

ASSEMBLY, No. 110

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

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SYNOPSIS

“State Authorities Reform Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/29/2008)

1 AN ACT reforming the operations and practices of State authorities,
2 amending R.S.58:5-7 and R.S.58:14-2, and supplementing Title
3 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 20 and 23 of this act shall
9 be known and may be cited as the “State Authorities Reform Act.”

10
11 2. (New section) The Legislature finds and declares that:

12 a. There are over fifty governmental agencies in New Jersey
13 commonly known as “State authorities,” which play significant
14 roles in the governance of the State, yet their operations are largely
15 unknown to many of the citizens of New Jersey;

16 b. These State authorities are independent or quasi-independent
17 and operate outside the standard structure of the Executive Branch
18 of State government;

19 c. Together, these State authorities have capital and operating
20 budgets amounting to billions of dollars, and they issue bonds and
21 otherwise incur debt without voter approval that also total in the
22 billions of dollars; and

23 d. It is in the best interests of public and good government: (1)
24 to reform the business practices of State authorities, including how
25 they enter into contracts, incur debt, and hire employees; (2) to take
26 steps to make the operations of the State authorities more accessible
27 to public scrutiny; and (3) to ensure that the State authorities are
28 working to further the State’s plans for economic growth.

29
30 3. (New section) As used in this act:

31 “Board of directors” or “board” means the governing body of a
32 State authority.

33 “Governor’s Authorities Unit” or “Authorities Unit” means the
34 Authorities Unit in the Governor’s Office or a similar successor
35 entity thereto.

36 “Nonprofessional services” means services other than
37 professional services or technical services.

38 “Procurement contract” means a contract for goods or services
39 including, but not limited to, contracts for the purchase of goods
40 such as materials, products, or supplies; services that are non-
41 professional; and professional services.

42 “Professional services” means services rendered or performed by
43 a person authorized by law to practice a recognized profession
44 whose practice is regulated by law and the performance of which
45 services requires knowledge of an advanced type in a field of

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 learning acquired by a prolonged formal course of specialized
2 instruction and study as distinguished from general academic
3 instruction or apprenticeship and training.

4 “Relative” means an individual's spouse or the individual's or
5 spouse's parent, child, brother, sister, aunt, uncle, niece, nephew,
6 grandparent, grandchild, son-in-law, daughter-in-law, stepparent,
7 stepchild, stepbrother, stepsister, half brother or half sister, whether
8 the relative is related to the individual or the individual's spouse by
9 blood, marriage or adoption.

10 “Senior management” means the executive director or chief
11 executive officer, the chief financial officer, assistant directors, and
12 any other directors, or substantially similar positions of a State
13 authority.

14 “State authority” or “authority” means an independent State
15 authority; any board, commission, or agency that is organized in but
16 not of a principal department of State government; and any State
17 authority that is required to submit its minutes, resolutions, or
18 actions for gubernatorial approval or veto.

19

20 4. (New section) a. Each State authority shall annually prepare
21 a comprehensive report concerning the authority's operations. The
22 report shall set forth the significant actions of the authority from the
23 previous year, including a discussion of the degree of success the
24 authority had in promoting the State's economic growth strategies
25 and other policies.

26 The report shall also include the authority's financial statements
27 and identify internal financial controls at the authority that govern
28 expenditures, financial reporting, procurement, and other financial
29 matters and transactions.

30 b. The report shall contain a certification by the appropriate
31 member of senior management that during the preceding year the
32 authority has, to the best of the member's knowledge, followed all
33 of the authority's standards, procedures, and internal financial
34 controls. In the event that such certification is not warranted, the
35 report shall set forth the manner in which such controls were not
36 followed and a description of the corrective action to be taken by
37 the authority.

38 c. The report shall be submitted to the board of directors of the
39 authority for approval. Upon approval by the board of directors, a
40 copy of the report shall be submitted to the Governor's Authorities
41 Unit and the Legislature, and posted on the authority's website.

