

ASSEMBLY, No. 885

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 34 (Essex and Passaic)

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SYNOPSIS

Establishes pilot program to allow certain counties and municipalities to use single firm for design and inspection services on certain transportation projects.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning design and inspection services for certain
2 transportation projects and supplementing Title 40A of the New
3 Jersey Statutes.

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

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Commissioner” means the Commissioner of Transportation.

11 “Design professional” means the entity, whether natural person,
12 partnership, joint stock company, corporation, trust, professional
13 corporation, business association, or other legal business entity or
14 successor, that proposes to design any public project, who is
15 registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-
16 56.48 et seq.), and classified by the New Jersey Division of
17 Property Management and Construction or the New Jersey
18 Department of Transportation, where applicable, to perform design
19 services.

20 “Design services” means architectural, engineering, and related
21 design services provided by a design professional.

22 “Federal aid highway” means any highway within the State in
23 connection with which the State receives payment or reimbursement
24 from the federal government under the terms of Title 23 of the
25 United States Code or any amendment, successor, or replacement
26 thereof.

27 “Federal aid highway funds” means federal funds authorized by
28 Congress to assist the states in providing for construction,
29 reconstruction, and improvement of highways and bridges on
30 eligible federal aid highways and for other special purpose
31 programs and projects.

32 “Inspection professional” means the entity, whether natural
33 person, partnership, joint stock company, corporation, trust,
34 professional corporation, business association, or other legal
35 business entity or successor, that proposes to design any public
36 project, who is registered pursuant to the provisions of P.L.1999,
37 c.238 (C.34:11-56.48 et seq.), and classified by the New Jersey
38 Division of Property Management and Construction or the New
39 Jersey Department of Transportation, where applicable, to perform
40 inspection services.

41 “Inspection services” means construction inspection, surveying
42 and materials testing, quality control inspection, and other
43 inspection services provided by an inspection professional.

44 “Professional firm” means any individual, firm, partnership,
45 corporation, association or other legal entity permitted by law to
46 provide professional engineering services in this State.

1 2. a. Notwithstanding the provisions of any law, rule, or
2 regulation to the contrary, the Department of Transportation shall
3 establish a five-year pilot program to evaluate the costs and benefits
4 of allowing a professional firm to provide both design services and
5 inspection services for a project that receives federal aid highway
6 funds.

7 b. The Commissioner of Transportation shall select three
8 counties in the State to participate in the pilot program. The
9 counties shall be selected as follows: the county in the State with
10 the largest population according to the most recent federal decennial
11 census; the county in the State with the smallest population
12 according to the most recent federal decennial census; and a third
13 county, determined by the commissioner, provided that each of the
14 three counties selected to participate in the pilot program shall be of
15 a different class as determined pursuant to N.J.S.40A:6-1.

16 c. The commissioner shall review the conflict of interest
17 protocol submitted by a municipality or county pursuant to
18 subsection b. of section 3 of P.L. , c. (C.) (pending
19 before the Legislature as this bill) or subsection b. of section 4 of
20 P.L. , c. (C.) (pending before the Legislature as
21 this bill) and shall determine, within 10 days of receipt of the
22 protocol, whether the protocol is consistent with all federal and
23 State laws, rules, and regulations including, but not limited to, those
24 requirements specified in 23 C.F.R. s.1.33, 23 C.F.R. s.172.9, 23
25 C.F.R. s.635.105, 23 C.F.R. s.636.116, and 23 C.F.R. s.636.117. If
26 the commissioner determines that a municipality's or county's
27 protocol is consistent with all federal and State laws, rules, and
28 regulations, the commissioner shall approve the municipality or
29 county to participate in the pilot program. If the commissioner
30 determines that a municipality's or county's protocol is not
31 consistent with all federal and State laws, rules, and regulations, the
32 commissioner shall not approve the municipality or county to
33 participate in the pilot program.

34
35 3. A municipality in a county selected by the commissioner
36 pursuant to subsection b. of section 2 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) to participate in the
38 pilot program shall be permitted, pursuant to the provisions of
39 P.L. , c. (C.) (pending before the Legislature as this
40 bill), to select a professional firm to provide design services and
41 inspection services for a municipal project that receives aid federal
42 aid highway funds provided that:

43 a. the municipality develops a conflict of interest protocol
44 consistent with all federal and State laws, rules, and regulations
45 including, but not limited to, those requirements specified in 23
46 C.F.R. s.1.33, 23 C.F.R. s.172.9, 23 C.F.R. s.635.105, 23 C.F.R.
47 s.636.116, and 23 C.F.R. s.636.117;

1 b. the municipality submits its conflict of interest protocol to
2 the commissioner;

3 c. the municipality is approved by the commissioner to
4 participate in the program pursuant to subsection c. of section 2 of
5 P.L. , c. (C.) (pending before the Legislature as
6 this bill); and

7 d. the municipality submits annual reports to the commissioner
8 as required pursuant to section 5 of P.L. , c. (C.)
9 (pending before the Legislature as this bill).

