

SENATE, No. 1480

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

SYNOPSIS

Applies certain public contract bid threshold amounts to pay to play and prevailing wage laws.

CURRENT VERSION OF TEXT

As introduced.



S1480 CRUZ-PEREZ

2

1 AN ACT coordinating threshold dollar amounts under certain laws
2 concerning public contracts, prevailing wages, and campaign
3 contributions, and amending P.L.2004, c.19, P.L.2005, c.271,
4 P.L.1963, c.150, and P.L.1968, c.175.

5

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

8

9 1. Section 3 of P.L.2004, c.19 (C.19:44A-20.4) is amended to
10 read as follows:

11 3. Notwithstanding the provisions of any other law to the
12 contrary:

13 a county, or any agency or instrumentality thereof, shall not enter
14 into a contract having an anticipated value in excess of **[\$17,500]**
15 the local bid threshold, as determined in advance and certified in
16 writing by the county, agency or instrumentality, with a business
17 entity, except a contract that is awarded pursuant to a fair and open
18 process, if, during the preceding one-year period, that business
19 entity has made a contribution that is reportable by the recipient
20 under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee
21 of a political party in that county if a member of that political party
22 is serving in an elective public office of that county when the
23 contract is awarded or to any candidate committee of any person
24 serving in an elective public office of that county when the contract
25 is awarded; and

26 a business entity that has entered into a contract having an
27 anticipated value in excess of **[\$17,500]** the local bid threshold
28 with a county, or any agency or instrumentality thereof, except a
29 contract that is awarded pursuant to a fair and open process, shall
30 not make such a contribution, reportable by the recipient under
31 P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a
32 political party in that county if a member of that political party is
33 serving in an elective public office of that county when the contract
34 is awarded or to any candidate committee of any person serving in
35 an elective public office of that county when the contract is
36 awarded, during the term of that contract.

37 No such committee shall accept such a contribution from a
38 business entity during the term of its contract with the county.

39 (cf: P.L.2004, c.19, s.3)

40

41 2. Section 4 of P.L.2004, c.19 (C.19:44A-20.5) is amended to
42 read as follows:

43 4. Notwithstanding the provisions of any other law to the
44 contrary:

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 a municipality, or any agency or instrumentality thereof, shall
2 not enter into a contract having an anticipated value in excess of
3 **[\$17,500]** the local bid threshold, as determined in advance and
4 certified in writing by the municipality, agency or instrumentality,
5 with a business entity, except a contract that is awarded pursuant to
6 a fair and open process, if, during the preceding one-year period,
7 that business entity has made a contribution that is reportable by the
8 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
9 municipal committee of a political party in that municipality if a
10 member of that political party is serving in an elective public office
11 of that municipality when the contract is awarded or to any
12 candidate committee of any person serving in an elective public
13 office of that municipality when the contract is awarded; and

14 a business entity that has entered into a contract having an
15 anticipated value in excess of **[\$17,500]** the local bid threshold
16 with a municipality, or any agency or instrumentality thereof,
17 except a contract that is awarded pursuant to a fair and open
18 process, shall not make such a contribution, reportable by the
19 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
20 municipal committee of a political party in that municipality if a
21 member of that political party is serving in an elective public office
22 of that municipality when the contract is awarded or to any
23 candidate committee of any person serving in an elective public
24 office of that municipality when the contract is awarded, during the
25 term of that contract.

26 No such committee shall accept such a contribution from a
27 business entity during the term of its contract with the municipality.
28 (cf: P.L.2004, c.19, s.4)

29

30 3. Section 6 of P.L.2004, c.19 (C.19:44A-20.7) is amended to
31 read as follows:

32 6. As used in sections 2 through 12 of **[this act]** P.L.2004,
33 c.19 (C.19:44A-20.2 et seq.):

34 "business entity" means any natural or legal person, business
35 corporation, professional services corporation, limited liability
36 company, partnership, limited partnership, business trust,
37 association or any other legal commercial entity organized under
38 the laws of this State or of any other state or foreign jurisdiction;

39 "interest" means the ownership or control of more than 10% of
40 the profits or assets of a business entity or 10% of the stock in the
41 case of a business entity that is a corporation for profit, as
42 appropriate;

43 "local bid threshold" means the bid threshold or threshold
44 amount applicable to the contract at issue under the "Local Public
45 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or the
46 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-
47 25.1);

1 "fair and open process" means, at a minimum, that the contract
2 shall be: publicly advertised in newspapers or on the Internet
3 website maintained by the public entity in sufficient time to give
4 notice in advance of the contract; awarded under a process that
5 provides for public solicitation of proposals or qualifications and
6 awarded and disclosed under criteria established in writing by the
7 public entity prior to the solicitation of proposals or qualifications;
8 and publicly opened and announced when awarded. The decision of
9 a public entity as to what constitutes a fair and open process shall
10 be final.

