

# SENATE, No. 439

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## STATE OF NEW JERSEY 218th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator DAWN MARIE ADDIEGO**

**District 8 (Atlantic, Burlington and Camden)**

**SYNOPSIS**

Provides counties and municipalities with additional discretion when leasing public land for agricultural or horticultural use.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the lease of county or municipal real property  
2 for agricultural or horticultural use, and amending P.L.1971,  
3 c.198 and P.L.2006, c.52.  
4

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

8 1. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to  
9 read as follows:

10 13. Specifications. Any specifications for the provision or  
11 performance of goods or services under this act shall be drafted in a  
12 manner to encourage free, open and competitive bidding. In  
13 particular, no specifications under this act may:

14 (a) Require any standard, restriction, condition or limitation not  
15 directly related to the purpose, function or activity for which the  
16 contract is awarded; or

17 (b) Require that any bidder be a resident of, or that the bidder's  
18 place of business be located in, the county or municipality in which  
19 the contract will be awarded or performed, unless the physical  
20 proximity of the bidder is requisite to the efficient and economical  
21 performance of the contract; except that in the case of a lease of real  
22 property to a private person for agricultural or horticultural use, the  
23 physical proximity of the bidder to the property may be required;  
24 and except that no specification for a contract for the collection and  
25 disposal of municipal solid waste shall require any bidder to be a  
26 resident of, or that the bidder's place of business be located in, the  
27 county or municipality in which the contract will be performed; or

28 (c) Discriminate on the basis of race, religion, sex, national  
29 origin, creed, color, ancestry, age, marital status, affectional or  
30 sexual orientation, familial status, liability for service in the Armed  
31 Forces of the United States, or nationality; or

32 (d) Require, with regard to any contract, the furnishing of any  
33 "brand name," but may in all cases require "brand name or  
34 equivalent," except that if the goods or services to be provided or  
35 performed are proprietary, such goods or services may be purchased  
36 by stipulating the proprietary goods or services in the bid  
37 specification in any case in which the resolution authorizing the  
38 contract so indicates, and the special need for such proprietary  
39 goods or services is directly related to the performance, completion  
40 or undertaking of the purpose for which the contract is awarded; or

41 (e) Fail to include any option for renewal, extension, or release  
42 which the contracting unit may intend to exercise or require; or any  
43 terms and conditions necessary for the performance of any extra  
44 work; or fail to disclose any matter necessary to the substantial  
45 performance of the contract; 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.

1 (f) Require that any bidder submit a financial statement if either  
2 a guarantee, by certified check, cashier's check or bid bond, or a  
3 surety company certificate is also required to be furnished by the  
4 bidder, unless any law or regulation of the United States imposes a  
5 condition upon the awarding of a monetary grant to be used for the  
6 purchase, contract or agreement, which condition requires that a  
7 financial statement be submitted.

8 (g) As used in this subsection:

9 "asphalt price index" means the asphalt price index as  
10 determined and published by the New Jersey Department of  
11 Transportation;

12 "basic asphalt price index" means the asphalt price index for the  
13 month preceding the month in which the bids are opened;

14 "department" means the New Jersey Department of  
15 Transportation;

16 "fuel price index" means the fuel price index as determined and  
17 published by the New Jersey Department of Transportation; and

18 "pay item" means a specifically described item of work for  
19 which the bidder provides a per unit or lump sum price in a bid  
20 specification determined and published by the New Jersey  
21 Department of Transportation.

22 In addition to the requirements of paragraphs (a) through (f) of  
23 this section, any bid specification for the provision or performance  
24 of goods or services under P.L.1971, c.198 (C.40A:11-1 et seq.)  
25 that includes the purchase or use of 1,000 or more tons of hot mix  
26 asphalt shall include a pay item for an asphalt price adjustment  
27 reflecting changes in the cost of asphalt cement. The pay item for  
28 asphalt price adjustment shall apply to each ton of hot mix asphalt  
29 purchased or used by the contracting unit. Any bid specification  
30 prepared pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) that  
31 includes the purchase or use of less than 1,000 tons of hot mix  
32 asphalt shall include a pay item for an asphalt price adjustment  
33 applicable to any quantity of hot mix asphalt exceeding 1,000 tons  
34 that may be purchased or used in the work in the event that  
35 performance of the work, including change orders, requires more  
36 than 1,000 tons of hot mix asphalt. As set forth in section 7 of  
37 P.L.1971, c.198 (C.40A:11-7), no contract shall be divided to  
38 disaggregate the quantity of hot mix asphalt or equivalent asphalt  
39 cement-based paving product to be purchased or used for the  
40 purpose of avoiding compliance with this paragraph.

