

[First Reprint]

ASSEMBLY, No. 1677

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

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District 6 (Burlington and Camden)

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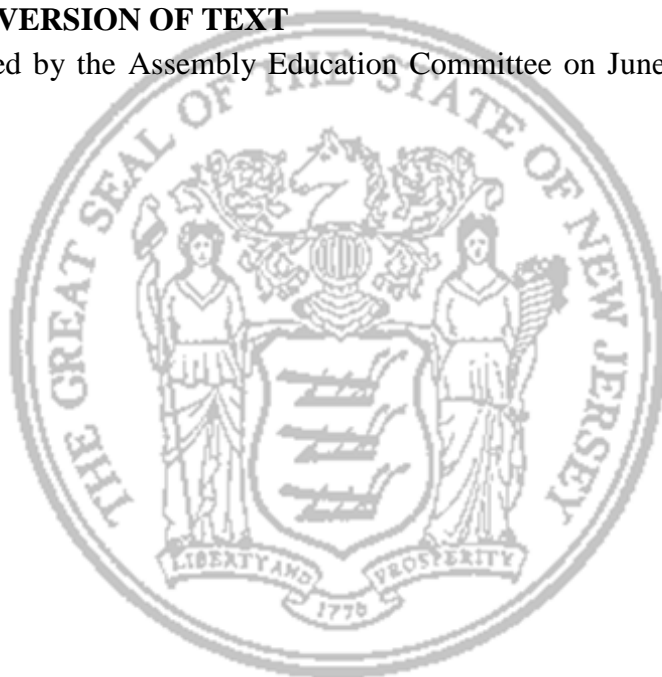
District 18 (Middlesex)

SYNOPSIS

Authorizes use of competitive contracting and extended terms for lease and purchase contracts for electric school buses; permits New Jersey School Boards Association to serve as government aggregator to obtain energy services for local units.

CURRENT VERSION OF TEXT

As reported by the Assembly Education Committee on June 6, 2024, with amendments.



(Sponsorship Updated As Of: 6/6/2024)

1 AN ACT concerning ¹**[public school contracting and]**¹ electric
2 school buses ¹and government aggregation of certain energy
3 services,¹ and amending various parts of the statutory law.

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

7
8 1. Section 45 of P.L.1999, c.440 (C.18A:18A-4.1) is amended
9 to read as follows:

10 45. Notwithstanding the provisions of any law, rule or regulation
11 to the contrary, competitive contracting may be used by boards of
12 education in lieu of public bidding for procurement of specialized
13 goods and services the price of which exceeds the bid threshold, for
14 the following purposes:

15 a. The purchase or licensing of proprietary computer software
16 designed for board of education purposes, which may include
17 hardware intended for use with the proprietary software. This
18 subsection shall not be utilized for the purpose of acquiring general
19 purpose computer hardware or software;

20 b. The hiring of a for-profit entity or a not-for-profit entity
21 incorporated under Title 15A of the New Jersey Statutes for the
22 purpose of:

23 (1) the operation, management or administration of recreation or
24 social service facilities or programs; or

25 (2) the operation, management or administration of data
26 processing services;

27 c. Services performed by an organization engaged in providing
28 energy conservation education and training services to train
29 employees of a board of education to reduce consumption of
30 energy;

31 d. Telecommunications transmission or switching services that
32 are not part of a tariff or schedule of charges filed with the Board of
33 Public Utilities;

34 e. The purchase of specialized machinery or equipment of a
35 technical nature, or servicing thereof, which will not reasonably
36 permit the drawing of specifications;

37 f. Food services provided by food service management
38 companies when not part of programs administered by the New
39 Jersey Department of Agriculture, Bureau of Child Nutrition
40 Programs;

41 g. Driver education courses provided by licensed driver
42 education schools;

43 h. At the option of the board of education, any good or service
44 that is exempt from bidding pursuant to N.J.S.18A:18A-5;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AED committee amendments adopted June 6, 2024.