11 "State agency in the Legislative Branch" means the Legislature
12 of the State and any office, board, bureau or commission within or
13 created by the Legislative Branch.

14 (cf: P.L.2005, c.51, s.14)

15

16 4. Section 2 of P.L.2005, c.271 (C.19:44A-20.26) is amended
17 to read as follows:

18 2. a. **【**Not later than 10 days prior to entering into any contract
19 having an anticipated value in excess of \$17,500, except for a
20 contract that is required by law to be publicly advertised for bids, a**】**

21 (1) A State agency, 【county, municipality, independent
22 authority,】 or board of education, 【or fire district】 not later than 10
23 days prior to entering into any contract having an anticipated value
24 in excess of \$17,500, except for a contract that is required by law to
25 be publicly advertised for bids; and

26 (2) a contracting unit, as defined in section 2 of the "Local
27 Public Contracts Law," P.L.1971, c.198 (C.40A:11-2), or a county
28 college, as defined in section 2 of P.L.1982, c.189 (C.18A:64A-25.2),
29 not later than 10 days prior to entering into any contract having an
30 anticipated value in excess of the local bid threshold, except for a
31 contract that is required by law to be publicly advertised for bids:

32 shall require any business entity bidding thereon or negotiating
33 therefor, to submit along with its bid or price quote, a list of
34 political contributions as set forth in this subsection that are
35 reportable by the recipient pursuant to the provisions of P.L.1973,
36 c.83 (C.19:44A-1 et al.) and that were made by the business entity
37 during the preceding 12-month period, along with the date and
38 amount of each contribution and the name of the recipient of each
39 contribution. A business entity contracting with a State agency
40 shall disclose contributions to any State, county, or municipal
41 committee of a political party, legislative leadership committee,
42 candidate committee of a candidate for, or holder of, a State
43 elective office, or any continuing political committee. A business
44 entity contracting with a county, municipality, independent
45 authority, other than an independent authority that is a State agency,
46 board of education, or fire district shall disclose contributions to:
47 any State, county, or municipal committee of a political party; any
48 legislative leadership committee; or any candidate committee of a

1 candidate for, or holder of, an elective office of that public entity,
2 of that county in which that public entity is located, of another
3 public entity within that county, or of a legislative district in which
4 that public entity is located or, when the public entity is a county, of
5 any legislative district which includes all or part of the county, or
6 any continuing political committee.

7 The provisions of this section shall not apply to a contract when
8 a public emergency requires the immediate delivery of goods or
9 services.

10 b. When a business entity is a natural person, a contribution by
11 that person's spouse or child, residing therewith, shall be deemed to
12 be a contribution by the business entity. When a business entity is
13 other than a natural person, a contribution by any person or other
14 business entity having an interest therein shall be deemed to be a
15 contribution by the business entity. When a business entity is other
16 than a natural person, a contribution by: all principals, partners,
17 officers, or directors of the business entity or their spouses; any
18 subsidiaries directly or indirectly controlled by the business entity;
19 or any political organization organized under section 527 of the
20 Internal Revenue Code that is directly or indirectly controlled by
21 the business entity, other than a candidate committee, election fund,
22 or political party committee, shall be deemed to be a contribution
23 by the business entity.

24 c. As used in this section:

25 "business entity" means a for-profit entity that is a natural or
26 legal person, business corporation, professional services
27 corporation, limited liability company, partnership, limited
28 partnership, business trust, association or any other legal
29 commercial entity organized under the laws of this State or of any
30 other state or foreign jurisdiction;

31 "interest" means the ownership or control of more than 10% of
32 the profits or assets of a business entity or 10% of the stock in the
33 case of a business entity that is a corporation for profit, as
34 appropriate;

35 "local bid threshold" means the bid threshold or threshold
36 amount applicable to the contract at issue under the "Local Public
37 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) .), or the
38 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-
39 25.1); and

40 "State agency" means any of the principal departments in the
41 Executive Branch of the State Government, and any division, board,
42 bureau, office, commission or other instrumentality within or
43 created by such department, the Legislature of the State and any
44 office, board, bureau or commission within or created by the
45 Legislative Branch, and any independent State authority,
46 commission, instrumentality or agency.

