

SENATE, No. 1329

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires certain public contracts for insurance coverage and consulting services to be awarded through competitive contracting process.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring competitive contracting for certain insurance
2 public contracts and supplementing P.L.1999, c.440 (C.40A:11-
3 4.1 et al.).
4

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

8 1. a. A board of education seeking to procure any insurance
9 products or insurance consultant services shall use the competitive
10 contracting process set forth in sections 45 through 49 of P.L.1999,
11 c.440 (C.18A:18A-4.1 et seq.) and shall comply with the additional
12 requirements of this section.

13 b. An insurance consultant providing any insurance consultant
14 services to a board of education shall be compensated directly and
15 exclusively by the board of education at a fixed amount, an hourly
16 rate, or on another common and readily comparable basis, provided
17 that the compensation shall not be determined as a percentage of
18 any insurance product costs. No insurer shall pay an insurance
19 consultant any commission or other form of compensation for any
20 insurance consultant services provided in connection with any
21 contract awarded to an insurer by a board of education.

22 c. (1) (a) An insurance consultant seeking a contract for the
23 provision of any insurance consultant services to a board of
24 education shall, in the competitive contracting proposal, certify that
25 no commission or other form of compensation will be accepted
26 from an insurer for any insurance consultant services provided in
27 connection with any contract awarded to the insurer by the board of
28 education.

29 (b) An insurance consultant awarded a contract for the
30 provision of any insurance consultant services to a board of
31 education shall, as soon as practicable after being awarded a
32 contract, but no later than the date on which an insurer is
33 recommended to the board of education, disclose in a statement to
34 the board of education the aggregate amount of commissions or
35 other forms of compensation received in each of the preceding three
36 years from each insurer that submits a proposal.

37 (c) An insurance consultant awarded a contract for the provision
38 of any insurance consultant services to a board of education shall,
39 no later than the last business day of each year of the contract,
40 certify to the board of education that no commission or other form
41 of compensation has been accepted from an insurer for any
42 insurance consultant services provided in connection with any
43 contract awarded to the insurer by the board of education.

44 (2) (a) An insurer seeking a contract for the provision of any
45 insurance products to a board of education shall, in the competitive
46 contracting proposal, certify that no commission or other form of
47 compensation shall be paid to an insurance consultant for any

1 insurance consultant services provided in connection with any
2 contract awarded to the insurer by the board of education.

3 (b) An insurer awarded a contract for the provision of any
4 insurance products to a board of education shall, no later than the
5 last business day of each year of the contract, certify to the board of
6 education that no commission or other form of compensation has
7 been paid to the insurance consultant for any insurance consultant
8 services provided in connection with any contract awarded to the
9 insurer by the board of education.

10 d. Upon a violation of any provision of subsections b. or c. of
11 this section by an insurance consultant or insurer, the board of
12 education shall be entitled to terminate any contract with the
13 insurance consultant or insurer and to recover in a civil action the
14 amount of any commission or other form of compensation paid in
15 violation of subsection b. of this section.

16 e. (1) The request for proposal documentation shall include:
17 the compensation restrictions set forth in subsection b. of this
18 section; the manner of compensation; the certification and
19 disclosure requirements set forth in subsection c. of this section; the
20 penalties for violations set forth in subsection d. of this section; the
21 terms, coverages, and costs of current insurance products or
22 insurance consultant services; the loss experience; and the
23 anticipated insurance product or insurance consultant service needs.

24 (2) The request for proposal documentation shall be made
25 available to proposers in electronic format.

26 f. (1) The notice of the availability of request for proposal
27 documentation shall be published in an official newspaper of the
28 board of education, a newspaper of general circulation in at least
29 five counties of this State, and on the board of education's Internet
30 website at least 60, but no more than 120, days prior to the date
31 anticipated for the commencement of the contract.

32 (2) The request for proposal documentation shall be submitted
33 to at least one joint insurance fund, established pursuant to
34 P.L.1983, c.372 (C.40A:10-36 et seq.), at the same time the notice
35 of the availability of the documentation is published to determine if
36 it would be advantageous for the board of education to become a
37 member of the joint insurance fund.

38 (3) Each interested insurer or insurance consultant shall submit
39 a proposal to the board of education at least 30 days prior to the
40 date anticipated for the commencement of the contract.

41 (4) The purchasing agent or counsel or school business
42 administrator shall obtain at least three proposals.

43 (5) The report prepared by the purchasing agent or counsel or
44 school business administrator evaluating and recommending the
45 award of a contract or contracts shall include an analysis and
46 discussion of the availability, terms, and price of comparable
47 coverage through participation in at least one joint insurance fund

1 and, with respect to health insurance, the School Employees' Health
2 Benefits Program.

