

§3 - C.52:27D-124.3  
& Note to 40A:11-1  
§4 - T&E  
§5 - Note to §§1-4

P.L. 2005, CHAPTER 212, *approved August 29, 2005*  
Senate, No. 2101

1 **AN ACT** concerning construction code inspection, amending and  
2 supplementing P.L.1975, c.217 (C.52:27D-119 et seq.), and  
3 amending P.L.1971, c.198.

4

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

7

8 1. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to  
9 read as follows:

10 6. The commissioner shall have all the powers necessary or  
11 convenient to effectuate the purposes of this act, including, but not  
12 limited to, the following powers in addition to all others granted by  
13 this act:

14 a. To adopt, amend and repeal, after consultation with the code  
15 advisory board, rules: (1) relating to the administration and  
16 enforcement of this act and (2) the qualifications or licensing, or both,  
17 of all persons employed by enforcing agencies of the State to enforce  
18 this act or the code, except that, plumbing inspectors shall be subject  
19 to the rules adopted by the commissioner only insofar as such rules are  
20 compatible with such rules and regulations, regarding health and  
21 plumbing for public and private buildings, as may be promulgated by  
22 the Public Health Council in accordance with Title 26 of the Revised  
23 Statutes.

24 b. To enter into agreements with federal and State of New Jersey  
25 agencies, after consultation with the code advisory board, to provide  
26 insofar as practicable (1) single-agency review of construction plans  
27 and inspection of construction and (2) intergovernmental acceptance  
28 of such review and inspection to avoid unnecessary duplication of  
29 effort and fees. The commissioner shall have the power to enter into  
30 such agreements although the federal standards are not identical with  
31 State standards; provided that the same basic objectives are met. The  
32 commissioner shall have the power through such agreements to bind  
33 the State of New Jersey and all governmental entities deriving  
34 authority therefrom.

35 c. To take testimony and hold hearings relating to any aspect of or  
36 matter relating to the administration or enforcement of this act,  
37 including but not limited to prospective interpretation of the code so  
38 as to resolve inconsistent or conflicting code interpretations, and, in  
39 connection therewith, issue subpoena to compel the attendance of

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 witnesses and the production of evidence. The commissioner may  
2 designate one or more hearing examiners to hold public hearings and  
3 report on such hearings to the commissioner.

4 d. To encourage, support or conduct, after consultation with the  
5 code advisory board, educational and training programs for employees,  
6 agents and inspectors of enforcing agencies, either through the  
7 Department of Community Affairs or in cooperation with other  
8 departments of State government, enforcing agencies, educational  
9 institutions, or associations of code officials.

10 e. To study the effect of this act and the code to ascertain their  
11 effect upon the cost of building construction and maintenance, and the  
12 effectiveness of their provisions for insuring the health, safety, and  
13 welfare of the people of the State of New Jersey.

14 f. To make, establish and amend, after consultation with the code  
15 advisory board, such rules as may be necessary, desirable or proper to  
16 carry out his powers and duties under this act.

17 g. To adopt, amend, and repeal rules and regulations providing for  
18 the charging of and setting the amount of fees for the following code  
19 enforcement services, licenses or approvals performed or issued by the  
20 department, pursuant to the "State Uniform Construction Code Act:"

21 (1) Plan review, construction permits, certificates of occupancy,  
22 demolition permits, moving of building permits, elevator permits and  
23 sign permits; and

24 (2) Review of applications for and the issuance of licenses  
25 certifying an individual's qualifications to act as a construction code  
26 official, subcode official or assistant under this act.

27 (3) (Deleted by amendment, P.L.1983, c.338).

28 h. To adopt, amend and repeal rules and regulations providing for  
29 the charging of and setting the amount of construction permit  
30 surcharge fees to be collected by the enforcing agency and remitted to  
31 the department to support those activities which may be undertaken  
32 with moneys credited to the Uniform Construction Code Revolving  
33 Fund.

34 i. To adopt, amend and repeal rules and regulations providing for:

35 (1) Setting the amount of and the charging of fees to be paid to the  
36 department by a private agency for the review of applications for and  
37 the issuance of approvals authorizing a private agency to act as an  
38 on-site inspection and plan review agency or an in-plant inspection  
39 agency;

40 (2) **[**The setting of the amounts of fees to be charged by a private  
41 agency for inspection and plan review services; provided, however,  
42 that such fees shall not be more than those adopted and charged by the  
43 department when it serves as a local enforcement agency pursuant to  
44 section 10 of P.L.1975, c.217 (C.52:27D-128); and] (Deleted by  
45 amendment, P.L. , c. )(now before the Legislature as this bill).