47 d. Any business entity that fails to comply with the provisions
48 of this section shall be subject to a fine imposed by the New Jersey

1 Election Law Enforcement Commission in an amount to be
2 determined by the commission which may be based upon the
3 amount that the business entity failed to report.

4 (cf: P.L.2007, c.304, s.1)

5

6 5. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to
7 read as follows:

8 2. As used in this act:

9 (1) "Department" means the Department of Labor and
10 Workforce Development of the State of New Jersey.

11 (2) "Locality" means any political subdivision of the State,
12 combination of the same or parts thereof, or any geographical area
13 or areas classified, designated and fixed by the commissioner from
14 time to time, provided that in determining the "locality," the
15 commissioner shall be guided by the boundary lines of political
16 subdivisions or parts thereof, or by a consideration of the areas with
17 respect to which it has been the practice of employers of particular
18 crafts or trades to engage in collective bargaining with the
19 representatives of workers in such craft or trade.

20 (3) "Maintenance work" means the repair of existing facilities
21 when the size, type or extent of such facilities is not thereby
22 changed or increased. "Maintenance work" also means any work on
23 a maintenance-related project that exceeds the scope of work and
24 capabilities of in-house maintenance personnel, requires the
25 solicitation of bids, and has an aggregate value exceeding \$50,000.

26 (4) "Public body" means the State of New Jersey, any of its
27 political subdivisions, any authority created by the Legislature of
28 the State of New Jersey and any instrumentality or agency of the
29 State of New Jersey or of any of its political subdivisions.

30 (5) "Public work" means construction, reconstruction,
31 demolition, alteration, custom fabrication, or repair work, or
32 maintenance work, including painting and decorating, done under
33 contract and paid for in whole or in part out of the funds of a public
34 body, except work performed under a rehabilitation program.
35 "Public work" shall also mean construction, reconstruction,
36 demolition, alteration, custom fabrication, or repair work, done on
37 any property or premises, whether or not the work is paid for from
38 public funds, if, at the time of the entering into of the contract the
39 property or premises is owned by the public body or:

40 (a) Not less than 55% of the property or premises is leased by a
41 public body, or is subject to an agreement to be subsequently leased
42 by the public body; and

43 (b) The portion of the property or premises that is leased or
44 subject to an agreement to be subsequently leased by the public
45 body measures more than 20,000 square feet.

46 (6) "Commissioner" means the Commissioner of Labor and
47 Workforce Development or his duly authorized representatives.

1 (7) "Workman" or "worker" includes laborer, mechanic, skilled
2 or semi-skilled, laborer and apprentices or helpers employed by any
3 contractor or subcontractor and engaged in the performance of
4 services directly upon a public work, regardless of whether their
5 work becomes a component part thereof, but does not include
6 material suppliers or their employees who do not perform services
7 at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25
8 et seq.), contractors or subcontractors engaged in custom fabrication
9 shall not be regarded as material suppliers.

10 (8) "Work performed under a rehabilitation program" means
11 work arranged by and at a State institution primarily for teaching
12 and upgrading the skills and employment opportunities of the
13 inmates of such institutions.

14 (9) "Prevailing wage" means the wage rate paid by virtue of
15 collective bargaining agreements by employers employing a
16 majority of workers of that craft or trade subject to said collective
17 bargaining agreements, in the locality in which the public work is
18 done.

19 (10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-
20 56.25 et seq.) and the rules and regulations issued hereunder.

21 (11) "Prevailing wage contract threshold amount" means:

22 (a) In the case of any public work paid for in whole or in part
23 out of the funds of a **【municipality in the State of New Jersey】**
24 contracting unit, as defined in section 2 of the "Local Public
25 Contracts Law," P.L.1971, c.198 (C.40A:11-2) , a board of
26 education, as defined in N.J.S.18A:18A-2, or a county college, as
27 defined in section 2 of P.L.1982, c.189 (C.18A:64A-25.2),¹ or done
28 on property or premises owned by a **【public body】** contracting unit,
29 a board of education, or a county college or leased or to be leased by
30 **【the municipality, the dollar amount established for the then current**
31 **calendar year by the commissioner through rules and regulations**
32 **promulgated pursuant to the "Administrative Procedure Act,"**
33 **P.L.1968, c.410 (C.52:14B-1 et seq.), which amount shall be equal**
34 **to \$9,850 on July 1, 1994 and which amount shall be adjusted on**
35 **July 1 every five calendar years thereafter in direct proportion to the**
36 **rise or fall in the average of the Consumer Price Indices for Urban**
37 **Wage Earners and Clerical Workers for the New York metropolitan**
38 **and the Philadelphia metropolitan regions as reported by the United**
39 **States Department of Labor during the last full calendar year**
40 **preceding the date upon which the adjustment is made】 a**
41 contracting unit , a board of education, or a county college, the local
42 bid threshold applicable to the contract at issue under the "Local
43 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)., the
44 "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the
45 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-
46 25.1); and

1 (b) In the case of any public work other than a public work
2 described in paragraph (a) of this subsection, an amount equal to
3 \$2,000.

