

SENATE, No. 728

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Applies local public contract bid threshold amounts to local pay to play and prevailing wage laws.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S728 CRUZ-PEREZ, BEACH

2

1 AN ACT coordinating threshold dollar amounts under certain laws
2 concerning local public contracts, prevailing wages, and
3 campaign contributions, and amending P.L.2004, c.19, P.L.2005,
4 c.271 and P.L.1963, c.150.

5

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

8

9 1. Section 3 of P.L.2004, c.19 (C.19:44A-20.4) is amended to
10 read as follows:

11 3. Notwithstanding the provisions of any other law to the
12 contrary:

13 a county, or any agency or instrumentality thereof, shall not enter
14 into a contract having an anticipated value in excess of **[\$17,500]**
15 the local bid threshold, as determined in advance and certified in
16 writing by the county, agency or instrumentality, with a business
17 entity, except a contract that is awarded pursuant to a fair and open
18 process, if, during the preceding one-year period, that business
19 entity has made a contribution that is reportable by the recipient
20 under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee
21 of a political party in that county if a member of that political party
22 is serving in an elective public office of that county when the
23 contract is awarded or to any candidate committee of any person
24 serving in an elective public office of that county when the contract
25 is awarded; and

26 a business entity that has entered into a contract having an
27 anticipated value in excess of **[\$17,500]** the local bid threshold
28 with a county, or any agency or instrumentality thereof, except a
29 contract that is awarded pursuant to a fair and open process, shall
30 not make such a contribution, reportable by the recipient under
31 P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a
32 political party in that county if a member of that political party is
33 serving in an elective public office of that county when the contract
34 is awarded or to any candidate committee of any person serving in
35 an elective public office of that county when the contract is
36 awarded, during the term of that contract.

37 No such committee shall accept such a contribution from a
38 business entity during the term of its contract with the county.

39 (cf: P.L.2004, c.19, s.3)

40

41 2. Section 4 of P.L.2004, c.19 (C.19:44A-20.5) is amended to
42 read as follows:

43 4. Notwithstanding the provisions of any other law to the
44 contrary:

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 a municipality, or any agency or instrumentality thereof, shall
2 not enter into a contract having an anticipated value in excess of
3 **[\$17,500]** the local bid threshold, as determined in advance and
4 certified in writing by the municipality, agency or instrumentality,
5 with a business entity, except a contract that is awarded pursuant to
6 a fair and open process, if, during the preceding one-year period,
7 that business entity has made a contribution that is reportable by the
8 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
9 municipal committee of a political party in that municipality if a
10 member of that political party is serving in an elective public office
11 of that municipality when the contract is awarded or to any
12 candidate committee of any person serving in an elective public
13 office of that municipality when the contract is awarded; and

14 a business entity that has entered into a contract having an
15 anticipated value in excess of **[\$17,500]** the local bid threshold
16 with a municipality, or any agency or instrumentality thereof,
17 except a contract that is awarded pursuant to a fair and open
18 process, shall not make such a contribution, reportable by the
19 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
20 municipal committee of a political party in that municipality if a
21 member of that political party is serving in an elective public office
22 of that municipality when the contract is awarded or to any
23 candidate committee of any person serving in an elective public
24 office of that municipality when the contract is awarded, during the
25 term of that contract.

26 No such committee shall accept such a contribution from a
27 business entity during the term of its contract with the municipality.
28 (cf: P.L.2004, c.19, s.4)

29

30 3. Section 6 of P.L.2004, c.19 (C.19:44A-20.7) is amended to
31 read as follows:

32 6. As used in sections 2 through 12 of **[this act]** P.L.2004,
33 c.19 (C.19:44A-20.2 et seq.):

34 "business entity" means any natural or legal person, business
35 corporation, professional services corporation, limited liability
36 company, partnership, limited partnership, business trust,
37 association or any other legal commercial entity organized under
38 the laws of this State or of any other state or foreign jurisdiction;

