions
33 of a request of a contracting agent and other provisions and
34 procedures that may be established by the contracting unit, will
35 result in payment by the contracting unit.

36 (30) a. “Purchasing agent” means the individual duly assigned
37 the authority, responsibility, and accountability for the purchasing
38 activity of the contracting unit, and [who has such duties as are
39 defined by an authority appropriate to the form and structure of the
40 contracting unit, and] administration of the contracting unit’s
41 responsibilities, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

42 b. “Qualified Purchasing Agent” means a purchasing agent
43 who is the holder of a qualified purchasing agent certificate issued
44 pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).

45 (31) “Quotation” means the response to a formal or informal
46 request made by a contracting agent by a vendor for provision or
47 performance of goods or services, when the aggregate cost is less

- 1 than the bid threshold. Quotations may be in writing, or taken
2 verbally if a record is kept by the contracting agent.
- 3 (32) “Responsible” means able to complete the contract in
4 accordance with its requirements, including but not limited to
5 requirements pertaining to experience, moral integrity, operating
6 capacity, financial capacity, credit, and workforce, equipment, and
7 facilities availability.
- 8 (33) “Responsive” means conforming in all material respects to
9 the terms and conditions, specifications, legal requirements, and
10 other provisions of the request.
- 11 (34) “Public works” means building, altering, repairing,
12 improving or demolishing any public structure or facility
13 constructed or acquired by a contracting unit to house local
14 government functions or provide water, waste disposal, power,
15 transportation, and other public infrastructures.
- 16 (35) “Director” means the Director of the Division of Local
17 Government Services in the Department of Community Affairs.
- 18 (36) “Administrator” means a municipal administrator appointed
19 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
20 administrator, a municipal manager or a municipal administrator
21 appointed pursuant to the “Optional Municipal Charter Law,”
22 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager
23 appointed pursuant to “the municipal manager form of government
24 law,” R.S.40:79-1 et seq.; or the person holding responsibility for
25 the overall operations of an authority that falls under the “Local
26 Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et
27 seq.).
- 28 (37) “Concession” means the granting of a license or right to act
29 for or on behalf of the contracting unit, or to provide a service
30 requiring the approval or endorsement of the contracting unit, and
31 which may or may not involve a payment or exchange, or provision
32 of services by or to the contracting unit.
- 33 (38) “Index rate” means the rate of annual percentage increase,
34 rounded to the nearest half-percent, in the Implicit Price Deflator
35 for State and Local Government Purchases of Goods and Services,
36 computed and published quarterly by the United States Department
37 of Commerce, Bureau of Economic Analysis.
- 38 (39) “Proprietary” means goods or services of a specialized
39 nature, that may be made or marketed by a person or persons having
40 the exclusive right to make or sell them, when the need for such
41 goods or services has been certified in writing by the governing
42 body of the contracting unit to be necessary for the conduct of its
43 affairs.
- 44 (40) “Service or services” means the performance of work, or the
45 furnishing of labor, time, or effort, or any combination thereof, not
46 involving or connected to the delivery or ownership of a specified
47 end product or goods or a manufacturing process. Service or
48 services may also include an arrangement in which a vendor

1 compensates the contracting unit for the vendor's right to operate a
2 concession.

3 (cf: P.L.2002, c.47, s.7)

4

5 2. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to
6 read as follows:

7 3. a. When the cost or price of any contract awarded by the
8 contracting agent in the aggregate does not exceed in a contract year
9 the total sum of \$17,500 '[or the threshold amount adjusted by the
10 Governor pursuant to section c. of this section]', the contract may
11 be awarded by a purchasing agent when so authorized by ordinance
12 or resolution, as appropriate to the contracting unit, of the
13 governing body of the contracting unit without public advertising
14 for bids, except that the governing body of any contracting unit may
15 adopt an ordinance or resolution to set a lower threshold for the
16 receipt of public bids or the solicitation of competitive quotations.
17 ['If the purchasing agent is qualified pursuant to subsection b. of
18 section 9 of P.L.1971, c.198 (C.40A:11-9)'] In the case of a
19 qualified purchasing agent, the governing body of the contracting
20 unit may establish that the bid threshold may be up to \$25,000 '[or
21 the threshold amount adjusted by the Governor pursuant to section
22 c. of this section]'. Such authorization may be granted for each
23 contract or by a general delegation of the power to negotiate and
24 award such contracts pursuant to this section.

