

[Third Reprint]

**ASSEMBLY, No. 2220**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED JANUARY 27, 2016

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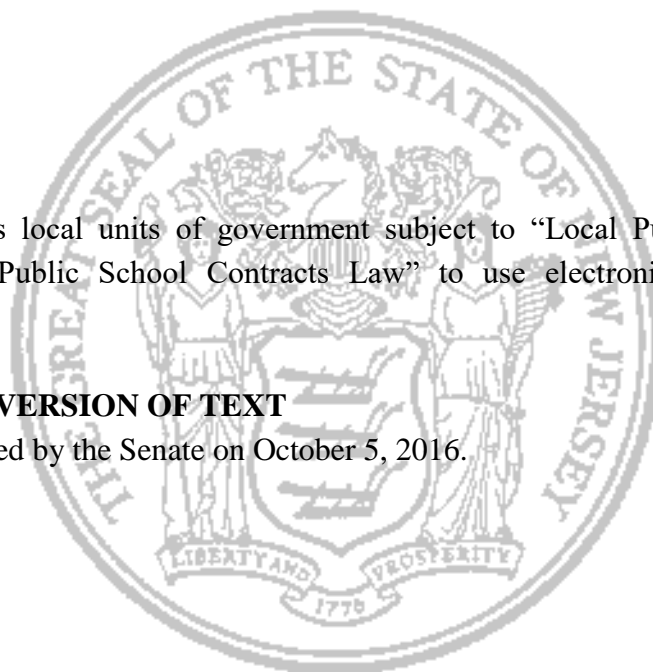
**Assemblyman McKeon, Assemblywoman Caride, Senator Whelan,  
Assemblywoman Pinkin and Assemblyman Space**

**SYNOPSIS**

Authorizes local units of government subject to “Local Public Contracts Law” and “Public School Contracts Law” to use electronic procurement technologies.

**CURRENT VERSION OF TEXT**

As amended by the Senate on October 5, 2016.



**(Sponsorship Updated As Of: 1/9/2018)**

1 AN ACT authorizing the electronic purchase of certain commodities  
2 and services and sale of surplus personal property by local units  
3 of government and school districts, supplementing P.L.1971,  
4 c.198 (C.40A:11-1 et seq.) <sup>2</sup>**;** amending P.L.1971, c.199,  
5 N.J.S.18A:20-6, and P.L.1978, c.91,<sup>2</sup> and repealing P.L.2001,  
6 c.30.

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

10  
11 1. This act shall be known and may be cited as the "Local Unit  
12 Electronic Procurement Act."

13  
14 2. The Legislature finds and declares that advances in  
15 electronic technology offer opportunities to enhance governmental  
16 efficiencies. In order to explore these avenues of improved  
17 government efficiency and commerce, it is in the best interests of  
18 this State to allow local units of government to adopt proven  
19 technologies for the procurement of goods, services, public works  
20 construction, and sale of surplus personal and real property through  
21 means of electronic technology, and to allow the Department of  
22 Community Affairs to promulgate standards for the use of these  
23 technologies that provide for the integrity and procedural  
24 protections of sealed public bidding and competitive contracting  
25 translated to an electronic environment.

26  
27 3. As used in this P.L. <sup>1,1</sup> c. (c. ) (pending before the  
28 Legislature as this bill):

29 "Director" means the Director of the Division of Local  
30 Government Services in the Department of Community Affairs;

31 "Electronic procurement" means the use of computer technology  
32 and the Internet for the advertising and submission of public bids,  
33 <sup>1</sup>providing notice of revisions or addenda to advertisements or bid  
34 documents,<sup>1</sup> the receipt of proposals and quotations, competitive  
35 contracting, the use of reverse auctions, and related practices to  
36 assist in determining the lowest responsible bidder or proposer who  
37 is most advantageous, price and other factors considered, as  
38 appropriate, for goods and services, the sale of personal property,  
39 and other public procurement-related activities and services as may  
40 be determined appropriate by the director;

41 "Goods and services" means any work, labor, commodities,  
42 equipment, materials, or supplies of any tangible or intangible  
43 nature, except real property or any interest therein, provided or

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly floor amendments adopted March 14, 2016.