46 (3) **[**The formulation of standards to be observed by a municipality

1 in the evaluation of a proposal submitted by a private agency to  
2 provide inspection or plan review services within a municipality.]  
3 (Deleted by amendment, P.L. , c. )(now before the Legislature as  
4 this bill).

5 j. To enforce and administer the provisions of the "State Uniform  
6 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and  
7 the code promulgated thereunder, and to prosecute or cause to be  
8 prosecuted violators of the provisions of that act or the code  
9 promulgated thereunder in administrative hearings and in civil  
10 proceedings in State and local courts.

11 k. To monitor the compliance of local enforcing agencies with the  
12 provisions of the "State Uniform Construction Code Act," P.L.1975,  
13 c.217 (C.52:27D-119 et seq.), to order corrective action as may be  
14 necessary where a local enforcing agency is found to be failing to carry  
15 out its responsibilities under that act, to supplant or replace the local  
16 enforcing agency for a specific project, and to order it dissolved and  
17 replaced by the department where the local enforcing agency  
18 repeatedly or habitually fails to enforce the provisions of the "State  
19 Uniform Construction Code Act."

20 l. To adopt, amend and repeal rules and regulations concerning the  
21 installation and maintenance of carbon monoxide sensors.

22 (cf: P.L.1999, c.15, s.4)

23

24 2. Section 5 of P.L.1971, c.198 (C:40A:11-5) is amended to read  
25 as follows:

26 5. Exceptions. Any contract the amount of which exceeds the bid  
27 threshold, may be negotiated and awarded by the governing body  
28 without public advertising for bids and bidding therefor and shall be  
29 awarded by resolution of the governing body if:

30 (1) The subject matter thereof consists of:

31 (a) (i) Professional services. The governing body shall in each  
32 instance state supporting reasons for its action in the resolution  
33 awarding each contract and shall forthwith cause to be printed once,  
34 in the official newspaper, a brief notice stating the nature, duration,  
35 service and amount of the contract, and that the resolution and  
36 contract are on file and available for public inspection in the office of  
37 the clerk of the county or municipality, or, in the case of a contracting  
38 unit created by more than one county or municipality, of the counties  
39 or municipalities creating such contracting unit; or (ii) Extraordinary  
40 unspecifiable services. The application of this exception shall be  
41 construed narrowly in favor of open competitive bidding, whenever  
42 possible, and the Division of Local Government Services is authorized  
43 to adopt and promulgate rules and regulations after consultation with  
44 the Commissioner of Education limiting the use of this exception in  
45 accordance with the intention herein expressed. The governing body  
46 shall in each instance state supporting reasons for its action in the

- 1 resolution awarding each contract and shall forthwith cause to be  
2 printed, in the manner set forth in subsection (1) (a) (i) of this section,  
3 a brief notice of the award of such contract;
- 4 (b) The doing of any work by employees of the contracting unit;
- 5 (c) The printing of legal briefs, records and appendices to be used  
6 in any legal proceeding in which the contracting unit may be a party;
- 7 (d) The furnishing of a tax map or maps for the contracting unit;
- 8 (e) The purchase of perishable foods as a subsistence supply;
- 9 (f) The supplying of any product or the rendering of any service by  
10 a public utility, which is subject to the jurisdiction of the Board of  
11 Public Utilities or the Federal Energy Regulatory Commission or its  
12 successor, in accordance with tariffs and schedules of charges made,  
13 charged or exacted, filed with the board or commission;
- 14 (g) The acquisition, subject to prior approval of the Attorney  
15 General, of special equipment for confidential investigation;
- 16 (h) The printing of bonds and documents necessary to the issuance  
17 and sale thereof by a contracting unit;
- 18 (i) Equipment repair service if in the nature of an extraordinary  
19 unspecifiable service and necessary parts furnished in connection with  
20 such service, which exception shall be in accordance with the  
21 requirements for extraordinary unspecifiable services;
- 22 (j) The publishing of legal notices in newspapers as required by  
23 law;
- 24 (k) The acquisition of artifacts or other items of unique intrinsic,  
25 artistic or historical character;
- 26 (l) Those goods and services necessary or required to prepare and  
27 conduct an election;
- 28 (m) Insurance, including the purchase of insurance coverage and  
29 consultant services, which exception shall be in accordance with the  
30 requirements for extraordinary unspecifiable services;
- 31 (n) The doing of any work by handicapped persons employed by a  
32 sheltered workshop;
- 33 (o) The provision of any goods or services including those of a  
34 commercial nature, attendant upon the operation of a restaurant by any  
35 nonprofit, duly incorporated, historical society at or on any historical  
36 preservation site;
- 37 (p) (Deleted by amendment, P.L.1999, c.440.)
- 38 (q) Library and educational goods and services;
- 39 (r) **[On-site inspections undertaken by private agencies pursuant  
40 to the "State Uniform Construction Code Act," P.L.1975, c.217  
41 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;]  
42 (Deleted by amendment, P.L. , c. ) (pending before the Legislature  
43 as this bill).**
- 44 (s) The marketing of recyclable materials recovered through a  
45 recycling program, or the marketing of any product intentionally  
46 produced or derived from solid waste received at a resource recovery