- 1 i. Laboratory testing services;
- 2 j. Concessions;
- 3 k. The operation, management or administration of other
- 4 services, with the approval of the Division of Local Government
- 5 Services in the Department of Community Affairs;
- 6 l. The purchase of electric school buses, on-site charging
- 7 infrastructure for electric school buses, and on-site or off-site
- 8 related electric school bus and charging infrastructure operation and
- 9 maintenance services, or any combination thereof.
- 10 Any purpose included herein shall not be considered by a board
- 11 of education as an extraordinary unspecifiable service pursuant to
- 12 paragraph (2) of subsection a. of N.J.S.18A:18A-5.
- 13 (cf: P.L.2009, c.4, s.2)
- 14
- 15 2. N.J.S.18A:18A-42 is amended to read as follows:
- 16 18A:18A-42. All contracts for the provision or performance of
- 17 goods or services shall be awarded for a period not to exceed 24
- 18 consecutive months, except that contracts for professional services
- 19 pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall
- 20 be awarded for a period not to exceed 12 consecutive months. Any
- 21 board of education may award a contract for longer periods of time
- 22 as follows:
- 23 a. Supplying of:
- 24 (1) Fuel for heating purposes, for any term not exceeding in the
- 25 aggregate, three years;
- 26 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles
- 27 or equipment, for any term not exceeding in the aggregate, three
- 28 years;
- 29 (3) Thermal energy produced by a cogeneration facility, for use
- 30 for heating or air conditioning or both, for any term not exceeding
- 31 40 years, when the contract is approved by the Board of Public
- 32 Utilities. For the purposes of this paragraph, "cogeneration" means
- 33 the simultaneous production in one facility of electric power and
- 34 other forms of useful energy such as heating or process steam; or
- 35 b. Plowing and removal of snow and ice, for any term not
- 36 exceeding in the aggregate, three years; or
- 37 c. Collection and disposal of garbage and refuse, for any term
- 38 not exceeding in the aggregate, three years; or
- 39 d. Data processing service, for any term of not more than seven
- 40 years; or
- 41 e. Insurance, including the purchase of insurance coverages,
- 42 insurance consultant or administrative services, and including
- 43 participation in a joint self-insurance fund, risk management
- 44 program or related services provided by a school board insurance
- 45 group, or participation in an insurance fund established by a county
- 46 pursuant to N.J.S.40A:10-6, or a joint insurance fund established
- 47 pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of
- 48 not more than three years; or

- 1 f. Leasing or servicing of automobiles, motor vehicles,
2 electronic communications equipment, machinery and equipment of
3 every nature and kind and textbooks and non-consumable
4 instructional materials, for any term not exceeding in the aggregate,
5 five years; except that contracts for the leasing of fossil fuel school
6 buses may be awarded for any term not exceeding in the aggregate
7 **[ten]** 10 years and contracts for the leasing of electric school buses
8 and related charging equipment and services may be awarded for
9 any term not exceeding the service life of the electric school buses.
10 Contracts awarded pursuant to this subsection shall be awarded only
11 subject to and in accordance with rules and regulations promulgated
12 by the State Board of Education; or
- 13 g. Supplying of any product or the rendering of any service by
14 a company providing voice, data, transmission or switching
15 services, for a term not exceeding five years; or
- 16 h. (Deleted by amendment, P.L.1999, c.440.)
- 17 i. Driver education instruction conducted by private, licensed
18 driver education schools, for any term not exceeding in the
19 aggregate, three years; or
- 20 j. (Deleted by amendment, P.L.2009, c.4).
- 21 k. Any single project for the construction, reconstruction or
22 rehabilitation of any public building, structure or facility, or any
23 public works project, including the retention of the services of any
24 architect or engineer in connection therewith, for the length of time
25 authorized and necessary for the completion of the actual
26 construction; or
- 27 l. Laundry service and the rental, supply and cleaning of
28 uniforms for any term of not more than three years; or
- 29 m. Food supplies and food services for any term of not more
30 than three years; or
- 31 n. Purchases made under a contract awarded by the Director of
32 the Division of Purchase and Property in the Department of the
33 Treasury for use by counties, municipalities or other contracting
34 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
35 term not to exceed the term of that contract; **[or]**
- 36 o. The provision or performance of goods or services for the
37 purpose of producing class I renewable energy, as that term is
38 defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent
39 to, buildings owned by any local board of education, the entire price
40 of which is to be established as a percentage of the resultant savings
41 in energy costs, for a term not to exceed 15 years; provided,
42 however, that these contracts shall be entered into only subject to
43 and in accordance with guidelines promulgated by the Board of
44 Public Utilities establishing a methodology for computing energy
45 cost savings and energy generation costs; or
- 46 p. The provision or performance of goods or services for the
47 purpose of providing electric school buses, on-site or off-site
48 electric school bus charging infrastructure, and related maintenance

1 and other related services, or any combination thereof for a
2 specified price for a term up to the service life of the vehicle being
3 contracted.

