

# SENATE, No. 679

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senators Van Drew, Whelan, Turner, Cunningham, Scutari, Vitale,  
Gordon, Greenstein, Pou and Beach**

**SYNOPSIS**

Allows establishment of county-wide purchasing system for certain school district services in certain counties; offers employment protections for certain food or custodial services employees; and regulates subcontracting by districts and public higher education institutions.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning public contracts, amending P.L.2007, c.63, and  
2 supplementing P.L.1971, c.198 (C.40A:11-1 et seq.) and  
3 P.L.1941, c.100 (C.34:13A-1 et seq.).  
4

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

8 1. (New section) a. In order to take advantage of economies of  
9 scale and administrative efficiencies in the purchase of services, a  
10 local unit that is a county that has been classified as an eligible  
11 county pursuant to subsection j. of this section may adopt a  
12 resolution or ordinance, as appropriate to its form of government,  
13 establishing a county-wide purchasing system for providing  
14 custodial services, food services, or both, to school districts within  
15 the county.

16 A county may not adopt a resolution or ordinance pursuant to  
17 this subsection unless: a notice of a public meeting to discuss the  
18 resolution or ordinance is posted in the newspapers of the county  
19 and through any other means deemed appropriate at least 30 days  
20 prior to the meeting; following the meeting, a period of no less than  
21 60 days is provided during which members of the public will have  
22 the opportunity to submit comments on the proposal to establish a  
23 county-wide purchasing system; and upon review of all comments  
24 and submissions, the county provides a written response to the  
25 comments.

26 The county clerk of a county that establishes a county-wide  
27 purchasing system pursuant to this subsection shall notify all school  
28 districts located within the county within 20 days of final adoption  
29 of the resolution or ordinance, as appropriate, that the county-wide  
30 system has been established.

31 b. If a school district is located within a county that has  
32 established a county-wide purchasing system pursuant to subsection  
33 a. of this section and the school district uses a private contractor to  
34 provide custodial services, food services, or both, the school district  
35 shall participate in the single county-wide contract, awarded by the  
36 county, if the school district chooses to continue using a private  
37 contractor to provide the service.

38 Notwithstanding the provisions of any other law to the contrary,  
39 a school district seeking to contract for a service subject to a  
40 county-wide contract shall acquire the service only through that  
41 county-wide contract. Any school district bid document or contract  
42 for a service that is eligible to be acquired through the county-wide  
43 contract shall be beyond the authority of the school district to  
44 advertise or award, and shall be void from its inception.

**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 c. A county that establishes a county-wide purchasing system  
2 pursuant to subsection a. of this section shall create and maintain a  
3 webpage on the county Internet website listing the services for  
4 which the county has entered into a county-wide contract.
- 5 d. (1) A county shall use the competitive contracting  
6 provisions set forth in the "Local Public Contracts Law," P.L.1971,  
7 c.198 (C.40A:11-1 et seq.), except as specifically provided in this  
8 section, for the purpose of entering into a county-wide contract  
9 pursuant to the provisions of subsection a. of this section.
- 10 (2) A county that establishes a county-wide contract pursuant to  
11 subsection a. of this section shall appoint an advisory committee,  
12 consisting of one representative from each school district that is  
13 subject to the county-wide contract, to assist with reviewing and  
14 evaluating requests for proposals.
- 15 (3) Criteria for evaluating requests for proposals shall include,  
16 but shall not be limited to, the contractor's previous experience with  
17 the provision of similar supplies, materials, and services.
- 18 (4) Prior to awarding any contract, the terms of all contracts  
19 pending final approval shall be disclosed on the county's Internet  
20 website at least 20 days prior to the final approval of the contract.
- 21 (5) Notwithstanding any law or regulation to the contrary, the  
22 request for proposal documentation prepared by the county for  
23 county-wide contracts shall specify that the contractor who is  
24 awarded the county-wide contract shall be required to pay to the  
25 county a specified fee to cover the administrative costs associated  
26 with administering the county-wide contract.
- 27 (6) The county governing body may establish a set-aside  
28 program pursuant to section 2 of P.L.1985, c.482 (C.40A:11-42) for  
29 the provision of services under a county-wide contract.
- 30 e. If a school district is located in a county that is using a  
31 county-wide contract and the district is currently not using a private  
32 contractor to provide the service which is the subject of the county-  
33 wide contract, the district shall not participate in the county-wide  
34 contract which affects the employment of any employees in a  
35 collective bargaining unit represented by a majority representative  
36 during the term that an existing collective bargaining agreement  
37 with the majority representative is in effect. The school district  
38 shall not participate in the county-wide contract for a period  
39 following the term of the current collective bargaining agreement  
40 unless the school district:
- 41 (1) provides written notice at least 90 days prior to participation  
42 in the county-wide contract to the majority representative of  
43 employees in each collective bargaining unit which may be affected  
44 by the district's participating in the county-wide contract and to the  
45 New Jersey Public Employment Relations Commission; and
- 46 (2) offers the majority representative of the employees in each  
47 collective bargaining unit which may be affected by the district's

1 participation in the county-wide contract the opportunity to meet  
2 and consult with the school district to discuss the decision to  
3 participate in the county-wide contract, and the opportunity to  
4 engage in negotiations over the impact of participation. The school  
5 district's duty to negotiate with the representative of the employees  
6 in each collective bargaining unit shall not preclude the school  
7 district's right to participate in the county-wide contract should no  
8 successor agreement exist.

