

ASSEMBLY, No. 2089

STATE OF NEW JERSEY

INTRODUCED JUNE 3, 1996

By Assemblymen **R. SMITH, DALTON**, Green, Wisniewski and
Assemblywoman Friscia

1 **AN ACT** concerning project labor agreements and amending P.L.1971,
2 c.198, N.J.S.18A:18A-2 and N.J.S.18A:18A-15.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read
8 as follows:

9 2. As used herein the following words have the following
10 definitions, unless the context otherwise indicates:

11 (1) "Contracting unit" means:

12 (a) Any county; or

13 (b) Any municipality; or

14 (c) Any board, commission, committee, authority or agency, which
15 is not a State board, commission, committee, authority or agency, and
16 which has administrative jurisdiction over any district other than a
17 school district, project, or facility, included or operating in whole or
18 in part, within the territorial boundaries of any county or municipality
19 which exercises functions which are appropriate for the exercise by
20 one or more units of local government, and which has statutory power
21 to make purchases and enter into contracts or agreements for the
22 performance of any work or the furnishing or hiring of any materials
23 or supplies usually required, the cost or contract price of which is to
24 be paid with or out of public funds.

25 The term shall not include a private firm that has entered into a
26 contract with a public entity for the provision of water supply services
27 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

28 "Contracting unit" shall not include a private firm or public
29 authority that has entered into a contract with a public entity for the
30 provision of wastewater treatment services pursuant to P.L.1995,
31 c.216 (C.58:27-19 et al.).

32 (2) "Governing body" means:

33 (a) The governing body of the county, when the purchase is to be

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 made or the contract or agreement is to be entered into by, or in behalf
2 of, a county; or

3 (b) The governing body of the municipality, when the purchase is
4 to be made or the contract or agreement is to be entered into by, or on
5 behalf of, a municipality; or

6 (c) Any board, commission, committee, authority or agency of the
7 character described in subsection (1) (c) of this section.

8 (3) "Contracting agent" means the governing body of a contracting
9 unit, or any board, commission, committee, officer, department,
10 branch or agency which has the power to prepare the advertisements,
11 to advertise for and receive bids and, as permitted by this act, to make
12 awards for the contracting unit in connection with purchases, contracts
13 or agreements.

14 (4) "Purchase" is a transaction, for a valuable consideration,
15 creating or acquiring an interest in goods, services and property,
16 except real property or any interest therein.

17 (5) "Materials" includes goods and property subject to chapter 2
18 of Title 12A of the New Jersey Statutes, apparatus, or any other
19 tangible thing, except real property or any interest therein.

20 (6) "Professional services" means services rendered or performed
21 by a person authorized by law to practice a recognized profession,
22 whose practice is regulated by law, and the performance of which
23 services requires knowledge of an advanced type in a field of learning
24 acquired by a prolonged formal course of specialized instruction and
25 study as distinguished from general academic instruction or
26 apprenticeship and training. Professional services may also mean
27 services rendered in the performance of work that is original and
28 creative in character in a recognized field of artistic endeavor.

29 (7) "Extraordinary unspecifiable services" means services which are
30 specialized and qualitative in nature requiring expertise, extensive
31 training and proven reputation in the field of endeavor.

32 (8) "Project" means any work, undertaking, program, activity,
33 development, redevelopment, construction or reconstruction of any
34 area or areas.

35 (9) "Work" includes services and any other activity of a tangible or
36 intangible nature performed or assumed pursuant to a contract or
37 agreement with a contracting unit.

38 (10) "Homemaker--home health services" means at home personal
39 care and home management provided to an individual or members of
40 his family who reside with him, or both, necessitated by the individual's
41 illness or incapacity. "Homemaker--home health services" includes, but
42 is not limited to, the services of a trained homemaker.

43 (11) "Recyclable material" means those materials which would
44 otherwise become municipal solid waste, and which may be collected,
45 separated or processed and returned to the economic mainstream in
46 the form of raw materials or products.