4 Any contract for services other than professional services, the
5 statutory length of which contract is for three years or less, may
6 include provisions for no more than one two-year, or two one-year,
7 extensions, subject to the following limitations: a. the contract shall
8 be awarded by resolution of the board of education upon a finding
9 by the board of education that the services are being performed in
10 an effective and efficient manner; b. no such contract shall be
11 extended so that it runs for more than a total of five consecutive
12 years; c. any price change included as part of an extension shall be
13 based upon the price of the original contract as cumulatively
14 adjusted pursuant to any previous adjustment or extension and shall
15 not exceed the change in the index rate for the 12 months preceding
16 the most recent quarterly calculation available at the time the
17 contract is renewed; and d. the terms and conditions of the contract
18 remain substantially the same.

19 All multiyear leases and contracts entered into pursuant to this
20 section, including any two-year or one-year extensions, except
21 contracts for insurance coverages, insurance consultant or
22 administrative services, participation or membership in a joint self-
23 insurance fund, risk management programs or related services of a
24 school board insurance group, participation in an insurance fund
25 established by a county pursuant to N.J.S.40A:10-6 or contracts for
26 thermal energy authorized pursuant to subsection a. above, and
27 contracts for the provision or performance of goods or services to
28 promote energy conservation through the production of class I
29 renewable energy, authorized pursuant to subsection o. of this
30 section, shall contain a clause making them subject to the
31 availability and appropriation annually of sufficient funds as may
32 be required to meet the extended obligation, or contain an annual
33 cancellation clause. All contracts shall cease to have effect at the
34 end of the contracted period and shall not be extended by any
35 mechanism or provision, unless in conformance with the "Public
36 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a
37 contract may be extended by mutual agreement of the parties to the
38 contract when a board of education has commenced rebidding prior
39 to the time the contract expires or when the awarding of a contract
40 is pending at the time the contract expires.

41 (cf: P.L.2009, c.4, s.3)

42

43 3. N.J.S.18A:20-4.2 is amended to read as follows:

44 18A:20-4.2. The board of education of any school district may,
45 for school purposes:

46 (a) Purchase, take and condemn lands within the district and
47 lands not exceeding 50 acres in extent without the district but
48 situate in a municipality or municipalities adjoining the district, but

- 1 no more than 25 acres may be so acquired in any one such
2 municipality, without the district, except with the consent, by
3 ordinance, of such municipality;
- 4 (b) Grade, drain and landscape lands owned or to be acquired by
5 it and improve the same in like manner;
- 6 (c) Erect, lease for a term not exceeding 50 years, enlarge,
7 improve, repair or furnish buildings;
- 8 (d) Borrow money therefor, with or without mortgage; in the
9 case of a type II district without a board of school estimate, when
10 authorized so to do at any annual or special school election; and in
11 the case of a type II district having a board of school estimate, when
12 the amount necessary to be provided therefor shall have been fixed,
13 determined and certified by the board of school estimate; and in the
14 case of a type I district, when an ordinance authorizing expenditures
15 for such purpose is finally adopted by the governing body of a
16 municipality comprised within the district; provided, however, that
17 no such election shall be held nor shall any such resolution of a
18 school estimate board or ordinance of a municipal governing body
19 be introduced to authorize any lease of any building for a term
20 exceeding one year, until the proposed terms of such lease have
21 been reviewed and approved by the Commissioner of Education and
22 the Local Finance Board in the Department of Community Affairs;
- 23 (e) Construct, purchase, lease or otherwise acquire a building
24 with the federal government, the State, a political subdivision
25 thereof or any other individual or entity properly authorized to do
26 business in the State; provided that: (1) the noneducational uses of
27 the building are compatible with the establishment and operation of
28 a school, as determined by the Commissioner of Education; (2) the
29 portion of the building to be used as a school meets regulations of
30 the Department of Education; (3) the board of education has
31 complied with the provisions of law and regulations relating to the
32 selection and approval of sites; and (4) in the case of a lease, that
33 any lease in excess of five years shall be approved by the
34 Commissioner of Education and the Local Finance Board in the
35 Department of Community Affairs;
- 36 (f) Acquire, with the approval of either the commissioner, or
37 voters or board of school estimate, as applicable, improvements or
38 additions to school buildings through lease purchase agreements not
39 in excess of five years. The agreement shall be recorded as an
40 expenditure of the General Fund of the district. The commissioner
41 shall approve the agreement only upon a demonstration by the
42 district that the lease purchase payments and any operating
43 expenses related to the agreement can be included within the
44 district's tax levy growth limitation and will not result in the need
45 for approval by the voters or board of school estimate, as
46 appropriate, of additional spending proposals to maintain existing
47 instructional programs and extracurricular activities. If the
48 commissioner cannot approve the agreement, the board of education

