

SENATE, No. 389

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 28 (Essex)

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SYNOPSIS

Concerns requirements for local purchasing agents.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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:

6

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.

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 The criteria established by the director shall include, but are not
2 limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

39 (b) a medical event or condition.

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

1 as provided pursuant to subsection b. of this section in order to be
2 issued a new qualified purchasing agent certificate.

3 (2) An individual who has been certified by the Department of
4 Education as a school business administrator and has performed
5 duties relative to public procurement for at least three years shall be
6 exempt from taking the courses required pursuant to paragraph (5)
7 of subsection b. of this section and the state qualifying examination,
8 and upon application to the director and the payment of the fee
9 imposed pursuant to subsection b. of this section, shall be issued a
10 qualified purchasing agent certificate.

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

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

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

1 make application for recertification for a period of five years from
2 the date of revocation.

3 i. The director may adopt and promulgate rules and regulations
4 to effectuate the purposes of P.L.1971, c.198. Notwithstanding any
5 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
6 any such regulations shall be effective immediately upon filing with
7 the Office of Administrative Law and shall be effective for a period
8 not to exceed 365 days and may thereafter be amended, adopted or
9 readopted by the director in accordance with the requirements of
10 P.L.1968, c.410. In order to better manage the workload of
11 implementing the provisions of P.L.1971, c.198, the director may
12 establish a transition process for administering an examination for
13 individuals serving as purchasing agents on the effective date of
14 P.L.1971, c.198, issuing and renewing qualified purchasing agent
15 certificates to eligible individuals, prescribing a schedule by which
16 such certificates will be issued and renewed, and such other matters
17 as the director determines to be necessary to the implementation of
18 P.L.1971, c.198.

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

20
21 2. This act shall take effect immediately.
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24 STATEMENT 25

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

42 Under the Local Public Contracts Law, a contracting unit that
43 designates a holder of a qualified purchasing agent certificate as its
44 purchasing agent may award contracts without public advertising at
45 a higher threshold amount than a contracting unit that designates as
46 its purchasing agent a person who does not hold a qualified
47 purchasing agent certificate.