

[Second Reprint]

ASSEMBLY, No. 1677

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

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Assemblywoman ROSAURA "ROSY" BAGOLIE

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SYNOPSIS

Authorizes 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 Budget Committee on June 26, 2024, with amendments.

(Sponsorship Updated As Of: 6/28/2024)

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 ²**[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;

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.

²Assembly ABU committee amendments adopted June 26, 2024.

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

3 i. Laboratory testing services;

4 j. Concessions;

5 k. The operation, management or administration of other
6 services, with the approval of the Division of Local Government
7 Services in the Department of Community Affairs;

8 l. The purchase of electric school buses, on-site charging
9 infrastructure for electric school buses, and on-site or off-site
10 related electric school bus and charging infrastructure operation and
11 maintenance services, or any combination thereof.

12 Any purpose included herein shall not be considered by a board
13 of education as an extraordinary unspecifiable service pursuant to
14 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

15 (cf: P.L.2009, c.4, s.2)]²

16
17 ²[2.] 1.² N.J.S.18A:18A-42 is amended to read as follows:

18 18A:18A-42. All contracts for the provision or performance of
19 goods or services shall be awarded for a period not to exceed 24
20 consecutive months, except that contracts for professional services
21 pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall
22 be awarded for a period not to exceed 12 consecutive months. Any
23 board of education may award a contract for longer periods of time
24 as follows:

25 a. Supplying of:

26 (1) Fuel for heating purposes, for any term not exceeding in the
27 aggregate, three years;

28 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles
29 or equipment, for any term not exceeding in the aggregate, three
30 years;

31 (3) Thermal energy produced by a cogeneration facility, for use
32 for heating or air conditioning or both, for any term not exceeding
33 40 years, when the contract is approved by the Board of Public
34 Utilities. For the purposes of this paragraph, "cogeneration" means
35 the simultaneous production in one facility of electric power and
36 other forms of useful energy such as heating or process steam; or

37 b. Plowing and removal of snow and ice, for any term not
38 exceeding in the aggregate, three years; or

39 c. Collection and disposal of garbage and refuse, for any term
40 not exceeding in the aggregate, three years; or

41 d. Data processing service, for any term of not more than seven
42 years; or

43 e. Insurance, including the purchase of insurance coverages,
44 insurance consultant or administrative services, and including
45 participation in a joint self-insurance fund, risk management
46 program or related services provided by a school board insurance
47 group, or participation in an insurance fund established by a county
48 pursuant to N.J.S.40A:10-6, or a joint insurance fund established

- 1 pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of
2 not more than three years; or
- 3 f. Leasing or servicing of automobiles, motor vehicles,
4 electronic communications equipment, machinery and equipment of
5 every nature and kind and textbooks and non-consumable
6 instructional materials, for any term not exceeding in the aggregate,
7 five years; except that contracts for the leasing of fossil fuel school
8 buses may be awarded for any term not exceeding in the aggregate
9 **【ten】 10 years and contracts for the leasing of electric school buses**
10 **and related charging equipment and services may be awarded for**
11 **any term not exceeding the service life of the electric school buses.**
12 Contracts awarded pursuant to this subsection shall be awarded only
13 subject to and in accordance with rules and regulations promulgated
14 by the State Board of Education; or
- 15 g. Supplying of any product or the rendering of any service by
16 a company providing voice, data, transmission or switching
17 services, for a term not exceeding five years; or
- 18 h. (Deleted by amendment, P.L.1999, c.440.)
- 19 i. Driver education instruction conducted by private, licensed
20 driver education schools, for any term not exceeding in the
21 aggregate, three years; or
- 22 j. (Deleted by amendment, P.L.2009, c.4).
- 23 k. Any single project for the construction, reconstruction or
24 rehabilitation of any public building, structure or facility, or any
25 public works project, including the retention of the services of any
26 architect or engineer in connection therewith, for the length of time
27 authorized and necessary for the completion of the actual
28 construction; or
- 29 l. Laundry service and the rental, supply and cleaning of
30 uniforms for any term of not more than three years; or
- 31 m. Food supplies and food services for any term of not more
32 than three years; or
- 33 n. Purchases made under a contract awarded by the Director of
34 the Division of Purchase and Property in the Department of the
35 Treasury for use by counties, municipalities or other contracting
36 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
37 term not to exceed the term of that contract; **【or】**
- 38 o. The provision or performance of goods or services for the
39 purpose of producing class I renewable energy, as that term is
40 defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent
41 to, buildings owned by any local board of education, the entire price
42 of which is to be established as a percentage of the resultant savings
43 in energy costs, for a term not to exceed 15 years; provided,
44 however, that these contracts shall be entered into only subject to
45 and in accordance with guidelines promulgated by the Board of
46 Public Utilities establishing a methodology for computing energy
47 cost savings and energy generation costs; or