1 facility or recovered through a resource recovery program, including,  
2 but not limited to, refuse-derived fuel, compost materials, methane  
3 gas, and other similar products;

4 (t) (Deleted by amendment, P.L.1999, c.440.)

5 (u) Contracting unit towing and storage contracts, provided that  
6 all such contracts shall be pursuant to reasonable non-exclusionary and  
7 non-discriminatory terms and conditions, which may include the  
8 provision of such services on a rotating basis, at the rates and charges  
9 set by the municipality pursuant to section 1 of P.L.1979, c.101  
10 (C.40:48-2.49). All contracting unit towing and storage contracts for  
11 services to be provided at rates and charges other than those  
12 established pursuant to the terms of this paragraph shall only be  
13 awarded to the lowest responsible bidder in accordance with the  
14 provisions of the "Local Public Contracts Law" and without regard for  
15 the value of the contract therefor;

16 (v) The purchase of steam or electricity from, or the rendering of  
17 services directly related to the purchase of such steam or electricity  
18 from a qualifying small power production facility or a qualifying  
19 cogeneration facility as defined pursuant to 16 U.S.C.s.796;

20 (w) The purchase of electricity or administrative or dispatching  
21 services directly related to the transmission of such purchased  
22 electricity by a contracting unit engaged in the generation of  
23 electricity;

24 (x) The printing of municipal ordinances or other services  
25 necessarily incurred in connection with the revision and codification  
26 of municipal ordinances;

27 (y) An agreement for the purchase of an equitable interest in a  
28 water supply facility or for the provision of water supply services  
29 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
30 an agreement entered into pursuant to P.L.1989, c.109  
31 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
32 later than six months after the effective date of P.L.1993, c.381;

33 (z) A contract for the provision of water supply services entered  
34 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

35 (aa) The cooperative marketing of recyclable materials recovered  
36 through a recycling program;

37 (bb) A contract for the provision of wastewater treatment services  
38 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

39 (cc) Expenses for travel and conferences;

40 (dd) The provision or performance of goods or services for the  
41 support or maintenance of proprietary computer hardware and  
42 software, except that this provision shall not be utilized to acquire or  
43 upgrade non-proprietary hardware or to acquire or update  
44 non-proprietary software;

45 (ee) The management or operation of an airport owned by the  
46 contracting unit pursuant to R.S.40:8-1 et seq.;

1 (ff) Purchases of goods and services at rates set by the Universal  
2 Service Fund administered by the Federal Communications  
3 Commission.

4 (gg) A contract for the provision of water supply services or  
5 wastewater treatment services entered into pursuant to section 2 of  
6 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,  
7 construction, operation, or maintenance, or any combination thereof,  
8 of a water supply facility as defined in subsection (16) of section 15 of  
9 P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as  
10 defined in subsection (19) of section 15 of P.L.1971, c.198  
11 (C.40A:11-15), or any component part or parts thereof, including a  
12 water filtration system as defined in subsection (16) of section 15 of  
13 P.L.1971, c.198 (C.40A:11-15);

14 (hh) The purchase of electricity generated from a power production  
15 facility that is fueled by methane gas extracted from a landfill in the  
16 county of the contracting unit.

17 (2) It is to be made or entered into with the United States of  
18 America, the State of New Jersey, county or municipality or any  
19 board, body, officer, agency or authority thereof or any other state or  
20 subdivision thereof.

