

ASSEMBLY, No. 3960

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED APRIL 4, 2013

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

SYNOPSIS

Allows establishment of county-wide purchasing system for certain school district services; offers employment protections for certain food or custodial services employees; and regulates subcontracting by districts and public higher education institutions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/10/2013)

1 AN ACT concerning public contracts, amending P.L.2007, c.63, and
2 supplementing P.L.1971, c.198 (C.40A:11-1 et seq.) and
3 P.L.1941, c.100 (C.34:13A-1 et seq.).

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

7
8 1. (New section) a. In order to take advantage of economies of
9 scale and administrative efficiencies in the purchase of services, a
10 local unit that is a county may adopt a resolution or ordinance, as
11 appropriate to its form of government, establishing a county-wide
12 purchasing system for providing custodial services, food services,
13 or both, to school districts within the county.

14 The county clerk of a county that establishes a county-wide
15 purchasing system pursuant to this subsection shall notify all school
16 districts located within the county within 20 days of final adoption
17 of the resolution or ordinance, as appropriate, that the county-wide
18 system has been established.

19 b. If a school district is located within a county that has
20 established a county-wide purchasing system pursuant to subsection
21 a. of this section and the school district uses a private contractor to
22 provide custodial services, food services, or both, the school district
23 shall participate in the single county-wide contract, awarded by the
24 county, if the school district chooses to continue using a private
25 contractor to provide the service.

26 Notwithstanding the provisions of any other law to the contrary,
27 a school district seeking to contract for a service subject to a
28 county-wide contract shall acquire the service only through that
29 county-wide contract. Any school district bid document or contract
30 for a service that is eligible to be acquired through the county-wide
31 contract shall be beyond the authority of the school district to
32 advertise or award, and shall be void from its inception.

33 c. A county that establishes a county-wide purchasing system
34 pursuant to subsection a. of this section shall create and maintain a
35 webpage on the county Internet website listing the services for
36 which the county has entered into a county-wide contract.

37 d. (1) A county shall use the competitive contracting provisions
38 set forth in the "Local Public Contracts Law," P.L.1971, c.198
39 (C.40A:11-1 et seq.), except as specifically provided in this section,
40 for the purpose of entering into a county-wide contract pursuant to
41 the provisions of subsection a. of this section.

42 (2) A county that establishes a county-wide contract pursuant to
43 subsection a. of this section shall appoint an advisory committee,
44 consisting of one representative from each school district that is

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.

1 subject to the county-wide contract, to assist with reviewing and
2 evaluating requests for proposals.

3 (3) Criteria for evaluating requests for proposals shall include,
4 but shall not be limited to, the contractor's previous experience with
5 the provision of similar supplies, materials, and services.

6 (4) Prior to awarding any contract, the terms of all contracts
7 pending final approval shall be disclosed on the county's Internet
8 website at least 20 days prior to the final approval of the contract.

9 (5) Notwithstanding any law or regulation to the contrary, the
10 request for proposal documentation prepared by the county for
11 county-wide contracts shall specify that the contractor who is
12 awarded the county-wide contract shall be required to pay to the
13 county a specified fee to cover the administrative costs associated
14 with administering the county-wide contract.

15 (6) The county governing body may establish a set-aside
16 program pursuant to section 2 of P.L.1985, c.482 (C.40A:11-42) for
17 the provision of services under a county-wide contract.

18 e. If a school district is located in a county that is using a
19 county-wide contract and the district is currently not using a private
20 contractor to provide the service which is the subject of the county-
21 wide contract, the district shall not participate in the county-wide
22 contract which affects the employment of any employees in a
23 collective bargaining unit represented by a majority representative
24 during the term that an existing collective bargaining agreement
25 with the majority representative is in effect. The school district
26 shall not participate in the county-wide contract for a period
27 following the term of the current collective bargaining agreement
28 unless the school district:

29 (1) provides written notice at least 90 days prior to participation
30 in the county-wide contract to the majority representative of
31 employees in each collective bargaining unit which may be affected
32 by the district's participating in the county-wide contract and to the
33 New Jersey Public Employment Relations Commission; and

34 (2) offers the majority representative of the employees in each
35 collective bargaining unit which may be affected by the district's
36 participation in the county-wide contract the opportunity to meet
37 and consult with the school district to discuss the decision to
38 participate in the county-wide contract, and the opportunity to
39 engage in negotiations over the impact of participation. The school
40 district's duty to negotiate with the representative of the employees
41 in each collective bargaining unit shall not preclude the school
42 district's right to participate in the county-wide contract should no
43 successor agreement exist.

