

SENATE, No. 3108

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED APRIL 15, 2024

Sponsored by:

Senator NILSA I. CRUZ-PEREZ

District 5 (Camden and Gloucester)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



S3108 CRUZ-PEREZ

2

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

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 candidate
21 committee of any person serving in an elective public office of that
22 county when the contract is awarded; and

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

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

33 **[**Notwithstanding the provisions of any other law, rule, or
34 regulation to the contrary, a contract having an anticipated value in
35 excess of \$17,500 but below the applicable public bidding threshold
36 shall not be required to be awarded by the governing body of a
37 county, or any agency or instrumentality thereof, and may be
38 awarded by the qualified purchasing agent of the contracting unit. **]**
39 (cf: P.L.2023, c.30, s.11)

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 candidate committee of any person serving in an elective public
10 office of that municipality when the contract is awarded; and

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

20 No such committee shall accept such a contribution from a
21 business entity during the term of its contract with the municipality.

22 **【Notwithstanding the provisions of any other law, rule, or**
23 **regulation to the contrary, a contract having an anticipated value in**
24 **excess of \$17,500 but below the applicable public bidding threshold**
25 **shall not be required to be awarded by the governing body of a**
26 **municipality, or any agency or instrumentality thereof, and may be**
27 **awarded by the qualified purchasing agent of the contracting unit.】**
28 (cf: P.L.2023, c.30, s.12)
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, c.19
33 (C.19:44A-20.3 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.);

46 "fair and open process" means, at a minimum, that the contract
47 shall be: publicly advertised in newspapers or on the Internet
48 website maintained by the public entity in sufficient time to give

1 notice in advance of the contract; awarded under a process that
2 provides for public solicitation of proposals or qualifications and
3 awarded and disclosed under criteria established in writing by the
4 public entity prior to the solicitation of proposals or qualifications;
5 and publicly opened and announced when awarded. A contract
6 awarded under a process that includes public bidding or competitive
7 contracting pursuant to the "Local Public Contracts Law," P.L.1971,
8 c.198 (C.40A:11-1 et seq.) shall constitute a fair and open process.
9 The decision of a public entity as to what constitutes a fair and open
10 process shall 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.2023, c.30, s.13)

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 authority,】**
22 **or board of education, 【or fire district】 not later than 10 days prior**
23 **to entering into any contract having an anticipated value in excess**
24 **of \$17,500, except for a contract that is required by law to be**
25 **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), not later than**
28 **10 days prior to entering into any contract having an anticipated**
29 **value in excess of the local bid threshold, except for a contract that**
30 **is required by law to be publicly advertised for bids:**

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

1 any legislative district which includes all or part of the county, or
2 any continuing political committee.

3 The provisions of this section shall not apply to a contract when
4 a public emergency requires the immediate delivery of goods or
5 services.

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

20 c. As used in this section:

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

27 "interest" means the ownership or control of more than 10% of
28 the profits or assets of a business entity or 10% of the stock in the
29 case of a business entity that is a corporation for profit, as
30 appropriate; "local bid threshold" means the bid threshold or
31 threshold amount applicable to the contract at issue under the
32 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
33 seq.); and

34 "State agency" means any of the principal departments in the
35 Executive Branch of the State Government, and any division, board,
36 bureau, office, commission or other instrumentality within or
37 created by such department, the Legislature of the State and any
38 office, board, bureau or commission within or created by the
39 Legislative Branch, and any independent State authority,
40 commission, instrumentality or agency.

41 d. Any business entity that fails to comply with the provisions
42 of this section shall be subject to a fine imposed by the New Jersey
43 Election Law Enforcement Commission in an amount to be
44 determined by the commission which may be based upon the
45 amount that the business entity failed to report.

46 (cf: P.L.2023, c.30, s.20)

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

3 2. As used in this act:

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

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

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

21 (4) "Public body" means the State of New Jersey, any of its
22 political subdivisions, any authority created by the Legislature of
23 the State of New Jersey and any instrumentality or agency of the
24 State of New Jersey or of any of its political subdivisions.

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

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

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

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

44 (7) "Workman" or "worker" includes laborer, mechanic, skilled
45 or semi-skilled, laborer and apprentices or helpers employed by any
46 contractor or subcontractor and engaged in the performance of
47 services directly upon a public work, regardless of whether their
48 work becomes a component part thereof, but does not include

1 material suppliers or their employees who do not perform services
2 at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25
3 et seq.), contractors or subcontractors engaged in custom fabrication
4 shall not be regarded as material suppliers.

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

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

14 (10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-
15 56.25 et seq.) and the rules and regulations issued hereunder.

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

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

36 (b) In the case of any public work other than a public work
37 described in paragraph (a) of this subsection, an amount equal to
38 \$2,000.

39 (12) "Custom fabrication" means:

40 (a) the fabrication of any of the following: plumbing, heating,
41 cooling, ventilation or exhaust duct systems, mechanical insulation,
42 or one or more signs in a project which cost a total of more than
43 \$30,000 and are part of a project upon completion; or

44 (b) any other fabrication which is one or more entire modules or
45 structures pre-fabricated to specifications for a particular project of
46 public work with minimal construction work remaining other than
47 installation, regardless of whether unforeseen construction work is
48 required on the public work site to modify the custom fabricated

1 item for the purpose of installation, for use in a project of public
2 work or for use in a type or classification of a project of public
3 work. "Custom fabrication" shall not include components or
4 materials, such as structural steel members or precast concrete, or
5 smaller prefabricated components.

6 (cf: P.L.2023, c.133, s.1)

7

8 6. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 An unintended consequence of two bodies of law, the "Pay to
14 Play" laws, P.L.2004, c.19 and P.L.2005, c.271 (C.19:44A-20.4 et
15 al) and the "New Jersey Prevailing Wage Act," P.L.1963, c.150
16 (C.34:11-56.25 et seq.) is to make it difficult for small, local
17 businesses to contract with municipalities and counties. These
18 bodies of law impose requirements and costs on businesses which
19 contract with public entities for relatively modest dollar amounts.
20 The threshold dollar amounts set under these laws is lower than the
21 bid threshold amounts authorized under the "Local Public Contracts
22 Law."

23 Under current law, the governing bodies of counties,
24 municipalities, and other contracting units subject to the "Local
25 Public Contracts Law" (LPCL) may authorize a purchasing agent or
26 other employee to award contracts below a certain dollar amount
27 without public advertising for bids. The statutory bid threshold is
28 \$17,500, however, a contracting unit that has appointed a "qualified
29 purchasing agent" (QPA), can set the bid threshold at a higher
30 amount. The statute provides that a contracting unit with a QPA
31 can set the bid threshold at up to \$25,000, which amount is adjusted
32 by the Governor every five years to account for inflation. The
33 Governor's adjusted threshold amount currently allows contracting
34 units that have appointed a QPA to set the bid threshold at up to
35 \$44,000.

36 The pay-to-play laws require contracts above \$17,500 to be
37 awarded pursuant to a fair and open process. The "New Jersey
38 Prevailing Wage Act" stipulates the payment of prevailing wage
39 rates for workers on construction projects that are subsidized by
40 public funds of over \$2,000, in the case of counties, and an amount
41 below \$17,500, in the case of municipalities. The bill also removes
42 certain provisions added by P.L.2023, c.30 which would no longer
43 be necessary under this bill.

44 This bill amends the threshold amounts under the pay to play and
45 prevailing wage laws to make them the same as the amount
46 applicable to the contract under the LPCL.