

SENATE, No. 3234

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED NOVEMBER 5, 2015

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Allows certain public colleges and universities to use the design-build or construction manager at-risk method as the means to contract for the construction of buildings.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning contracts at State colleges and universities and
2 amending various parts of the statutory law.

3

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

6

7 1. N.J.S.18A:64-6 is amended to read as follows:

8 18A:64-6. The board of trustees of a State college shall have
9 general supervision over and shall be vested with the conduct of the
10 college. It shall have the power and duty to:

11 a. Adopt and use a corporate seal;

12 b. Determine the educational curriculum and program of the
13 college consistent with the programmatic mission of the institution
14 or approved by the Commission on Higher Education;

15 c. Determine policies for the organization, administration and
16 development of the college;

17 d. Study the educational and financial needs of the college;
18 annually acquaint the Governor and Legislature with the condition
19 of the college; and prepare and present the annual budget to the
20 Governor, the Division of Budget and Accounting in the
21 Department of the Treasury and the Legislature in accordance with
22 law;

23 e. Disburse all moneys appropriated to the college by the
24 Legislature and all moneys received from tuition, fees, auxiliary
25 services and other sources;

26 f. Direct and control expenditures and transfers of funds
27 appropriated to the college and tuition received by the college, in
28 accordance with the provisions of the State budget and
29 appropriation acts of the Legislature, reporting changes and
30 additions thereto and transfers thereof to the Director of the
31 Division of Budget and Accounting in the State Department of the
32 Treasury and as to funds received from other sources, direct and
33 control expenditures and transfers in accordance with the terms of
34 any applicable trusts, gifts, bequests, or other special provisions.
35 All accounts of the college shall be subject to audit by the State at
36 any time;

37 g. In accordance with the provisions of the State budget and
38 appropriation acts of the Legislature, appoint and fix the
39 compensation of a president of the college, who shall be the
40 executive officer of the college and an ex officio member of the
41 board of trustees, without vote, and shall serve at the pleasure of the
42 board of trustees;

43 h. Notwithstanding the provisions of Title 11, Civil Service, of
44 the Revised Statutes, upon nomination by the president appoint a
45 treasurer and such deans and other professional members of the

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 academic, administrative and teaching staffs as defined in section
2 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix
3 their compensation and terms of employment in accordance with
4 salary ranges and policies which shall prescribe qualifications for
5 various classifications and shall limit the percentage of the
6 educational staff that may be in any given classification;
- 7 i. Upon nomination by the president, appoint, remove, promote
8 and transfer such other officers, agents or employees as may be
9 required for carrying out the purposes of the college and assign
10 their duties, determine their salaries and prescribe qualifications for
11 all positions, all in accordance with the provisions of Title 11, Civil
12 Service, of the Revised Statutes;
- 13 j. Grant diplomas, certificates and degrees;
- 14 k. Pursuant to the provisions of the "State College Contracts
15 Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and
16 agreements for the purchase of lands, buildings, equipment,
17 materials, supplies and services; enter into contracts and agreements
18 with the State or any of its political subdivisions or with the United
19 States, or with any public body, department or other agency of the
20 State or the United States or with any individual, firm, or
21 corporation, which are deemed necessary or advisable by the board
22 for carrying out the purposes of the college;
- 23 l. If necessary, take and condemn land and other property in
24 the manner provided by the "Eminent Domain Act of 1971,"
25 P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to
26 purchase land or other property;
- 27 m. Adopt, after consultation with the president and faculty,
28 bylaws and make and promulgate such rules, regulations and orders,
29 not inconsistent with the provisions of this article, that are
30 necessary and proper for the administration and operation of the
31 college and the carrying out of its purposes;
- 32 n. Establish fees for room and board sufficient for the
33 operation, maintenance, and rental of student housing and food
34 service facilities;
- 35 o. Fix and determine tuition rates and other fees to be paid by
36 students;
- 37 p. Accept from any government or governmental department,
38 agency or other public or private body or from any other source
39 grants or contributions of money or property, which the board may
40 use for or in aid of any of its purposes;
- 41 q. Acquire by gift, purchase, condemnation or otherwise, own,
42 lease, dispose of, use and operate property, whether real, personal
43 or mixed, or any interest therein, which is necessary or desirable for
44 college purposes;
- 45 r. Employ architects to plan buildings; secure bids for the
46 construction of buildings and for the equipment thereof; make
47 contracts for the construction of buildings and for equipment; and
48 supervise the construction of buildings;