25 b. Any contract made pursuant to this section may be awarded
26 for a period of 24 consecutive months, except that contracts for
27 professional services pursuant to subparagraph (i) of paragraph (a)
28 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may
29 be awarded for a period not exceeding 12 consecutive months. The
30 Division of Local Government Services shall adopt and promulgate
31 rules and regulations concerning the methods of accounting for all
32 contracts that do not coincide with the contracting unit's fiscal year.

33 c. The Governor, in consultation with the Department of the
34 Treasury, shall, no later than March 1 of every fifth year beginning
35 in the fifth year after the year in which P.L.1999, c.440 takes effect,
36 adjust the threshold ['amount]' ['amounts] amount' and the higher
37 threshold ['amount]' ['amounts] amount' which the governing body
38 is permitted to establish, as set forth in subsection a. of this section,
39 or the threshold ['amount]' amounts resulting from any adjustment
40 under this subsection, in direct proportion to the rise or fall of the
41 index rate as that term is defined in section 2 of P.L.1971, c.198
42 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000.
43 The Governor shall, no later than June 1 of every fifth year, notify
44 each governing body of the adjustment. The adjustment shall
45 become effective on July 1 of the year in which it is made.

46 (cf: P.L.1999, c.440, s.7)

1 3. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to
2 read as follows:

3 9. a. ²(1)² The governing body of ²[any] every² contracting
4 unit ~~may~~ shall by ordinance, in the case of a municipality, by
5 ordinance or resolution, as the case may be, in the case of a county,
6 or by resolution in all other cases, ²[establish the office of
7 purchasing agent] designate an individual² [, or a purchasing
8 department or a purchasing board,] ²[with] to serve as the
9 contracting unit's purchasing agent. The individual designated as
10 the purchasing agent pursuant to this subsection shall be assigned²
11 the authority, responsibility, and accountability ²[as its contracting
12 agent,]² for the purchasing activity for the contracting unit, to
13 prepare public advertising for bids and to receive bids for the
14 provision or performance of goods or services on behalf of the
15 contracting unit and to award contracts permitted pursuant to
16 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) in the
17 name of the contracting unit, and conduct any activities as may be
18 necessary or appropriate to the purchasing function of the
19 contracting unit ²[. Except as provided pursuant to subsection i of
20 this section, the governing body of each contracting unit shall
21 employ at least one qualified purchasing agent.] as the governing
22 body of the contracting unit may authorize. The individual
23 designated to serve as the purchasing agent of a contracting unit
24 pursuant to this subsection shall be a qualified purchasing agent.²
25 The ²[position of purchasing agent, or qualified purchasing agent,
26 as the case may be,] individual designated as the purchasing agent
27 pursuant to this subsection² may be ²[filled by]² a part-time or full-
28 time employee of the contracting unit, ²[by contract with an
29 individual] an independent contractor,² or ²[by]² an individual
30 employed by another contracting unit through ²[an interlocal] a
31 shared² services agreement.

32 ²(2) The provisions of this subsection shall not apply to a
33 contracting unit exempted pursuant to the provisions of subsection
34 j. of this section.²

35 b. The Director of the Division of Local Government Services,
36 after consultation with the Commissioner of Education, shall
37 establish criteria to qualify individuals who have completed
38 appropriate training [and possess such purchasing experience as
39 deemed necessary to exercise such supplemental authority as may
40 be set forth in subsection a. of section 3 of P.L.1971, c.198
41 (C.40A:11-3)] ²[to exercise such supplementary authority set forth
42 in subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) and
43 section 1 of P.L.1977, c.114 (C.18A:18A-3)]², and, when determined
44 to be necessary, have passed ²[a test certified and] an examination²
45 administered by the ²[State] director² pursuant to this section.