1 p. The provision or performance of goods or services for the
2 purpose of providing electric school buses, on-site or off-site
3 electric school bus charging infrastructure, and related maintenance
4 and other related services, or any combination thereof for a
5 specified price for a term up to the service life of the vehicle being
6 contracted.

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

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

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

45
46 ²[3.] 2.² N.J.S.18A:20-4.2 is amended to read as follows:

47 18A:20-4.2. The board of education of any school district may,
48 for school purposes:

1 (a) Purchase, take and condemn lands within the district and
2 lands not exceeding 50 acres in extent without the district but
3 situate in a municipality or municipalities adjoining the district, but
4 no more than 25 acres may be so acquired in any one such
5 municipality, without the district, except with the consent, by
6 ordinance, of such municipality;

7 (b) Grade, drain and landscape lands owned or to be acquired by
8 it and improve the same in like manner;

9 (c) Erect, lease for a term not exceeding 50 years, enlarge,
10 improve, repair or furnish buildings;

11 (d) Borrow money therefor, with or without mortgage; in the
12 case of a type II district without a board of school estimate, when
13 authorized so to do at any annual or special school election; and in
14 the case of a type II district having a board of school estimate, when
15 the amount necessary to be provided therefor shall have been fixed,
16 determined and certified by the board of school estimate; and in the
17 case of a type I district, when an ordinance authorizing expenditures
18 for such purpose is finally adopted by the governing body of a
19 municipality comprised within the district; provided, however, that
20 no such election shall be held nor shall any such resolution of a
21 school estimate board or ordinance of a municipal governing body
22 be introduced to authorize any lease of any building for a term
23 exceeding one year, until the proposed terms of such lease have
24 been reviewed and approved by the Commissioner of Education and
25 the Local Finance Board in the Department of Community Affairs;

26 (e) Construct, purchase, lease or otherwise acquire a building
27 with the federal government, the State, a political subdivision
28 thereof or any other individual or entity properly authorized to do
29 business in the State; provided that: (1) the noneducational uses of
30 the building are compatible with the establishment and operation of
31 a school, as determined by the Commissioner of Education; (2) the
32 portion of the building to be used as a school meets regulations of
33 the Department of Education; (3) the board of education has
34 complied with the provisions of law and regulations relating to the
35 selection and approval of sites; and (4) in the case of a lease, that
36 any lease in excess of five years shall be approved by the
37 Commissioner of Education and the Local Finance Board in the
38 Department of Community Affairs;

39 (f) Acquire, with the approval of either the commissioner, or
40 voters or board of school estimate, as applicable, improvements or
41 additions to school buildings through lease purchase agreements not
42 in excess of five years. The agreement shall be recorded as an
43 expenditure of the General Fund of the district. The commissioner
44 shall approve the agreement only upon a demonstration by the
45 district that the lease purchase payments and any operating
46 expenses related to the agreement can be included within the
47 district's tax levy growth limitation and will not result in the need
48 for approval by the voters or board of school estimate, as