<sup>2</sup>Assembly floor amendments adopted June 16, 2016.

<sup>3</sup>Senate floor amendments adopted October 5, 2016.

1 performed through a contract awarded by a contracting agent,  
2 including goods and property subject to N.J.S.12A:2-101 et seq.;

3 "Local unit" means a school district as defined in the "Public  
4 School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting  
5 unit as defined in the "Local Public Contracts Law," P.L.1971,  
6 c.198 (C.40A:11-1 et seq.);

7 "Public works construction" means any contract that is subject to  
8 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-  
9 56.25 et seq.); and

10 "Real property" shall include, in addition to the usual  
11 connotations thereof, development rights or easements, or any right,  
12 interest, or estate in the area extending above any real property, or  
13 capital improvement thereon, to such a height or altitude as any  
14 title, interest, or estate in real property may extend, commonly  
15 known as "air rights," and subject to, but not limited to, the "Local  
16 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

17

18 4. Local units are authorized to use electronic procurement  
19 practices for such purposes as may be authorized by the governing  
20 body of the local unit, and subject to the provisions of P.L. ,  
21 c. (C. ) (pending before the Legislature as this bill).

22

23 5. A local unit or joint purchasing unit or cooperative pricing  
24 system is also authorized to use electronic procurement practices  
25 for the following purposes:

26 <sup>1</sup>(<sup>1</sup>a) to purchase electric generation service, electric related  
27 service, gas supply service, or gas related service, either separately  
28 or bundled, for its own facilities so long as the purchase otherwise  
29 complies with the provisions of the "Electric Discount and Energy  
30 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.); <sup>1</sup>and<sup>1</sup>

31 <sup>1</sup>(<sup>1</sup>b) the sale of surplus personal property that shall otherwise  
32 comply with the provisions of section 36 of P.L.1971,  
33 c.198 (C.40A:11-36) <sup>1</sup>]; and

34 c) the sale of real property that shall otherwise comply with the  
35 sale and lease provisions of the "Local Lands and Buildings Law,"  
36 P.L.1971, c.199 (C.40A:12-1) <sup>1</sup>].

37 Contracts awarded for the administration of electronic  
38 procurement practices shall be subject to the requirements of the  
39 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)  
40 and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,  
41 except that they shall be considered as purposes for which  
42 competitive contracting may be used.

43

44 6. a. The director, in consultation with the State Comptroller  
45 and pursuant to the "Administrative Procedure Act," P.L.1968,  
46 c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to  
47 effectuate the provisions of this act.

48 The rules promulgated pursuant to this section shall include, but

1 shall not be limited to, practices that, notwithstanding any other law  
2 to the contrary:

3 (1) convert the law, principals, safeguards, and procedures  
4 related to sealed bidding to an electronic procurement environment;

5 (2) authorize local units of government to accept commercial  
6 standards for electronic forms of bid security; and

7 (3) establish minimum standards that must be met by systems  
8 and services providing and administering electronic procurement  
9 activities.

10 The director shall also consult with the Attorney General to  
11 develop safeguards to protect against collusion and bid rigging,  
12 with the Division of Purchase and Property in the Department of  
13 Treasury to develop practices used for electronic procurement, and  
14 with the Office of Information Technology in, but not of, the  
15 Department of Treasury, to ensure the privacy and security of  
16 electronic transactions.

17 b. With regard to the <sup>2</sup>~~otherwise required~~<sup>2</sup> notices, advertising  
18 bids, or requests for proposals <sup>2</sup>required to be published<sup>2</sup> in an  
19 official newspaper of the local unit, such notices <sup>2</sup>, advertising bids,  
20 or requests for proposals, as appropriate,<sup>2</sup> shall not be eliminated  
21 <sup>2</sup>~~],~~ but may be limited to a notice announcing the purpose of the  
22 action, due date, and location of the full notice that is posted on a  
23 website. The local unit may waive public advertising for electronic  
24 procurement of electric generation service, electric related service,  
25 gas supply service, or gas related service if notification is made  
26 directly to eligible Board of Public Utilities approved providers of  
27 such services] under the provisions of P.L. , c. (C. )  
28 (pending before the Legislature as this bill), and shall continue to be  
29 published as required by law<sup>2</sup>.

