

ASSEMBLY, No. 5406

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 8, 2023

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

SYNOPSIS

Concerns requirements for local purchasing agents.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning local purchasing agents and amending
2 P.L.1971, c.198.

3

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

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7 1. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to
8 read as follows:

9 9. a. The governing body of any contracting unit may by
10 ordinance, in the case of a municipality, by ordinance or resolution,
11 as the case may be, in the case of a county, or by resolution in all
12 other cases, designate an individual to serve as the contracting unit's
13 purchasing agent. The individual designated as the purchasing
14 agent pursuant to this subsection shall be assigned the authority,
15 responsibility, and accountability for the purchasing activity for the
16 contracting unit, to prepare public advertising for bids and to
17 receive bids for the provision or performance of goods or services
18 on behalf of the contracting unit and to award contracts permitted
19 pursuant to subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-
20 3) in the name of the contracting unit, and conduct any activities as
21 may be necessary or appropriate to the purchasing function of the
22 contracting unit as its contracting agent. The individual designated
23 to serve as the purchasing agent of a contracting unit pursuant to
24 this subsection shall possess a qualified purchasing agent certificate
25 pursuant to this section. The individual designated as the
26 purchasing agent pursuant to this subsection may be a part-time or
27 full-time employee of the contracting unit, an independent
28 contractor, or an individual employed by another contracting unit
29 through a shared services agreement. The governing body of a
30 contracting unit may designate its municipal finance officer, county
31 finance officer, or county purchasing official, as the case may be, to
32 serve as the contracting unit's purchasing agent only if the person is
33 a certified municipal finance officer, certified county finance
34 officer, or certified county purchasing official, meets the criteria
35 established pursuant to subsection b. of this section, and the
36 person's responsibilities include the performance of the day to day
37 work required of a purchasing agent.

38 b. The Director of the Division of Local Government Services,
39 after consultation with the Commissioner of Education, shall
40 establish criteria to qualify individuals who have completed
41 appropriate training and possess such purchasing experience as
42 deemed necessary to serve as a purchasing agent, and, when
43 determined to be necessary by the director, have passed an
44 examination administered by the director pursuant to this section.
45 The criteria established by the director shall include, but are not
46 limited to, the following:

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.

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- 1 (1) is a citizen of the United States;
2 (2) is of good moral character;
3 (3) is a high school graduate or equivalent;
4 (4) has at least two years of higher education, and two years of
5 full time governmental experience performing duties relative to
6 those of public procurement provided, however **[, that]** :

7 (a) additional years of experience may be substituted for years
8 of higher education, on a one to one basis, and

9 (b) on and after the effective date of P.L. _____, c. _____ (C. _____)
10 (pending before the Legislature as this bill), the criteria shall
11 require at least two years of full time governmental experience
12 performing duties relative to those of public procurement under the
13 direct supervision of a purchasing agent or, in the case of a certified
14 municipal finance officer, certified county finance officer, or
15 certified county purchasing official, two years of full time
16 governmental experience performing duties relative to those of
17 public procurement;

18 (5) has successfully received certificates indicating satisfactory
19 completion of a series of training courses in public procurement as
20 determined by the director, pursuant to rules and regulations
21 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
22 c.410 (C.52:14B-1 et seq.), and provided by either the Division of
23 Local Government Services, or, with the approval of the director,
24 by a county college or Rutgers, The State University of New Jersey,
25 all under the supervision of instructors who meet criteria
26 established by the director;

27 (6) has submitted completed application forms, including proof
28 of education and experience, as set forth in this subsection,
29 accompanied by a fee in the amount of \$150 payable to the State
30 Treasurer, to the Director of the Division of Local Government
31 Services at least 30 days prior to the administration of a State
32 examination;

33 (7) has successfully passed a State examination for a qualified
34 purchasing agent certificate. The director shall hold examinations
35 semi-annually or at such times as the director may deem
36 appropriate. An individual shall be eligible to take the State
37 examination for a qualified purchasing agent certificate without
38 having taken the courses required pursuant to paragraph (5) of this
39 subsection if the individual has been certified by the division as a
40 certified municipal finance officer, a certified county finance
41 officer, or a certified county purchasing **[officer]** official.

42 The director shall issue a qualified purchasing agent certificate to
43 an individual who passes the examination upon payment to the
44 director of a fee of \$25 which shall be payable to the State
45 Treasurer.

46 c. The criteria established by the director to authorize
47 purchasing agents, pursuant to subsection b. of this section, shall
48 include, but are not limited to, completion of a course in green

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1 product purchasing, as established by the director pursuant to
2 regulation. Any person qualified pursuant to subsection b. of this
3 section prior to the establishment of the course in green product
4 purchasing, shall in order to continue to be qualified, take and
5 successfully complete the course within four years from the date the
6 course is established. For the purposes of this subsection and
7 section 2 of P.L.2007, c.332 (C.40A:11-9.1), "green product" means
8 any commodity or service that has a lesser or reduced negative
9 effect on human health and the environment when compared with
10 competing commodities or services. Items considered in this
11 comparison may include, but are not limited to: raw materials
12 acquisition, production, manufacturing, packaging, distribution,
13 reuse, operation, maintenance, disposal, energy efficiency, recycled
14 content resource use, transportation, and durability.

15 d. (1) Renewal of the qualified purchasing agent certification
16 shall be required every three years, subject to the applicant's
17 fulfillment of continuing education requirements, the submission of
18 an application for renewal, and the payment of a renewal fee, all as
19 determined by the director.

