

ASSEMBLY, No. 4474

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

SYNOPSIS

Establishes educational service agencies for procuring custodial and food services in schools and ensures certain employee rights for affected employees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/30/2020)

1 AN ACT concerning custodial and food services in public schools
2 and supplementing chapter 18A of Title 18A of the New Jersey
3 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 this act:

9 “Agency” means an educational service agency.

10 “Board of directors” means the governing body of an educational
11 service agency established pursuant to section 4 of this act.

12 “Cooperative pricing system” means a purchasing system in
13 which the educational service agency advertises for bids or
14 proposals, and awards a master contract that includes estimated
15 quantities and the prices to be extended to school districts within its
16 zone and participating nonpublic schools along with other
17 specifications. School districts and participating nonpublic schools
18 may engage in subordinate contracts with the vendor, subject to the
19 specifications in the master contract. The master contract shall be
20 controlling with respect to specifications and prices, even though
21 quantities are contracted through subordinate contracts.

22 “Covered service” means custodial and food services.

23 “Educational service agency” means an agency, serving as a
24 cooperative of school districts and their respective boards of
25 education, established to contract for custodial and food services on
26 behalf of school districts within its zone.

27 “Predecessor employer” means a school district or a contractor
28 which provided food or custodial services for a school district or an
29 educational service agency and which ceases to provide these
30 services.

31 “Recall rights” means the right of any employee dismissed as the
32 result of the adherence to an educational service agency master
33 contract to be placed and remain upon a preferred eligibility list, in
34 the order of years of service, for reemployment whenever vacancies
35 occur and to be reemployed in such order, and upon reemployment
36 be given full recognition for previous years of service in their
37 respective positions and employments.

38 “Representative assembly” means a body established pursuant to
39 section 3 of this act composed of representatives from each member
40 school district.

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

45 “Successor contractor” means a contractor that has been awarded
46 a food or custodial services contract to provide services that, in
47 whole or in part, are substantially similar to those food or custodial

1 services provided by a predecessor employer within the preceding
2 90 days.

3
4 2. a. There shall be established an educational service agency
5 in each county. The zones of each respective agency shall be
6 coterminous with the county in which it is located. Notwithstanding
7 any provision of law to the contrary, membership in an agency shall
8 be automatic for each school district in that zone that has chosen to
9 use a private contractor with respect to a covered service, except
10 that in cases in which the contractor has chosen to contract for only
11 one type of covered service their membership shall be automatic
12 only for that specific covered service.

13 b. Notwithstanding the provisions of any other law to the
14 contrary, a school district seeking to contract for a service included
15 in subsection a. of this section, shall acquire the service only
16 through the master contract awarded by the educational service
17 agency, beginning in the first school year following the
18 establishment of the educational service agency in the respective
19 county. An educational service agency may petition for an
20 extension by a majority vote of the board of directors, which the
21 commissioner may grant upon a determination that the educational
22 service agency is not yet prepared to enter into a master contract for
23 the provision of the covered services. If an extension is granted,
24 member school districts seeking to contract for a covered service
25 shall acquire the service only through a master contract awarded by
26 the educational services agency, beginning in the second school
27 year following the establishment of the educational service agency.
28 Any school district bid document or contract for a service that is
29 included in subsection a. of this section which is not part of the
30 master contract shall be beyond the authority of the school district
31 to advertise or award, and shall be void from its inception.

32 c. This act shall not be construed to void or impair any existing
33 contract between a school district and a private contractor for a
34 covered service executed prior to the effective date of this act,
35 except that such a contract shall not be renewed or extended. Upon
36 the expiration of such a previously existing contract, the school
37 district shall utilize the master contract if the district continues to
38 utilize a private contractor.

39 d. No entity other than a school district or a nonpublic school
40 that is a child nutrition program operator under federal law, shall be
41 eligible to be a part of a contract reached by the educational service
42 agency.