39 "interest" means the ownership or control of more than 10% of
40 the profits or assets of a business entity or 10% of the stock in the
41 case of a business entity that is a corporation for profit, as
42 appropriate;

43 "local bid threshold" means the bid threshold or threshold
44 amount applicable to the contract at issue under the "Local Public
45 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.):

46 "fair and open process" means, at a minimum, that the contract
47 shall be: publicly advertised in newspapers or on the Internet
48 website maintained by the public entity in sufficient time to give

1 notice in advance of the contract; awarded under a process that
2 provides for public solicitation of proposals or qualifications and
3 awarded and disclosed under criteria established in writing by the
4 public entity prior to the solicitation of proposals or qualifications;
5 and publicly opened and announced when awarded. The decision of
6 a public entity as to what constitutes a fair and open process shall
7 be final.

8 "State agency in the Legislative Branch" means the Legislature
9 of the State and any office, board, bureau or commission within or
10 created by the Legislative Branch.

11 (cf: P.L.2005, c.51, s.14)

12

13 4. Section 2 of P.L.2005, c.271 (C.19:44A-20.26) is amended
14 to read as follows:

15 2. a. **【**Not later than 10 days prior to entering into any contract
16 having an anticipated value in excess of \$17,500, except for a
17 contract that is required by law to be publicly advertised for bids, a**】**

18 (1) A State agency, 【county, municipality, independent
19 authority,】 or board of education, 【or fire district】 not later than 10
20 days prior to entering into any contract having an anticipated value
21 in excess of \$17,500, except for a contract that is required by law to
22 be publicly advertised for bids; and

23 (2) a contracting unit, as defined in section 2 of the "Local
24 Public Contracts Law," P.L.1971, c.198 (C.40A:11-2), not later than
25 10 days prior to entering into any contract having an anticipated
26 value in excess of the local bid threshold, except for a contract that
27 is required by law to be publicly advertised for bids;

28 shall require any business entity bidding thereon or negotiating
29 therefor, to submit along with its bid or price quote, a list of
30 political contributions as set forth in this subsection that are
31 reportable by the recipient pursuant to the provisions of P.L.1973,
32 c.83 (C.19:44A-1 et al.) and that were made by the business entity
33 during the preceding 12-month period, along with the date and
34 amount of each contribution and the name of the recipient of each
35 contribution. A business entity contracting with a State agency
36 shall disclose contributions to any State, county, or municipal
37 committee of a political party, legislative leadership committee,
38 candidate committee of a candidate for, or holder of, a State
39 elective office, or any continuing political committee. A business
40 entity contracting with a county, municipality, independent
41 authority, other than an independent authority that is a State agency,
42 board of education, or fire district shall disclose contributions to:
43 any State, county, or municipal committee of a political party; any
44 legislative leadership committee; or any candidate committee of a
45 candidate for, or holder of, an elective office of that public entity,
46 of that county in which that public entity is located, of another
47 public entity within that county, or of a legislative district in which
48 that public entity is located or, when the public entity is a county, of

1 any legislative district which includes all or part of the county, or
2 any continuing political committee.

3 The provisions of this section shall not apply to a contract when
4 a public emergency requires the immediate delivery of goods or
5 services.

6 b. When a business entity is a natural person, a contribution by
7 that person's spouse or child, residing therewith, shall be deemed to
8 be a contribution by the business entity. When a business entity is
9 other than a natural person, a contribution by any person or other
10 business entity having an interest therein shall be deemed to be a
11 contribution by the business entity. When a business entity is other
12 than a natural person, a contribution by: all principals, partners,
13 officers, or directors of the business entity or their spouses; any
14 subsidiaries directly or indirectly controlled by the business entity;
15 or any political organization organized under section 527 of the
16 Internal Revenue Code that is directly or indirectly controlled by
17 the business entity, other than a candidate committee, election fund,
18 or political party committee, shall be deemed to be a contribution
19 by the business entity.

