

SENATE, No. 1599

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Addiego

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 introduced.



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.), amending P.L.1971, c.199,
5 N.J.S.18A:20-6, and P.L.1978, c.91, 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. (New section) This act shall be known and may be cited as
12 the "Local Unit Electronic Procurement Act."

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

26
27 3. (New section) As used in this P.L. , c. (c.) (pending
28 before the 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 providing notice of revisions or addenda to advertisements or bid
34 documents, 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.

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

23

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

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

32 (b) the sale of surplus personal property that shall otherwise
33 comply with the provisions of section 36 of P.L.1971, c.198
34 (C.40A:11-36).

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

41

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

46 The rules promulgated pursuant to this section shall include, but
47 shall not be limited to, practices that, notwithstanding any other law
48 to the contrary:

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

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

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

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

15 b. With regard to the notices, advertising bids, or requests for
16 proposals required to be published in an official newspaper of the
17 local unit, such notices, advertising bids, or requests for proposals,
18 as appropriate, shall not be eliminated under the provisions of
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 and shall continue to be published as required by law.

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

31

32 7. Section 13 of P.L.1971, c.199 (C.40A:12-13) is amended to
33 read as follows:

34 13. Sales of real property, capital improvements or personal
35 property; exceptions; procedure. Any county or municipality may
36 sell any real property, capital improvement or personal property, or
37 interests therein, not needed for public use, as set forth in the
38 resolution or ordinance authorizing the sale, other than county or
39 municipal lands, real property otherwise dedicated or restricted
40 pursuant to law, and, except as otherwise provided by law, all such
41 sales shall be made by one of the following methods:

42 (a) By open public sale at auction to the highest bidder after
43 advertisement thereof in a newspaper circulating in the municipality
44 or municipalities in which the lands are situated, by two insertions
45 at least once a week during two consecutive weeks, the last
46 publication to be not earlier than seven days prior to such sale. In
47 the case of public sales, the governing body may by resolution fix a
48 minimum price or prices, with or without the reservation of the

1 right to reject all bids where the highest bid is not accepted. Notice
2 of such reservation shall be included in the advertisement of the
3 sale and public notice thereof shall be given at the time of sale.
4 Such resolution may provide, without fixing a minimum price, that
5 upon the completion of the bidding, the highest bid may be accepted
6 or all the bids may be rejected. The invitation to bid may also
7 impose restrictions on the use to be made of such real property,
8 capital improvement or personal property, and any conditions of
9 sale as to buildings or structures, or as to the type, size, or other
10 specifications of buildings or structures to be constructed thereon,
11 or as to demolition, repair, or reconstruction of buildings or
12 structures, and the time within which such conditions shall be
13 operative, or any other conditions of sale, in like manner and to the
14 same extent as by any other vendor. Such conditions shall be
15 included in the advertisement, as well as the nature of the interest
16 retained by the county or municipality. Such restrictions or
17 conditions shall be related to a lawful public purpose and encourage
18 and promote fair and competitive bidding of the county or
19 municipality and shall not, in the case of a municipality, be
20 inconsistent with or impose a special or higher standard than any
21 zoning ordinance or building, plumbing, electrical, or similar code
22 or ordinance then in effect in the municipality.

23 In any case in which a county or municipality intends to retain an
24 estate or interest in any real property, capital improvement or
25 personal property, in the nature of an easement, contingent or
26 reversionary, the invitation to bid and the advertisement required
27 herein shall require each bidder to submit one bid under each
28 Option A and Option B below.

29 (1) Option A shall be for the real property, capital improvement
30 or personal property subject to the conditions or restrictions
31 imposed, or interest or estate retained, which the county or
32 municipality proposes to retain or impose.

33 (2) Option B shall be for the real property, capital improvement
34 or personal property to be sold free of all such restrictions,
35 conditions, interests or estates on the part of the county or
36 municipality.

37 The county or the municipality may elect or reject either or both
38 options and the highest bid for each. Such acceptance or rejection
39 shall be made not later than at the second regular meeting of the
40 governing body following the sale, and, if the governing body shall
41 not so accept such highest bid, or reject all bids, said bids shall be
42 deemed to have been rejected. Any such sale may be adjourned at
43 the time advertised for not more than one week without
44 readvertising.

45 (b) At private sale, when authorized by resolution, in the case of
46 a county, or by ordinance, in the case of a municipality, in the
47 following cases:

1 (1) A sale to any political subdivision, agency, department,
2 commission, board or body corporate and politic of the State of
3 New Jersey or to an interstate agency or body of which the State of
4 New Jersey is a member or to the United States of America or any
5 department or agency thereof.

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

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

33 (4) A sale of an easement upon any real property previously
34 conveyed by any county or municipality may be made when the
35 governing body of any county, by resolution, or any municipality,
36 by ordinance, has elected to release the public rights in the nature of
37 easements, in, on, over or under any real property within the county
38 or the municipality, as the case may be, upon such terms as shall be
39 agreed upon with the owner of such lands, if the use of such rights
40 is no longer desirable, necessary or required for public purposes.

41 (5) A sale to the owner of the real property contiguous to the real
42 property being sold; provided that the property being sold is less
43 than the minimum size required for development under the
44 municipal zoning ordinance and is without any capital improvement
45 thereon; except that when there is more than one owner with real
46 property contiguous thereto, said property shall be sold to the
47 highest bidder from among all such owners. Any such sale shall be
48 for not less than the fair market value of said real property. When

1 there is only one owner with real property contiguous to the
2 property being sold, and the property is less than an eighth of the
3 minimum size required for development under the municipal zoning
4 ordinance and is without any capital improvement thereon, the fair
5 market value of that property may be determined by negotiation
6 between the local unit and the owner of the contiguous real
7 property. The negotiated sum shall be subject to approval by
8 resolution of the governing body, but in no case shall that sum be
9 less than one dollar.