30 c. Notwithstanding any law, rule, or regulation to the contrary,  
31 plans and specifications for public works construction contracts that  
32 require the seal and signature of a professional engineer, architect,  
33 or land surveyor may be included in an electronic file used for  
34 electronic procurement as long as the original document from which  
35 the electronic file is derived contains a physical or electronic seal  
36 and signature as otherwise required by law; however, if and when  
37 the State Board of Engineers and Land Surveyors and the New  
38 Jersey State Board of Architects adopt rules to permit digital seals  
39 and signatures, those rules shall supersede this provision.  
40

41 <sup>1</sup>7. Section 13 of P.L.1971, c.199 (C.40A:12-13) is amended to  
42 read as follows:

43 13. Sales of real property, capital improvements or personal  
44 property; exceptions; procedure. Any county or municipality may  
45 sell any real property, capital improvement or personal property, or  
46 interests therein, not needed for public use, as set forth in the  
47 resolution or ordinance authorizing the sale, other than county or  
48 municipal lands, real property otherwise dedicated or restricted

1 pursuant to law, and, except as otherwise provided by law, all such  
2 sales shall be made by one of the following methods:

3 (a) By open public sale at auction to the highest bidder after  
4 advertisement thereof in a newspaper circulating in the municipality  
5 or municipalities in which the lands are situated, by two insertions  
6 at least once a week during two consecutive weeks, the last  
7 publication to be not earlier than seven days prior to such sale. In  
8 the case of public sales, the governing body may by resolution fix a  
9 minimum price or prices, with or without the reservation of the  
10 right to reject all bids where the highest bid is not accepted. Notice  
11 of such reservation shall be included in the advertisement of the  
12 sale and public notice thereof shall be given at the time of sale.  
13 Such resolution may provide, without fixing a minimum price, that  
14 upon the completion of the bidding, the highest bid may be accepted  
15 or all the bids may be rejected. The invitation to bid may also  
16 impose restrictions on the use to be made of such real property,  
17 capital improvement or personal property, and any conditions of  
18 sale as to buildings or structures, or as to the type, size, or other  
19 specifications of buildings or structures to be constructed thereon,  
20 or as to demolition, repair, or reconstruction of buildings or  
21 structures, and the time within which such conditions shall be  
22 operative, or any other conditions of sale, in like manner and to the  
23 same extent as by any other vendor. Such conditions shall be  
24 included in the advertisement, as well as the nature of the interest  
25 retained by the county or municipality. Such restrictions or  
26 conditions shall be related to a lawful public purpose and encourage  
27 and promote fair and competitive bidding of the county or  
28 municipality and shall not, in the case of a municipality, be  
29 inconsistent with or impose a special or higher standard than any  
30 zoning ordinance or building, plumbing, electrical, or similar code  
31 or ordinance then in effect in the municipality.

32 In any case in which a county or municipality intends to retain an  
33 estate or interest in any real property, capital improvement or  
34 personal property, in the nature of an easement, contingent or  
35 reversionary, the invitation to bid and the advertisement required  
36 herein shall require each bidder to submit one bid under each  
37 Option A and Option B below.

38 (1) Option A shall be for the real property, capital improvement  
39 or personal property subject to the conditions or restrictions  
40 imposed, or interest or estate retained, which the county or  
41 municipality proposes to retain or impose.

42 (2) Option B shall be for the real property, capital improvement  
43 or personal property to be sold free of all such restrictions,  
44 conditions, interests or estates on the part of the county or  
45 municipality.