20 c. As used in this section:

21 "business entity" means a for-profit entity that is a natural or
22 legal person, business corporation, professional services
23 corporation, limited liability company, partnership, limited
24 partnership, business trust, association or any other legal
25 commercial entity organized under the laws of this State or of any
26 other state or foreign jurisdiction;

27 "interest" means the ownership or control of more than 10% of
28 the profits or assets of a business entity or 10% of the stock in the
29 case of a business entity that is a corporation for profit, as
30 appropriate;

31 "local bid threshold" means the bid threshold or threshold
32 amount applicable to the contract at issue under the "Local Public
33 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); and

34 "State agency" means any of the principal departments in the
35 Executive Branch of the State Government, and any division, board,
36 bureau, office, commission or other instrumentality within or
37 created by such department, the Legislature of the State and any
38 office, board, bureau or commission within or created by the
39 Legislative Branch, and any independent State authority,
40 commission, instrumentality or agency.

41 d. Any business entity that fails to comply with the provisions
42 of this section shall be subject to a fine imposed by the New Jersey
43 Election Law Enforcement Commission in an amount to be
44 determined by the commission which may be based upon the
45 amount that the business entity failed to report.

46 (cf: P.L.2007, c.304, s.1)

- 1 5. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to
2 read as follows:
- 3 2. As used in this act:
- 4 (1) "Department" means the Department of Labor and
5 Workforce Development of the State of New Jersey.
- 6 (2) "Locality" means any political subdivision of the State,
7 combination of the same or parts thereof, or any geographical area
8 or areas classified, designated and fixed by the commissioner from
9 time to time, provided that in determining the "locality," the
10 commissioner shall be guided by the boundary lines of political
11 subdivisions or parts thereof, or by a consideration of the areas with
12 respect to which it has been the practice of employers of particular
13 crafts or trades to engage in collective bargaining with the
14 representatives of workers in such craft or trade.
- 15 (3) "Maintenance work" means the repair of existing facilities
16 when the size, type or extent of such facilities is not thereby
17 changed or increased. "Maintenance work" also means any work on
18 a maintenance-related project that exceeds the scope of work and
19 capabilities of in-house maintenance personnel, requires the
20 solicitation of bids, and has an aggregate value exceeding \$50,000.
- 21 (4) "Public body" means the State of New Jersey, any of its
22 political subdivisions, any authority created by the Legislature of
23 the State of New Jersey and any instrumentality or agency of the
24 State of New Jersey or of any of its political subdivisions.
- 25 (5) "Public work" means construction, reconstruction,
26 demolition, alteration, custom fabrication, or repair work, or
27 maintenance work, including painting and decorating, done under
28 contract and paid for in whole or in part out of the funds of a public
29 body, except work performed under a rehabilitation program.
30 "Public work" shall also mean construction, reconstruction,
31 demolition, alteration, custom fabrication, or repair work, done on
32 any property or premises, whether or not the work is paid for from
33 public funds, if, at the time of the entering into of the contract the
34 property or premises is owned by the public body or:
- 35 (a) Not less than 55% of the property or premises is leased by a
36 public body, or is subject to an agreement to be subsequently leased
37 by the public body; and
- 38 (b) The portion of the property or premises that is leased or
39 subject to an agreement to be subsequently leased by the public
40 body measures more than 20,000 square feet.
- 41 (6) "Commissioner" means the Commissioner of Labor and
42 Workforce Development or his duly authorized representatives.
- 43 (7) "Workman" or "worker" includes laborer, mechanic, skilled
44 or semi-skilled, laborer and apprentices or helpers employed by any
45 contractor or subcontractor and engaged in the performance of
46 services directly upon a public work, regardless of whether their
47 work becomes a component part thereof, but does not include
48 material suppliers or their employees who do not perform services

1 at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25
2 et seq.), contractors or subcontractors engaged in custom fabrication
3 shall not be regarded as material suppliers.

4 (8) "Work performed under a rehabilitation program" means
5 work arranged by and at a State institution primarily for teaching
6 and upgrading the skills and employment opportunities of the
7 inmates of such institutions.