44 Each employee replaced or displaced as the result of the school
45 district's participation in the county-wide contract shall retain all
46 previously acquired seniority during that period and shall have
47 recall rights whenever the district's participation in the county-wide
48 contract terminates.

1 A district that violates any provision of this subsection shall be
2 deemed to have committed an unfair practice, and any employee or
3 majority representative organization affected by the violation may
4 file an unfair practice charge with the New Jersey Public
5 Employment Relations Commission. If the employee or
6 organization prevails on the charge, the employee is entitled to a
7 remedy including, but not limited to, reinstatement, back pay, back
8 benefits, back emoluments, tenure and seniority credit, attorney's
9 fees, and any other relief the commission deems appropriate to
10 effectuate the purposes of this subsection.

11 f. In addition to any other requirements set forth in this
12 section, a school district that is currently not using a private
13 contractor to provide a service that is the subject of a county-wide
14 contract in the county in which the district is located, shall not
15 participate in the county-wide contract unless:

16 (1) The school district passes a resolution calling for a public
17 hearing to explore the costs and benefits of participating in a
18 county-wide contract and provides an opportunity for parents and
19 other affected stakeholders in the district to make statements and
20 ask questions relating to participation in a county-wide contract;

21 (2) Notice of the public hearing is posted in an official
22 newspaper of the board of education, and through any other means
23 deemed appropriate by the board of education, at least 30 days prior
24 to the hearing;

25 (3) Following the public hearing, a period of no less than 60
26 days is provided during which members of the public will have the
27 opportunity to submit comments on the proposal to participate in a
28 county-wide contract; and

29 (4) Upon review of all comments and submissions, the board of
30 education provides a written response to comments at the next
31 board of education meeting and to the collective bargaining
32 representative. The school board shall hold a vote on whether or
33 not to participate in the county-wide contract.

34 g. Nothing in this section shall require the privatization of a
35 position currently filled by a public employee.

36 h. Any administrative employee whose position is eliminated
37 due to implementation of this section shall receive terminal leave
38 pay, as set forth in paragraph (2) of subsection a. of section 19 of
39 the "Uniform Shared Services and Consolidation Act," P.L.2007,
40 c.63 (C.40A:65-19).

41

42 2. (New section) a. As used in this section:

43 "Predecessor employer" means a school district or a contractor
44 which provided food or custodial services for a school district and
45 which ceases to provide such services.

46 "Service employee" means an employee employed on or around
47 school district premises and central kitchens to provide food or

1 custodial services, except for managerial, executive, confidential
2 employees, and employees who work less than four hours a week.

3 "Successor contractor" means a contractor that has been awarded
4 a food or custodial services contract to provide services that, in
5 whole or in part, are substantially similar to those food or custodial
6 services provided by a predecessor employer within the previous 90
7 days.

8 b. The intent of this section is to provide protection for
9 employees who are satisfactorily performing their duties during the
10 transition to employment by a successor contractor and to prevent
11 favoritism in employment decisions during such transition to ensure
12 the highest quality of services to school districts.

13 c. A school district for which a successor contractor will
14 provide food or custodial services shall:

15 (1) obtain from the predecessor employer and provide to the
16 successor contractor, a full and accurate list containing the name,
17 address, date of hire, and employment classification of each service
18 employee employed by the predecessor employer within 15
19 calendar days before the termination of any service contract;

20 (2) notify the collective bargaining representative of the affected
21 service employees, if any, of the successor contractor and provide
22 to the collective bargaining representative a copy of the list of
23 service employees prepared pursuant to paragraph (1) of this
24 subsection; and

25 (3) ensure that a notice is conspicuously posted at any site at
26 which service employees perform their duties, setting forth the
27 rights provided under this section in the same location and manner
28 that other statutorily required notices to employees are posted.

