

# ASSEMBLY, No. 5818

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 1, 2021

**Sponsored by:**

**Assemblyman P. CHRISTOPHER TULLY**

**District 38 (Bergen and Passaic)**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**SYNOPSIS**

Provides for debarment of school bus contractors for certain violations; requires certain information in pupil transportation contract bid.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning bidding on pupil transportation contracts,  
2 amending N.J.S.18A:39-3 and P.L.2005, c.84, and  
3 supplementing chapter 39 of Title 18A of the New Jersey  
4 Statutes.

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

8  
9 1. N.J.S.18A:39-3 is amended to read as follows:

10 18A:39-3. a. No contract for the transportation of pupils to and  
11 from school shall be made, when the amount to be paid during the  
12 school year for such transportation shall exceed \$7,500.00 or the  
13 amount determined pursuant to subsection b. of this section, and  
14 have the approval of the executive county superintendent of  
15 schools, unless the board of education making such contract shall  
16 have first publicly advertised for bids therefor in a newspaper  
17 published in the district or, if no newspaper is published therein, in  
18 a newspaper circulating in the district, once, at least 10 days prior to  
19 the date fixed for receiving proposals for such transportation, and  
20 shall have awarded the contract to the lowest responsible bidder.

21 Nothing in this chapter shall require the advertisement and  
22 letting on proposals or bids of annual extensions, approved by the  
23 executive county superintendent, of any contract for transportation  
24 entered into through competitive bidding when--

25 (1) Such annual extensions impose no additional cost upon the  
26 board of education, regardless of the fact that the route description  
27 has changed; or

28 (2) The increase in the contractual amount as a result of such  
29 extensions does not exceed the rise in the Consumer Price Index as  
30 defined in section 3 of P.L.2007, c.260 (C.18A:7F-45) for that  
31 school year, regardless of the fact that the route description has  
32 changed or an aide has been added or removed; or

33 (3) (Deleted by amendment, P.L.1982, c.74.)

34 (4) The increase in the contractual amount as a result of an  
35 extension exceeds the rise in the Consumer Price Index as defined  
36 in section 3 of P.L.2007, c.260 (C.18A:7F-45) for that school year,  
37 but the following apply to the extensions:

38 (a) The increase is directly attributable to a route change to  
39 accommodate new student riders or safety concerns as provided for  
40 in the original bid, or the increase is directly attributable to the  
41 addition of an aide as provided for in the original bid; and

42 (b) The school destination remains unchanged from the original  
43 contract.

44 Any such extension as described in this paragraph shall require  
45 the approval of the executive county superintendent of schools.

**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 Nothing in this chapter shall require the immediate bid of any  
2 contract renewal for the remainder of a school year in which the  
3 only change, in addition to route description, is the bus type.  
4 However, any such extension shall be approved by the executive  
5 county superintendent of schools and shall be bid for the next  
6 school year.

7 No annual extension shall be granted pursuant to this subsection  
8 to a person who has been debarred from bidding on a pupil  
9 transportation contract pursuant to the provisions of section 3 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill).

11 b. The Governor, in consultation with the Department of the  
12 Treasury, shall, no later than March 1 of each odd-numbered year,  
13 adjust the threshold amount set forth in subsection a. of this section,  
14 or subsequent to 1985 the threshold amount resulting from any  
15 adjustment under this subsection or section 17 of P.L.1985, c.469,  
16 in direct proportion to the rise or fall of the Consumer Price Index  
17 for all urban consumers in the New York City and the Philadelphia  
18 areas as reported by the United States Department of Labor. The  
19 Governor shall, no later than June 1 of each odd-numbered year,  
20 notify all local school districts of the adjustment. The adjustment  
21 shall become effective on July 1 of each odd-numbered year.

22 c. A bid for a pupil transportation contract shall identify each  
23 person who has any ownership interest in the company submitting a  
24 bid for the pupil transportation contract.

25 d. Prior to awarding any pupil transportation contract, a board  
26 of education shall review the debarment list maintained pursuant to  
27 section 3 of P.L. , c. (C. ) (pending before the Legislature  
28 as this bill). No pupil transportation contract shall be awarded to  
29 any person who is debarred from bidding pursuant to the provisions  
30 of section 3 of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill).