1 These criteria also shall authorize county purchasing agents
2 certified pursuant to P.L.1981, c.380 (C.40A:9-30.1 et seq.) to
3 exercise such supplemental authority as may be set forth in
4 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3). The
5 criteria established by the director shall include, but are not limited
6 to, the following:

7 (1) is a citizen of the United States;

8 (2) is of good moral character;

9 (3) is a high school graduate or equivalent;

10 (4) has two years of higher education, or two years of full time
11 governmental experience performing duties relative to those of
12 public procurement, or a combination of the above;

13 (5) has successfully received certificates indicating satisfactory
14 completion of a series of training courses in public procurement as
15 determined by the director and provided by either the Division of
16 Local Government Services, or, with the approval of the director,
17 by a county college or Rutgers, The State University of New Jersey,
18 ²all² under the supervision of instructors ²[approved] who meet
19 criteria established² by the director. ²The criteria for the courses
20 shall include, to the extent practicable and feasible, that these
21 courses are made available during normal business hours of the
22 normal work week and over the Internet²;

23 (6) has submitted completed application forms, including proof
24 of education and experience, as set forth in ²[subsection c. of this
25 section] this subsection², accompanied by a fee in the amount of
26 \$50 payable to the State Treasurer, to the Director of the Division
27 of Local Government Services at least 30 days prior to the
28 administration of a State qualifying examination;

29 (7) has successfully passed a State qualifying examination. The
30 director shall hold examinations semi-annually or at such times as
31 the director may deem appropriate for certification of qualified
32 purchasing agents. An individual shall be eligible to take the State
33 qualifying examination for a qualified purchasing agent without
34 having taken the courses required pursuant to paragraph (5) of this
35 subsection if the individual has been certified by the division as a
36 certified municipal finance officer, a certified county finance
37 officer, or a certified county purchasing officer ²[, or has been
38 certified by the Department of Education as a school board
39 administrator]².

40 The director shall issue a qualified purchasing agent certificate to
41 an individual who passes the qualifying examination upon payment
42 to the director of a fee of \$50 which shall be payable to the State
43 Treasurer.

44 c. ²The criteria established by the director to authorize
45 purchasing agents, pursuant to subsection b. of this section, shall
46 include, but are not limited to, completion of a course in green
47 product purchasing, as established by the director pursuant to

1 regulation. Any person qualified pursuant to subsection b. of this
2 section prior to the establishment of the course in green product
3 purchasing, shall in order to continue to be qualified, take and
4 successfully complete the course within four years from the date the
5 course is established. For the purposes of this subsection and
6 section 2 of P.L.2007, c.332 (C.40A:11-9.1), "green product" means
7 any commodity or service that has a lesser or reduced negative
8 effect on human health and the environment when compared with
9 competing commodities or services. Items considered in this
10 comparison may include, but are not limited to: raw materials
11 acquisition, production, manufacturing, packaging, distribution,
12 reuse, operation, maintenance, disposal, energy efficiency, recycled
13 content resource use, transportation, and durability.

14 d. (1)² Renewal of the qualified purchasing agent certification
15 shall be required every three years, subject to the applicant's
16 fulfillment of continuing education requirements, the submission of
17 an application for renewal, and the payment of a renewal fee, all as
18 determined by the director.

19 ²(2)² In the event that an individual holding a qualified
20 purchasing agent certificate allows the certificate to lapse by failing
21 to renew the certificate, the individual shall be required to apply to
22 take the qualifying examination required pursuant to subsection b.
23 of this section and pay a fee as determined by the director.

24 ²[d.] (3) Where the holder of a qualified purchasing agent
25 certificate has allowed the certificate to expire by failing to renew
26 the certificate, a new application and certificate shall be required.
27 If application is made within six months of the expiration of the
28 certificate, application may be made in the same manner as renewal
29 but the application shall be accompanied by the fee for a new
30 application.

31 e. (1)² An individual who obtained a qualified purchasing agent
32 certificate prior to enactment of P.L. , c. (C.) (pending
33 before the Legislature as this bill) shall be exempt from taking the
34 State qualifying examination, but shall adhere to all requirements
35 for renewal pursuant to subsection ²[c.] d.² of this section. If such
36 a qualified purchasing agent certificate expires due to the failure of
37 the holder to renew the certificate as prescribed in subsection ²[c.]
38 d.² of this section, that individual shall be required to pass the
39 qualifying ²[test] examination² as provided pursuant to subsection
40 b. of this section in order to be issued a new qualified purchasing
41 agent certificate.