29 d. The successor contractor shall:

30 (1) offer employment during a 90-day transition employment
31 period to all service employees employed by the predecessor
32 employer;

33 (2) not discharge, without just cause, an employee retained in
34 accordance with this section during the 90-day transition period;
35 and

36 (3) perform a written performance evaluation for each employee
37 retained in accordance with this section at the end of the 90-day
38 transition period and offer those employees whose performance was
39 satisfactory, continued employment under the terms and conditions
40 of employment established by the successor contractor or as
41 required by law.

42

43 3. (New section) a. As used in this section:

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

46 "Employer" means any local or regional school district,
47 educational services commission, jointure commission, county
48 special services school district, county college, State college, public

1 college or university under the authority of the Secretary of Higher
2 Education, or board or commission under the authority of the
3 Commissioner of Education or the State Board of Education.

4 "Recall rights" means any employee dismissed as a result of
5 subcontracting shall be placed and remain upon a preferred
6 eligibility list, in the order of years of service, for reemployment
7 whenever vacancies occur and shall be reemployed in such order,
8 and upon reemployment shall be given full recognition for previous
9 years of service in his respective positions and employments.

10 "Subcontracting" means any action, practice, or effort by an
11 employer which results in any services or work performed by any of
12 its employees being performed or provided by any other person,
13 vendor, corporation, partnership, or entity.

14 "Subcontracting agreement" means any agreement or
15 arrangement entered into by an employer to implement
16 subcontracting, but shall not include any contract entered into
17 pursuant to the "Uniform Shared Services and Consolidation Act,"
18 P.L.2007, c.63 (C.40A:65-1 et seq.), or any contract entered into to
19 provide services to nonpublic schools through State or federal
20 funds, or any contract in which it is required by law that workers be
21 paid the prevailing wage determined by the Commissioner of Labor
22 and Workforce Development pursuant to the provisions of the "New
23 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
24 seq.).

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

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

37 (1) provides written notice to the majority representative of
38 employees in each collective bargaining unit which may be affected
39 by the subcontracting agreement and to the New Jersey Public
40 Employment Relations Commission, not less than 90 days before
41 the employer requests bids, or solicits contractual proposals for the
42 subcontracting agreement; and

43 (2) has offered the majority representative of the employees in
44 each collective bargaining unit which may be affected by the
45 subcontracting agreement the opportunity to meet and consult with
46 the employer to discuss the decision to subcontract, and the
47 opportunity to engage in negotiations over the impact of the
48 subcontracting. The employer's duty to negotiate with the majority

1 representative of the employees in each collective bargaining unit
2 shall not preclude the employer's right to subcontract should no
3 successor agreement exist.

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

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

18 f. Nothing in this section shall be construed as authorizing
19 subcontracting which is not otherwise authorized by law. Nothing
20 in this section shall be construed as restricting or limiting any right
21 established or provided for employees by section 7 of P.L.1968,
22 c.303 (C.34:13A-5.3); the purpose of this section is to provide
23 rights in addition to those provided in that section.

24
25 4. Section 54 of P.L.2007, c.63 (C.18A:7-12) is amended to
26 read as follows:

27 54. a. A local school district may apply to the executive county
28 superintendent of schools to have school district services including,
29 but not limited to, transportation, personnel, purchasing, payroll,
30 and accounting, assumed by the office of the superintendent. If the
31 executive county superintendent determines to assume a service, a
32 fee may be assessed the school district for the service. The
33 executive county superintendent of schools may utilize county
34 special services school districts, jointure commissions, and
35 educational services commissions to provide services to local
36 school boards.

37 b. If the county governing body wherein the school district is
38 located has adopted a resolution or ordinance pursuant to section 1
39 of P.L. , c. (C.) (pending before the Legislature as this bill),
40 to utilize a county-wide contract for food or custodial services, the
41 office of the executive county superintendent of schools and every
42 local school district that uses a private contractor to provide the
43 good or service at issue shall be required to participate in the
44 county-wide contract.