32 e. As used in this section, "person" means an individual and any  
33 business, including any corporation, partnership, association, or  
34 proprietorship in which such individual is a principal, or with  
35 respect to which the individual owns, directly or indirectly, or  
36 controls any of the stock or other equity interest of such business.  
37 (cf: P.L.2007, c.260, s.66)

38  
39 2. Section 2 of P.L.2005, c.84 (C.18A:39-11.3) is amended to  
40 read as follows:

41 2. a. A board of education may, by resolution approved by a  
42 majority of the board of education and subject to the provisions of  
43 subsection b. of this section, disqualify a bidder who would  
44 otherwise be determined to be the lowest responsible bidder for a  
45 pupil transportation contract, if the board of education finds that it  
46 has had prior negative experience with the bidder. The  
47 disqualification shall be for a reasonable, defined period of time  
48 which shall not exceed three years.

1       b. As used in this section, "prior negative experience" means  
2 any of the following:

3       (1) the bidder has been determined to be "nonperforming" under  
4 a pupil transportation contract after a hearing which shall include  
5 the bidder, the superintendent of schools, and the county  
6 superintendent of schools. The county superintendent of schools  
7 shall make the determination as to nonperformance and this  
8 determination may be appealed to the Commissioner of Education  
9 and the State Board of Education, as provided by law;

10       (2) the bidder defaulted on a transportation contract thereby  
11 requiring the board of education to utilize the services of another  
12 contractor to complete the contract;

13       (3) the bidder defaulted on a transportation contract thereby  
14 requiring the board of education to look to the bidder's surety for  
15 completion of the contract or tender of the costs of completion; or

16       (4) the bidder has **【at least a 10%】** any ownership interest in any  
17 contractor that had prior negative experience with the board of  
18 education as described in paragraphs (1) through (3) of this  
19 subsection or in any contractor that is debarred from bidding on a  
20 pupil transportation contract pursuant to the provisions of section 3  
21 of P.L. , c. (C. ) (pending before the Legislature as this  
22 bill).  
23 (cf: P.L.2005, c.84, s.2)  
24

25       3. (New section) a. The State Board of Education shall  
26 provide for the debarment from bidding on any pupil transportation  
27 contract of a person for causes that include, but are not limited to:

28       (1) the employment or assignment of an individual as a school  
29 bus driver who has been disqualified to serve as a school bus driver  
30 or determined ineligible to operate a school bus pursuant to the  
31 provisions of section 6 of P.L.1989, c.104 (C.18A:39-19.1);

32       (2) failure to comply with the provisions of section 1 of  
33 P.L.2018, c.152 (C.18A:39-19.6);

34       (3) failure to comply with the provisions of the "School Bus  
35 Enhanced Safety Inspection Act," P.L.1999, c.5 (C.39:3B-18 et  
36 seq.), or any rules or regulations promulgated thereunder;

37       (4) commission of a criminal offense as an incident to obtaining  
38 or attempting to obtain a public or private contract, or subcontract  
39 thereunder, or in the performance of such contract or subcontract;

40       (5) commission of a criminal offense that includes child abuse  
41 or sexual misconduct involving a child;

42       (6) a record of failure to perform or of unsatisfactory  
43 performance in accordance with the terms of one or more pupil  
44 transportation contracts, provided that such failure or unsatisfactory  
45 performance has occurred within a reasonable time preceding the  
46 determination to debar and was caused by acts within the control of  
47 the person debarred;

1 (7) knowingly submitting a bid for a pupil transportation  
2 contract that fails to contain the information required pursuant to  
3 subsection c. of N.J.S.18A:39-3 that would have included a person  
4 debarred from bidding on a pupil transportation contract pursuant to  
5 the provisions of this section; or

6 (8) debarment by some other department or agency in the  
7 Executive Branch of the New Jersey State government.

8 b. The debarment shall be for a reasonable, defined period of  
9 time not less than one year and not to exceed five years.

10 c. The existence of any of the causes set forth in subsection a.  
11 of this section shall not necessarily require that a person be  
12 debarred from bidding on a pupil transportation contract. In each  
13 instance, the decision to debar shall be made within the discretion  
14 of the Commissioner of Education or the Bus Safety Ombudsman,  
15 unless otherwise required by law, and shall be rendered in the best  
16 interest of the State.

17 d. A list of persons debarred from bidding on a pupil  
18 transportation contract shall be maintained on the Department of  
19 Education's Internet website and shall be distributed to each school  
20 district and board of education in the State by March 1 of each year.  
21 The Commissioner of Education or Bus Safety Ombudsman may  
22 determine to keep the names of such persons debarred pursuant to  
23 the provisions of this section on the list beyond completion of any  
24 debarment period instituted pursuant to the provisions of this  
25 section.

26 e. As used in this section:

27 "Child abuse" means any conduct that falls under the purview  
28 and reporting requirements of P.L.1971, c.437 (C.9:6-8.8 et seq.)  
29 and is directed toward or against a child or student, regardless of the  
30 age of the child or student.

