

ASSEMBLY, No. 1181

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman SHEILA Y. OLIVER

District 34 (Essex and Passaic)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

Assemblymen Diegnan, Vas, Giblin, Assemblywoman Vainieri Huttie and

Assemblyman Scalera

SYNOPSIS

Concerns subcontracting agreements entered into by public school districts and higher education institutions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning collective bargaining agreements and
2 subcontracting and supplementing P.L.1941, c.100 (C.34:13A-1
3 et seq.).
4

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

8 1. As used in this act:

9 "Employer" means any local or regional school district,
10 educational services commission, jointure commission, county
11 special services school district, county college, State college,
12 college or university under the authority of the Commission on
13 Higher Education, or board or commission under the authority of
14 the Commissioner of Education or the State Board of Education.

15 "Employee" means any employee, whether employed on a full or
16 part-time basis, of an employer.

17 "Subcontracting" means any action, practice, or effort by an
18 employer which results in any services or work performed by any of
19 its employees being performed or provided by any other person,
20 vendor, corporation, partnership or entity.

21 "Subcontracting agreement" means any agreement or
22 arrangement entered into by an employer to implement
23 subcontracting, but shall not include any contract entered into
24 pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-
25 1 et seq.), or any contract entered into to provide services to
26 nonpublic schools through State or federal funds, or any contract in
27 which it is required by law that workers be paid the prevailing wage
28 determined by the Commissioner of Labor pursuant to the
29 provisions of the "New Jersey Prevailing Wage Act," P.L.1963,
30 c.150 (C.34:11-56.25 et seq.).
31

32 2. Except for actions of an employer expressly required or
33 prohibited by the provisions of this act, all aspects or actions
34 relating to or resulting from an employer's decision to subcontract
35 including, but not limited to, whether or not severance pay is
36 provided, shall be mandatory subjects of negotiations.
37

38 3. No employer shall enter into a subcontracting agreement
39 which affects the employment of any employees in a collective
40 bargaining unit represented by a majority representative during the
41 term that an existing collective bargaining agreement with the
42 majority representative is in effect. No employer shall enter into a
43 subcontracting agreement for a period following the term of the
44 current collective bargaining agreement unless the employer:

45 a. Provides written notice to the majority representative of
46 employees in each collective bargaining unit which may be affected
47 by the subcontracting agreement and to the New Jersey Public
48 Employment Relations Commission, not less than 90 days before

1 the employer requests bids, or solicits contractual proposals for the
2 subcontracting agreement; and

3 b. Has offered the majority representative of the employees in
4 each collective bargaining unit which may be affected by the
5 subcontracting agreement the opportunity to meet and consult with
6 the employer to discuss the decision to subcontract, and the
7 opportunity to engage in negotiations over the impact of the
8 subcontracting. The employer's duty to negotiate with the majority
9 representative of the employees in each collective bargaining unit
10 shall not preclude the employer's right to subcontract should no
11 successor agreement exist.

12
13 4. Each employee replaced or displaced as the result of a
14 subcontracting agreement shall retain all previously acquired
15 seniority during that period and shall have recall rights whenever
16 the subcontracting terminates.

17
18 5. An employer who violates any provision of this act shall be
19 deemed to have committed an unfair practice, and any employee or
20 majority representative organization affected by the violation may
21 file an unfair practice charge with the New Jersey Public
22 Employment Relations Commission. If the employee or
23 organization prevails on the charge, the employee is entitled to a
24 remedy including, but not limited to, reinstatement, back pay, back
25 benefits, back emoluments, tenure and seniority credit, attorney's
26 fees, and any other relief the commission deems appropriate to
27 effectuate the purposes of this act.

28
29 6. Nothing in this act shall be construed as authorizing
30 subcontracting which is not otherwise authorized by law. Nothing
31 in this act shall be construed as restricting or limiting any right
32 established or provided for employees by section 7 of P.L.1968,
33 c.303 (C.34:13A-5.3); the purpose of this act is to provide rights in
34 addition to those provided in that section.

35
36 7. This act shall take effect immediately.

37
38
39 STATEMENT

40
41 This bill provides that, during the term of an existing collective
42 bargaining agreement covering its employees, an employer is
43 prohibited from entering into a subcontracting agreement which
44 affects the employment of those employees. The bill defines
45 "employer" to include any local or regional school district,
46 educational services commission, jointure commission, county
47 special services school district, county college, State college,
48 college or university under the authority of the Commission on

1 Higher Education, or board or commission under the authority of
2 the Commissioner of Education or the State Board of Education.

3 Following the term of a collective bargaining agreement, an
4 employer is permitted to enter into a subcontracting agreement only
5 if the employer:

6 a. provides written notice to both the majority representative of
7 employees in each collective bargaining unit and to the New Jersey
8 Public Employment Relations Commission at least 90 days prior to
9 any effort by the employer to seek the subcontracting agreement;
10 and

11 b. offers the majority representative the opportunity to meet and
12 discuss the decision to subcontract and negotiate over its impact.

13 Under current law, an employer has a duty to negotiate a
14 successor agreement. Given compliance by the employer with
15 subparagraphs a. and b. above, the bill provides that failure to reach
16 a successor agreement does not preclude the employer from
17 subcontracting.

18 With certain exceptions, the bill makes all actions of an
19 employer regarding subcontracting mandatory subjects of
20 negotiations. Failure to negotiate would subject the employer to an
21 unfair labor practice charge by the majority representative.

22 Each employee replaced or displaced because of a subcontracting
23 agreement would retain all previously acquired seniority and would
24 have recall rights when the subcontracting terminates.

25 The bill provides that an employer who violates the act has
26 committed an unfair labor practice and may be subject to an unfair
27 labor practice charge with the New Jersey Public Employment
28 Relations Commission, under which the employee may be entitled
29 to a remedy including, but not limited to: reinstatement, back pay,
30 back benefits, back emoluments, tenure and seniority credit, and
31 attorney's fees.