42 ²[e.] (2) An individual who has been certified by the
43 Department of Education as a school business administrator and has
44 performed duties relative to public procurement for at least three
45 years shall be exempt from taking the courses required pursuant to
46 paragraph (5) of subsection b. of this section and the state
47 qualifying examination, and upon application to the director and the

1 payment of the fee imposed pursuant to subsection b. of this
2 section, shall be issued a qualified purchasing agent certificate.

3 f.² Those persons who have been performing the duties of a
4 purchasing agent² or who have been performing on a full time basis
5 public procurement duties² for a² [municipality or county]
6 contracting unit² pursuant to² [P.L.1970,] P.L.1971,² c.198
7 (C.40A:11-1 et seq.), or school board pursuant to P.L.1977, c.114
8 (C.18A:18A-1 et seq.) for at least three² continuous² years, prior to
9 the first day of the sixth month following the promulgation of rules
10 and regulations to effectuate the purposes of P.L. , c. (C.)
11 (pending before the Legislature as this bill), may take the State
12 qualifying examination, if not otherwise exempt under subsection
13 ²[d.] e.² of this section, without the courses required in subsection
14 b. of this section.

15 ²[f.] g.² (1) Each contracting unit² subject to the provisions of
16 subsection a. of this section² shall appoint a qualified purchasing
17 agent² to serve as its purchasing agent² within three years of the
18 enactment of P.L. , c. (C.) (pending before the Legislature as
19 this bill).² If the director determines in writing that the courses
20 required pursuant to paragraph (5) of subsection b. of this section
21 are not available in sufficient number to enable contracting units to
22 comply with the provisions of this paragraph, the director may
23 extend the deadline imposed by this paragraph by up to two years.²

24 (2) A contracting unit² subject to the provisions of subsection a.
25 of this section² that has not appointed a qualified purchasing agent
26 within three years of the enactment of P.L. , c. (C.) (pending
27 before the Legislature as this bill)² or by such deadline as may be
28 extended by the director pursuant to paragraph 1 of this subsection²
29 may be granted up to two additional years to meet this requirement,
30 upon certification to the director that the contracting unit has made
31 a good faith effort to appoint a² qualified² purchasing agent. Such
32 certification shall include documentation of such good faith efforts.

33 (3) ²[If in the office of purchasing agent a vacancy occurs in a
34 position formerly held by a qualified purchasing agent,] Following
35 the appointment of a qualified purchasing agent as the purchasing
36 agent for a contracting unit pursuant to subsection a. of this section,
37 and if the person appointed no longer performs such duties,² the
38 governing body or chief executive officer, as appropriate to the
39 form of government, may appoint, for a period not to exceed one
40 year commencing from the date of the vacancy, a person who does
41 not possess a qualified purchasing agent certificate to serve as a
42 temporary purchasing agent. Any person so appointed may, with
43 the approval of the director, be reappointed as a temporary
44 purchasing agent for² a maximum of² one additional year following
45 the end of the first temporary appointment. No contracting unit

1 shall employ a temporary purchasing agent for more than two
2 consecutive years.

3 ²[g.] h.² The director may revoke or suspend a qualified
4 purchasing agent certificate for dishonest practices or willful or
5 intentional failure, neglect, or refusal to comply with the laws
6 relating to procurement, or for other good cause. The governing
7 body, together with the chief executive officer of any contracting
8 unit, or a ²[school]² board ²of education², may request ²[a review
9 by]² the director ²[of] to review² the behavior or practices of a
10 person holding a qualified purchasing agent certificate ²[, except
11 after a proper hearing before] . Prior to taking any adverse action
12 against a person,² the director or the director's designee
13 ²[following] shall convene a hearing, upon² due notice ², affording
14 the person an opportunity to be heard². If the qualified purchasing
15 agent certificate held by a person serving as a purchasing agent is
16 revoked, ²[that person shall be removed from his or her position by
17 the director, the position shall be declared vacant,] the director
18 shall order that person to no longer perform the duties of
19 contracting agent,² and the person shall not be eligible to ²[hold
20 that position] serve as a contracting agent² or to make application
21 for recertification for a period of five years from the date of
22 revocation.