31 "Person" means an individual and any business, including any  
32 corporation, partnership, association, or proprietorship in which  
33 such individual is a principal, or with respect to which the  
34 individual owns, directly or indirectly, or controls any of the stock  
35 or other equity interest of such business.

36 "Sexual misconduct" means any verbal, nonverbal, written, or  
37 electronic communication, or any other act directed toward or with  
38 a child or student that is designed to establish a sexual relationship  
39 with the child or student, including a sexual invitation, dating or  
40 soliciting a date, engaging in sexual dialogue, making sexually  
41 suggestive comments, self-disclosure or physical exposure of a  
42 sexual or erotic nature, and any other sexual, indecent, or erotic  
43 contact with a child or student.

44

45 4. The State Board of Education shall adopt in accordance with  
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
47 et seq.), rules and regulations as may be necessary to implement the  
48 provisions of this act.

1       5    This act shall take effect upon the enactment of P.L.     , c.  
2   (C.     ) (pending before the Legislature as Senate Bill No. XXXX  
3   and Assembly Bill No. XXXX) and shall apply to any pupil  
4   transportation contract entered into or renewed on or after the  
5   effective date of this act.

6  
7  
8                               STATEMENT

9  
10       This bill requires the State Board of Education to provide for  
11   debarment of school bus contractors for certain violations. Under  
12   current law, a board of education must, with limited exception,  
13   accept the lowest responsible bid for a pupil transportation contract.  
14   A board of education may only disqualify the lowest responsible  
15   bidder if the board finds it has had certain prior negative  
16   experiences with the bidder.

17       Under the bill, the State Board of Education is required to  
18   provide for debarment from bidding on any pupil transportation  
19   contract of a person for certain causes that include, but are not  
20   limited to: failing to comply with certain provisions of law  
21   pertaining to the qualification of school bus drivers and school bus  
22   inspections; the commission of a criminal offense as an incident to  
23   obtaining or attempting to obtain a public or private contract, or  
24   subcontract thereunder, or in the performance of such contract or  
25   subcontract; the commission of a criminal offense that includes  
26   child abuse or sexual misconduct involving a child; a record of  
27   failure to perform or of unsatisfactory performance in accordance  
28   with the terms of one or more pupil transportation contracts;  
29   knowingly submitting a bid for a pupil transportation contract that  
30   fails to identify each person who has any ownership interest in the  
31   company and that would have included a person debarred from  
32   bidding on a pupil transportation contract under the bill; and  
33   debarment by some other department or agency in the Executive  
34   Branch of the New Jersey State government. Under the bill,  
35   debarment, which must be for a reasonable, defined period of time  
36   of not less than one year and not longer than five years, based on  
37   one of the above causes need not be automatic. The decision to  
38   debar will be at the discretion of the Commissioner of Education or  
39   Bus Safety Ombudsman and rendered in the best interest of the  
40   State.

41       The bill requires that a list of persons debarred from bidding on a  
42   pupil transportation contract under the bill be maintained on the  
43   Department of Education's Internet website and distributed to each  
44   school district and board of education in the State by March 1 of  
45   each year. The commissioner or ombudsman may keep the names  
46   of debarred persons on this list beyond the completion of a period  
47   of debarment. The bill defines "person" to mean an individual and  
48   any business, including any corporation, partnership, association, or

1 proprietorship in which such individual is a principal, or with  
2 respect to which the individual owns, directly or indirectly, or  
3 controls any of the stock or other equity interest of such business.

4 The bill amends current law to require a bid for a pupil  
5 transportation contract to identify each person who has any  
6 ownership interest in the company submitting the bid and to require  
7 a board of education to review the debarment list prior to awarding  
8 a pupil transportation contract. The bill prohibits a board of  
9 education from awarding a pupil transportation contract to any  
10 person debarred from bidding on a pupil transportation contract  
11 under the provisions of the bill.

12 The bill also expands what qualifies as a prior negative  
13 experience for which a board of education may disqualify the  
14 lowest responsible bidder for a pupil transportation contract. Under  
15 the bill, a board of education may disqualify the lowest responsible  
16 bidder when the bidder has any ownership interest in any contractor  
17 that had prior negative experiences with the board or in any  
18 contractor that is debarred from bidding on a pupil transportation  
19 contract under the provisions of the bill. Current law provides that  
20 a board of education may disqualify a bidder when the bidder has at  
21 least 10 percent ownership in any contractor that had a prior  
22 negative experience with the board.

23 This bill will take effect upon the enactment of Senate Bill. No.  
24 XXXX and Assembly Bill No. XXXX, which are currently pending  
25 before the Legislature.