

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.



S1592 RICE

2

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 that has been classified as an eligible
11 county pursuant to subsection j. of this section may adopt a
12 resolution or ordinance, as appropriate to its form of government,
13 establishing a county-wide purchasing system for providing
14 custodial services, food services, or both, to school districts within
15 the county.

16 A county may not adopt a resolution or ordinance pursuant to
17 this subsection unless: a notice of a public meeting to discuss the
18 resolution or ordinance is posted in the newspapers of the county
19 and through any other means deemed appropriate at least 30 days
20 prior to the meeting; following the meeting, a period of no less than
21 60 days is provided during which members of the public will have
22 the opportunity to submit comments on the proposal to establish a
23 county-wide purchasing system; and upon review of all comments
24 and submissions, the county provides a written response to the
25 comments.

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

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

38 Notwithstanding the provisions of any other law to the contrary,
39 a school district seeking to contract for a service subject to a
40 county-wide contract shall acquire the service only through that
41 county-wide contract. Any school district bid document or contract
42 for a service that is eligible to be acquired through the county-wide
43 contract shall be beyond the authority of the school district to
44 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.

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

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

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

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

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

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

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

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

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

46 (2) offers the majority representative of the employees in each
47 collective bargaining unit which may be affected by the district's
48 participation in the county-wide contract the opportunity to meet

1 and consult with the school district to discuss the decision to
2 participate in the county-wide contract, and the opportunity to
3 engage in negotiations over the impact of participation. The school
4 district's duty to negotiate with the representative of the employees
5 in each collective bargaining unit shall not preclude the school
6 district's right to participate in the county-wide contract should no
7 successor agreement exist.

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

13 A district that violates any provision of this subsection 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 subsection.

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

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

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

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

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

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

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

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

15 j. As used in this section, "eligible county" means Camden
16 County, Gloucester County, Middlesex County, Passaic County,
17 and Union County.

18
19 2. (New section) a. As used in this section:

20 "Predecessor employer" means a school district or a contractor
21 which provided food or custodial services for a school district and
22 which ceases to provide such services.

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

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

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

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

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

44 (2) notify the collective bargaining representative of the affected
45 service employees, if any, of the successor contractor and provide
46 to the collective bargaining representative a copy of the list of
47 service employees prepared pursuant to paragraph (1) of this
48 subsection; and

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

5 d. The successor contractor shall:

6 (1) offer employment during a 90-day transition employment
7 period to all service employees employed by the predecessor
8 employer;

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

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

18

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

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

22 "Employer" means any local or regional school district,
23 educational services commission, jointure commission, county
24 special services school district, county college, State college, public
25 college or university under the authority of the Secretary of Higher
26 Education, or board or commission under the authority of the
27 Commissioner of Education or the State Board of Education.

28 "Recall rights" means any employee dismissed as a result of
29 subcontracting shall be placed and remain upon a preferred
30 eligibility list, in the order of years of service, for reemployment
31 whenever vacancies occur and shall be reemployed in such order,
32 and upon reemployment shall be given full recognition for previous
33 years of service in his respective positions and employments.

34 "Subcontracting" means any action, practice, or effort by an
35 employer which results in any services or work performed by any of
36 its employees being performed or provided by any other person,
37 vendor, corporation, partnership, or entity.

38 "Subcontracting agreement" means any agreement or
39 arrangement entered into by an employer to implement
40 subcontracting, but shall not include any contract entered into
41 pursuant to the "Uniform Shared Services and Consolidation Act,"
42 P.L.2007, c.63 (C.40A:65-1 et seq.), or any contract entered into to
43 provide services to nonpublic schools through State or federal
44 funds, or any contract in which it is required by law that workers be
45 paid the prevailing wage determined by the Commissioner of Labor
46 and Workforce Development pursuant to the provisions of the "New
47 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
48 seq.).

49 b. Except for actions of an employer expressly required or

1 prohibited by the provisions of this section, all aspects or actions
2 relating to or resulting from an employer's decision to subcontract
3 including, but not limited to, whether or not severance pay is
4 provided, shall be mandatory subjects of negotiations.

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

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

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

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

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

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

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

1 54. a. A local school district may apply to the executive county
2 superintendent of schools to have school district services including,
3 but not limited to, transportation, personnel, purchasing, payroll,
4 and accounting, assumed by the office of the superintendent. If the
5 executive county superintendent determines to assume a service, a
6 fee may be assessed the school district for the service. The
7 executive county superintendent of schools may utilize county
8 special services school districts, jointure commissions, and
9 educational services commissions to provide services to local
10 school boards.

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

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

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

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24 5. This act shall take effect immediately.

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STATEMENT

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

38 In addition, the bill requires a district that is using its own
39 employees to provide custodial or food services to participate in a
40 county-wide contract if it determines to privatize the service. Prior
41 to participating in the county-wide contract, however, the bill
42 requires that the district meet certain criteria, including holding a
43 public hearing on the proposal to participate, providing a period
44 during which the public will have the opportunity to submit
45 comments on the proposal, and providing written responses to the
46 comments. A district in these circumstances will not be permitted
47 to participate in the county-wide contract during the term of an
48 existing collective bargaining agreement with employees who will

1 be affected by the participation in the county-wide contract, and
2 after the term of the agreement, the district may participate only
3 after:

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

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

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

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

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

40 The bill includes a provision that applies to all subcontracting by
41 any of the following employers: any local or regional school
42 district, educational services commission, jointure commission,
43 county special services school district, county college, State
44 college, public college or university under the authority of the
45 Secretary of Higher Education, or board or commission under the
46 authority of the Commissioner of Education or the State Board of
47 Education. Under this provision, during the term of an existing
48 collective bargaining agreement covering its employees, the

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1 employer is prohibited from entering into a subcontracting
2 agreement which affects the employment of those employees.
3 Following the term of a collective bargaining agreement, the
4 employer is permitted to enter into a subcontracting agreement only
5 if the employer provides similar notice and opportunity to negotiate
6 over the impact of the subcontracting agreement as described above
7 in relation to the decision by a school district to participate in a
8 county-wide contract. As in that case, each employee replaced or
9 displaced because of a subcontracting agreement would retain all
10 previously acquired seniority and will have recall rights when the
11 subcontracting terminates.