

**ASSEMBLY, No. 423**

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**STATE OF NEW JERSEY**

**215th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**  
**Assemblyman GREGORY P. MCGUCKIN**  
**District 10 (Ocean)**

**SYNOPSIS**

Concerns subcontracting agreements entered into by public school districts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning collective bargaining agreements and  
2 subcontracting and supplementing P.L.1941, c.100 (C.34:13A-1  
3 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. As used in this act:

9 "Employer" means any local or regional school district,  
10 educational services commission, jointure commission, county  
11 special services school district, or board or commission under the  
12 authority of the Commissioner of Education or the State Board of  
13 Education.

14 "Employee" means any employee, whether employed on a full or  
15 part-time basis, of an employer.

16 "Subcontracting" means any action, practice, or effort by an  
17 employer which results in any services or work performed by any of  
18 its employees being performed or provided by any other person,  
19 vendor, corporation, partnership or entity.

20 "Subcontracting agreement" means any agreement or  
21 arrangement entered into by an employer to implement  
22 subcontracting, but shall not include any contract entered into  
23 pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-  
24 1 et seq.), or any contract entered into to provide services to  
25 nonpublic schools through State or federal funds.  
26

27 2. Except for actions of an employer expressly required or  
28 prohibited by the provisions of this act, all aspects or actions  
29 relating to or resulting from an employer's decision to subcontract  
30 including, but not limited to, whether or not severance pay is  
31 provided, shall be mandatory subjects of negotiations.  
32

33 3. No employer shall enter into a subcontracting agreement  
34 which affects the employment of any employees in a collective  
35 bargaining unit represented by a majority representative during the  
36 term that an existing collective bargaining agreement with the  
37 majority representative is in effect. No employer shall enter into a  
38 subcontracting agreement for a period following the term of the  
39 current collective bargaining agreement unless the employer:

40 a. Provides written notice to the majority representative of  
41 employees in each collective bargaining unit which may be affected  
42 by the subcontracting agreement and to the New Jersey Public  
43 Employment Relations Commission, not less than 90 days before  
44 the employer requests bids, or solicits contractual proposals for the  
45 subcontracting agreement; and

46 b. Has offered the majority representative of the employees in  
47 each collective bargaining unit which may be affected by the  
48 subcontracting agreement the opportunity to meet and consult with

1 the employer to discuss the decision to subcontract, and the  
2 opportunity to engage in negotiations over the impact of the  
3 subcontracting. The employer's duty to negotiate with the majority  
4 representative of the employees in each collective bargaining unit  
5 shall not preclude the employer's right to subcontract should no  
6 successor agreement exist.

7  
8 4. Each employee replaced or displaced as the result of a  
9 subcontracting agreement shall retain all previously acquired  
10 seniority during that period and shall have recall rights whenever  
11 the subcontracting terminates.

12  
13 5. An employer who violates any provision of this act shall be  
14 deemed to have committed an unfair practice, and any employee or  
15 majority representative organization affected by the violation may  
16 file an unfair practice charge with the New Jersey Public  
17 Employment Relations Commission. If the employee or  
18 organization prevails on the charge, the employee is entitled to a  
19 remedy including, but not limited to, reinstatement, back pay, back  
20 benefits, back emoluments, tenure and seniority credit, attorney's  
21 fees, and any other relief the commission deems appropriate to  
22 effectuate the purposes of this act.

23  
24 6. Nothing in this act shall be construed as authorizing  
25 subcontracting which is not otherwise authorized by law. Nothing  
26 in this act shall be construed as restricting or limiting any right  
27 established or provided for employees by section 7 of P.L.1968,  
28 c.303 (C.34:13A-5.3); the purpose of this act is to provide rights in  
29 addition to those provided in that section.

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31 7. This act shall take effect immediately.

### 32 33 34 STATEMENT

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36 This bill prohibits an employer from entering into a  
37 subcontracting agreement which may affect the employment of any  
38 employees in a collective bargaining unit under any circumstances  
39 during the term of an existing collective bargaining agreement  
40 covering the employees. The bill defines "employer" to include any  
41 local or regional school district, educational services commission,  
42 jointure commission, county special services school district, or  
43 board or commission under the authority of the Commissioner of  
44 Education or the State Board of Education.

45 The employer is permitted to enter into a subcontracting  
46 agreement for a period following the term of a current collecting  
47 bargaining agreement only if the employer:

48 first, provides notice to both the majority representative of

1 employees in each collective bargaining unit and to the Public  
2 Employment Relations Commission at least 90 days prior to any  
3 effort by the employer to seek the subcontracting agreement; and  
4 second, offers the majority representative the opportunity to meet  
5 and discuss the decision to subcontract and negotiate over its  
6 impact. The employer's duty to negotiate over the impact of the  
7 subcontracting would not preclude the employer's right to  
8 subcontract should no successor agreement exist.  
9 The bill makes all actions of an employer regarding  
10 subcontracting, except for those expressly required or prohibited by  
11 the bill, mandatory subjects of negotiations.  
12 Each employee replaced or displaced because of a subcontracting  
13 agreement would retain all previously acquired seniority and would  
14 have recall rights when the subcontracting terminates.  
15 The bill provides that an employer who violates the act has  
16 committed an unfair practice and may be subject to an unfair  
17 practice charge with the Public Employment Relations Commission,  
18 under which the employee may be entitled to a remedy including,  
19 but not limited to: reinstatement, back pay, back benefits, back  
20 emoluments, tenure and seniority credit, and attorney's fees.