1 (12) "Recycling" means any process by which materials which
2 would otherwise become solid waste are collected, separated or
3 processed and returned to the economic mainstream in the form of raw
4 materials or products.

5 (13) "Marketing" means the marketing of designated recyclable
6 materials source separated in a municipality which entails a marketing
7 cost less than the cost of transporting the recyclable materials to solid
8 waste facilities and disposing of the materials as municipal solid waste
9 at the facility utilized by the municipality.

10 (14) "Municipal solid waste" means all residential, commercial and
11 institutional solid waste generated within the boundaries of a
12 municipality.

13 (15) "Distribution" (when used in relation to electricity) means the
14 process of conveying electricity from a contracting unit who is a
15 generator of electricity or a wholesale purchaser of electricity to retail
16 customers or other end users of electricity.

17 (16) "Transmission" (when used in relation to electricity) means
18 the conveyance of electricity from its point of generation to a
19 contracting unit who purchases it on a wholesale basis for resale.

20 (17) "Disposition" means the transportation, placement, reuse, sale,
21 donation, transfer or temporary storage of recyclable materials for all
22 possible uses except for disposal as municipal solid waste.

23 (18) "Cooperative marketing" means the joint marketing by two or
24 more contracting units within the same county, or adjacent or
25 proximate counties, of the source separated recyclable materials
26 designated in a district recycling plan required pursuant to section 3 of
27 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative
28 agreement entered into by the participating contracting units thereof.

29 (19) "Project labor agreement" means a form of prehire agreement
30 between a contractor doing business with a contracting unit and a
31 designated labor organization in which the contractor agrees to use the
32 members of the designated labor organization on a project in exchange
33 for the designated labor organization's guarantee of labor stability
34 during the life of the project.

35 (cf: P.L.1995, c.216, s.10)

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

39 13. Specifications. Any specifications for an acquisition under this
40 act, whether by purchase, contract or agreement, shall be drafted in a
41 manner to encourage free, open and competitive bidding. In particular,
42 no specifications under this act may:

43 (a) Require any standard, restriction, condition or limitation not
44 directly related to the purpose, function or activity for which the
45 purchase, contract or agreement is made; or

46 (b) Require that any bidder be a resident of, or that his place of

1 business be located in, the county or municipality in which the
2 purchase will be made or the contract or agreement performed, unless
3 the physical proximity of the bidder is requisite to the efficient and
4 economical purchase or performance of the contract or agreement;
5 except that no specification for a contract for the collection and
6 disposal of municipal solid waste shall require any bidder to be a
7 resident of, or that his place of business be located in, the county or
8 municipality in which the contract will be performed; or

9 (c) Discriminate on the basis of race, religion, sex, national origin;
10 or

11 (d) Require, with regard to any purchase, contract or agreement,
12 the furnishing of any "brand name," but may in all cases require "brand
13 name or equivalent," except that if the materials to be supplied or
14 purchased are patented or copyrighted, such materials or supplies may
15 be purchased by specification in any case in which the ordinance or
16 resolution authorizing the purchase, contract, sale or agreement so
17 indicates, and the special need for such patented or copyrighted
18 materials or supplies is directly related to the performance, completion
19 or undertaking of the purpose for which the purchase, contract or
20 agreement is made; or

21 (e) Fail to include any option for renewal, extension, or release
22 which the contracting unit may intend to exercise or require; or any
23 terms and conditions necessary for the performance of any extra work;
24 or fail to disclose any matter necessary to the substantial performance
25 of the contract or agreement.

26 Any specification adopted by the governing body, which knowingly
27 excludes prospective bidders by reason of the impossibility of
28 performance, bidding or qualification by any but one bidder, except as
29 provided herein, shall be null and void and of no effect and subject
30 purchase, contract or agreement shall be readvertised, and the original
31 purchase, contract or agreement shall be set aside by the governing
32 body.

33 Any specification adopted by the governing body for a contract for
34 the collection and disposal of municipal solid waste shall conform to
35 the uniform bid specifications for municipal solid waste collection
36 contracts established pursuant to section 22 of P.L.1991, c.381
37 (C.48:13A-7.22).