46 The county or the municipality may elect or reject either or both  
47 options and the highest bid for each. Such acceptance or rejection  
48 shall be made not later than at the second regular meeting of the

1 governing body following the sale, and, if the governing body shall  
2 not so accept such highest bid, or reject all bids, said bids shall be  
3 deemed to have been rejected. Any such sale may be adjourned at  
4 the time advertised for not more than one week without  
5 readvertising.

6 (b) At private sale, when authorized by resolution, in the case of  
7 a county, or by ordinance, in the case of a municipality, in the  
8 following cases:

9 (1) A sale to any political subdivision, agency, department,  
10 commission, board or body corporate and politic of the State of  
11 New Jersey or to an interstate agency or body of which the State of  
12 New Jersey is a member or to the United States of America or any  
13 department or agency thereof.

14 (2) A sale to a person submitting a bid pursuant to subsection  
15 (a) of this section, where all bids have been rejected, provided that  
16 the terms and price agreed to shall in no event be less than the  
17 highest bid rejected, and provided further that the terms and  
18 conditions of sale shall remain identical.

19 (3) A sale by any county or municipality, when it has or shall  
20 have conveyed its right, title and interest in any real property,  
21 capital improvement or personal property not needed for public use,  
22 and it was assumed and intended that there should be conveyed a  
23 good and sufficient title in fee simple to said real property, capital  
24 improvement or personal property, free of all encumbrances and the  
25 full consideration has been paid therefor, and it shall thereafter  
26 appear that the title conveyed was insufficient or that said county or  
27 municipality at the time of said conveyance was not the owner of  
28 some estate or interest in said real property, capital improvement or  
29 personal property or of some encumbrances thereon, and the county  
30 or municipality shall thereafter acquire a good and sufficient title in  
31 fee simple, free of all encumbrances of said real property, capital  
32 improvement or personal property or shall acquire such outstanding  
33 estate or interest therein or outstanding encumbrance thereon and  
34 said county or municipality, by resolution of the governing body  
35 and without the payment of any additional consideration, has  
36 deemed to convey or otherwise transfer to said purchaser, his heirs  
37 or assigns, such after-acquired title, or estate or interest in, or  
38 encumbrance upon, such real property, capital improvement or  
39 personal property to perfect the title or interest previously  
40 conveyed.

41 (4) A sale of an easement upon any real property previously  
42 conveyed by any county or municipality may be made when the  
43 governing body of any county, by resolution, or any municipality,  
44 by ordinance, has elected to release the public rights in the nature of  
45 easements, in, on, over or under any real property within the county  
46 or the municipality, as the case may be, upon such terms as shall be  
47 agreed upon with the owner of such lands, if the use of such rights  
48 is no longer desirable, necessary or required for public purposes.

1 (5) A sale to the owner of the real property contiguous to the  
2 real property being sold; provided that the property being sold is  
3 less than the minimum size required for development under the  
4 municipal zoning ordinance and is without any capital improvement  
5 thereon; except that when there is more than one owner with real  
6 property contiguous thereto, said property shall be sold to the  
7 highest bidder from among all such owners. Any such sale shall be  
8 for not less than the fair market value of said real property. When  
9 there is only one owner with real property contiguous to the  
10 property being sold, and the property is less than an eighth of the  
11 minimum size required for development under the municipal zoning  
12 ordinance and is without any capital improvement thereon, the fair  
13 market value of that property may be determined by negotiation  
14 between the local unit and the owner of the contiguous real  
15 property. The negotiated sum shall be subject to approval by  
16 resolution of the governing body, but in no case shall that sum be  
17 less than one dollar.