21 (3) Bids have been advertised pursuant to section 4 of P.L.1971,  
22 c.198 (C.40A:11-4) on two occasions and (a) no bids have been  
23 received on both occasions in response to the advertisement, or (b) the  
24 governing body has rejected such bids on two occasions because it has  
25 determined that they are not reasonable as to price, on the basis of  
26 cost estimates prepared for or by the contracting agent prior to the  
27 advertising therefor, or have not been independently arrived at in open  
28 competition, or (c) on one occasion no bids were received pursuant to  
29 (a) and on one occasion all bids were rejected pursuant to (b), in  
30 whatever sequence; any such contract may then be negotiated and may  
31 be awarded upon adoption of a resolution by a two-thirds affirmative  
32 vote of the authorized membership of the governing body authorizing  
33 such contract; provided, however, that:

34 (i) A reasonable effort is first made by the contracting agent to  
35 determine that the same or equivalent goods or services, at a cost  
36 which is lower than the negotiated price, are not available from an  
37 agency or authority of the United States, the State of New Jersey or  
38 of the county in which the contracting unit is located, or any  
39 municipality in close proximity to the contracting unit;

40 (ii) The terms, conditions, restrictions and specifications set forth  
41 in the negotiated contract are not substantially different from those  
42 which were the subject of competitive bidding pursuant to section 4 of  
43 P.L.1971, c.198 (C.40A:11-4); and

44 (iii) Any minor amendment or modification of any of the terms,  
45 conditions, restrictions and specifications, which were the subject of  
46 competitive bidding pursuant to section 4 of P.L.1971, c.198

1 (C.40A:11-4), shall be stated in the resolution awarding such contract;  
2 provided further, however, that if on the second occasion the bids  
3 received are rejected as unreasonable as to price, the contracting agent  
4 shall notify each responsible bidder submitting bids on the second  
5 occasion of its intention to negotiate, and afford each bidder a  
6 reasonable opportunity to negotiate, but the governing body shall not  
7 award such contract unless the negotiated price is lower than the  
8 lowest rejected bid price submitted on the second occasion by a  
9 responsible bidder, is the lowest negotiated price offered by any  
10 responsible vendor, and is a reasonable price for such goods or  
11 services.

12 Whenever a contracting unit shall determine that a bid was not  
13 arrived at independently in open competition pursuant to subsection  
14 (3) of this section it shall thereupon notify the county prosecutor of  
15 the county in which the contracting unit is located and the Attorney  
16 General of the facts upon which its determination is based, and when  
17 appropriate, it may institute appropriate proceedings in any State or  
18 federal court of competent jurisdiction for a violation of any State or  
19 federal antitrust law or laws relating to the unlawful restraint of trade.

20 (4) The contracting unit has solicited and received at least three  
21 quotations on materials, supplies or equipment for which a State  
22 contract has been issued pursuant to section 12 of P.L.1971, c.198  
23 (C.40A:11-12), and the lowest responsible quotation is at least 10%  
24 less than the price the contracting unit would be charged for the  
25 identical materials, supplies or equipment, in the same quantities,  
26 under the State contract. Any such contract entered into pursuant to  
27 this subsection may be awarded only upon adoption of a resolution by  
28 the affirmative vote of two-thirds of the full membership of the  
29 governing body of the contracting unit at a meeting thereof  
30 authorizing such a contract. A copy of the purchase order relating to  
31 any such contract, the requisition for purchase order, if applicable, and  
32 documentation identifying the price of the materials, supplies or  
33 equipment under the State contract and the State contract number  
34 shall be filed with the director within five working days of the award  
35 of any such contract by the contracting unit. The director shall notify  
36 the contracting unit of receipt of the material and shall make the  
37 material available to the State Treasurer. The contracting unit shall  
38 make available to the director upon request any other documents  
39 relating to the solicitation and award of the contract, including, but not  
40 limited to, quotations, requests for quotations, and resolutions. The  
41 director periodically shall review material submitted by contracting  
42 units to determine the impact of such contracts on local contracting  
43 and shall consult with the State Treasurer on the impact of such  
44 contracts on the State procurement process. The director may, after  
45 consultation with the State Treasurer, adopt rules in accordance with  
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.) to limit the use of this subsection, after considering the impact of  
2 contracts awarded under this subsection on State and local  
3 contracting, or after considering the extent to which the award of  
4 contracts pursuant to this subsection is consistent with and in  
5 furtherance of the purposes of the public contracting laws.

6 (5) Notwithstanding any provision of law, rule or regulation to the  
7 contrary, the subject matter consists of the combined collection and  
8 marketing, or the cooperative combined collection and marketing of  
9 recycled material recovered through a recycling program, or any  
10 product intentionally produced or derived from solid waste received  
11 at a resource recovery facility or recovered through a resource  
12 recovery program including, but not limited to, refuse-derived fuel,  
13 compost materials, methane gas, and other similar products, provided  
14 that in lieu of engaging in such public advertising for bids and the  
15 bidding therefor, the contracting unit shall, prior to commencing the  
16 procurement process, submit for approval to the Director of the  
17 Division of Local Government Services, a written detailed description  
18 of the process to be followed in securing said services. Within 30 days  
19 after receipt of the written description the director shall, if the director  
20 finds that the process provides for fair competition and integrity in the  
21 negotiation process, approve, in writing, the description submitted by  
22 the contracting unit. If the director finds that the process does not  
23 provide for fair competition and integrity in the negotiation process,  
24 the director shall advise the contracting unit of the deficiencies that  
25 must be remedied. If the director fails to respond in writing to the  
26 contracting unit within 30 days, the procurement process as described  
27 shall be deemed approved. As used in this section, "collection" means  
28 the physical removal of recyclable materials from curbside or any other  
29 location selected by the contracting unit.