42

43 5. (New section) In order to ensure that a State authority
44 operates in an efficient, transparent, and ethical manner, the board
45 of directors shall, in addition to its other statutory duties:

- 1 a. Exercise direct oversight over the executive director, chief
2 executive officer, chief financial officer, and other senior
3 management of the authority;
- 4 b. Ensure that appropriate financial controls are in place at the
5 authority and that an audit committee has been impaneled to the
6 extent required by Executive Order No. 122 of 2004 or a
7 substantially similar executive order;
- 8 c. Maintain policies concerning competitive procurement
9 procedures that are consistent with this act and other applicable law;
- 10 d. Ensure compliance with all laws and regulations that
11 prohibit the awarding of contracts to businesses that have made
12 disqualifying political contributions;
- 13 e. Establish written policies and guidelines concerning
14 personnel matters including, but not limited to, job descriptions, job
15 qualifications, hiring practices, and compensation;
- 16 f. Establish policies necessary to implement provisions of law
17 and regulation governing ethics;
- 18 g. Require senior management to ensure the maintenance of a
19 website for the authority, and to post on the website notice of the
20 meetings and agendas of the authority board of directors and a copy
21 of the minutes of the meetings;
- 22 h. Require disclosure to the board, on an annual basis, of any
23 outside business dealings with the authority during the previous
24 year by a board member, a board member's employer, a board
25 member's business, a board member's relative, a member of the
26 authority's senior management, or a relative of a member of senior
27 management. The disclosure shall be made in the form of a
28 certification submitted to the board by the board member or senior
29 staff member.
30
- 31 6. (New section) A State authority shall promulgate regulations
32 setting forth procedures to be followed for public advertising for
33 bids for all procurement contracts to be awarded by the authority.
34 The procedures shall ensure that potential interested and qualified
35 bidders receive appropriate notice of the proposed contract and a
36 fair opportunity to seek award of the contract. The procedures shall
37 include advertisements in appropriate publications, and posting on
38 the authority's website and on the Statewide website established in
39 accordance with section 19 of this act.
40
- 41 7. (New section) Prior to the due date for bids on procurement
42 contracts, a State authority may hold conferences with interested
43 parties to explain contract specifications and the factors to be used
44 in awarding the contract, and to answer any questions. The date,
45 time, location, and other information concerning the conferences
46 shall be advertised along with the advertisement of the proposed

1 contracts or in any other manner that will adequately give notice of
2 the conferences to interested parties.

3
4 8. (New section) A State authority shall establish written
5 procedures for the awarding of contracts for goods or non-
6 professional services that are consistent with the purposes of this
7 act. The procedures shall include measures to ensure equal
8 opportunity for minority-owned, female-owned, and small business
9 enterprises. The procedures shall prescribe the establishment of
10 specifications and related information and the means by which such
11 specifications and information shall be transmitted in written or
12 electronic form to interested parties.

13 The procedures shall provide that all bids or other responses to
14 an advertised contract shall be submitted to the authority in written
15 or electronic form. In cases where the contract is to be awarded to
16 the lowest responsible bidder, the bid shall be in writing and sealed
17 until opened with all other bids.

18
19 9. (New section) a. Except as provided in subsection b. of this
20 section, a State authority shall award a contract for goods or non-
21 professional services to the lowest responsible bidder.

22 b. If a State authority is not required by another section of law
23 or by regulation to award a contract for goods or nonprofessional
24 services to the lowest responsible bidder, it may award the contract
25 to a bidder other than the lowest responsible bidder if: (1) the
26 circumstances come within the exceptions provided in section 14 of
27 this act, and (2) documentation of the decision not to award the
28 contract to the lowest responsible bidder is given in accordance
29 with the requirements of sections 14 and 15 of this act.

30
31 10. (New section) a. A State authority shall establish written
32 procedures that are consistent with the purposes of this act for the
33 awarding of contracts for professional services or technical
34 services. The procedures shall include efforts to ensure equal
35 opportunity for minority-owned, female-owned, and small business
36 enterprises. The procedures shall include steps to ensure that
37 contract specifications are not drafted in such a way as to establish
38 a preference for a particular firm.

39 The procedures shall include a numerical, quantitative scoring
40 process to evaluate proposals. The procedures shall require that the
41 scoring process and the scoring factors shall be in writing.

42 b. The factors which may be used by an authority as part of its
43 scoring process include, but are not limited to, the following:

44 (1) the background, qualifications, skills, and experience of the
45 firm and its staff;

46 (2) the firm's degree of expertise in the area of the proposal;

47 (3) the rate or price to be charged by the firm;

- 1 (4) the authority's prior experience with the firm;
- 2 (5) the firm's familiarity with the work, requirements, and
- 3 systems of the State authority;
- 4 (6) the firm's capacity to meet the requirements of the contract;
- 5 (7) the firm's references;
- 6 (8) interviews with prospective firms; and
- 7 (9) the geographic location of the firm's offices.

8 c. A State authority shall review its ongoing and open-ended
9 professional services contracts and establish a timetable for periodic
10 advertisement and re-evaluation of the contracts in accordance with
11 this section.