20 (2) In the event that an individual holding a qualified purchasing
21 agent certificate allows the certificate to lapse by failing to renew
22 the certificate, the individual shall be required to apply to take the
23 qualifying examination required pursuant to subsection b. of this
24 section and pay a fee as determined by the director, except that
25 when an individual applies within six months of the expiration of
26 the certificate, the application may be made in the same manner as
27 renewal and except that such application may be made in the same
28 manner as a renewal within 12 months of the expiration of the
29 certificate if the director determines that either of the following
30 circumstances prevents a certificate holder from earning the
31 required continuing education units within six months of the
32 expiration of the certificate:

33 (a) a flood, hurricane, superstorm, tornado, or other natural
34 disaster, and a state of emergency has been declared as a result
35 thereof by the Governor; or

36 (b) a medical event or condition.

37 e. (1) An individual who obtained a qualified purchasing
38 agent certificate prior to enactment of P.L.2009, c.166 (C.40A:11-
39 9a et al.) shall be exempt from taking the State qualifying
40 examination, but shall adhere to all requirements for renewal
41 pursuant to subsection d. of this section. If such a qualified
42 purchasing agent certificate expires due to the failure of the holder
43 to renew the certificate as prescribed in subsection d. of this section,
44 that individual shall be required to pass the qualifying examination
45 as provided pursuant to subsection b. of this section in order to be
46 issued a new qualified purchasing agent certificate.

47 (2) An individual who has been certified by the Department of
48 Education as a school business administrator and has performed

1 duties relative to public procurement for at least three years shall be
2 exempt from taking the courses required pursuant to paragraph (5)
3 of subsection b. of this section and the state qualifying examination,
4 and upon application to the director and the payment of the fee
5 imposed pursuant to subsection b. of this section, shall be issued a
6 qualified purchasing agent certificate.

7 f. Those persons who have been performing the duties of a
8 purchasing agent for a contracting unit pursuant to P.L.1971, c.198
9 (C.40A:11-1 et seq.), or school board pursuant to N.J.S.18A:18A-1
10 et seq. for at least three continuous years, prior to the first day of
11 the sixth month following the promulgation of rules and regulations
12 to effectuate the purposes of P.L.2009, c.166 (C.40A:11-9a et al.),
13 and did not possess a qualified purchasing agent certificate at that
14 time, may take the State qualifying examination, if not otherwise
15 exempt under subsection e. of this section, without the courses
16 required in subsection b. of this section.

17 g. Following the appointment of a purchasing agent for a
18 contracting unit pursuant to subsection a. of this section, if the
19 person appointed no longer performs such duties, the governing
20 body or chief executive officer, as appropriate to the form of
21 government, may appoint, for a period not to exceed one year
22 commencing from the date of the vacancy, a person who does not
23 possess a qualified purchasing agent certificate to serve as a
24 temporary purchasing agent. Any person so appointed may, with
25 the approval of the director, be reappointed as a temporary
26 purchasing agent for a maximum of one additional year following
27 the end of the first temporary appointment. No contracting unit
28 shall employ a temporary purchasing agent for more than two
29 consecutive years.

30 h. The director may revoke or suspend a qualified purchasing
31 agent certificate for dishonest practices or willful or intentional
32 failure, neglect, or refusal to comply with the laws relating to
33 procurement, or for other good cause. The governing body,
34 together with the chief executive officer of any contracting unit, or
35 a board of education, may request the director to review the
36 behavior or practices of a person holding a qualified purchasing
37 agent certificate. Prior to taking any adverse action against a
38 person, the director or the director's designee shall convene a
39 hearing, upon due notice, affording the person an opportunity to be
40 heard. If the qualified purchasing agent certificate held by a person
41 serving as a purchasing agent is revoked, the director shall order
42 that person to no longer perform the duties of purchasing agent, and
43 the person shall not be eligible to serve as a purchasing agent or to
44 make application for recertification for a period of five years from
45 the date of revocation.

46 i. The director may adopt and promulgate rules and regulations
47 to effectuate the purposes of P.L.1971, c.198. Notwithstanding any
48 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,

1 any such regulations shall be effective immediately upon filing with
2 the Office of Administrative Law and shall be effective for a period
3 not to exceed 365 days and may thereafter be amended, adopted or
4 readopted by the director in accordance with the requirements of
5 P.L.1968, c.410. In order to better manage the workload of
6 implementing the provisions of P.L.1971, c.198, the director may
7 establish a transition process for administering an examination for
8 individuals serving as purchasing agents on the effective date of
9 P.L.1971, c.198, issuing and renewing qualified purchasing agent
10 certificates to eligible individuals, prescribing a schedule by which
11 such certificates will be issued and renewed, and such other matters
12 as the director determines to be necessary to the implementation of
13 P.L.1971, c.198.

14 (cf: P.L.2015, c.95, s.45)

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16 2. This act shall take effect immediately.

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STATEMENT

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21 This bill would allow a contracting unit under the “Local Public
22 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.), to designate
23 its municipal finance officer, county finance officer, or county
24 purchasing official to serve as a purchasing agent only if the person
25 is a certified municipal finance officer, a certified county finance
26 officer, or a certified county purchasing official, and the person will
27 perform the actual day to day work of a purchasing agent. The bill
28 also provides that the work experience required for certification as a
29 qualified purchasing agent must be performed under the direct
30 supervision of a purchasing agent, or, in the case of a certified
31 municipal finance officer, certified county finance officer, or
32 certified county purchasing official, two years of full-time
33 governmental experience performing duties relative to those of
34 public procurement. Additionally, the bill would specify the content
35 and length of the courses an individual must complete to earn a
36 qualified purchasing agent certificate.

37 Under the Local Public Contracts Law, a contracting unit that
38 designates a holder of a qualified purchasing agent certificate as its
39 purchasing agent may award contracts without public advertising at
40 a higher threshold amount than a contracting unit that designates as
41 its purchasing agent a person who does not hold a qualified
42 purchasing agent certificate.