18 In the case of any sale of real property hereafter made pursuant  
19 to subsection (b) of this section, in no event shall the price agreed  
20 upon with the owner be less than the difference between the highest  
21 bid accepted for the real property subject to easements (Option A)  
22 and the highest bid rejected for the real property not subject to  
23 easements (Option B). After the adoption of the resolution or  
24 ordinance, and compliance by the owner of said real property with  
25 the terms thereof, said real property shall be free, and entirely  
26 discharged of and from such rights of the public and of the county  
27 or municipality, as the case may be, but no such release shall affect  
28 the right of lawful occupancy or use of any such real property by  
29 any municipal or private utility to occupy or use any such real  
30 property lawfully occupied or used by it. A list of the property so  
31 authorized to be sold, pursuant to subsection (b) of this section,  
32 together with the minimum prices, respectively, as determined by  
33 the governing body, shall be included in the resolution or ordinance  
34 authorizing the sale, and said list shall be posted on the bulletin  
35 board or other conspicuous space in the building which the  
36 governing body usually holds its regular meetings, and  
37 advertisement thereof made in a newspaper circulating in the  
38 municipality or municipalities in which the real property, capital  
39 improvement or personal property is situated, within five days  
40 following enactment of said resolution or ordinance. Offers for any  
41 or all properties so listed may thereafter be made to the governing  
42 body or its designee for a period of 20 days following the  
43 advertisement herein required, at not less than said minimum prices,  
44 by any prospective purchaser, real estate broker, or other authorized  
45 representative. In any such case, the governing body may  
46 reconsider its resolution or ordinance, not later than 30 days after its  
47 enactment, and advertise the real property, capital improvement, or

1 personal property in question for public sale pursuant to subsection  
2 (a) of this section.

3 Any county or municipality selling any real property, capital  
4 improvement or personal property pursuant to subsection (b) of this  
5 section shall file with the Director of the Division of Local  
6 Government Services in the Department of Community Affairs,  
7 sworn affidavits verifying the publication of advertisements as  
8 required by this subsection.

9 (c) By private sale of a municipality in the following case: A  
10 sale to a private developer by a municipality, when acting in  
11 accordance with the "Local Redevelopment and Housing Law,"  
12 P.L.1992, c.79 (C.40A:12A-1 et al.).

13 (d) A county or municipality is also authorized to use electronic  
14 procurement practices in accordance with the provisions of P.L. ,  
15 c. (C. ) (pending before the Legislature as this bill) for the  
16 sale or lease of real property pursuant to the "Local Lands and  
17 Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

18 All sales, either public or private, may be made for cash or upon  
19 credit. A deposit not exceeding 10% of the minimum price or value  
20 of the property to be sold may be required of all bidders. When  
21 made upon credit, the county or municipality may accept a  
22 purchase-money mortgage, upon terms and conditions which shall  
23 be fixed by the resolution of the governing body; provided,  
24 however, that such mortgage shall be fully payable within five years  
25 from the date of the sale and shall bear interest at a rate equal to  
26 that authorized under Title 31 of the Revised Statutes, as amended  
27 and supplemented, and the regulations issued pursuant thereto, or  
28 the rate last paid by the county or municipality upon any issue of  
29 notes pursuant to the "Local Bond Law" (N.J.S.40A:2-1 et seq.),  
30 whichever is higher. The governing body may, by resolution, fix  
31 the time for closing of title and payment of the consideration.

32 In all sales made pursuant to this section, the governing body of  
33 any county or municipality may provide for the payment of a  
34 commission to any real estate broker, or authorized representative  
35 other than the purchaser actually consummating such sale;  
36 provided, however, that no commission shall be paid unless notice  
37 of the governing body's intention to pay such a commission shall  
38 have been included in the advertisement of sale and the recipient  
39 thereof shall have filed an affidavit with the governing body stating  
40 that said recipient is not the purchaser. Said commissions shall not  
41 exceed, in the aggregate, 5% of the sale price, and be paid, where  
42 there has been a public sale, only in the event that the sum of the  
43 commission and the highest bid price does not exceed the next  
44 highest bid price (exclusive of any real estate broker's commission).  
45 As used in this section, "purchaser" shall mean and include any  
46 person, corporation, company, association, society, firm,  
47 partnership, or other business entity owning or controlling, directly



1 or indirectly, more than 10% of the purchasing entity.<sup>1</sup>  
2 (cf: P.L.2000, c.126, s.26)