43
44 3. a. Each member school district shall select a board of
45 education member, the superintendent, or chief school
46 administrator, as its representative on the representative assembly.
47 The first representative assembly shall organize upon the call of the
48 executive county superintendent. Thereafter the representative

- 1 assembly shall organize annually during the first week of June and
2 meet at such other times as are necessary.
- 3 b. The representative assembly shall adopt a budget for the
4 educational service agency.
- 5 c. The representative assembly shall counsel and advise the
6 board of directors established pursuant to section 4 of this act on the
7 provision of services and facilitate the coordination and provision
8 of those services with member districts.
- 9 d. The representative assembly shall elect by a majority vote
10 from among its members, a board of directors to serve until the next
11 annual organization meeting.
- 12
- 13 4. a. Each educational service agency established pursuant to
14 section 2 of this act shall establish a board of directors, which shall
15 consist of no more than 15 members. The board of directors of an
16 agency which has 15 or fewer member districts shall be comprised
17 of all members of the representative assembly. Each member of the
18 board of directors shall have one vote. Members shall serve without
19 compensation but shall be entitled to reimbursement for all
20 reasonable and necessary expenses. Upon election, the board of
21 directors shall elect a president and vice-president who shall also
22 serve until the next organization meeting.
- 23 b. The board of directors shall meet for the transaction of
24 business at least once every two months throughout the year. A
25 written record of all action taken by the board of directors shall be
26 forwarded to the members of the representative assembly after each
27 meeting of the board.
- 28 c. The board shall not enter into a contract until the contract
29 has been presented and passed upon at a regularly called meeting of
30 the board. The board may pay a bill or a demand for money against
31 it by action of the board or as provided in section 4 of P.L.1982,
32 c.196 (C.18A:19-4.1).
- 33 d. The board may designate its president, its vice-president,
34 and one other member of the board as an executive committee to
35 administer the affairs of the board of directors between regularly
36 convened meetings of the board.
- 37 e. A quorum shall consist of a majority of the members of the
38 board of directors.
- 39 f. The board of directors shall be a body corporate, and shall
40 be known as “the board of directors of ” (here shall be
41 inserted a suitable name to be adopted by the board of directors
42 with the approval of the State Board of Education, but the name
43 shall contain at least the name of the county in which the
44 educational service agency is located). The board of directors may
45 purchase, lease-purchase, or lease personal or real property in
46 accordance with rules and regulations to be adopted by the State
47 Board of Education.

1 g. The board of directors shall adopt and employ such a system
2 of bookkeeping and accounting as may be prescribed by the State
3 Board of Education. The board of directors shall comply with the
4 requirements for audit prescribed in chapter 23 of Title 18A for
5 public school districts.

6 h. The board of directors may enter into a contract with and
7 receive and administer funds and grants from any individual or
8 agency, including but not limited to, agencies of the federal
9 government of the United States, provided that the funds or grants
10 are for services for which the agency has received approval from
11 the State board pursuant to sections 2 and 19 of P.L.1968, c.243
12 (C.18A:6-52 and 18A:6-69).

13 i. The board of directors may enter into a contract with a
14 nonpublic school for the provision of covered services.

15 j. The board of directors may establish minimum wage,
16 benefits, and paid leave standards for its employees and contractors,
17 in accordance with State and federal law.

18

19 5. The board of directors shall appoint a suitable person to be
20 the superintendent or chief school administrator of the agency. The
21 person shall possess a certificate appropriate to the position of
22 superintendent or chief school administrator as prescribed under
23 rules of the State Board of Examiners. The superintendent or chief
24 school administrator shall have a seat on the board of directors, but
25 no vote. The superintendent or chief school administrator shall have
26 the same powers as are conferred upon superintendents of schools
27 by Title 18A of the New Jersey Statutes.

28

29 6. The board of directors shall appoint a suitable person to be
30 its secretary and shall fix that person's compensation and term of
31 employment. The secretary shall before entering upon the duties of
32 the office execute and deliver to the board a bond in a sum to be
33 fixed by it, with surety to be approved by the board, conditioned for
34 the faithful performance of the duties of his office. The board may
35 accept the bond of a company authorized to execute surety bonds,
36 and may pay the annual premium or fee for the bond as an agency
37 expense. The secretary shall enjoy the same rights and benefits as
38 are enjoyed by persons holding office, position, or employment
39 under a public school district board of education. The powers and
40 duties of the secretary of the board of directors shall be prescribed
41 by the board including, but not limited to, the following:

42 a. Record in a suitable book all proceedings of the board;

43 b. Pay out on warrants signed by the president and another
44 member of the board;

45 c. Report to the board at each regular meeting:

46 (1) The amount of the total appropriations and the cash receipts
47 for each account;

1 (2) The amount for which warrants have been drawn and the
2 amount of orders for all contractual obligations since the date of his
3 last report;

4 (3) The accounts against which the warrants have been drawn
5 and the accounts against which the contractual obligations are
6 chargeable; and

7 (4) The cash balance and free balance to the credit of each
8 account.

