

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1191**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

ADOPTED MARCH 4, 2013

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

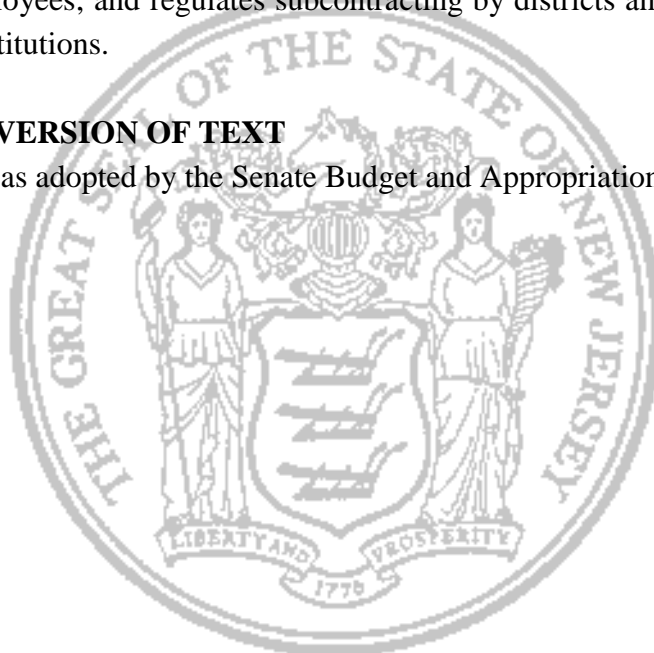
**Senators Van Drew, Whelan, Turner, Cunningham, Scutari, Vitale,  
Gordon, Greenstein and Pou**

**SYNOPSIS**

Allows establishment of county-wide purchasing system for certain school district services; offers employment protections for certain food or custodial services employees; and regulates subcontracting by districts and public higher education institutions.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Budget and Appropriations Committee.



**(Sponsorship Updated As Of: 3/19/2013)**

1 **AN ACT** concerning public contracts, amending P.L.2007, c.63, and  
2 supplementing P.L.1971, c.198 (C.40A:11-1 et seq.) and  
3 P.L.1941, c.100 (C.34:13A-1 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) a. In order to take advantage of economies of  
9 scale and administrative efficiencies in the purchase of services, a  
10 local unit that is a county may adopt a resolution or ordinance, as  
11 appropriate to its form of government, establishing a county-wide  
12 purchasing system for providing custodial services, food services,  
13 or both, to school districts within the county.

14 The county clerk of a county that establishes a county-wide  
15 purchasing system pursuant to this subsection shall notify all school  
16 districts located within the county within 20 days of final adoption  
17 of the resolution or ordinance, as appropriate, that the county-wide  
18 system has been established.

19 b. If a school district is located within a county that has  
20 established a county-wide purchasing system pursuant to subsection  
21 a. of this section and the school district uses a private contractor to  
22 provide custodial services, food services, or both, the school district  
23 shall participate in the single county-wide contract, awarded by the  
24 county, if the school district chooses to continue using a private  
25 contractor to provide the service.

26 Notwithstanding the provisions of any other law to the contrary,  
27 a school district seeking to contract for a service subject to a  
28 county-wide contract shall acquire the service only through that  
29 county-wide contract. Any school district bid document or contract  
30 for a service that is eligible to be acquired through the county-wide  
31 contract shall be beyond the authority of the school district to  
32 advertise or award, and shall be void from its inception.

33 c. A county that establishes a county-wide purchasing system  
34 pursuant to subsection a. of this section shall create and maintain a  
35 webpage on the county Internet website listing the services for  
36 which the county has entered into a county-wide contract.

37 d. (1) A county shall use the competitive contracting  
38 provisions set forth in the "Local Public Contracts Law," P.L.1971,  
39 c.198 (C.40A:11-1 et seq.), except as specifically provided in this  
40 section, for the purpose of entering into a county-wide contract  
41 pursuant to the provisions of subsection a. of this section.

42 (2) A county that establishes a county-wide contract pursuant to  
43 subsection a. of this section shall appoint an advisory committee,  
44 consisting of one representative from each school district that is

**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 subject to the county-wide contract, to assist with reviewing and  
2 evaluating requests for proposals.

3 (3) Criteria for evaluating requests for proposals shall include,  
4 but shall not be limited to, the contractor's previous experience with  
5 the provision of similar supplies, materials, and services.

6 (4) Prior to awarding any contract, the terms of all contracts  
7 pending final approval shall be disclosed on the county's Internet  
8 website at least 20 days prior to the final approval of the contract.