9 Each employee replaced or displaced as the result of the school  
10 district's participation in the county-wide contract shall retain all  
11 previously acquired seniority during that period and shall have  
12 recall rights whenever the district's participation in the county-wide  
13 contract terminates.

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

24 f. In addition to any other requirements set forth in this  
25 section, a school district that is currently not using a private  
26 contractor to provide a service that is the subject of a county-wide  
27 contract in the county in which the district is located, shall not  
28 participate in the county-wide contract unless:

29 (1) The school district passes a resolution calling for a public  
30 hearing to explore the costs and benefits of participating in a  
31 county-wide contract and provides an opportunity for parents and  
32 other affected stakeholders in the district to make statements and  
33 ask questions relating to participation in a county-wide contract;

34 (2) Notice of the public hearing is posted in an official  
35 newspaper of the board of education, and through any other means  
36 deemed appropriate by the board of education, at least 30 days prior  
37 to the hearing;

38 (3) Following the public hearing, a period of no less than 60  
39 days is provided during which members of the public will have the  
40 opportunity to submit comments on the proposal to participate in a  
41 county-wide contract; and

42 (4) Upon review of all comments and submissions, the board of  
43 education provides a written response to comments at the next  
44 board of education meeting and to the collective bargaining  
45 representative. The school board shall hold a vote on whether or  
46 not to participate in the county-wide contract.

1 g. Nothing in this section shall be interpreted to encourage the  
2 further privatization of any custodial or food services position  
3 currently held or currently filled by a public employee.

4 h. Any administrative employee whose position is eliminated  
5 due to implementation of this section shall receive terminal leave  
6 pay, as set forth in paragraph (2) of subsection a. of section 19 of  
7 the "Uniform Shared Services and Consolidation Act,"  
8 P.L.2007, c.63 (C.40A:65-19).

9 i. A school district participating in a county-wide contract  
10 pursuant to this section may elect to discontinue its participation  
11 and perform the services at issue directly with public employees by  
12 notifying the county no less than 20 days before the end of the  
13 contract term. If the county-wide contract is for a term greater than  
14 three years, a school district participating in the contract may elect  
15 to discontinue its participation and perform the services at issue  
16 directly with public employees after the third year of the contract by  
17 providing the county with 30 days notice.

18 j. As used in this section, "eligible county" means Camden  
19 County, Gloucester County, Middlesex County, Passaic County,  
20 and Union County.

21

22 2. (New section) a. As used in this section:

23 "Predecessor employer" means a school district or a contractor  
24 which provided food or custodial services for a school district and  
25 which ceases to provide such services.

26 "Service employee" means an employee employed on or around  
27 school district premises and central kitchens to provide food or  
28 custodial services, except for managerial, executive, confidential  
29 employees, and employees who work less than four hours a week.

30 "Successor contractor" means a contractor that has been awarded  
31 a food or custodial services contract to provide services that, in  
32 whole or in part, are substantially similar to those food or custodial  
33 services provided by a predecessor employer within the previous 90  
34 days.

35 b. The intent of this section is to provide protection for  
36 employees who are satisfactorily performing their duties during the  
37 transition to employment by a successor contractor and to prevent  
38 favoritism in employment decisions during such transition to ensure  
39 the highest quality of services to school districts.

40 c. A school district for which a successor contractor will  
41 provide food or custodial services shall:

42 (1) obtain from the predecessor employer and provide to the  
43 successor contractor, a full and accurate list containing the name,  
44 address, date of hire, and employment classification of each service  
45 employee employed by the predecessor employer within 15  
46 calendar days before the termination of any service contract;

1 (2) notify the collective bargaining representative of the affected  
2 service employees, if any, of the successor contractor and provide  
3 to the collective bargaining representative a copy of the list of  
4 service employees prepared pursuant to paragraph (1) of this  
5 subsection; and

6 (3) ensure that a notice is conspicuously posted at any site at  
7 which service employees perform their duties, setting forth the  
8 rights provided under this section in the same location and manner  
9 that other statutorily required notices to employees are posted.