45 c. Nothing in this section shall require the privatization of a
46 position currently filled by a public employee.

47 (cf: P.L.2007, c.63, s.54)

1 5. This act shall take effect immediately.

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STATEMENT

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6 This bill permits counties to establish a county-wide purchasing
7 system to provide custodial or food services, or both, to school
8 districts within the county. These contracts would be awarded to
9 contractors using the competitive contracting process set forth in
10 the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
11 seq.). If a county establishes a county-wide purchasing system and
12 a school district in the county is currently using a private contractor
13 for the service, the district will be required to participate in the
14 county-wide contract.

15 In addition, a district that is using its own employees to provide
16 custodial or food services will be required to participate in a
17 county-wide contract if it determines to privatize the service. Prior
18 to participating in the county-wide contract, however, the district
19 will be required to meet certain criteria, including holding a public
20 hearing on the proposal to participate, providing a period during
21 which the public will have the opportunity to submit comments on
22 the proposal, and providing written responses to the comments. A
23 district in these circumstances will not be permitted to participate in
24 the county-wide contract during the term of an existing collective
25 bargaining agreement with employees who will be affected by the
26 participation in the county-wide contract, and after the term of the
27 agreement, the district may participate only after:

28 (1) providing written notice to the majority representative of
29 employees in each collective bargaining unit affected by
30 participation in the county-wide contract and to the New Jersey
31 Public Employment Relations Commission; and

32 (2) offering the majority representative the opportunity to
33 consult with the district to discuss the decision to participate in the
34 county-wide contract and the opportunity to engage in negotiations
35 over the impact of participation.

36 Each employee replaced or displaced as a result of the district's
37 participation in the county-wide contract would retain all previously
38 acquired seniority and would have recall rights whenever the
39 district's participation in the county-wide contract terminates.

40 Any administrator whose position is eliminated due to a
41 countywide purchasing system will receive terminal leave pay
42 pursuant to N.J.S.A.40A:65-19 of the "Uniform Shared Services
43 and Consolidation Act."

44 The bill also provides protection for food or custodial services
45 employees employed on school district premises during a transition
46 to employment by a successor contractor, which is defined in the
47 bill as a contractor that has been awarded a food or custodial
48 services contract. Under the provisions of the bill, a successor

1 contractor must offer employment during a 90-day transition
2 employment period to all service employees providing food or
3 custodial services employed by the predecessor employer, whether
4 that predecessor employer is a school district or another contractor
5 providing food or custodial services for the school district. The
6 successor contractor is prohibited from discharging, without just
7 cause, a retained employee during that transition period, and must
8 perform a written performance evaluation for each retained
9 employee at the end of the transition period. Employees whose
10 performance was satisfactory, must be offered continued
11 employment by the successor contractor. This provision would
12 apply in the case of participation in a county-wide contract for food
13 or custodial services, in the case of a district privatizing these
14 services, or in the case of a change from one private contractor to
15 another private contractor for these services.

16 The bill includes a provision that applies to all subcontracting by
17 any of the following employers: any local or regional school
18 district, educational services commission, jointure commission,
19 county special services school district, county college, State
20 college, public college or university under the authority of the
21 Secretary of Higher Education, or board or commission under the
22 authority of the Commissioner of Education or the State Board of
23 Education. Under this provision, during the term of an existing
24 collective bargaining agreement covering its employees, the
25 employer is prohibited from entering into a subcontracting
26 agreement which affects the employment of those employees.
27 Following the term of a collective bargaining agreement, the
28 employer is permitted to enter into a subcontracting agreement only
29 if the employer provides similar notice and opportunity to negotiate
30 over the impact of the subcontracting agreement as described above
31 in relation to the decision by a school district to participate in a
32 county-wide contract. As in that case, each employee replaced or
33 displaced because of a subcontracting agreement would retain all
34 previously acquired seniority and would have recall rights when the
35 subcontracting terminates.