12

13 11. (New section) Prior to the receipt of any proposals or
14 qualifications concerning a professional services or technical
15 services contract, a State authority shall establish a qualified
16 evaluation committee to review and score submitted bids and
17 proposals. The authority shall screen each member of the
18 committee for a conflict of interest or the appearance of a conflict
19 of interest. A member of the board or a member of senior
20 management shall not participate, either directly or indirectly, in the
21 evaluation process if the member has a conflict of interest or there
22 is an appearance of conflict of interest.

23

24 12. (New section) An analysis of relevant factors that lead to
25 the decision to award a contract for professional services or
26 technical services shall be memorialized, in summary form, in the
27 State authority's resolution awarding the contract.

28

29 13. (New section) When professional services rendered in
30 connection with bond sales, related financial instruments, and
31 litigation matters are expected to be required on numerous
32 occasions over a period of time, the procedures and criteria set forth
33 in this act may be used to create a pool of prequalified potential
34 providers of professional services for a term not to exceed two
35 years. The purpose of establishing such a pool shall be to aid rather
36 than circumvent a genuine competitive process that ensures quality
37 service at the best possible value.

38 Advertisements for applications for inclusion in the pool of
39 prequalified providers of professional services shall set forth the
40 basis on which members of the pool will be selected to perform
41 particular services. The selection for a particular service may be
42 based upon the price to be charged by the professional for that
43 service, the relative strengths of the prequalified professionals for
44 that particular service, a process of alternating professionals, or
45 other fair and appropriate approaches.

1 14. (New section) The provisions of this act concerning public
2 advertisement and competitive procurement processes shall not
3 apply in the following limited circumstances:

4 a. When the contract price is below the bid threshold set by the
5 Governor pursuant to subsection b. of section 2 of P.L.1954, c.48
6 (C.52:34-7), unless other State law sets forth a lower bid threshold
7 to be used, in which case the lower bid threshold shall apply. A
8 State authority may not divide a contract into multiple proposed
9 contracts in order to take advantage of this exception.

10 When a contract price is below a bid threshold, a State authority
11 shall employ a modified competitive procurement process,
12 including advertising and obtaining verbal or written price
13 quotations, to the extent that such process is feasible and
14 economically appropriate.

15 If an authority invokes this exception, it must certify
16 the procurement process that was used and that the contract was not
17 divided into multiple proposed contracts in order to come under
18 this exception. The authority must maintain a record of the
19 certification;

20 b. In the case of an unforeseen life, safety, or health emergency
21 where the public exigency requires that services or products be
22 purchased immediately as demonstrated by a memorialized
23 concurrence of three officials designated to make such
24 determinations. This exception is limited to purchasing those
25 services or products necessary to mitigate the emergency situation.
26 State authorities shall make efforts to contract in advance for
27 services or products for which a foreseeable need may arise in the
28 event of an emergency;

29 c. When there is only one vendor capable or available to
30 provide the goods or services. Sole-source procurements may be
31 made only in exceptional and necessary circumstances. If an
32 authority invokes this exception, a designated member of the
33 authority's senior management shall write, sign, and retain a
34 memorandum justifying the awarding of a sole-source procurement
35 contract;

36 d. When a contract is with the federal government, or any state
37 government, or any agency or political subdivision thereof;

38 e. When a firm has brought an innovative idea to the authority,
39 a request for proposals cannot be constructed without
40 communicating the new idea, and the procurement would not
41 benefit from a competitive selection process;

42 f. When State or federal law or regulation requires, for a
43 specific situation, a procurement process different from that
44 prescribed under this act; or

45 g. When the State authority has received authorization from the
46 Governor's Authorities Unit.

1 15. (New section) When a State authority invokes one of the
2 exceptions provided for in subsections b. through g. of section 14 of
3 this act, the authority's executive director or chief executive officer
4 shall certify that circumstances warranted the application of the
5 exception and the proposed resolution concerning the contract shall
6 set forth the justification for invoking the exception.
7

8 16. (New section) A financial audit of each State authority shall
9 be conducted annually by an independent certified public
10 accounting firm and with oversight by an audit committee as
11 provided for in subsection b. of section 5 of this act. The financial
12 audit shall be submitted to the board of directors for its review.

13 The audit shall be accompanied by a written certification from
14 the chief executive officer and the chief financial officer or their
15 equivalents that, to the best of their knowledge, the financial
16 information provided to the auditor in connection with the audit is
17 accurate and fairly represents the financial condition and
18 operational results of the authority for the year being audited.