9 (5) Notwithstanding any law or regulation to the contrary, the  
10 request for proposal documentation prepared by the county for  
11 county-wide contracts shall specify that the contractor who is  
12 awarded the county-wide contract shall be required to pay to the  
13 county a specified fee to cover the administrative costs associated  
14 with administering the county-wide contract.

15 (6) The county governing body may establish a set-aside  
16 program pursuant to section 2 of P.L.1985, c.482 (C.40A:11-42) for  
17 the provision of services under a county-wide contract.

18 e. If a school district is located in a county that is using a  
19 county-wide contract and the district is currently not using a private  
20 contractor to provide the service which is the subject of the county-  
21 wide contract, the district shall not participate in the county-wide  
22 contract which affects the employment of any employees in a  
23 collective bargaining unit represented by a majority representative  
24 during the term that an existing collective bargaining agreement  
25 with the majority representative is in effect. The school district  
26 shall not participate in the county-wide contract for a period  
27 following the term of the current collective bargaining agreement  
28 unless the school district:

29 (1) provides written notice at least 90 days prior to participation  
30 in the county-wide contract to the majority representative of  
31 employees in each collective bargaining unit which may be affected  
32 by the district's participating in the county-wide contract and to the  
33 New Jersey Public Employment Relations Commission; and

34 (2) offers the majority representative of the employees in each  
35 collective bargaining unit which may be affected by the district's  
36 participation in the county-wide contract the opportunity to meet  
37 and consult with the school district to discuss the decision to  
38 participate in the county-wide contract, and the opportunity to  
39 engage in negotiations over the impact of participation. The school  
40 district's duty to negotiate with the representative of the employees  
41 in each collective bargaining unit shall not preclude the school  
42 district's right to participate in the county-wide contract should no  
43 successor agreement exist.

44 Each employee replaced or displaced as the result of the school  
45 district's participation in the county-wide contract shall retain all  
46 previously acquired seniority during that period and shall have  
47 recall rights whenever the district's participation in the county-wide  
48 contract terminates.

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

11 f. In addition to any other requirements set forth in this  
12 section, a school district that is currently not using a private  
13 contractor to provide a service that is the subject of a county-wide  
14 contract in the county in which the district is located, shall not  
15 participate in the county-wide contract unless:

16 (1) The school district passes a resolution calling for a public  
17 hearing to explore the costs and benefits of participating in a  
18 county-wide contract and provides an opportunity for parents and  
19 other affected stakeholders in the district to make statements and  
20 ask questions relating to participation in a county-wide contract;

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

25 (3) Following the public hearing, a period of no less than 60  
26 days is provided during which members of the public will have the  
27 opportunity to submit comments on the proposal to participate in a  
28 county-wide contract; and

29 (4) Upon review of all comments and submissions, the board of  
30 education provides a written response to comments at the next  
31 board of education meeting and to the collective bargaining  
32 representative. The school board shall hold a vote on whether or  
33 not to participate in the county-wide contract.

34 g. Nothing in this section shall require the privatization of a  
35 position currently filled by a public employee.

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

41

42 2. (New section) a. As used in this section:

43 "Predecessor employer" means a school district or a contractor  
44 which provided food or custodial services for a school district and  
45 which ceases to provide such services.

46 "Service employee" means an employee employed on or around  
47 school district premises and central kitchens to provide food or  
48 custodial services, except for managerial, executive, confidential  
49 employees, and employees who work less than four hours a week.

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

6       b. The intent of this section is to provide protection for  
7 employees who are satisfactorily performing their duties during the  
8 transition to employment by a successor contractor and to prevent  
9 favoritism in employment decisions during such transition to ensure  
10 the highest quality of services to school districts.

11       c. A school district for which a successor contractor will  
12 provide food or custodial services shall:

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

18       (2) notify the collective bargaining representative of the affected  
19 service employees, if any, of the successor contractor and provide  
20 to the collective bargaining representative a copy of the list of  
21 service employees prepared pursuant to paragraph (1) of this  
22 subsection; and

23       (3) ensure that a notice is conspicuously posted at any site at  
24 which service employees perform their duties, setting forth the  
25 rights provided under this section in the same location and manner  
26 that other statutorily required notices to employees are posted.

27       d. The successor contractor shall:

28       (1) offer employment during a 90-day transition employment  
29 period to all service employees employed by the predecessor  
30 employer;

31       (2) not discharge, without just cause, an employee retained in  
32 accordance with this section during the 90-day transition period;  
33 and

34       (3) perform a written performance evaluation for each employee  
35 retained in accordance with this section at the end of the 90-day  
36 transition period and offer those employees whose performance was  
37 satisfactory, continued employment under the terms and conditions  
38 of employment established by the successor contractor or as  
39 required by law.