23 ²[h.] i.² If a governing body ²or a board of education² fails or
24 refuses to comply with the provisions of this section and has
25 received an order from the director to do so, the members of the
26 governing body ²or board of education² who willfully fail or refuse
27 to comply shall each be subject to a personal penalty of \$25 for
28 each day after the date fixed for final action that the failure or
29 refusal to comply continues. The amount of penalty may be
30 recovered by the director in the name of the State as a personal debt
31 of the member of the governing body ²or board of education², and
32 shall be paid, upon receipt, to the State Treasurer.

33 ²[i.] j. (1) Any contracting unit, the annual operating budget of
34 which is less than \$2,500,000, shall be exempt from the provisions
35 of subsection a. of this section. Any contracting unit eligible for an
36 exemption pursuant to this paragraph shall notify the director in
37 writing of its exemption pursuant to this paragraph.

38 (2)² The director may grant an exemption from the requirements
39 of ²subsection a. of² this section to a contracting unit ²not exempted
40 pursuant to paragraph (1) of this subsection² that demonstrates that
41 the purchasing activity of the contracting unit is minimal or would
42 otherwise not benefit from the appointment of a qualified
43 purchasing agent. Such an exemption shall be valid for five years
44 from the date of issuance, at which time the contracting unit must
45 reapply for an exemption or appoint a qualified purchasing agent.
46 Upon receipt of an application for an exemption pursuant to this

1 ²[subsection] paragraph², the director shall review the application
2 and approve or deny the request.

3 ²[j.] k.² If a contracting unit has available funds for employee
4 training or education, the contracting unit ²[shall] may² make such
5 funds available to defray or reimburse in whole or in part the cost of
6 courses taken by an employee pursuant to paragraph (5) of
7 subsection b. of this section.

8 ²[k.] l.² The director shall adopt and promulgate rules and
9 regulations to effectuate the purposes of this section.

10 (cf: P.L.1999, c.440, s.15)

11

12 ³4. (New section) a. Notwithstanding any provision of law to
13 the contrary, an individual who is the duly authorized purchasing
14 agent of a contracting unit on the date of enactment of P.L. _____,
15 c. (pending before the Legislature as this bill) may continue to be
16 authorized to serve as the purchasing agent for that contracting unit
17 after the effective date of P.L. _____, c. (pending before the
18 Legislature as this bill) although the individual has not satisfied the
19 new criteria for certification or renewal established by P.L. _____,
20 c. (pending before the Legislature as this bill).

21 b. An individual who is the duly authorized purchasing agent
22 of a contracting unit on the date of enactment of P.L. _____,
23 c. (pending before the Legislature as this bill) and who was
24 qualified, pursuant to subsection b. of section 9 of P.L.1971, c.198
25 (C.40A:11-9), to exercise supplemental authority under subsection
26 a. of section 3 of P.L.1971, c.198 (C.40A:11-3) prior to the date of
27 enactment of P.L. _____, c. (pending before the Legislature as this
28 bill), may continue to be authorized to exercise supplemental
29 authority under subsection a. of section 3 of P.L.1971, c.198
30 (C.40A:11-3) after the effective date of P.L. _____, c. (pending before
31 the Legislature as this bill) so long as the individual continues to
32 comply with the criteria established pursuant to subsection b. of
33 section 9 of P.L.1971, c.198 (C.40A:11-9) that were in effect prior
34 to the date of enactment of P.L. _____, c. (pending before the
35 Legislature as this bill), notwithstanding that the individual has not
36 satisfied the new criteria for certification or renewal established by
37 P.L. _____, c. (pending before the Legislature as this bill).

38 c. Notwithstanding any provision of law to the contrary, a
39 contracting unit that has authorized an individual to serve
40 as purchasing agent prior to the date of enactment of P.L. _____,
41 c. (pending before the Legislature as this bill) shall not be
42 required to designate or appoint a qualified purchasing agent to
43 serve as the purchasing agent for the contracting unit until such
44 time as the individual serving as the purchasing agent on the date of
45 enactment of P.L. _____, c. (pending before the Legislature as this
46 bill) is replaced or ceases to perform the duties of purchasing
47 agent.³

1 ³[4.] 5.³ This act shall take effect on the first day of the
2 seventh month next following enactment, but the Director of the
3 Division of Local Government Services in the Department of
4 Community Affairs may take such anticipatory action in advance
5 thereof as shall be necessary for the implementation of this act.