8 (9) "Prevailing wage" means the wage rate paid by virtue of
9 collective bargaining agreements by employers employing a
10 majority of workers of that craft or trade subject to said collective
11 bargaining agreements, in the locality in which the public work is
12 done.

13 (10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-
14 56.25 et seq.) and the rules and regulations issued hereunder.

15 (11) "Prevailing wage contract threshold amount" means:

16 (a) In the case of any public work paid for in whole or in part
17 out of the funds of a **【municipality in the State of New Jersey】**
18 contracting unit, as defined in section 2 of the "Local Public
19 Contracts Law," P.L.1971, c.198 (C.40A:11-2) or done on property
20 or premises owned by a **【public body】** contracting unit or leased or
21 to be leased by **【the municipality,** the dollar amount established for
22 the then current calendar year by the commissioner through rules
23 and regulations promulgated pursuant to the "Administrative
24 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which
25 amount shall be equal to \$9,850 on July 1, 1994 and which amount
26 shall be adjusted on July 1 every five calendar years thereafter in
27 direct proportion to the rise or fall in the average of the Consumer
28 Price Indices for Urban Wage Earners and Clerical Workers for the
29 New York metropolitan and the Philadelphia metropolitan regions
30 as reported by the United States Department of Labor during the
31 last full calendar year preceding the date upon which the adjustment
32 is made**】** a contracting unit, the local bid threshold applicable to the
33 contract at issue under the "Local Public Contracts Law," P.L.1971,
34 c.198 (C.40A:11-1 et seq.); and

35 (b) In the case of any public work other than a public work
36 described in paragraph (a) of this subsection, an amount equal to
37 \$2,000.

38 (12) "Custom fabrication" means the fabrication of plumbing,
39 heating, cooling, ventilation or exhaust duct systems, and
40 mechanical insulation.

41 (cf: P.L.2009, c.249, s.2)

42
43 6. This act shall take effect immediately.

44
45 STATEMENT

46
47 An unintended consequence of two bodies of law, the "Pay to
48 Play" laws, P.L.2004, c.19 and P.L.2005, c.271 (C.19:44A-20.4 et

1 al) and the "New Jersey Prevailing Wage Act," P.L.1963,
2 c.150 (C.34:11-56.25 et seq.) is to make it difficult for small, local
3 businesses to contract with municipalities and counties. These
4 bodies of law impose requirements and costs on businesses which
5 contract with public entities for relatively modest dollar amounts.
6 The threshold dollar amounts set under these laws is lower than the
7 bid threshold amounts authorized under the "Local Public Contracts
8 Law."

9 Under current law, the governing bodies of counties,
10 municipalities, and other contracting units subject to the "Local
11 Public Contracts Law" (LPCL) may authorize a purchasing agent or
12 other employee to award contracts below a certain dollar amount
13 without public advertising for bids. The statutory bid threshold is
14 \$17,500, however, a contracting unit that has appointed a "qualified
15 purchasing agent" (QPA), can set the bid threshold at a higher
16 amount. The statute provides that a contracting unit with a QPA
17 can set the bid threshold at up to \$25,000, which amount is adjusted
18 by the Governor every five years to account for inflation. The
19 Governor's adjusted threshold amount currently allows contracting
20 units that have appointed a QPA to set the bid threshold at up to
21 \$36,000. The bid threshold is next scheduled to be adjusted by the
22 Governor on July 1, 2015.

23 The pay-to-play laws require contracts above \$17,500 to be
24 awarded pursuant to a fair and open process. The "New Jersey
25 Prevailing Wage Act" stipulates the payment of prevailing wage
26 rates for workers on construction projects that are subsidized by
27 public funds of over \$2,000, in the case of counties, and an amount
28 below \$17,500, in the case of municipalities.

29 This bill amends the threshold amounts under the pay to play and
30 prevailing wage laws to make them the same as the amount
31 applicable to the contract under the LPCL.