9 d. Notify all members of the board of all regular meetings of
10 the
11 board;

12 e. Notify all members of the board of special meetings of the
13 board when ordered by the president to do so, or when requested to
14 do so by a petition in writing signed by at least one-third of the
15 members of the board;

16 f. During the month of November in each year, report to the
17 board a detailed audit report of its financial transactions during the
18 preceding fiscal year, and file a copy thereof with the executive
19 county superintendent of the county in which the agency is located.
20 The report shall itemize all expenses, indicating which are agency
21 expenses and which are expenses of each service offered. Where
22 appropriate, the report shall indicate which agency expenses can be
23 reasonably charged to specific services. The report shall also
24 indicate the amount and disposition of revenues derived from
25 membership charges of school districts and nonpublic schools and
26 from each service; and

27 g. Notify all members of the representative assembly of
28 meetings of the board of directors and record all transactions.

29

30 7. a. The representative assembly shall annually, on or before
31 March 8, adopt a budget for the ensuing fiscal year, which shall
32 contain the estimated cost of providing each service, and shall
33 submit the budget within three days of adoption to the board of
34 directors for approval.

35 b. By January 15 prior to the adoption of the budget, the board
36 shall notify each member school district and nonpublic school of
37 the fees to be charged for each service to school districts and
38 nonpublic schools for the ensuing school year and of the method by
39 which the agency expenses shall be funded. The agency expenses
40 may be paid from one or more of the following sources:

41 (1) unappropriated balances from the prebudget year;

42 (2) anticipated surpluses to be generated by fees for services;

43 (3) payments by member districts;

44 (4) payments by nonpublic schools; and

45 (5) anticipated miscellaneous revenues.

46 c. Payments shall be made by member districts to pay for all or
47 part of the agency expenses. Each member district's share shall be
48 determined as the proportion which the total public school

1 enrollment in the school district on the last school day prior to
2 October 16 of the year in which the budget is made bears to the
3 total public school enrollment for all member districts on the last
4 school day prior to October 16 or in any other manner agreed to by
5 two-thirds of the members of the representative assembly. Payment
6 of the member district's share of the agency expenses, when so
7 determined, shall be an obligation of a member school district, and
8 payments shall be made during the school year for which the budget
9 shall have been made in a manner determined by the representative
10 assembly.

11 d. The agency may enter into contracts to provide these
12 services to nonpublic schools. The board of directors shall
13 determine the fee to be charged for providing each service to
14 nonpublic schools. In no case shall the fees charged to nonpublic
15 schools be less than the fee that would be charged to an
16 equivalently sized school district.

17 e. Notwithstanding any provision of this act to the contrary, a
18 school district shall not be required to undertake any additional
19 direct expenditures. If the savings in contract and administrative
20 costs are not sufficient to offset any additional expenditures, then
21 the school district shall notify the executive county superintendent
22 who shall estimate the difference between the school district's
23 relevant direct expenditures prior to its adhesion to the master
24 contract, adjusted for inflation, and its direct expenditures as a
25 member school district, and the State shall pay for the difference
26 during a five year transition period.

27

28 8. a. The agency shall operate as a cooperative pricing system.

29 b. The provision of services shall be conducted pursuant to the
30 "Public School Contracts Law," N.J.S.18A:18A-1 et seq., and
31 notwithstanding any law to the contrary, contracts for covered
32 services shall be secured via competitive contracting. Criteria for
33 evaluating proposals shall include, but shall not be limited to, the
34 contractor's previous experience with the provision of similar
35 supplies, materials, and services.

36 c. Prior to awarding any contract, the terms of all contracts
37 pending final approval shall be disclosed on the educational service
38 agency's website at least 20 days prior to the final approval of the
39 contract.

