SENATE, No. 1592

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

SYNOPSIS
Allows establishment of county-wide purchasing system for certain school district services in certain counties; 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.

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

1. (New section) a. In order to take advantage of economies of scale and administrative efficiencies in the purchase of services, a local unit that is a county that has been classified as an eligible county pursuant to subsection j. of this section may adopt a resolution or ordinance, as appropriate to its form of government, establishing a county-wide purchasing system for providing custodial services, food services, or both, to school districts within the county.

A county may not adopt a resolution or ordinance pursuant to this subsection unless: a notice of a public meeting to discuss the resolution or ordinance is posted in the newspapers of the county and through any other means deemed appropriate at least 30 days prior to the meeting; following the meeting, a period of no less than 60 days is provided during which members of the public will have the opportunity to submit comments on the proposal to establish a county-wide purchasing system; and upon review of all comments and submissions, the county provides a written response to the comments.

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

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

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

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

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

(2) A county that establishes a county-wide contract pursuant to subsection a. of this section shall appoint an advisory committee, consisting of one representative from each school district that is subject to the county-wide contract, to assist with reviewing and evaluating requests for proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Nothing in this section shall be interpreted to encourage the further privatization of any custodial or food services position currently held or currently filled by a public employee.
h. Any administrative employee whose position is eliminated due to implementation of this section shall receive terminal leave pay, as set forth in paragraph (2) of subsection a. of section 19 of the “Uniform Shared Services and Consolidation Act,” P.L.2007, c.63 (C.40A:65-19).

i. A school district participating in a county-wide contract pursuant to this section may elect to discontinue its participation and perform the services at issue directly with public employees by notifying the county no less than 20 days before the end of the contract term. If the county-wide contract is for a term greater than three years, a school district participating in the contract may elect to discontinue its participation and perform the services at issue directly with public employees after the third year of the contract by providing the county with 30 days notice.

j. As used in this section, “eligible county” means Camden County, Gloucester County, Middlesex County, Passaic County, and Union County.

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

“Predecessor employer” means a school district or a contractor which provided food or custodial services for a school district and which ceases to provide such services.

“Service employee” means an employee employed on or around school district premises and central kitchens to provide food or custodial services, except for managerial, executive, confidential employees, and employees who work less than four hours a week.

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

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

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

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

(2) notify the collective bargaining representative of the affected service employees, if any, of the successor contractor and provide to the collective bargaining representative a copy of the list of service employees prepared pursuant to paragraph (1) of this subsection; and
(3) ensure that a notice is conspicuously posted at any site at which service employees perform their duties, setting forth the rights provided under this section in the same location and manner that other statutorily required notices to employees are posted.

d. The successor contractor shall:
   (1) offer employment during a 90-day transition employment period to all service employees employed by the predecessor employer;
   (2) not discharge, without just cause, an employee retained in accordance with this section during the 90-day transition period; and
   (3) perform a written performance evaluation for each employee retained in accordance with this section at the end of the 90-day transition period and offer those employees whose performance was satisfactory, continued employment under the terms and conditions of employment established by the successor contractor or as required by law.

3. (New section) a. As used in this section:
   "Employee" means any employee, whether employed on a full or part-time basis, of an employer.
   "Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, county college, State college, public college or university under the authority of the Secretary of Higher Education, or board or commission under the authority of the Commissioner of Education or the State Board of Education.
   "Recall rights" means any employee dismissed as a result of subcontracting shall be placed and remain upon a preferred eligibility list, in the order of years of service, for reemployment whenever vacancies occur and shall be reemployed in such order, and upon reemployment shall be given full recognition for previous years of service in his respective positions and employments.
   "Subcontracting" means any action, practice, or effort by an employer which results in any services or work performed by any of its employees being performed or provided by any other person, vendor, corporation, partnership, or entity.
   "Subcontracting agreement" means any agreement or arrangement entered into by an employer to implement subcontracting, but shall not include any contract entered into pursuant to the "Uniform Shared Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-1 et seq.), or any contract entered into to provide services to nonpublic schools through State or federal funds, or any contract in which it is required by law that workers be paid the prevailing wage determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).
   b. Except for actions of an employer expressly required or
prohibited by the provisions of this section, all aspects or actions
relating to or resulting from an employer's decision to subcontract
including, but not limited to, whether or not severance pay is
provided, shall be mandatory subjects of negotiations.

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

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

(2) has offered the majority representative of the employees in
each collective bargaining unit which may be affected by the
subcontracting agreement the opportunity to meet and consult with
the employer to discuss the decision to subcontract, and the
opportunity to engage in negotiations over the impact of the
subcontracting. The employer's duty to negotiate with the majority
representative of the employees in each collective bargaining unit
shall not preclude the employer's right to subcontract should no
successor agreement exist.

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

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

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

4. Section 54 of P.L.2007, c.63 (C.18A:7-12) is amended to
read as follows:
54. **a.** A local school district may apply to the executive county superintendent of schools to have school district services including, but not limited to, transportation, personnel, purchasing, payroll, and accounting, assumed by the office of the superintendent. If the executive county superintendent determines to assume a service, a fee may be assessed the school district for the service. The executive county superintendent of schools may utilize county special services school districts, jointure commissions, and educational services commissions to provide services to local school boards.

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

**c.** Nothing in this section shall be interpreted to encourage the further privatization of any custodial or food services position currently held or currently filled by a public employee.

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

5. This act shall take effect immediately.

**STATEMENT**

The bill permits Camden, Gloucester, Middlesex, Passaic and Union Counties to establish a county-wide purchasing system to provide custodial or food services, or both, to school districts within the county. These contracts will be awarded to contractors using the competitive contracting process set forth in the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.). If a county establishes a county-wide purchasing system and a school district in the county is currently using a private contractor for the service, the district will be required to participate in the county-wide contract.

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

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

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

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

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

The bill also provides protection for food or custodial services employees employed on school district premises during a transition to employment by a successor contractor, which is defined in the bill as a contractor that has been awarded a food or custodial services contract. Under the provisions of the bill, a successor contractor must offer employment during a 90-day transition employment period to all service employees providing food or custodial services employed by the predecessor employer, whether that predecessor employer is a school district or another contractor providing food or custodial services for the school district. The bill prohibits a successor contractor from discharging, without just cause, a retained employee during that transition period, and must perform a written performance evaluation for each retained employee at the end of the transition period. Employees whose performance was satisfactory, must be offered continued employment by the successor contractor. This provision will apply in the case of participation in a county-wide contract for food or custodial services, in the case of a district privatizing these services, or in the case of a change from one private contractor to another private contractor for these services.

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