1 s. Manage and maintain, and provide for the payment of all
2 charges and expenses in respect to all properties utilized by the
3 college;

4 t. Borrow money for the needs of the college, as deemed
5 requisite by the board, in such amounts, and for such time and upon
6 such terms as may be determined by the board, provided that this
7 borrowing shall not be deemed or construed to create or constitute a
8 debt, liability, or a loan or pledge of the credit, or be payable out of
9 property or funds, other than moneys appropriated for that purpose,
10 of the State;

11 u. Authorize any new program, educational department or
12 school consistent with the institution's programmatic mission or
13 approved by the commission;

14 v. (Deleted by amendment, P.L.1994, c.48);

15 w. Pursuant to the "State College Contracts Law," P.L.1986,
16 c.43 (C.18A:64-52 et seq.), award contracts and agreements for the
17 purchase of goods and services, as distinct from contracts or
18 agreements for the construction of buildings and other
19 improvements, to that responsible bidder whose bid, conforming to
20 the invitation for bids, will be most advantageous to the State
21 college, price and other factors considered; and

22 x. Pursuant to the "State College Contracts Law," P.L.1986,
23 c.43 (C.18A:64-52 et seq.), award contracts and agreements for the
24 construction of buildings and other improvements, depending on the
25 method of contracting selected pursuant to section 2 of P.L.1992,
26 c.61 (C.18A:64-76.1), either to the lowest responsible bidder,
27 whose bid, conforming to the invitation for bids, will be the most
28 advantageous to the State college, or to the responsible bidder
29 whose proposal, conforming to the invitation for proposals, will be
30 the most advantageous to the State college, price and other factors
31 considered.

32 (cf: P.L.2005, c.369, s.1)

33

34 2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to
35 read as follows:

36 2. As used in this article, unless the context otherwise
37 indicates:

38 a. "Board of trustees" means the board of a State college;

39 b. "Contracting agent" means the business officer of the State
40 college having the power to prepare advertisements, to advertise for
41 and receive bids, and to make awards for the State college in
42 connection with the purchases, contracts or agreements permitted
43 by this article or the officer, committee or employee to whom the
44 power has been delegated by the State college;

45 c. "Contracts" means contracts or agreements for the
46 performance of work or the furnishing or hiring of services,
47 materials or supplies, as distinguished from contracts of
48 employment;

- 1 d. "Legal newspaper" means a newspaper circulating in this
2 State which has been printed and published in the English language
3 at least once a week for at least one year continuously;
- 4 e. "Materials" includes goods and property subject to chapter 2
5 of Title 12A of the New Jersey Statutes, apparatus or any other
6 tangible thing, except real property or any interest therein;
- 7 f. "Extraordinary unspecifiable services" means services or
8 products which cannot be reasonably described by written
9 specifications;
- 10 g. "Professional services" means services rendered or
11 performed by a person authorized by law to practice a recognized
12 profession and whose practice is regulated by law and the
13 performance of which services requires knowledge of an advanced
14 type in a field of learning acquired by a prolonged formal course of
15 specialized instruction and study as distinguished from general
16 academic instruction or apprenticeship and training. Professional
17 services also means services rendered in the performance of work
18 that is original and creative in character in a recognized field of
19 artistic endeavor;
- 20 h. "Project" means any work, undertaking, construction or
21 alteration;
- 22 i. "Purchases" are transactions, for a valuable consideration,
23 creating or acquiring an interest in goods, services and property
24 except real property or any interest therein;
- 25 j. "State college" means an institution of higher education
26 established pursuant to chapter 64 of Title 18A of the New Jersey
27 Statutes;
- 28 k. "Work" includes services and any other activity of a tangible
29 or intangible nature performed or assumed pursuant to a contract or
30 agreement with a State college;
- 31 l. "Information technology" means telecommunication goods
32 and services, including, but not limited to, software, hardware and
33 systems implementation and support for voice, data and video.
- 34 m. "Construction manager at-risk method" means a construction
35 method in which the State college enters into a single contract for
36 both the construction of a building and construction management
37 services, at a guaranteed maximum price.
- 38 n. "Design-build method" means a construction method in
39 which the State college enters into a single contract for the design
40 and construction of a building.
41 (cf: P.L.2005, c.369, s.2)
- 42
- 43 3. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to
44 read as follows:
- 45 2. a. Whenever the entire cost for the construction, alteration
46 or repair of any building by a State college will exceed the amount
47 determined pursuant to subsection b. of section 3 of P.L.1986, c.43
48 (C.18A:64-54), if the contracting agent does not solicit proposals in