4 (12) "Custom fabrication" means:

5 (a) the fabrication of plumbing, heating, cooling, ventilation or
6 exhaust duct systems, and mechanical insulation; or

7 (b) any other fabrication which is either of components or
8 structures pre-fabricated to specifications for a particular project of
9 public work or of other materials finished into components without
10 further modification for use in a project of public work or for use in
11 a type or classification of a project of public work.

12 (cf: P.L.2019, c.44, s.1)

13

14 6. Section 3 of P.L.1968, c.175 (C.18A:20-4.4) is amended to
15 read as follows:

16 3. Every contract in excess of **[\$2,000.00]** the bid threshold
17 applicable to the contract at issue under the "Public School Contracts
18 Law," N.J.S.18A:18A-1 et seq., for any public work contracted for by
19 a private party acting under an express agreement for subsequent lease
20 by a board of education shall contain a provision stating the prevailing
21 wage rate which can be paid (as determined pursuant to the applicable
22 provisions of the "New Jersey Prevailing Wage Act" (P.L. 1963, c.
23 150)) to the workmen employed in the performance of the contract,
24 and the contract shall contain a stipulation that such workmen shall be
25 paid not less than such prevailing wage rate. No board of education
26 shall enter into any such agreement or understanding except upon the
27 condition that such provision and stipulation shall be included in the
28 contract; and no such agreement or understanding shall be valid or
29 shall be honored by any board of education if such provision and
30 stipulation are not included in the contract.

31 (cf: P.L.1968, c.175, s.3)

32

33 7. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill would revise the threshold amounts under the pay-to-
39 play and prevailing wage laws for local contracting units and
40 county colleges to make them the same as the threshold amount
41 under the applicable local public contracting laws. The bill would
42 also revise the threshold amount under the prevailing wage law for
43 boards of education to make it the same as the threshold amount
44 under the public school contracting law.

45 Under current law, the governing bodies of counties,
46 municipalities, and other contracting units subject to the "Local
47 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) may
48 award contracts below a certain dollar amount without public

1 advertising for bids. The statutory bid threshold is \$17,500,
2 however, a contracting unit that has appointed a “qualified
3 purchasing agent” (QPA), can set the bid threshold at up to
4 \$25,000, or the adjusted amount set by the Governor every five
5 years to account for inflation. The Governor’s adjusted threshold
6 amount currently allows contracting units that have appointed a
7 QPA to set the bid threshold at up to \$40,000.

8 Current law with regard to county colleges provides that such
9 colleges may award contracts without public advertising for bids if
10 the contract amount is below \$25,000 or, if the contract is made,
11 negotiated, and awarded by a contracting agent, at the adjusted
12 amount set by the Governor every five years to account for
13 inflation. The Governor’s adjusted threshold amount currently
14 allows county colleges to set the bid threshold at up to \$35,000 for
15 these contracts.

16 Current law with regard to boards of education provides that
17 such boards may award contracts without public advertising for bids
18 if the contract amount is below \$17,500, however, a board of
19 education that has appointed a QPA, can set the bid threshold at up
20 to \$25,000. A board of education may adopt higher threshold
21 amounts set by the Governor every five years to account for
22 inflation. The Governor’s adjusted threshold amount currently
23 allows boards of education to set the bid threshold at up to \$29,000,
24 and boards of education with a QPA at up to \$40,000.

25 The pay-to-play laws require contracts above \$17,500 to be
26 awarded pursuant to a fair and open process. The "New Jersey
27 Prevailing Wage Act" stipulates the payment of prevailing wage
28 rates for workers on construction projects that are subsidized by
29 public funds of over \$2,000, in the case of counties, county
30 colleges, and boards of education, and an amount over \$15,444, in
31 the case of municipalities.

32 The bill revises these pay-to-play and prevailing wage threshold
33 amounts for contracting units and county colleges to be consistent
34 with the applicable local public contract threshold amounts, and
35 revises the prevailing wage threshold amount for boards of
36 education to be consistent with the applicable local public contract
37 threshold amounts.