40

41       3. (New section) a. As used in this section:

42       "Employee" means any employee, whether employed on a full or  
43 part-time basis, of an employer.

44       "Employer" means any local or regional school district,  
45 educational services commission, jointure commission, county  
46 special services school district, county college, State college, public  
47 college or university under the authority of the Secretary of Higher  
48 Education, or board or commission under the authority of the  
49 Commissioner of Education or the State Board of Education.

1       “Recall rights” means any employee dismissed as a result of  
2 subcontracting shall be placed and remain upon a preferred  
3 eligibility list, in the order of years of service, for reemployment  
4 whenever vacancies occur and shall be reemployed in such order,  
5 and upon reemployment shall be given full recognition for previous  
6 years of service in his respective positions and employments.

7       “Subcontracting” means any action, practice, or effort by an  
8 employer which results in any services or work performed by any of  
9 its employees being performed or provided by any other person,  
10 vendor, corporation, partnership, or entity.

11       “Subcontracting agreement” means any agreement or  
12 arrangement entered into by an employer to implement  
13 subcontracting, but shall not include any contract entered into  
14 pursuant to the “Uniform Shared Services and Consolidation Act,”  
15 P.L.2007, c.63 (C.40A:65-1 et seq.), or any contract entered into to  
16 provide services to nonpublic schools through State or federal  
17 funds, or any contract in which it is required by law that workers be  
18 paid the prevailing wage determined by the Commissioner of Labor  
19 and Workforce Development pursuant to the provisions of the “New  
20 Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et  
21 seq.).

22       b. Except for actions of an employer expressly required or  
23 prohibited by the provisions of this section, all aspects or actions  
24 relating to or resulting from an employer's decision to subcontract  
25 including, but not limited to, whether or not severance pay is  
26 provided, shall be mandatory subjects of negotiations.

27       c. No employer shall enter into a subcontracting agreement  
28 which affects the employment of any employees in a collective  
29 bargaining unit represented by a majority representative during the  
30 term that an existing collective bargaining agreement with the  
31 majority representative is in effect. No employer shall enter into a  
32 subcontracting agreement for a period following the term of the  
33 current collective bargaining agreement unless the employer:

34       (1) provides written notice to the majority representative of  
35 employees in each collective bargaining unit which may be affected  
36 by the subcontracting agreement and to the New Jersey Public  
37 Employment Relations Commission, not less than 90 days before  
38 the employer requests bids, or solicits contractual proposals for the  
39 subcontracting agreement; and

40       (2) has offered the majority representative of the employees in  
41 each collective bargaining unit which may be affected by the  
42 subcontracting agreement the opportunity to meet and consult with  
43 the employer to discuss the decision to subcontract, and the  
44 opportunity to engage in negotiations over the impact of the  
45 subcontracting. The employer's duty to negotiate with the majority  
46 representative of the employees in each collective bargaining unit  
47 shall not preclude the employer's right to subcontract should no  
48 successor agreement exist.

1 d. Each employee replaced or displaced as the result of a  
2 subcontracting agreement shall retain all previously acquired  
3 seniority during that period and shall have recall rights whenever  
4 the subcontracting terminates.

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

15 f. Nothing in this section shall be construed as authorizing  
16 subcontracting which is not otherwise authorized by law. Nothing  
17 in this section shall be construed as restricting or limiting any right  
18 established or provided for employees by section 7 of P.L.1968,  
19 c.303 (C.34:13A-5.3); the purpose of this section is to provide  
20 rights in addition to those provided in that section.

21  
22 4. Section 54 of P.L.2007, c.63 (C.18A:7-12) is amended to  
23 read as follows:

24 54. a. A local school district may apply to the executive county  
25 superintendent of schools to have school district services including,  
26 but not limited to, transportation, personnel, purchasing, payroll,  
27 and accounting, assumed by the office of the superintendent. If the  
28 executive county superintendent determines to assume a service, a  
29 fee may be assessed the school district for the service. The  
30 executive county superintendent of schools may utilize county  
31 special services school districts, jointure commissions, and  
32 educational services commissions to provide services to local  
33 school boards.

34 b. If the county governing body wherein the school district is  
35 located has adopted a resolution or ordinance pursuant to section 1  
36 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
37 to utilize a county-wide contract for food or custodial services, the  
38 office of the executive county superintendent of schools and every  
39 local school district that uses a private contractor to provide the  
40 good or service at issue shall be required to participate in the  
41 county-wide contract.

42 c. Nothing in this section shall require the privatization of a  
43 position currently filled by a public employee.

44 (cf: P.L.2007, c.63, s.54)

45  
46 5. This act shall take effect immediately.