1 the manner provided for in subsection c. of this section, the
2 contracting agent shall advertise for and receive in the manner
3 provided by law:

4 (1) separate bids for branches of work in the following
5 categories:

6 (a) the plumbing and gas fitting work;

7 (b) the refrigeration, heating and ventilating systems and
8 equipment;

9 (c) the electrical work, including any electrical power plants,
10 tele-date, fire alarm, or security systems;

11 (d) the structural steel and ornamental iron work;

12 (e) general construction, which shall include all other work and
13 materials required for the completion of the project, or

14 (2) bids for all work and materials required to complete the
15 entire project if awarded as a single contract, or

16 (3) both (1) and (2) above.

17 In the case of separate bids under paragraph (1) or (3) of this
18 subsection, prime contractors for categories (a) through (d) shall not
19 be required to name subcontractors in their bid. In the case of a
20 single bid under paragraph (2) or (3), all bids submitted shall set
21 forth the names and license numbers of all subcontractors to whom
22 the general contractor will subcontract the work described in the
23 foregoing categories (a) through (d). Subcontractors who furnish
24 non-specialty trade work pursuant to category (e) in paragraph (1)
25 of this subsection or subcontractors who furnish work to named
26 subcontractors pursuant to categories (a) through (d) in paragraph
27 (1) of this subsection shall not be named in the bid.
28 Notwithstanding the foregoing provisions of this subsection, a State
29 college may choose to require in its bid specification that a
30 subcontractor shall be named in a bid when, in the case of
31 paragraph (1), separate bids for each category, the work of that
32 subcontractor exceeds 35 percent of the State college's estimated
33 amount of value of the work, which shall be set forth in the bid
34 specification.

35 b. Contracts awarded pursuant to subsection a. of this section
36 shall be awarded to the lowest responsible bidder whose bid,
37 conforming to the invitation for bids, will be the most advantageous
38 to the State college. Whenever two or more bids of equal amounts
39 are the lowest bids submitted by responsible parties, the college
40 may award the contract to any of the parties, as, in its discretion, it
41 may determine.

42 c. Whenever the entire cost for the construction, alteration, or
43 repair of any building by a State college will exceed the amount
44 determined pursuant to subsection b. of section 3 of P.L.1986, c.43
45 (C.18A:64-54), if the contracting agent does not advertise for and
46 receive bids in the manner provided for in subsection a. of this
47 section, the contracting agent shall solicit proposals for work using
48 one of the following methods:

1 (1) the design-build method; or

2 (2) the construction manager at-risk method.

3 A State college shall invite proposals under this subsection from
4 among a list of bidders prequalified by the Division of Property
5 Management and Construction in the Department of the Treasury to
6 perform the work.

7 Contracts awarded under this subsection shall be awarded to the
8 responsible bidder whose proposal, conforming to the request for
9 proposals, will be the most advantageous to the State college, price
10 and other factors considered.

11 (cf: P.L.2012, c.59, s.2)

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13 4. This act shall take effect immediately.

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STATEMENT

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18 This bill would permit State colleges and universities to contract
19 for the construction of buildings using the design-build or
20 construction manager at-risk method. Under the design-build
21 method, the State college or university would enter into a single
22 contract for the design and construction of a building. Under this
23 construction delivery method, a design-builder would be
24 responsible for architectural, engineering, and other related design
25 services, as well as labor, materials, and other construction services
26 necessary to construct the project. Under the construction manager
27 at-risk method, the State college or university would enter into a
28 single contract for both the construction of the building and
29 construction management services, at a guaranteed maximum price.
30 Under this construction delivery method, the construction manager
31 at-risk acts as an advocate of the State college or university through
32 the development and design phase of the project and also as the
33 general contractor during the construction phase. The construction
34 manager at-risk is financially responsible for delivering the project
35 within a guaranteed maximum price.

36 Building contracts awarded to a design-builder or a construction
37 manager at-risk will be awarded to the responsible bidder whose
38 proposal, conforming to the request for proposals, will be the most
39 advantageous to the State college or university, price and other
40 factors considered.