41 The asphalt price adjustment shall be calculated in accordance  
42 with the formula and relevant instructions published in the most  
43 recent edition of the "New Jersey Department of Transportation  
44 Standard Specifications for Road and Bridge Construction." All  
45 invoices for payment shall be accompanied by the calculation of  
46 any asphalt price adjustment and a showing of the current month's  
47 asphalt price index and the basic asphalt price index.

1 Every bid specification prepared pursuant to P.L.1971, c.198  
2 (C.40A:11-1 et seq.) shall be eligible for a fuel price adjustment.  
3 Fuel that is eligible for a fuel price adjustment shall be the sum of  
4 the quantities of the eligible pay items in the contract multiplied by  
5 the fuel usage factors as determined by the department. The types  
6 of fuel furnished shall be at the discretion of the contractor.

7 The fuel requirement for items not determined by the department  
8 to be eligible, and for pay items in the bid specifications calling for  
9 less than 500 gallons of fuel, shall not be eligible for a fuel price  
10 adjustment. If more than one pay item has the same nomenclature  
11 but with different thicknesses, depths, or types, each individual pay  
12 item must require 500 gallons or more of fuel to be eligible for a  
13 fuel price adjustment. If more than one pay item has the same  
14 nomenclature, similar pay items shall be combined and the  
15 combination must require 500 gallons or more of fuel to be eligible  
16 for the fuel price adjustment.

17 Fuel price index adjustments shall not be made in those months  
18 for which the monthly fuel price index has changed by less than  
19 five percent from the basic fuel price index.

20 Any specification which knowingly excludes prospective bidders  
21 by reason of the impossibility of performance, bidding or  
22 qualification by any but one bidder, except as provided herein, shall  
23 be null and void and of no effect and shall be readvertised for  
24 receipt of new bids, and the original contract shall be set aside by  
25 the governing body.

26 Any specification for a contract for the collection and disposal of  
27 municipal solid waste shall conform to the uniform bid  
28 specifications for municipal solid waste collection contracts  
29 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-  
30 7.22).

31 Any specification may include an item for the cost, which shall  
32 be paid by the contractor, of creating a file to maintain the notices  
33 of the delivery of labor or materials required by N.J.S.2A:44-128.

34 Any prospective bidder who wishes to challenge a bid  
35 specification shall file such challenges in writing with the  
36 contracting agent no less than three business days prior to the  
37 opening of the bids. Challenges filed after that time shall be  
38 considered void and having no impact on the contracting unit or the  
39 award of a contract.

40 (cf: P.L.2015, c.201, s.1)

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42 2. Section 2 of P.L.2006, c.52 (C.40A:12-14.1) is amended to  
43 read as follows:

44 2. Whenever a county or municipality acquires real property  
45 that, immediately prior to acquisition, was leased from the prior  
46 owner by a private person for agricultural or horticultural use, and  
47 the county or municipality determines that, until such time as the  
48 real property is needed for public use, the **temporary** continuance

1 of the private agricultural or horticultural use would not  
2 compromise that public use, it may lease the real property to the  
3 prior lessee for agricultural or horticultural use for such time period,  
4 consideration, and other terms and conditions as shall be mutually  
5 agreed upon.

6 (cf: P.L.2006, c.52, s.2)

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8 3. This act shall take effect immediately.

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#### STATEMENT

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13 This bill would clarify that when a county or municipality  
14 acquires real property which, prior to its acquisition, was leased  
15 from the prior owner to a private person for agricultural or  
16 horticultural use, the county or municipality may lease the real  
17 property to the prior lessee for agricultural or horticultural use for  
18 any time period as mutually agreed upon. Moreover, the bill would  
19 provide the county or municipality with additional discretion to  
20 consider local farmers when leasing public land for agricultural or  
21 horticultural use.