30 (cf: P.L.2003, c.150, s.2)

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32 3. (New section) A proposal by a private agency to provide  
33 inspection or plan review services to a municipality to administer the  
34 provisions of the "State Uniform Construction Code Act," P.L.1975,  
35 c.217 (C.52:27D-119 et seq.) shall be submitted in accordance with  
36 and shall be subject to the bidding and other provisions of the "Local  
37 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). A  
38 municipality shall require as part of the bid specifications that a private  
39 agency submit a bid or proposal in terms of a percentage of the costs  
40 charged by the department when it serves as a local enforcement  
41 agency pursuant to section 10 of P.L.1975, c.217 (C.52:27D-128). A  
42 municipality may include in the fee charged by it for work done by  
43 private agencies an amount sufficient to cover a proportionate share  
44 of administrative costs incurred by the local enforcing agency in  
45 connection with inspections performed by private agencies.

1       4. (New section) The Commissioner of Community Affairs shall,  
2 no later than three years after the effective date of P.L. , c.  
3 (pending before the Legislature as this bill), submit to: the Chairman  
4 of the Senate Community and Urban Affairs Committee and the  
5 Chairman of the Assembly Housing Committee, or their successor  
6 committees; the presiding officers and the minority leaders of the  
7 Senate and General Assembly; and the Governor, a report on the  
8 impact of making private agency contracts for inspection and plan  
9 review services subject to contracting procedures provided under the  
10 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)  
11 as required under P.L. , c. (pending before the Legislature as this  
12 bill). The report shall include an assessment of the quality of  
13 inspection services rendered pursuant to such contracts, the price of  
14 those services and uniformity of pricing for comparable services in  
15 municipalities throughout the State, the level of satisfaction of  
16 municipal officials with the services provided, the ease of  
17 administration of those contracts, and the extent to which full-time  
18 inspectors employed by the Department of Community Affairs are  
19 displaced by this change in contracting procedure.

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21       5. This act shall take effect on the first day of the third month next  
22 following enactment.

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#### STATEMENT

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27       This bill would make contracts between private inspection firms and  
28 local governments for inspections completed pursuant to the "State  
29 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et  
30 seq.) subject to the bidding and other requirements of the "Local  
31 Public Contracts Law," P.L.1971, c.198 (40A:11-1 et seq.). Currently  
32 such contracts are subject to separate regulations promulgated by the  
33 Commissioner of Community Affairs. In many ways these regulations  
34 are more burdensome for municipalities than the requirements under  
35 the "Local Public Contracts Law."

36       For more than 10 years, private agencies performing code  
37 inspection were required to charge the same fees as the inspectors  
38 employed by the Department of Community Affairs (DCA), and public  
39 bidding of such work was not required. This situation prevented a  
40 municipality from obtaining competitive prices from inspection firms.  
41 The Legislature amended the law in 1993 to provide that private firms  
42 could charge the same or less than the DCA fee schedule. The rules  
43 promulgated by the commissioner to effectuate this change in the law  
44 included requirements for sealed bids and ended the ability of a  
45 municipality to engage in short term contracts. Many municipalities  
46 now find the procedures for entering into a contract with a private

1 agency inspection firm so burdensome that they opt to contract with  
2 the department to do the work. The bill would remove the power  
3 from the commissioner to regulate these types of contracts. Instead,  
4 a contract for municipal code compliance or plan review would be bid  
5 as a public contract under the "Local Public Contracts Law."

6 The bill would also require a study and report to be made by the  
7 Commissioner of Community Affairs three years after the enactment  
8 of the bill into law. The report is to include an assessment of the  
9 quality of inspection services rendered pursuant to such contracts, the  
10 price of those services and uniformity of pricing for comparable  
11 services in municipalities throughout the State, the level of satisfaction  
12 of municipal officials with the services provided, the ease of  
13 administration of those contracts, and the extent to which full-time  
14 inspectors employed by the Department of Community Affairs are  
15 displaced by this change in contracting procedure.

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20 Requires contracts between local governments and private inspection  
21 agencies to comply with "Local Public Contracts Law."