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

1 (g) Establish with an individual or entity authorized to do
2 business in the State a tenancy in common, condominium,
3 horizontal property regime or other joint ownership arrangement on
4 a site contributed by the school district; provided the following
5 conditions are met:

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

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

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

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

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

20 (6) Any such agreement shall be approved by the Commissioner
21 of Education and the Local Finance Board in the Department of
22 Community Affairs;

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

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

30
31 ²[4.] 3.² Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to
32 read as follows:

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

44 b. A government aggregator shall purchase electric generation
45 service and gas supply service only from licensed electric power
46 suppliers and licensed gas suppliers.

47 c. The government aggregator shall enter into the contract for
48 electric generation service, electric related service, gas supply service

1 or gas related service for its own facilities or with other government
2 aggregators under the provisions of the "Local Public Contracts Law,"
3 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts
4 Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law,"
5 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services
6 Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.

7 d. Nothing in this act shall preclude the State government or any
8 State independent authority or State college from exercising authority
9 to obtain electric generation service, electric related service, gas
10 supply service or gas related service, either separately or bundled, for
11 its own facilities on an aggregated basis.

12 e. Nothing in this section shall preclude a government aggregator
13 from aggregating its own accounts for regulated utility services,
14 including basic generation or gas service.

15 f. Nothing in this act shall preclude any interstate authority or
16 agency from exercising authority to obtain electric generation service
17 or gas supply service, either separately or bundled, for its own
18 facilities in this State, including tenants in this State and other utility
19 customers in this State at such facilities, on an aggregated basis. By
20 exercising such authority, no interstate authority or agency shall be
21 deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided,
22 however, that nothing in this act shall be construed to exempt such
23 authority or agency from the payment of the market transition charge
24 or its equivalent, imposed pursuant to section 13 of this act, the
25 transition bond charge or its equivalent, imposed pursuant to section
26 18 of this act and any societal benefits charge or its equivalent, which
27 may be imposed pursuant to section 12 of this act, to the same extent
28 that other customers of an electric public utility pay such charges in
29 conjunction with any transmission and distribution service provided by
30 an electric public utility to the authority or agency.

31 g. Notwithstanding any other provision of this act to the contrary,
32 a private aggregator that is a private institution of higher education
33 may enter into a contract with a licensed electric power supplier other
34 than a municipal system or rural electric cooperative for the provision
35 of electric generation service or electric related service, either
36 separately or bundled, including any private aggregator that is a four-
37 year private institution of higher education which is located within the
38 jurisdiction of a municipal system, or within the franchise area of a
39 rural electric cooperative, as the case may be. The right hereunder of a
40 four-year private institution of higher education to enter into a contract
41 with a licensed electric power supplier other than the municipal system
42 or rural electric cooperative shall be subject to the condition that the
43 municipal system or rural electric cooperative shall have the right of
44 first refusal to offer a competitive, market-based price for electric
45 power. For the purposes of this subsection, "municipal system" means
46 a municipality that provides light, heat or power pursuant to the
47 provisions of R.S.40:62-12 et seq.

1 h. The "New Jersey School Boards Association," established
2 pursuant to N.J.S.18A:6-45, is authorized to serve as a government
3 aggregator to obtain electric generation service, electric related
4 service, gas supply service or gas related service, either separately or
5 bundled, in accordance with the "Public School Contracts Law,"
6 N.J.S.18A:18A-1 et seq., for members of the association who wish to
7 voluntarily participate ¹and for counties, municipalities, and other
8 local contracting units who wish to voluntarily participate¹. For
9 purposes of this subsection, "electric related service" ¹also¹ includes
10 electric school buses and related goods and services ²[, including
11 construction projects directly related to those goods and services either
12 individually or in combination]².

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

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

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

29

30 ²[5.] 4.² This act shall take effect immediately.