3 g. As used in this section:

4 "Insurance" means any lines of insurance in subtitle 3 of Title 17
5 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey
6 Statutes that are commonly available in a competitive market,
7 including but not limited to life, health, annuities, indemnity,
8 property and casualty, fidelity, surety, guaranty, and title insurance.

9 "Insurance consultant" means an individual or a business entity
10 providing, for a commission, brokerage fee, or other consideration,
11 services, including but not limited to brokerage, risk management,
12 and related administrative services associated with the procurement,
13 evaluation, and advice, counsel, or opinion with respect to the
14 benefits, advantages, or disadvantages of any insurance product or
15 contract that is or could be issued to a board of education.

16 "Insurer" means a business entity authorized to transact the
17 business of insurance in this State pursuant to subtitle 3 of Title 17
18 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey
19 Statutes.

20 "Other forms of compensation" includes but is not limited to
21 incentive payments, bonuses, rebates, or any other thing of value.
22

23 2. a. A contracting unit seeking to procure any insurance
24 products or insurance consultant services shall use the competitive
25 contracting process set forth in sections 1 through 5 of P.L.1999,
26 c.440 (C.40A:11-4.1 et seq.) and shall comply with the additional
27 requirements of this section.

28 b. An insurance consultant providing any insurance consultant
29 services to a contracting unit shall be compensated directly and
30 exclusively by the contracting unit at a fixed amount, an hourly
31 rate, or on another common and readily comparable basis, provided
32 that the compensation shall not be determined as a percentage of
33 any insurance product costs. No insurer shall pay an insurance
34 consultant any commission or other form of compensation for any
35 insurance consultant services provided in connection with any
36 contract awarded to an insurer by a contracting unit.

37 c. (1) (a) An insurance consultant seeking a contract for the
38 provision of any insurance consultant services to a contracting unit
39 shall, in the competitive contracting proposal, certify that no
40 commission or other form of compensation will be accepted from
41 an insurer for any insurance consultant services provided in
42 connection with any contract awarded to the insurer by the
43 contracting unit.

44 (b) An insurance consultant awarded a contract for the
45 provision of any insurance consultant services to a contracting unit
46 shall, as soon as practicable after being awarded a contract, but no
47 later than the date on which an insurer is recommended to the
48 contracting unit, disclose in a statement to the contracting unit the

1 aggregate amount of commissions or other forms of compensation
2 received in each of the preceding three years from each insurer that
3 submits a proposal.

4 (c) An insurance consultant awarded a contract for the provision
5 of any insurance consultant services to a contracting unit shall, no
6 later than the last business day of each year of the contract, certify
7 to the contracting unit that no commission or other form of
8 compensation has been accepted from an insurer for any insurance
9 consultant services provided in connection with any contract
10 awarded to the insurer by the contracting unit.

11 (2) (a) An insurer seeking a contract for the provision of any
12 insurance products to a contracting unit shall, in the competitive
13 contracting proposal, certify that no commission or other form of
14 compensation shall be paid to an insurance consultant for any
15 insurance consultant services provided in connection with any
16 contract awarded to the insurer by the contracting unit.

17 (b) An insurer awarded a contract for the provision of any
18 insurance products to a contracting unit shall, no later than the last
19 business day of each year of the contract, certify to the contracting
20 unit that no commission or other form of compensation has been
21 paid to the insurance consultant for any insurance consultant
22 services provided in connection with any contract awarded to the
23 insurer by the contracting unit.

24 d. Upon a violation of any provision of subsections b. or c. of
25 this section by an insurance consultant or insurer, the contracting
26 unit shall be entitled to terminate any contract with the insurance
27 consultant or insurer and to recover in a civil action the amount of
28 any commission or other form of compensation paid in violation of
29 subsection b. of this section.

30 e. (1) The request for proposal documentation shall include:
31 the compensation restrictions set forth in subsection b. of this
32 section; the manner of compensation; the certification and
33 disclosure requirements set forth in subsection c. of this section; the
34 penalties for violations set forth in subsection d. of this section; the
35 terms, coverages, and costs of current insurance products or
36 insurance consultant services; the loss experience; and the
37 anticipated insurance product or insurance consultant service needs.

38 (2) The request for proposal documentation shall be made
39 available to proposers in electronic format.

40 f. (1) The notice of the availability of request for proposal
41 documentation shall be published in an official newspaper of the
42 contracting unit, a newspaper of general circulation in at least five
43 counties of this State, and on the contracting unit's Internet website
44 at least 60, but no more than 120, days prior to the date anticipated
45 for the commencement of the contract.

46 (2) The request for proposal documentation shall be submitted
47 to at least one joint insurance fund, established pursuant to
48 P.L.1983, c.372 (C.40A:10-36 et seq.), at the same time the notice

1 of the availability of the documentation is published to determine if
2 it would be advantageous for the contracting unit to become a
3 member of the joint insurance fund.