1 may frame a separate question to authorize the lease purchase
2 agreement and obtain voter or board of school estimate approval to
3 enter into the agreement. A district may, without separate prior
4 approval of the commissioner, also acquire equipment through a
5 lease purchase agreement not in excess of five years or in the case
6 of a lease purchase agreement entered into for the acquisition of
7 fossil fuel school buses not in excess of 10 years and in the case of
8 a lease purchase agreement entered into for the acquisition of
9 electric school buses and related charging equipment and services
10 not in excess of the service life of the electric school buses,
11 provided that the amount of the first installment and each
12 subsequent installment for the lease purchase payments is included
13 in the budget that is advertised and submitted for approval to the
14 voters of the district or the board of school estimate, as appropriate.
15 As used herein, a "lease purchase agreement" refers to any
16 agreement which gives the board of education as lessee the option
17 of purchasing the leased equipment or improvements or additions to
18 existing school buildings during or upon termination of the lease,
19 with credit toward the purchase price of all or part of rental
20 payments which have been made by the board of education in
21 accordance with the lease. As part of such a transaction, the board
22 of education may transfer or lease land or rights in land, including
23 any building thereon, after publicly advertising for proposals for the
24 transfer for nominal or fair market value, to the party selected by
25 the board of education, by negotiation or otherwise, after
26 determining that the proposal is in the best interest of the taxpayers
27 of the district, to construct or to improve and to lease or to own or
28 to have ownership interests in the site and the school building to be
29 leased pursuant to such lease purchase agreement, notwithstanding
30 the provisions of any other law to the contrary. The land and any
31 building thereon which is described in a lease purchase agreement
32 entered into pursuant to this amendatory act, shall be deemed to be
33 and treated as property of the school district, used for school
34 purposes pursuant to R.S.54:4-3.3, and shall not be considered or
35 treated as property leased to another whose property is not exempt,
36 and shall not be assessed as real estate pursuant to section 1 of
37 P.L.1949, c.177 (C.54:4-2.3). Any lease purchase agreement
38 authorized by this section shall contain a provision making
39 payments thereunder subject to the annual appropriation of funds
40 sufficient to meet the required payments or shall contain an annual
41 cancellation clause and shall require all construction contracts let by
42 public school districts or let by developers or owners of property
43 used for school purposes to be competitively bid, pursuant to
44 N.J.S.18A:18A-1 et seq.;

45 (g) Establish with an individual or entity authorized to do
46 business in the State a tenancy in common, condominium,
47 horizontal property regime or other joint ownership arrangement on

1 a site contributed by the school district; provided the following
2 conditions are met:

3 (1) The individual or entity agrees to construct on the site, or
4 provide for the construction thereon, a building or buildings for use
5 of the board of education separately or jointly with the individual or
6 entity, which shall be subject to the joint ownership arrangement;

7 (2) The provision of the building shall be at no cost or at a
8 reduced cost to the board of education;

9 (3) The school district shall not make any payment for use of the
10 building other than its pro rata share of costs of maintenance and
11 improvements;

12 (4) The noneducational uses of the building are compatible with
13 the establishment and operation of a school, as determined by the
14 Commissioner of Education;

15 (5) The portion of the building to be used as a school, and the
16 site, meet regulations of the Department of Education; and

17 (6) Any such agreement shall be approved by the Commissioner
18 of Education and the Local Finance Board in the Department of
19 Community Affairs;

20 (h) Acquire through sale and lease-back textbooks and non-
21 consumable instructional materials provided that the sale price and
22 principal amount of the lease-back do not exceed the fair market
23 value of the textbooks and instructional materials and that the
24 interest rate applied in the lease-back is consistent with prevailing
25 market rates or is less.

26 (cf: P.L.2010, c.44, s.7)

27

28 4. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as
29 follows:

30 42. a. Pursuant to the provisions of sections 42 through 45 of this
31 act, a government aggregator may obtain: electric generation service,
32 electric related service, gas supply service or gas related service, either
33 separately or bundled, for its own facilities or with other government
34 aggregators; and a government aggregator that is a county or
35 municipality may contract for the provision of electric generation
36 service or gas supply service, either separately or bundled, for the
37 business and residential customers within the territorial jurisdiction of
38 the government aggregator. Such a government aggregator may
39 combine the need for its own facilities for electric generation service
40 or gas supply service with that of business and residential customers.