10

11 4. A county selected by the commissioner pursuant to
12 subsection b. of section 2 of P.L. , c. (C.) (pending before
13 the Legislature as this bill) to participate in the pilot program shall
14 be permitted, pursuant to the provisions of P.L. , c. (C.)
15 (pending before the Legislature as this bill), to select a professional
16 firm to provide design services and inspection services for a county
17 project that receives federal aid highway funds provided that:

18 a. the county develops a conflict of interest protocol consistent
19 with all federal and State laws, rules, and regulations including, but
20 not limited to, those requirements specified in 23 C.F.R. s.1.33, 23
21 C.F.R. s.172.9, 23 C.F.R. s.635.105, 23 C.F.R. s.636.116, and 23
22 C.F.R. s.636.117;

23 b. the county submits its conflict of interest protocol to the
24 commissioner;

25 c. the county is approved by the commissioner to participate in
26 the program pursuant to subsection c. of section 2 of P.L. ,
27 c. (C.) (pending before the Legislature as this bill); and

28 d. the county submits annual reports to the commissioner as
29 required pursuant to section 5 of P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31

32 5. A municipality or county participating in the pilot program
33 established pursuant to P.L. , c. (C.) (pending
34 before the Legislature as this bill) shall submit a report every 12
35 months to the commissioner detailing the projects that receive
36 federal aid highway funds for which a professional firm provides
37 design services and inspection services. The report shall include
38 any cost savings, efficiencies, or other benefits gained from using
39 the same professional firm to provide design services and inspection
40 services. The report shall also include any conflict of interest issues
41 or other costs or inefficiencies that resulted from selecting a single
42 professional firm to provide both design services and inspection
43 services. The commissioner shall prepare and submit an annual
44 report to the Governor, the President of the Senate, the Speaker of
45 the General Assembly, and the Senate Transportation Committee
46 and the Assembly Transportation and Independent Authorities
47 Committee, or their successor committees, describing the pilot
48 program developed pursuant to P.L. , c. (C.) (pending

1 before the Legislature as this bill), including all identified costs and
2 benefits. The first report shall be submitted no later than one year
3 after the effective date of P.L. , c. (C.) (pending before
4 the Legislature as this bill). Thereafter, subsequent reports shall be
5 submitted annually for the duration of the five-year pilot program
6 prescribed by P.L. , c. (C.) (pending before the Legislature
7 as this bill), with the fifth and final report providing a
8 comprehensive review of the pilot program, including but not
9 limited to, an evaluation of the program's effectiveness, a
10 discussion of extending the program to other counties and
11 municipalities in the State, and any other information relevant to the
12 report.

13
14 6. The Commissioner of Transportation shall, in accordance
15 with the "Administrative Procedure Act," P.L.1968,
16 c.410 (C.52:14B-1 et seq.), promulgate rules and regulations to
17 effectuate the purposes of this act.

18
19 7. This act shall take effect on the first day of the seventh
20 month following enactment, but the Commissioner of
21 Transportation may take such anticipatory administrative action in
22 advance as may be necessary for the implementation of this act.

23 24 25 STATEMENT

26
27 This bill requires the Department of Transportation (department)
28 to establish a five-year pilot program to evaluate the costs and
29 benefits of allowing a professional firm to provide both design
30 services and inspection services for a project that receives federal
31 aid highway funds. The Commissioner of Transportation
32 (commissioner) is to select three counties in the State to participate
33 in the pilot program: (1) the county with the largest population; (2)
34 the county with the smallest population; and (3) one additional
35 county determined by the commissioner provided that each of the
36 three counties selected to participate in the pilot program are of a
37 different class.

38 A county or a municipality in a county approved to participate in
39 the program is required to submit a conflict of interest protocol to
40 the commissioner for review. The municipality or county may only
41 be approved to participate in the pilot program if the commissioner
42 determines that the conflict of interest protocol is consistent with all
43 federal and State laws governing conflicts of interest.

44 A municipality or county participating in the pilot program is
45 required to submit an annual report to the commissioner detailing
46 the projects receiving federal aid highway funds for which a
47 professional firm provides design services and inspection services.
48 The commissioner is required to submit an annual report to the

1 Governor, the President of the Senate, the Speaker of the General
2 Assembly, and the Senate Transportation Committee and the
3 Assembly Transportation and Independent Authorities Committee,
4 or their successor committees, describing the pilot program,
5 including all identified costs and benefits.