19 Upon acceptance by the board, the approved financial audit shall
20 be transmitted to the State Treasurer and the Governor's Authorities
21 Unit, and shall be posted on the authority's website.
22

23 17. (New section) A State authority's senior management shall
24 annually review the authority's operations with the specific goal of
25 identifying waste and inefficiencies, and shall take appropriate
26 remedial steps which shall be reported to the Governor's
27 Authorities Unit.
28

29 18. (New section) This act is not intended to supersede any other
30 provision of law or regulation concerning the practice and
31 procedures of State authorities if the law or regulation is consistent
32 with the purposes of this act and meets or exceeds the requirements
33 of this act.
34

35 19. (New section) The Office of Information Technology in the
36 Department of the Treasury shall establish and maintain a website
37 on which proposed procurement contracts for goods or services
38 from all State authorities shall be posted.
39

40 20. (New section) The Governor's Authorities Unit shall
41 conduct periodic policy coordination meetings with the executive
42 directors and chairs of the State authorities and the Office of
43 Economic Growth, or substantially similar successor office,
44 concerning the State's economic growth strategies and goals. The
45 State authorities shall incorporate the economic growth strategies
46 and goals into their capital plan development processes. The State
47 authorities shall submit their proposed capital plans, including

1 specific information as to how the capital plan and other
2 expenditures reflect the State's economic growth strategies and
3 goals, to the Office of Economic Growth and the Governor's
4 Authorities Unit for review and discussion.

5

6 21. R.S.58:5-7 is amended to read as follows:

7 58:5-7. a. Each said commission, when duly organized, shall be
8 deemed to be and shall become a body corporate with power to sue
9 and be sued, and with the right to acquire, hold, use, lease and
10 dispose of all such property as may be necessary for the uses and
11 purposes for which the commission was created, and with all other
12 necessary powers incident to corporate bodies.

13 b. Each commission shall maintain minutes of all meetings and
14 public hearings held by the commissioners. No action may be taken
15 by the commissioners unless it is taken at a meeting or hearing for
16 which minutes have been provided.

17 c. A true copy of the minutes of every meeting or hearing of
18 the commissioners shall be delivered forthwith by and under the
19 certification of the secretary thereof to the Governor. No action
20 taken at the meeting by the commissioners shall have force or effect
21 until 15 days after the copy of the minutes shall have been so
22 delivered, unless during this 15-day period the Governor shall
23 approve in writing the minutes or any part thereof, in which case
24 the action shall become effective upon approval. If, within that 15-
25 day period, the Governor returns a copy of the minutes with the
26 Governor's veto of any action taken by the commissioners or any
27 member thereof at the meeting, the action shall be null and void and
28 of no effect. Notwithstanding the foregoing, if the last day of the
29 15-day period shall be a Saturday, Sunday or legal holiday, then the
30 15-day period shall be deemed extended to the next following
31 business day.

32 The powers conferred in this subsection upon the Governor shall
33 be exercised with due regard for the rights of the holders of bonds,
34 notes or other obligations of the commissioners at any time
35 outstanding, and nothing in, or done pursuant to, this subsection
36 shall in any way limit, restrict or alter the obligation or powers of
37 the commissioners or any representative or officer of the
38 commissioners to carry out and perform in every detail each and
39 every covenant, agreement or contract at any time made or entered
40 into by or on behalf of the commissioners with respect to its bonds,
41 notes or other obligations or for the benefit, protection or security
42 of the holders thereof.

43 d. After the review period required pursuant to subsection c. of
44 this section has elapsed, if the Governor has not notified the
45 commissioners of a veto of the minutes, the minutes and any action
46 taken at that meeting or public hearing to which the minutes
47 correspond shall take effect.

48 (cf: R.S.58:5-7)

1 22. R.S.58:14-2 is amended to read as follows:

2 58:14-2. a. The board of commissioners known as the Passaic
3 valley sewerage commissioners, the first members of which were
4 appointed under the act entitled "An act authorizing the
5 appointment and defining the powers and duties of commissioners
6 in sewage and drainage districts created for the purpose of relieving
7 the streams and rivers therein from pollution, and to provide a plan
8 for the prevention thereof and providing for the raising, expenditure
9 and payment of moneys necessary for this purpose," approved
10 March twenty-seventh, one thousand nine hundred and two (L.1902,
11 c. 49, p. 195), is continued as a body politic and corporate, with
12 perpetual succession under said name of Passaic valley sewerage
13 commissioners, hereinafter in this chapter designated as the
14 "commissioners" , with power to sue and be sued and to adopt and
15 use a corporate seal, and with the right, power and authority to
16 acquire, hold, use and dispose of all such property, real and
17 personal, as may be proper or necessary, and with all other power
18 and authority proper or necessary to carry out and effectuate the
19 purposes for which the board is created.

