

SENATE, No. 1191

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 23, 2012

Sponsored by:

Senator DIANE B. ALLEN
District 7 (Burlington)

Co-Sponsored by:

**Senators Van Drew, Whelan, Turner, Cunningham, Scutari, Vitale,
Gordon, Greenstein and Pou**

SYNOPSIS

Concerns subcontracting agreements entered into by public school districts and higher education institutions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/19/2013)

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

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

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8 1. As used in this act:

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

11 "Employer" means any local or regional school district,
12 educational services commission, jointure commission, county
13 special services school district, county college, State college,
14 college or university under the authority of the Commission on
15 Higher Education, or board or commission under the authority of
16 the Commissioner of Education or the State Board of Education.

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

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

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

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39 3. No employer shall enter into a subcontracting agreement
40 which affects the employment of any employees in a collective
41 bargaining unit represented by a majority representative during the
42 term that an existing collective bargaining agreement with the
43 majority representative is in effect. No employer shall enter into a
44 subcontracting agreement for a period following the term of the
45 current collective bargaining agreement unless the employer:

46 a. Provides written notice to the majority representative of
47 employees in each collective bargaining unit which may be affected
48 by the subcontracting agreement and to the New Jersey Public

1 Employment Relations Commission, not less than 90 days before
2 the employer requests bids, or solicits contractual proposals for the
3 subcontracting agreement; and

4 b. Has offered the majority representative of the employees in
5 each collective bargaining unit which may be affected by the
6 subcontracting agreement the opportunity to meet and consult with
7 the employer to discuss the decision to subcontract, and the
8 opportunity to engage in negotiations over the impact of the
9 subcontracting. The employer's duty to negotiate with the majority
10 representative of the employees in each collective bargaining unit
11 shall not preclude the employer's right to subcontract should no
12 successor agreement exist.

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14 4. Each employee replaced or displaced as the result of a
15 subcontracting agreement shall retain all previously acquired
16 seniority during that period and shall have recall rights whenever
17 the subcontracting terminates.

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

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

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37 7. This act shall take effect immediately.

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STATEMENT

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42 This bill provides that, during the term of an existing collective
43 bargaining agreement covering its employees, an employer is
44 prohibited from entering into a subcontracting agreement which
45 affects the employment of those employees. The bill defines
46 "employer" to include any local or regional school district,
47 educational services commission, jointure commission, county
48 special services school district, county college, State college,

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

4 Following the term of a collective bargaining agreement, an
5 employer is permitted to enter into a subcontracting agreement only
6 if the employer:

7 a. provides written notice to both the majority representative of
8 employees in each collective bargaining unit and to the New Jersey
9 Public Employment Relations Commission at least 90 days prior to
10 any effort by the employer to seek the subcontracting agreement;
11 and

12 b. offers the majority representative the opportunity to meet
13 and discuss the decision to subcontract and negotiate over its
14 impact.

15 Under current law, an employer has a duty to negotiate a
16 successor agreement. Given compliance by the employer with
17 subparagraphs a. and b. of the bill, the bill provides that failure to
18 reach a successor agreement does not preclude the employer from
19 subcontracting.

20 With certain exceptions, the bill makes all actions of an
21 employer regarding subcontracting mandatory subjects of
22 negotiations. Failure to negotiate would subject the employer to an
23 unfair labor practice charge by the majority representative.

24 Each employee replaced or displaced because of a subcontracting
25 agreement would retain all previously acquired seniority and would
26 have recall rights when the subcontracting terminates.

27 The bill provides that an employer who violates the act has
28 committed an unfair labor practice and may be subject to an unfair
29 labor practice charge with the New Jersey Public Employment
30 Relations Commission, under which the employee may be entitled
31 to a remedy including, but not limited to: reinstatement, back pay,
32 back benefits, back emoluments, tenure and seniority credit, and
33 attorney's fees.