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

42 Any county or municipality selling any real property, capital
43 improvement or personal property pursuant to subsection (b) of this
44 section shall file with the Director of the Division of Local
45 Government Services in the Department of Community Affairs,
46 sworn affidavits verifying the publication of advertisements as
47 required by this subsection.

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

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

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

24 In all sales made pursuant to this section, the governing body of
25 any county or municipality may provide for the payment of a
26 commission to any real estate broker, or authorized representative
27 other than the purchaser actually consummating such sale;
28 provided, however, that no commission shall be paid unless notice
29 of the governing body's intention to pay such a commission shall
30 have been included in the advertisement of sale and the recipient
31 thereof shall have filed an affidavit with the governing body stating
32 that said recipient is not the purchaser. Said commissions shall not
33 exceed, in the aggregate, 5% of the sale price, and be paid, where
34 there has been a public sale, only in the event that the sum of the
35 commission and the highest bid price does not exceed the next
36 highest bid price (exclusive of any real estate broker's commission).
37 As used in this section, "purchaser" shall mean and include any
38 person, corporation, company, association, society, firm,
39 partnership, or other business entity owning or controlling, directly
40 or indirectly, more than 10% of the purchasing entity.
41 (cf: P.L.2000, c.126, s.26)

42
43 8. N.J.S.18A:20-6 is amended to read as follows:

44 18A:20-6. Any lands or rights or interests therein sold by any
45 board of education, except lands conveyed as part of a lease
46 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold
47 **[at]** , after advertisement of public sale, to the highest bidder **],**
48 after] . A board of education is authorized to use electronic

1 procurement practices in accordance with P.L. , c. (C.)
2 (pending before the Legislature as this bill) for the advertisement of
3 sale or lease of land and real property thereon, and shall also
4 publish advertisement of the sale or lease in a newspaper published
5 in the district, or, if none is published therein, then in a newspaper
6 circulating in the district, in which the same is situate, at least once
7 a week for two weeks prior to the sale, unless:

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

11 b. The sale or other disposition thereof in some other manner is
12 provided for in this Title.

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

14
15 9. Section 1 of P.L.1978, c.91 (C.18A:20-8.2) is amended to
16 read as follows:

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

34 (1) After advertisement of the request for bids to lease to the
35 highest bidder in a newspaper published in the school district, or, if
36 none is published therein, then in a newspaper circulating in the
37 district in which the same is situate, at least once a week for two
38 weeks prior to the date fixed for the receipt and opening of bids,
39 and, at the discretion of the board of education, electronic
40 advertisement, unless:

41 (2) The same is leased to the federal government, State, a
42 political subdivision thereof, another school district, any board,
43 body or commission of a municipality within the school district, any
44 volunteer fire company or rescue squad actively engaged in the
45 protection of life and property and duly incorporated under the laws
46 of the State of New Jersey, or to any American Legion post,
47 Veterans of Foreign Wars, or other recognized veterans'
48 organization of the United States of America, located in the

1 municipality or the county, as a meeting place for such
2 organization, or to a nonprofit child care service organization duly
3 incorporated under the laws of the State of New Jersey, or to a
4 nonprofit hospital duly licensed under the laws of the State of New
5 Jersey, or to a nonprofit organization duly licensed under the laws
6 of the State of New Jersey to provide emergency shelter for the
7 homeless, or to a nonprofit senior citizen organization, or to a
8 nonprofit historic preservation organization duly incorporated under
9 the laws of the State of New Jersey, in which case the same may be
10 leased by private agreement for a nominal fee without
11 advertisement for bids.

12 b. Any lease in excess of five years shall be approved by the
13 Commissioner of Education.

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

15

16 10. P.L.2001, c.30 is repealed.

17

18 11. This act shall take effect on the first day of the 10th month
19 next following enactment.

20

21

22 **STATEMENT**

23

24 This bill would authorize local units of government to use
25 electronic procurement technologies. The bill defines "local unit"
26 as contracting units as defined in the "Local Public Contracts Law,"
27 P.L.1971, c.198 (C.40A:11-1 et seq.). The bill authorizes these
28 local units to use electronic procurement practices for such
29 purposes as may be authorized by the governing body of the local
30 unit, and subject to the provisions of the bill.

31 Under the bill, a local unit, joint purchasing unit, or cooperative
32 pricing system is also authorized to use electronic procurement
33 practices for the following purposes:

34 a) the purchase of electric generation service, electric related
35 service, gas supply service, or gas related service, either separately
36 or bundled, for its own facilities so long as the purchase otherwise
37 complies with the provisions of the "Electric Discount and Energy
38 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.);

39 b) the sale of surplus personal property that shall otherwise
40 comply with the provisions of section 36 of P.L.1971, c.198
41 (C.40A:11-36); and

42 c) the sale of real property that shall otherwise comply with the
43 sale and lease provisions of the "Local Lands and Buildings Law,"
44 P.L.1971, c.199 (C.40A:12-1).

45 A local unit using electronic procurement technologies must
46 continue to publish any notices, advertising bids, and requests for
47 proposals required by law to be published in the official newspaper
48 of the local unit.

1 Contracts awarded for the administration of electronic
2 procurement practices pursuant to the bill would be subject to the
3 requirements of the "Local Public Contracts Law," P.L.1971, c.198
4 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"
5 N.J.S.18A:18A-1 et seq., as appropriate, except that they are to be
6 considered as purposes for which competitive contracting may be
7 used.

8 The bill also requires the Director of the Division of Local
9 Government Services in the Department of Community Affairs, in
10 consultation with other State government entities, to promulgate
11 rules and regulations to effectuate the provisions of the bill.