3  
4 <sup>1</sup>8. N.J.S.18A:20-6 is amended to read as follows:

5 18A:20-6. Any lands or rights or interests therein sold by any  
6 board of education, except lands conveyed as part of a lease  
7 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold  
8 **[at]** , after advertisement of public sale, to the highest bidder **[**,  
9 after] . A board of education is authorized to use electronic  
10 procurement practices in accordance with P.L. , c. (C. )  
11 (pending before the Legislature as this bill) for the advertisement of  
12 sale or lease of land and real property thereon, and shall also  
13 publish advertisement of the sale or lease in a newspaper published  
14 in the district, or, if none is published therein, then in a newspaper  
15 circulating in the district, in which the same is situate, at least once  
16 a week for two weeks prior to the sale, unless:

17 a. The same are sold to the State, or a political subdivision  
18 thereof, in which case they may be sold at private sale without  
19 advertisement; or

20 b. The sale or other disposition thereof in some other manner is  
21 provided for in this Title.<sup>1</sup>

22 (cf: P.L.1986, c.183, s.2)

23  
24 <sup>1</sup>9. Section 1 of P.L.1978, c.91 (C.18A:20-8.2) is amended to  
25 read as follows:

26 1. a. Except as otherwise provided pursuant to section 14 of  
27 P.L.2007, c.137 (C.18A:7G-45), whenever any board of education  
28 shall by resolution determine that any tract of land, whether there is  
29 a building thereon or not, or part or all of a school building, is not  
30 necessary for school purposes, but which it does not desire to  
31 dispose of for reason that the property may, at some future time,  
32 again be required for school purposes, it may authorize the lease  
33 thereof for a term extending beyond the official life of the board;  
34 provided that the noneducational uses of such building or tract of  
35 land are compatible with the establishment and operation of a  
36 school, as determined by the Commissioner of Education, if joint  
37 occupancy of such site is considered. A board of education is  
38 authorized to use electronic procurement practices in accordance  
39 with the provisions of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill) for the advertisement of lease of land, and  
41 any building on that land. The lease shall be binding upon the  
42 successor board as follows:

43 (1) After advertisement of the request for bids to lease to the  
44 highest bidder in a newspaper published in the school district, or, if  
45 none is published therein, then in a newspaper circulating in the  
46 district in which the same is situate, at least once a week for two  
47 weeks prior to the date fixed for the receipt and opening of bids,

1 and, at the discretion of the board of education, electronic  
2 advertisement, unless:

3 (2) The same is leased to the federal government, State, a  
4 political subdivision thereof, another school district, any board,  
5 body or commission of a municipality within the school district, any  
6 volunteer fire company or rescue squad actively engaged in the  
7 protection of life and property and duly incorporated under the laws  
8 of the State of New Jersey, or to any American Legion post,  
9 Veterans of Foreign Wars, or other recognized veterans'  
10 organization of the United States of America, located in the  
11 municipality or the county, as a meeting place for such  
12 organization, or to a nonprofit child care service organization duly  
13 incorporated under the laws of the State of New Jersey, or to a  
14 nonprofit hospital duly licensed under the laws of the State of New  
15 Jersey, or to a nonprofit organization duly licensed under the laws  
16 of the State of New Jersey to provide emergency shelter for the  
17 homeless, or to a nonprofit senior citizen organization, or to a  
18 nonprofit historic preservation organization duly incorporated under  
19 the laws of the State of New Jersey, in which case the same may be  
20 leased by private agreement for a nominal fee without  
21 advertisement for bids.

22 b. Any lease in excess of five years shall be approved by the  
23 Commissioner of Education.<sup>1</sup>

24 (cf: P.L.2007, c.137, s.47)

25

26 <sup>1</sup>**[7.] 10.**<sup>1</sup> P.L.2001, c.30 is repealed.

27

28 <sup>1</sup>**[8.] 11.**<sup>1</sup> This act shall take effect on the first day of the 10th  
29 month next following enactment.