41 b. A government aggregator shall purchase electric generation
42 service and gas supply service only from licensed electric power
43 suppliers and licensed gas suppliers.

44 c. The government aggregator shall enter into the contract for
45 electric generation service, electric related service, gas supply service
46 or gas related service for its own facilities or with other government
47 aggregators under the provisions of the "Local Public Contracts Law,"
48 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts

- 1 Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law,"
2 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services
3 Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.
- 4 d. Nothing in this act shall preclude the State government or any
5 State independent authority or State college from exercising authority
6 to obtain electric generation service, electric related service, gas
7 supply service or gas related service, either separately or bundled, for
8 its own facilities on an aggregated basis.
- 9 e. Nothing in this section shall preclude a government aggregator
10 from aggregating its own accounts for regulated utility services,
11 including basic generation or gas service.
- 12 f. Nothing in this act shall preclude any interstate authority or
13 agency from exercising authority to obtain electric generation service
14 or gas supply service, either separately or bundled, for its own
15 facilities in this State, including tenants in this State and other utility
16 customers in this State at such facilities, on an aggregated basis. By
17 exercising such authority, no interstate authority or agency shall be
18 deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided,
19 however, that nothing in this act shall be construed to exempt such
20 authority or agency from the payment of the market transition charge
21 or its equivalent, imposed pursuant to section 13 of this act, the
22 transition bond charge or its equivalent, imposed pursuant to section
23 18 of this act and any societal benefits charge or its equivalent, which
24 may be imposed pursuant to section 12 of this act, to the same extent
25 that other customers of an electric public utility pay such charges in
26 conjunction with any transmission and distribution service provided by
27 an electric public utility to the authority or agency.
- 28 g. Notwithstanding any other provision of this act to the contrary,
29 a private aggregator that is a private institution of higher education
30 may enter into a contract with a licensed electric power supplier other
31 than a municipal system or rural electric cooperative for the provision
32 of electric generation service or electric related service, either
33 separately or bundled, including any private aggregator that is a four-
34 year private institution of higher education which is located within the
35 jurisdiction of a municipal system, or within the franchise area of a
36 rural electric cooperative, as the case may be. The right hereunder of a
37 four-year private institution of higher education to enter into a contract
38 with a licensed electric power supplier other than the municipal system
39 or rural electric cooperative shall be subject to the condition that the
40 municipal system or rural electric cooperative shall have the right of
41 first refusal to offer a competitive, market-based price for electric
42 power. For the purposes of this subsection, "municipal system" means
43 a municipality that provides light, heat or power pursuant to the
44 provisions of R.S.40:62-12 et seq.
- 45 h. The "New Jersey School Boards Association," established
46 pursuant to N.J.S.18A:6-45, is authorized to serve as a government
47 aggregator to obtain electric generation service, electric related
48 service, gas supply service or gas related service, either separately or

1 bundled, in accordance with the "Public School Contracts Law,"
2 N.J.S.18A:18A-1 et seq., for members of the association who wish to
3 voluntarily participate ¹and for counties, municipalities, and other
4 local contracting units who wish to voluntarily participate¹. For
5 purposes of this subsection, "electric related service" ¹also¹ includes
6 electric school buses and related goods and services, including
7 construction projects directly related to those goods and services either
8 individually or in combination.

9 i. Notwithstanding any provisions of the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
11 the board shall initiate a proceeding and shall adopt, after notice,
12 provision of the opportunity for comment, and public hearing, interim
13 standards governing government energy aggregation programs. Such
14 standards shall be effective as regulations immediately upon filing
15 with the Office of Administrative Law and shall be effective for a
16 period not to exceed 18 months, and may, thereafter, be amended,
17 adopted or readopted by the board in accordance with the provisions of
18 the "Administrative Procedure Act."

19 j. No government aggregator shall implement the provisions of
20 section 42, 43, 44, or 45 of this act, as appropriate, prior to the starting
21 date of retail competition pursuant to section 5 of this act, or the date
22 on which the board adopts interim standards pursuant to subsection i.
23 of this section, whichever is earlier.

24 (cf: P.L.2003, c.248, s.2)

25

26 5. This act shall take effect immediately.