20 b. The Passaic Valley Sewerage Commissioners shall maintain
21 minutes of all meetings and public hearings held by the
22 commissioners. No action may be taken by the commissioners
23 unless it is taken at a meeting or hearing for which minutes have
24 been provided.

25 c. A true copy of the minutes of every meeting or hearing of
26 the commissioners shall be delivered forthwith by and under the
27 certification of the secretary thereof to the Governor. No action
28 taken at the meeting by the commissioners shall have force or effect
29 until 15 days after the copy of the minutes shall have been so
30 delivered, unless during this 15-day period the Governor shall
31 approve in writing the minutes or any part thereof, in which case
32 the action shall become effective upon approval. If, within that 15-
33 day period, the Governor returns a copy of the minutes with the
34 Governor's veto of any action taken by the commissioners or any
35 member thereof at the meeting, the action shall be null and void and
36 of no effect. Notwithstanding the foregoing, if the last day of the
37 15-day period shall be a Saturday, Sunday or legal holiday, then the
38 15-day period shall be deemed extended to the next following
39 business day.

40 The powers conferred in this subsection upon the Governor shall
41 be exercised with due regard for the rights of the holders of bonds,
42 notes or other obligations of the commissioners at any time
43 outstanding, and nothing in, or done pursuant to, this subsection
44 shall in any way limit, restrict or alter the obligation or powers of
45 the commissioners or any representative or officer of the
46 commissioners to carry out and perform in every detail each and
47 every covenant, agreement or contract at any time made or entered
48 into by or on behalf of the commissioners with respect to its bonds,

1 notes or other obligations or for the benefit, protection or security
2 of the holders thereof.

3 d. After the review period required pursuant to subsection c. of
4 this section has elapsed, if the Governor has not notified the
5 commissioners of a veto of the minutes, the minutes and any action
6 taken at that meeting or public hearing to which the minutes
7 correspond shall take effect.

8 (cf: R.S.58:14-2)

9

10 23. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 There are over 50 State authorities in New Jersey that are
16 independent or quasi-independent and operate outside the standard
17 structure of the Executive Branch. Their combined capital and
18 operating budgets amount to billions of dollars. Without voter
19 approval, they issue bonds and otherwise incur debt that totals in
20 the billions of dollars.

21 The purpose of this bill is to ensure that all State authorities meet
22 a minimum standard of practices and procedures that are in the best
23 interests of the public and good government. The bill requires a
24 State authority: 1. to reform its business practices including, how it
25 enters into contracts, issues bonds, and hires employees; 2. to take
26 steps to make the operations of the authority more accessible to
27 public scrutiny; and 3. to ensure that the authority is working to
28 further the State's plans for economic growth. Specifically, the bill
29 requires a State authority to:

- 30 - prepare an annual report of its operations;
- 31 - maintain policies for competitive bidding of procurement
32 contracts;
- 33 - maintain policies for personnel matters including hiring practices;
- 34 - maintain a website and post notices, agendas, and minutes of
35 meetings;
- 36 - require disclosure of outside business dealings of board members
37 and senior management;
- 38 - publicly advertise procurement contracts, including posting on a
39 State website;
- 40 - maintain written procedures for the awarding of procurement
41 contracts, including efforts to ensure equal opportunity for
42 minority-owned, female-owned, and small businesses;
- 43 - award contracts for goods and non-professional services to the
44 lowest responsible bidder;
- 45 - award contracts for professional or technical services on the basis
46 of written procedures which include a quantitative scoring process
47 for evaluation of proposals by a qualified evaluation committee;

A110 VAINIERI HUTTLE, JOHNSON

12

- 1 - require written certification of the use of the few limited
2 exceptions to its procurement procedures for goods and services;
3 - conduct an annual financial audit by an independent public
4 accounting firm; and
5 - annually review operations for waste and inefficiencies and take
6 appropriate remedial steps.
- 7 If enacted, this bill will apply to all State authorities, including,
8 but not limited to, all independent State authorities, all boards,
9 commissions and agencies organized in but not of a principal
10 department of State government, and all State authorities that are
11 required to submit their minutes, resolutions, or actions for
12 gubernatorial approval or veto.
- 13 The bill also amends existing statutory law to provide that no
14 action taken at a meeting of the North Jersey District Water Supply
15 Commission or the Passaic Valley Sewerage Commission shall have
16 force or effect until 15 days after the minutes of the meeting have
17 been delivered to the Governor, unless the Governor approves the
18 action sooner. These amendments assure that the two commissions
19 are covered by the bill.