4 (3) Each interested insurer or insurance consultant shall submit
5 a proposal to the contracting unit at least 30 days prior to the date
6 anticipated for the commencement of the contract.

7 (4) The purchasing agent or counsel or administrator shall
8 obtain at least three proposals.

9 (5) The report prepared by the purchasing agent or counsel or
10 administrator evaluating and recommending the award of a contract
11 or contracts shall include an analysis and discussion of the
12 availability, terms, and price of comparable coverage through
13 participation in at least one joint insurance fund and, with respect to
14 health insurance, the State Health Benefits Program.

15 g. As used in this section:

16 “Insurance” means any lines of insurance in subtitle 3 of Title 17
17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey
18 Statutes that are commonly available in a competitive market,
19 including but not limited to life, health, annuities, indemnity,
20 property and casualty, fidelity, surety, guaranty, and title insurance.

21 “Insurance consultant” means an individual or a business entity
22 providing, for a commission, brokerage fee, or other consideration,
23 services, including but not limited to brokerage, risk management,
24 and related administrative services associated with the procurement,
25 evaluation, and advice, counsel, or opinion with respect to the
26 benefits, advantages, or disadvantages of any insurance product or
27 contract that is or could be issued to a contracting unit.

28 “Insurer” means a business entity authorized to transact the
29 business of insurance in this State pursuant to subtitle 3 of Title 17
30 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey
31 Statutes.

32 “Other forms of compensation” includes but is not limited to
33 incentive payments, bonuses, rebates, or any other thing of value.
34

35 3. This act shall take effect immediately and apply to contracts
36 involving insurance commonly available in a competitive market to
37 be awarded on or after the first day of the fourth month next
38 following the date of enactment.
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41 STATEMENT

42
43 This bill would require counties and municipalities, and their
44 agencies and authorities, and boards of education to use the
45 established competitive contracting process, and to follow new
46 supplemental requirements, for procuring any insurance products
47 and insurance consulting services. Under current law, such
48 contracts are exempt from public bidding requirements.

1 Specifically, the bill would require boards of education and local
2 contracting units seeking to procure any insurance products and
3 insurance consulting services to do so by the award of a contract
4 through the competitive contracting process set forth in sections 45
5 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 et seq.) and sections
6 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 et seq.), as
7 applicable.

8 This bill would supplement these provisions with respect to
9 insurance product and insurance consulting service contracts as
10 follows:

11 First, an insurance consultant providing any insurance consultant
12 services to a board of education or local contracting unit would be
13 required to be compensated directly and exclusively by the board of
14 education or local contracting unit at a fixed amount, an hourly rate,
15 or on another common and readily comparable basis, provided that
16 the compensation shall not be determined as a percentage of any
17 insurance product costs, and would not be permitted to accept any
18 commission or other form of compensation from an insurer for any
19 insurance consultant services provided to the board of education or
20 local contracting unit. Compensating insurance consultants in this
21 manner is intended to help ensure that their interests are solely
22 aligned with those of the board of education or local contracting
23 unit.

24 Second, insurance consultants and insurers would both be subject
25 to several certification and disclosure requirements related to the
26 restrictions on insurance consultant compensation.

27 Third, the request for proposal documentation would be required
28 to include additional items including the terms of compensation; the
29 certification and disclosure requirements; the penalties for
30 violations; and certain details with respect to current insurance use
31 and anticipated insurance needs.

32 Fourth, the competitive contracting proposal solicitation process
33 would be supplemented in several respects. The notice of the
34 availability of request for proposal documentation would be
35 required to be published through more outlets and in a new
36 timeframe, at least 60, but no more than 120, days prior to the date
37 anticipated for the commencement of the contract. The request for
38 proposal documentation would also have to be submitted to at least
39 one joint insurance fund, established pursuant to N.J.S.40A:10-36 et
40 seq., and with respect to health insurance, to the State Health
41 Benefits Plan, at the same time it is published. Each interested
42 insurer or insurance consultant would be required to submit a
43 proposal at least 30 days prior to the date anticipated for the
44 commencement of the contract. At least three proposals would be
45 required to be obtained. The report evaluating and recommending
46 the award of a contract or contracts would be required to include an
47 analysis and discussion of the availability, terms, and price of
48 comparable coverage from at least one joint insurance fund and,

1 with respect to health insurance, the State Health Benefits Plan,
2 ensuring that alternative insurance products available to the board
3 of education or contracting unit, which may be more cost-effective
4 options, are considered.

5 Finally, this bill would subject insurers and insurance consultants
6 to civil liability for violations of its provisions.

7 Insurance is one of the major expenses of boards of education
8 and local contracting units. Requiring boards of education and
9 local contracting units to use an open, transparent, and competitive
10 process for the award of insurance contracts would help ensure that
11 the lowest possible cost is realized and help protect against waste,
12 abuse, and insider deals, ultimately saving taxpayer money.