10 d. The successor contractor shall:

11 (1) offer employment during a 90-day transition employment  
12 period to all service employees employed by the predecessor  
13 employer;

14 (2) not discharge, without just cause, an employee retained in  
15 accordance with this section during the 90-day transition period;  
16 and

17 (3) perform a written performance evaluation for each employee  
18 retained in accordance with this section at the end of the 90-day  
19 transition period and offer those employees whose performance was  
20 satisfactory, continued employment under the terms and conditions  
21 of employment established by the successor contractor or as  
22 required by law.

23

24 3. (New section) a. As used in this section:

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

27 "Employer" means any local or regional school district,  
28 educational services commission, jointure commission, county  
29 special services school district, county college, State college, public  
30 college or university under the authority of the Secretary of Higher  
31 Education, or board or commission under the authority of the  
32 Commissioner of Education or the State Board of Education.

33 "Recall rights" means any employee dismissed as a result of  
34 subcontracting shall be placed and remain upon a preferred  
35 eligibility list, in the order of years of service, for reemployment  
36 whenever vacancies occur and shall be reemployed in such order,  
37 and upon reemployment shall be given full recognition for previous  
38 years of service in his respective positions and employments.

39 "Subcontracting" means any action, practice, or effort by an  
40 employer which results in any services or work performed by any of  
41 its employees being performed or provided by any other person,  
42 vendor, corporation, partnership, or entity.

43 "Subcontracting agreement" means any agreement or  
44 arrangement entered into by an employer to implement  
45 subcontracting, but shall not include any contract entered into  
46 pursuant to the "Uniform Shared Services and Consolidation Act,"  
47 P.L.2007, c.63 (C.40A:65-1 et seq.), or any contract entered into to  
48 provide services to nonpublic schools through State or federal

1 funds, or any contract in which it is required by law that workers be  
2 paid the prevailing wage determined by the Commissioner of Labor  
3 and Workforce Development pursuant to the provisions of the "New  
4 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et  
5 seq.).

6 b. Except for actions of an employer expressly required or  
7 prohibited by the provisions of this section, all aspects or actions  
8 relating to or resulting from an employer's decision to subcontract  
9 including, but not limited to, whether or not severance pay is  
10 provided, shall be mandatory subjects of negotiations.

11 c. No employer shall enter into a subcontracting agreement  
12 which affects the employment of any employees in a collective  
13 bargaining unit represented by a majority representative during the  
14 term that an existing collective bargaining agreement with the  
15 majority representative is in effect. No employer shall enter into a  
16 subcontracting agreement for a period following the term of the  
17 current collective bargaining agreement unless the employer:

18 (1) provides written notice to the majority representative of  
19 employees in each collective bargaining unit which may be affected  
20 by the subcontracting agreement and to the New Jersey Public  
21 Employment Relations Commission, not less than 90 days before  
22 the employer requests bids, or solicits contractual proposals for the  
23 subcontracting agreement; and

24 (2) has offered the majority representative of the employees in  
25 each collective bargaining unit which may be affected by the  
26 subcontracting agreement the opportunity to meet and consult with  
27 the employer to discuss the decision to subcontract, and the  
28 opportunity to engage in negotiations over the impact of the  
29 subcontracting. The employer's duty to negotiate with the majority  
30 representative of the employees in each collective bargaining unit  
31 shall not preclude the employer's right to subcontract should no  
32 successor agreement exist.

33 d. Each employee replaced or displaced as the result of a  
34 subcontracting agreement shall retain all previously acquired  
35 seniority during that period and shall have recall rights whenever  
36 the subcontracting terminates.

37 e. An employer who violates any provision of this section shall  
38 be deemed to have committed an unfair practice, and any employee  
39 or majority representative organization affected by the violation  
40 may file an unfair practice charge with the New Jersey Public  
41 Employment Relations Commission. If the employee or  
42 organization prevails on the charge, the employee is entitled to a  
43 remedy including, but not limited to, reinstatement, back pay, back  
44 benefits, back emoluments, tenure and seniority credit, attorney's  
45 fees, and any other relief the commission deems appropriate to  
46 effectuate the purposes of this section.

47 f. Nothing in this section shall be construed as authorizing  
48 subcontracting which is not otherwise authorized by law. Nothing

1 in this section shall be construed as restricting or limiting any right  
2 established or provided for employees by section 7 of  
3 P.L.1968, c.303 (C.34:13A-5.3); the purpose of this section is to  
4 provide rights in addition to those provided in that section.

5

6 4. Section 54 of P.L.2007, c.63 (C.18A:7-12) is amended to  
7 read as follows:

8 54. a. A local school district may apply to the executive county  
9 superintendent of schools to have school district services including,  
10 but not limited to, transportation, personnel, purchasing, payroll,  
11 and accounting, assumed by the office of the superintendent. If the  
12 executive county superintendent determines to assume a service, a  
13 fee may be assessed the school district for the service. The  
14 executive county superintendent of schools may utilize county  
15 special services school districts, jointure commissions, and  
16 educational services commissions to provide services to local  
17 school boards.

