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.
AN ACT concerning custodial and food services in public schools and supplementing chapter 18A of Title 18A of the New Jersey Statutes.

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

1. As used in this act:

“Agency” means an educational service agency.

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

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

“Covered service” means custodial and food services.

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

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

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

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

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

“Successor contractor” means a contractor that has been awarded a food or custodial services contract to provide services that, in whole or in part, are substantially similar to those food or custodial
services provided by a predecessor employer within the preceding 90 days.

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

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

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

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

3. a. Each member school district shall select a board of education member, the superintendent, or chief school administrator, as its representative on the representative assembly. The first representative assembly shall organize upon the call of the executive county superintendent. Thereafter the representative
assembly shall organize annually during the first week of June and
meet at such other times as are necessary.

b. The representative assembly shall adopt a budget for the
educational service agency.

c. The representative assembly shall counsel and advise the
board of directors established pursuant to section 4 of this act on the
provision of services and facilitate the coordination and provision
of those services with member districts.

d. The representative assembly shall elect by a majority vote
from among its members, a board of directors to serve until the next
annual organization meeting.

4. a. Each educational service agency established pursuant to
section 2 of this act shall establish a board of directors, which shall
consist of no more than 15 members. The board of directors of an
agency which has 15 or fewer member districts shall be comprised
of all members of the representative assembly. Each member of the
board of directors shall have one vote. Members shall serve without
compensation but shall be entitled to reimbursement for all
reasonable and necessary expenses. Upon election, the board of
directors shall elect a president and vice-president who shall also
serve until the next organization meeting.

b. The board of directors shall meet for the transaction of
business at least once every two months throughout the year. A
written record of all action taken by the board of directors shall be
forwarded to the members of the representative assembly after each
meeting of the board.

c. The board shall not enter into a contract until the contract
has been presented and passed upon at a regularly called meeting of
the board. The board may pay a bill or a demand for money against
it by action of the board or as provided in section 4 of P.L.1982,
c.196 (C.18A:19-4.1).

d. The board may designate its president, its vice-president,
and one other member of the board as an executive committee to
administer the affairs of the board of directors between regularly
convened meetings of the board.

e. A quorum shall consist of a majority of the members of the
board of directors.

f. The board of directors shall be a body corporate, and shall
be known as “the board of directors of ...................... ” (here shall be
inserted a suitable name to be adopted by the board of directors
with the approval of the State Board of Education, but the name
shall contain at least the name of the county in which the
educational service agency is located). The board of directors may
purchase, lease-purchase, or lease personal or real property in
accordance with rules and regulations to be adopted by the State
Board of Education.
g. The board of directors shall adopt and employ such a system of bookkeeping and accounting as may be prescribed by the State Board of Education. The board of directors shall comply with the requirements for audit prescribed in chapter 23 of Title 18A for public school districts.

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

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

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

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

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

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

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

c. Report to the board at each regular meeting:

(1) The amount of the total appropriations and the cash receipts for each account;
(2) The amount for which warrants have been drawn and the amount of orders for all contractual obligations since the date of his last report;

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

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

d. Notify all members of the board of all regular meetings of the board;

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

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

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

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

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

(1) unappropriated balances from the prebudget year;
(2) anticipated surpluses to be generated by fees for services;
(3) payments by member districts;
(4) payments by nonpublic schools; and
(5) anticipated miscellaneous revenues.

c. Payments shall be made by member districts to pay for all or part of the agency expenses. Each member district’s share shall be determined as the proportion which the total public school
enrollment in the school district on the last school day prior to October 16 of the year in which the budget is made bears to the total public school enrollment for all member districts on the last school day prior to October 16 or in any other manner agreed to by two-thirds of the members of the representative assembly. Payment of the member district’s share of the agency expenses, when so determined, shall be an obligation of a member school district, and payments shall be made during the school year for which the budget shall have been made in a manner determined by the representative assembly.

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

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

8. a. The agency shall operate as a cooperative pricing system.
   b. The provision of services shall be conducted pursuant to the “Public School Contracts Law,” N.J.S.18A:18A-1 et seq., and notwithstanding any law to the contrary, contracts for covered services shall be secured via competitive contracting. Criteria for evaluating proposals shall include, but shall not be limited to, the contractor’s previous experience with the provision of similar supplies, materials, and services.
   c. Prior to awarding any contract, the terms of all contracts pending final approval shall be disclosed on the educational service agency’s website at least 20 days prior to the final approval of the contract.
   d. The educational service agency shall create and maintain a webpage listing the services for which it has entered into a county-wide contract.

9. The board of directors may employ such persons as necessary to perform its administrative duties, subject to the provisions of Title 18A for the employment of personnel for public school districts, and subject to the rules of the State Board of Examiners for the employment of persons whose office, position, or
employment requires them to hold an appropriate certificate issued by the State Board of Examiners. Persons holding office, position, or employment under a board of directors of an agency shall enjoy the same rights and benefits as are enjoyed by persons holding office, position, or employment under a public school district board of education.

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

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

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

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

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

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

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

(1) The school district passes a resolution calling for a public hearing to explore the costs and benefits of adhering to an agency’s master contract and provides an opportunity for parents and other affected stakeholders in the district to make statements and ask 
questions relating to adhering to an educational service agency
master contract;

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

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

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

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

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

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

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

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

(2) notify the collective bargaining representative of the affected
service employees, if any, of the successor contractor and provide
to the collective bargaining representative a copy of the list of
service employees prepared pursuant to paragraph (1) of this
subsection; and
(3) ensure that a notice is conspicuously posted at any site at
which service employees perform their duties, setting forth the
rights provided under this section in the same location and manner
that other statutorily required notices to employees are posted.
b. The successor contractor shall:
(1) offer employment during a 90 day transition employment
period to all service employees employed by the predecessor
employer;
(2) not discharge, without just cause, an employee retained in
accordance with this section during the 90 day transition period;
and
(3) perform a written performance evaluation for each employee
retained in accordance with this section at the end of the 90 day
transition period and offer those employees whose performance was
satisfactory, continued employment under the terms and conditions
of employment established by the successor contractor or as
required by law.

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

13. This act shall take effect immediately.

STATEMENT

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

This bill establishes an educational service agency in each
county, which will serve as a cooperative of school districts to
contract for custodial and food services, the covered services under
the bill. Under the bill, membership in an agency will be automatic
for each school district in that county that uses a private contractor with respect to a covered service, except that in cases in which the district has chosen to contract for only one type of covered service its membership will be automatic only for that specific covered service.

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

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

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

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

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

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

The bill provides that if a school district is using its own employees to provide a covered service, the district may not adhere to an educational service agency master contract for that covered service when doing so would affect the employment of any employees in a collective bargaining unit during the term that an
existing collective bargaining agreement is in effect unless the
school district meets certain requirements. Each employee replaced
or displaced as the result of the school district’s adhesion to an
educational service agency’s master contract will retain all
previously acquired seniority and will have recall rights whenever
the district’s participation in the agency’s master contract
terminates.

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

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