38 Nothing in this section shall prohibit a contracting unit from
39 requiring that a project be implemented subject to a project labor
40 agreement, if the contracting unit determines that such an agreement
41 is justified as reasonably necessary for the satisfactory completion of
42 the project.

43 (cf: P.L.1991, c.381, s.48)

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45 3. N.J.S.18A:18A-2 is amended to read as follows:

46 18A:18A-2. As used in this chapter, unless the context otherwise

1 indicates:

2 a. "Board of education" means and includes the board of education
3 of any local school district, consolidated school district, regional
4 school district, county vocational school and any other board of
5 education or other similar body other than the State Board of
6 Education, the Commission on Higher Education or the Presidents'
7 Council, established and operating under the provisions of Title 18A
8 of the New Jersey Statutes and having authority to make purchases
9 and to enter into contracts, agreements or leases for the performance
10 of any work or the furnishing or hiring of any materials, supplies,
11 equipment or services usually required, the cost or contract price is to
12 be paid with or out of board funds.

13 b. "Contracting agent" means the secretary, business administrator
14 or the business manager of the board of education having the power
15 to prepare advertisements, to advertise for and receive bids and to
16 make awards for the board of education in connection with purchases,
17 contracts or agreements as permitted by this chapter, but if there be no
18 secretary, business administrator or business manager such officer,
19 committees or employees to whom such power has been delegated by
20 the board of education.

21 c. "Contracts" for the purpose of this chapter means contracts or
22 agreements for the performance of work or the furnishing or hiring of
23 services, materials, or supplies as distinguished from contracts of
24 employment.

25 d. "District" means and includes any local school district,
26 consolidated school district, regional school district, county vocational
27 school and any other board of education or other similar body other
28 than the State board, established under the provisions of Title 18A of
29 the New Jersey Statutes.

30 e. "Legal newspaper" means a newspaper circulating in the district,
31 printed and published in the English language at least once a week for
32 at least one year continuously.

33 f. "Materials" includes goods and property subject to Article 2 of
34 Title 12A of the New Jersey Statutes, apparatus, or any other tangible
35 thing, except real property or any interest therein.

36 g. "Extraordinary unspecifiable services" means services which are
37 specialized and qualitative in nature requiring expertise, extensive
38 training and proven reputation in the field of endeavor.

39 h. "Professional services" means services rendered or performed by
40 a person authorized by law to practice a recognized profession and
41 whose practice is regulated by law and the performance of which
42 services requires knowledge of an advanced type in a field of learning
43 acquired by a prolonged formal course of specialized instruction and
44 study as distinguished from general academic instruction or
45 apprenticeship and training. Professional services also means services
46 rendered in the performance of work that is original and creative in

1 character in a recognized field of artistic endeavor.

2 i. "Project" means any work, undertaking, construction or
3 alteration.

4 j. "Purchases" are transactions, for a valuable consideration,
5 creating or acquiring an interest in goods, services and property,
6 except real property or any interest therein.

7 k. "Work" includes services and any other activity of a tangible or
8 intangible nature performed or assumed pursuant to a contract or
9 agreement with a board of education.

10 l. "Project labor agreement" means a form of prehire agreement
11 between a contractor doing business with a board of education and a
12 designated labor organization in which the contractor agrees to use the
13 members of the designated labor organization on a project in exchange
14 for the designated labor organization's guarantee of labor stability
15 during the life of the project.