40 d. The educational service agency shall create and maintain a
41 webpage listing the services for which it has entered into a county-
42 wide contract.

43

44 9. The board of directors may employ such persons as
45 necessary to perform its administrative duties, subject to the
46 provisions of Title 18A for the employment of personnel for public
47 school districts, and subject to the rules of the State Board of
48 Examiners for the employment of persons whose office, position, or

1 employment requires them to hold an appropriate certificate issued
2 by the State Board of Examiners. Persons holding office, position,
3 or employment under a board of directors of an agency shall enjoy
4 the same rights and benefits as are enjoyed by persons holding
5 office, position, or employment under a public school district board
6 of education.

7
8 10. a. If a school district is currently not using a private
9 contractor to provide a covered service, the district shall not adhere
10 to an educational service agency contract for that covered service
11 when doing so would affect the employment of any employees in a
12 collective bargaining unit represented by a majority representative
13 during the term that an existing collective bargaining agreement
14 with the majority representative is in effect unless the school
15 district:

16 (1) provides written notice at least 90 days prior to its adhesion
17 to the agency's master contract to the majority representative of
18 employees in each collective bargaining unit which may be affected
19 and to the New Jersey Public Employment Relations Commission;
20 and

21 (2) offers the majority representative of the employees in each
22 collective bargaining unit which may be affected the opportunity to
23 meet and consult with the school district to discuss the potential
24 adhesion to the agency's master contract, and the opportunity to
25 engage in negotiations over the impact of adhesion.

26 The school district's duty to negotiate with the representative of
27 the employees in each collective bargaining unit shall not preclude
28 the school district's right to adhere to an agency's master contract.

29 b. Each employee replaced or displaced as the result of the
30 school district's adhesion to an educational service agency's master
31 contract shall retain all previously acquired seniority during that
32 period and shall have recall rights whenever the district's
33 participation in the agency's master contract terminates.

34 c. Except for actions of an employer expressly required or
35 prohibited by the provisions of this section, all aspects or actions
36 relating to or resulting from a school district's decision to adhere to
37 an educational service agency master contract including, but not
38 limited to, whether or not severance pay is provided, shall be
39 mandatory subjects of negotiations.

40 d. In addition to any other requirements set forth in this
41 section, a school district that is currently not using a private
42 contractor to provide a covered service, the district shall not adhere
43 to an educational service agency master contract unless:

44 (1) The school district passes a resolution calling for a public
45 hearing to explore the costs and benefits of adhering to an agency's
46 master contract and provides an opportunity for parents and other
47 affected stakeholders in the district to make statements and ask

1 questions relating to adhering to an educational service agency
2 master contract;

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

7 (3) Following the public hearing, a period of no less than 60
8 days is provided during which members of the public will have the
9 opportunity to submit comments on the proposal to adhere to an
10 educational service agency contract; and

11 (4) Upon review of all comments and submissions, the board of
12 education provides a written response to comments at the next
13 board of education meeting and to the collective bargaining
14 representative. The school board shall hold a vote on whether or not
15 to adhere to an educational service agency contract.

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

26 f. Nothing in this section shall be interpreted to encourage the
27 further privatization of any custodial or food services position
28 currently held or currently filled by a public employee. Nothing in
29 this section shall be construed as restricting or limiting any right
30 established or provided for employees by section 7 of P.L.1968,
31 c.303 (C.34:13A-5.3). The purpose of this section is to provide
32 rights in addition to those provided in section 7 of P.L.1968, c.303
33 (C.34:13A-5.3).

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

39

40 11. a. A school district or educational service agency for which
41 a successor contractor will provide food or custodial services shall:

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

47 (2) notify the collective bargaining representative of the affected
48 service employees, if any, of the successor contractor and provide

1 to the collective bargaining representative a copy of the list of
2 service employees prepared pursuant to paragraph (1) of this
3 subsection; and

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

8 b. The successor contractor shall:

9 (1) offer employment during a 90 day transition employment
10 period to all service employees employed by the predecessor
11 employer;

12 (2) not discharge, without just cause, an employee retained in
13 accordance with this section during the 90 day transition period;
14 and

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

21

22 12. A school district which is a member of an educational
23 service agency may withdraw from membership by adopting a
24 resolution setting forth its intention to withdraw and the reason or
25 reasons for the withdrawal, and filing a certified copy of the
26 resolution with the executive county superintendent, and secretary
27 of the board of directors. The withdrawal shall be effective at the
28 conclusion of the third full school year after the filing of the
29 resolution with the secretary of the board of directors. Upon
30 withdrawal, the school district may not enter into another contract
31 for covered services with a private contractor.