18 b. If the county governing body wherein the school district is  
19 located has adopted a resolution or ordinance pursuant to section 1  
20 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
21 to utilize a county-wide contract for food or custodial services, the  
22 office of the executive county superintendent of schools and every  
23 local school district that uses a private contractor to provide the  
24 good or service at issue shall be required to participate in the  
25 county-wide contract.

26 c. Nothing in this section shall be interpreted to encourage the  
27 further privatization of any custodial or food services position  
28 currently held or currently filled by a public employee.

29 (cf: P.L.2007, c.63, s.54)

30

31 5. This act shall take effect immediately.

32

33

34

#### STATEMENT

35

36 The bill permits Camden, Gloucester, Middlesex, Passaic and  
37 Union Counties to establish a county-wide purchasing system to  
38 provide custodial or food services, or both, to school districts within  
39 the county. These contracts will be awarded to contractors using  
40 the competitive contracting process set forth in the "Local Public  
41 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). If a county  
42 establishes a county-wide purchasing system and a school district in  
43 the county is currently using a private contractor for the service, the  
44 district will be required to participate in the county-wide contract.

45 In addition, the bill requires a district that is using its own  
46 employees to provide custodial or food services to participate in a  
47 county-wide contract if it determines to privatize the service. Prior  
48 to participating in the county-wide contract, however, the bill



1 requires that the district meet certain criteria, including holding a  
2 public hearing on the proposal to participate, providing a period  
3 during which the public will have the opportunity to submit  
4 comments on the proposal, and providing written responses to the  
5 comments. A district in these circumstances will not be permitted  
6 to participate in the county-wide contract during the term of an  
7 existing collective bargaining agreement with employees who will  
8 be affected by the participation in the county-wide contract, and  
9 after the term of the agreement, the district may participate only  
10 after:

11 (1) providing written notice to the majority representative of  
12 employees in each collective bargaining unit affected by  
13 participation in the county-wide contract and to the New Jersey  
14 Public Employment Relations Commission; and

15 (2) offering the majority representative the opportunity to  
16 consult with the district to discuss the decision to participate in the  
17 county-wide contract and the opportunity to engage in negotiations  
18 over the impact of participation.

19 Each employee replaced or displaced as a result of the district's  
20 participation in the county-wide contract will retain all previously  
21 acquired seniority and would have recall rights whenever the  
22 district's participation in the county-wide contract terminates.

23 Any administrator whose position is eliminated due to a  
24 countywide purchasing system will receive terminal leave pay  
25 pursuant to N.J.S.A.40A:65-19 of the "Uniform Shared Services  
26 and Consolidation Act."

27 The bill also provides protection for food or custodial services  
28 employees employed on school district premises during a transition  
29 to employment by a successor contractor, which is defined in the  
30 bill as a contractor that has been awarded a food or custodial  
31 services contract. Under the provisions of the bill, a successor  
32 contractor must offer employment during a 90-day transition  
33 employment period to all service employees providing food or  
34 custodial services employed by the predecessor employer, whether  
35 that predecessor employer is a school district or another contractor  
36 providing food or custodial services for the school district. The bill  
37 prohibits a successor contractor from discharging, without just  
38 cause, a retained employee during that transition period, and must  
39 perform a written performance evaluation for each retained  
40 employee at the end of the transition period. Employees whose  
41 performance was satisfactory, must be offered continued  
42 employment by the successor contractor. This provision will apply  
43 in the case of participation in a county-wide contract for food or  
44 custodial services, in the case of a district privatizing these services,  
45 or in the case of a change from one private contractor to another  
46 private contractor for these services.

1       The bill includes a provision that applies to all subcontracting by  
2 any of the following employers: any local or regional school  
3 district, educational services commission, jointure commission,  
4 county special services school district, county college, State  
5 college, public college or university under the authority of the  
6 Secretary of Higher Education, or board or commission under the  
7 authority of the Commissioner of Education or the State Board of  
8 Education. Under this provision, during the term of an existing  
9 collective bargaining agreement covering its employees, the  
10 employer is prohibited from entering into a subcontracting  
11 agreement which affects the employment of those employees.  
12 Following the term of a collective bargaining agreement, the  
13 employer is permitted to enter into a subcontracting agreement only  
14 if the employer provides similar notice and opportunity to negotiate  
15 over the impact of the subcontracting agreement as described above  
16 in relation to the decision by a school district to participate in a  
17 county-wide contract. As in that case, each employee replaced or  
18 displaced because of a subcontracting agreement would retain all  
19 previously acquired seniority and will have recall rights when the  
20 subcontracting terminates.