16 (cf: P.L.1994, c. 48, s.59)

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18 4. N.J.S.18A:18A-15 is amended to read as follows:

19 18A:18A-15. Specifications generally. Any specifications for an
20 acquisition under this chapter, whether by purchase, contract or
21 agreement, shall be drafted in a manner to encourage free, open and
22 competitive bidding. In particular, no specifications under this chapter
23 may:

24 a. Require any standard, restriction, condition or limitation not
25 directly related to the purpose, function or activity for which the
26 purchase, contract or agreement is made; or

27 b. Require that any bidder be a resident of, or that his place of
28 business be located in, the county or school district in which the
29 purchase will be made or the contract or agreement performed, unless
30 the physical proximity of the bidder is requisite to the efficient and
31 economical purchase or performance of the contract or agreement; or

32 c. Discriminate on the basis of race, religion, sex, national origin;
33 or

34 d. Require, with regard to any purchase, contract or agreement,
35 the furnishing of any "brand name," but may in all cases require "brand
36 name or equivalent," except that if the materials to be supplied or
37 purchased are patented or copyrighted, such materials or supplies may
38 be purchased by specification in any case in which the resolution
39 authorizing the purchase, contract, sale or agreement so indicates, and
40 the special need for such patented or copyrighted materials or supplies
41 is directly related to the performance, completion or undertaking of
42 the purpose for which the purchase, contract or agreement is made; or

43 e. Fail to include any option for renewal, extension, or release
44 which the board of education may intend to exercise or require; or any
45 terms and conditions necessary for the performance of any extra work;
46 or fail to disclose any matter necessary to the substantial performance

1 of the contract or agreement.

2 The specifications for every contract for public work, the entire
3 cost whereof will exceed \$20,000.00, shall provide that the board of
4 education, through its authorized agent, shall upon completion of the
5 contract report to the department as to the contractor's performance,
6 and shall also furnish such report from time to time during
7 performance if the contractor is then in default.

8 Any specification adopted by the board of education which
9 knowingly excludes prospective bidders by reason of the impossibility
10 of performance, bidding or qualification by any but one bidder, except
11 as provided herein, shall be null and void and of no effect and such
12 purchase, contract or agreement shall be readvertised, and the original
13 purchase, contract or agreement shall be set aside by the board of
14 education.

15 No provision in this section shall be construed to prevent a board
16 of education from designating that a contract, subcontract or other
17 means of procurement of goods, services, equipment or construction
18 shall be awarded to a small business enterprise, a minority business
19 enterprise or a women's business enterprise pursuant to P.L. 1985, c.
20 490 (C. 18A:18A-51 et seq.).

21 Nothing in this section shall prohibit a board of education from
22 requiring that a project be implemented subject to a project labor
23 agreement, if the board of education determines that such an
24 agreement is justified as reasonably necessary for the satisfactory
25 completion of the project.

26 (cf: P.L.1988, c.37, s.10)

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28 5. This act shall take effect immediately.

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STATEMENT

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33 This bill permits contracting units under the "Local Public Contracts
34 Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and boards of education
35 under the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,
36 to require that a project be implemented subject to a project labor
37 agreement, if the contracting unit or board of education determines
38 that such an agreement is justified as reasonably necessary for the
39 satisfactory completion of the project.

40 The bill defines a "project labor agreement" as a form of prehire
41 agreement between a contractor doing business with a contracting unit
42 or board of education and a designated labor organization in which the
43 contractor agrees to use the members of the designated labor
44 organization on a project in exchange for the designated labor
45 organization's guarantee of labor stability for the life of the project.

46 This bill is in response to the New Jersey Supreme Court's decisions

1 in George Harms Construction Co. v. New Jersey Turnpike Authority,
2 137 N.J.8 (1994) and Tormee Construction v. Mercer County
3 Improvement Authority, 143 N.J.143 (1995) in which the court held
4 that the designation of a particular labor organization as the sole
5 source of labor for a public construction project is inconsistent with
6 the public bidding law, the basic policy of which is to promote
7 competition and combat corruption in public bidding.

8 Project labor agreements are a useful tool in bringing about the
9 timely and efficient completion of construction projects. They ensure
10 predictable costs, establish uniform procedures for dealing with all
11 disputes, standardize the terms and conditions of employment,
12 guarantee a steady supply of skilled labor, and generally reduce the
13 costs of projects.

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18 _____
19 Permits the use of project labor agreements under "Local Public
Contracts Law" and "Public School Contracts Law."