32

33 13. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill mandates the consolidation of procurement of food and
39 custodial services through educational service agencies established
40 at the county level. These educational service agencies will
41 facilitate cost savings through economies of scale, while preserving
42 school district control over core school district functions. This bill
43 protects employees providing custodial and food services who may
44 be subject to disruptive and unnecessary displacement.

45 This bill establishes an educational service agency in each
46 county, which will serve as a cooperative of school districts to
47 contract for custodial and food services, the covered services under
48 the bill. Under the bill, membership in an agency will be automatic

1 for each school district in that county that uses a private contractor
2 with respect to a covered service, except that in cases in which the
3 district has chosen to contract for only one type of covered service
4 its membership will be automatic only for that specific covered
5 service.

6 Under the bill, a school district may acquire a contracted service
7 only through the master contract of the educational service agency.
8 The bill provides that no entity other than a school district, or a
9 nonpublic school that is a child nutrition program operator under
10 federal law, will be eligible to be a part of a contract reached by the
11 educational service agency.

12 The bill establishes a representative assembly for the educational
13 service agency that is charged with adopting a budget for the
14 agency and counseling and advising the board of directors of the
15 agency.

16 The bill directs each educational service agency to establish a
17 board of directors. The board is responsible for appointing a
18 superintendent or chief school administrator of the agency who
19 must possess a certificate appropriate to the position, and for
20 appointing a board secretary whose specific responsibilities are set
21 forth in the bill. The board is also permitted to employ such other
22 persons as necessary to perform its administrative duties and those
23 employees will have the same rights and benefits as persons
24 employed by a board of education .

25 The board of directors may purchase, lease-purchase, or lease
26 personal or real property in accordance with rules and regulations of
27 the State Board of Education and may enter into a contract with
28 and receive and administer funds and grants from any individual or
29 agency including, but not limited to, agencies of the federal
30 government. The board may also enter into a contract with a
31 nonpublic school for the provision of covered services. The board
32 of directors may establish minimum wage, benefits, and paid leave
33 standards for its employees and contractors, in accordance with
34 State and federal law.

35 The bill requires the representative assembly to annually adopt a
36 budget for the ensuing fiscal year, which contains the estimated cost
37 of providing each service, and submit the budget to the board of
38 directors for approval.

39 Under the bill, the agency will operate as a cooperative pricing
40 system. The provision of services will be conducted pursuant to the
41 "Public School Contracts Law," N.J.S.18A:18A-1 et seq., and
42 notwithstanding any provision of law to the contrary, contracts for
43 covered services will be secured via competitive contracting.

44 The bill provides that if a school district is using its own
45 employees to provide a covered service, the district may not adhere
46 to an educational service agency master contract for that covered
47 service when doing so would affect the employment of any
48 employees in a collective bargaining unit during the term that an

1 existing collective bargaining agreement is in effect unless the
2 school district meets certain requirements. Each employee replaced
3 or displaced as the result of the school district's adhesion to an
4 educational service agency's master contract will retain all
5 previously acquired seniority and will have recall rights whenever
6 the district's participation in the agency's master contract
7 terminates.

8 Under the bill, a school district which violates certain provisions
9 of the bill will be deemed to have committed an unfair practice and
10 any employee or majority representative organization affected by
11 the violation may file an unfair practice charge with the New Jersey
12 Public Employment Relations Commission. The bill provides
13 numerous protections for food and custodial service employees.

14 Finally, the bill provides that a school district which is a member
15 of an educational service agency may withdraw from membership
16 by adopting a resolution setting forth its intention to withdraw and
17 the reason or reasons for the withdrawal, and filing a certified copy
18 of the resolution with the executive county superintendent and
19 secretary of the board of directors.