

[First Reprint]

**ASSEMBLY, No. 4194**

**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

INTRODUCED MAY 2, 2024

**Sponsored by:**

**Assemblyman JOHN ALLEN**

**District 32 (Hudson)**

**Assemblyman MICHAEL VENEZIA**

**District 34 (Essex)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

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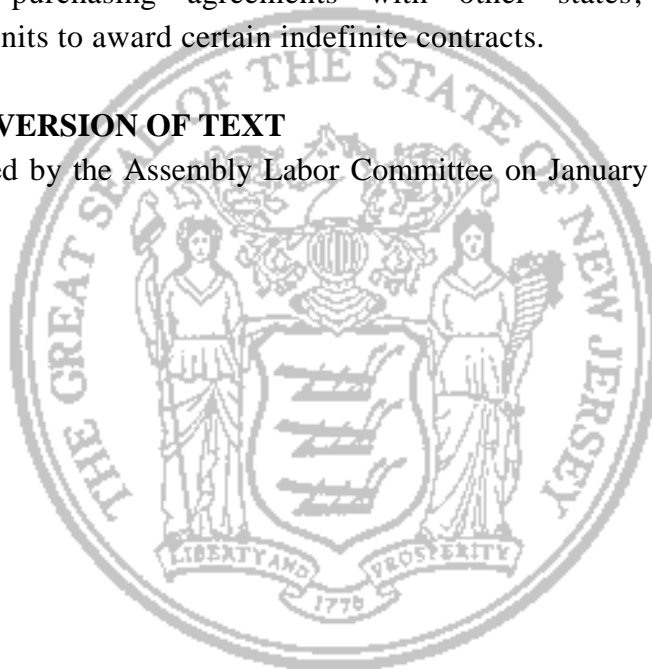
**Assemblymen Miller and Hutchison**

**SYNOPSIS**

Prohibits cooperative from receiving public works contract when cooperative-approved vendor fails to pay prevailing wage; concerns cooperative purchasing agreements with other states; and permits contracting units to award certain indefinite contracts.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Labor Committee on January 23, 2025, with amendments.



**(Sponsorship Updated As Of: 6/3/2024)**

1 AN ACT concerning the eligibility for public works contracts of  
2 certain legal entities <sup>1</sup>and supplementing Title 52 of the Revised  
3 Statutes<sup>1</sup> and amending <sup>1</sup>**[P.L.1963, c.150]** various parts of  
4 statutory law<sup>1</sup>.

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

8  
9 1. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to  
10 read as follows:

11 14. The public body awarding any contract for public work, or  
12 otherwise undertaking any public work, or entering into a lease or  
13 agreement to lease pursuant to which public work is to be done,  
14 shall first ascertain from the commissioner the list of names of  
15 contractors or subcontractors who have failed to pay prevailing  
16 wages as determined in section 13 of <sup>1</sup>**[this act]** P.L.1963, c.150  
17 (C.34:11-56.37)<sup>1</sup>, and no contract shall be awarded to such  
18 contractor or subcontractor, or to any firm, cooperative, corporation  
19 or partnership in which such contractor or subcontractor has an  
20 interest until three years have elapsed from the date of listing as  
21 determined in section 13 of <sup>1</sup>**[this act]** P.L.1963, c.150 (C.34:11-  
22 56.37)<sup>1</sup>. This prohibition shall apply to corporations or other legal  
23 entities that are owned and operated as a cooperative, in which <sup>1</sup>**[at**  
24 **least one of the owners is a contractor or subcontractor who]** any  
25 vendor approved by the cooperative<sup>1</sup> has failed to pay prevailing  
26 wages as determined by section 13 of <sup>1</sup>**[this act]** P.L.1963, c.150  
27 (C.34:11-56.37)<sup>1</sup>.

28 For purposes of this section, “cooperative” shall mean a system  
29 of collective ownership of a corporation or other legal entity in  
30 which the shareholders or other coowners each also have a long  
31 term proprietary interest or other long term arrangement of control  
32 over the operations of the business.

33 <sup>1</sup>For purposes of this section, “vendor” shall mean any person,  
34 firm, corporation or other entity which provides or offers or  
35 proposes to provide goods or services to or perform any contract.<sup>1</sup>

36 For purposes of this section, "interest" shall mean an interest in  
37 the firm, corporation or partnership bidding on, or performing  
38 public work, whether having the interest as an owner, partner,  
39 officer, manager, employee, agent, vendor, consultant or  
40 representative. The term may also include, but not be limited to, all  
41 instances in which the contractor or subcontractor listed by the  
42 commissioner under section 13 of <sup>1</sup>**[this act]** P.L.1963, c.150  
43 (C.34:11-56.37)<sup>1</sup> has received payments, whether those payments

**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:

<sup>1</sup>Assembly ALA committee amendments adopted January 23, 2025.

1 are in the form of cash or any other form of compensation from the  
2 firm, corporation or partnership, or when the contractor or  
3 subcontractor listed by the commissioner under section 13 of <sup>1</sup>["this  
4 act"] P.L.1963, c.150 (C.34:11-56.37)<sup>1</sup> has entered into any contract  
5 or agreement with the firm, corporation or partnership for services  
6 performed or to be performed, for services that have been or will be  
7 assigned or subletted, or for the sale, rental or lease of vehicles,  
8 tools, equipment or supplies during the period from the initiation of  
9 the proceedings under section 13 of <sup>1</sup>["this act"] P.L.1963, c.150  
10 (C.34:11-56.37)<sup>1</sup> against the contractor or subcontractor until three  
11 years have elapsed from the date that the contractor or  
12 subcontractor has been listed by the commissioner under section 13  
13 of <sup>1</sup>["this act"] P.L.1963, c.150 (C.34:11-56.37)<sup>1</sup>. The term  
14 "interest" shall not include shares held in a publicly traded  
15 corporation if the shares were not received as compensation after  
16 the initiation of proceedings under section 13 of <sup>1</sup>["this act"]  
17 P.L.1963, c.150 (C.34:11-56.37)<sup>1</sup> from a firm, corporation or  
18 partnership bidding or performing public work.

19 A rebuttable presumption that a contractor or subcontractor listed  
20 by the commissioner under section 13 of <sup>1</sup>["this act"] P.L.1963, c.150  
21 (C.34:11-56.37)<sup>1</sup> has an interest in another firm, corporation or  
22 partnership may arise if the two share any of the following  
23 capacities or characteristics: (1) perform similar work within the  
24 same geographical area and within the same monetary range, (2)  
25 occupy the same premises, (3) have the same telephone number or  
26 fax number, (4) have the same email address or internet website, (5)  
27 employ substantially the same administrative employees, (6) utilize  
28 the same tools and equipment, (7) employ or engage the services of  
29 any listed person or persons involved in the direction or control of  
30 the other, or (8) list substantially the same work experience in order  
31 to obtain the requisite pre-qualification rating from the Department  
32 of the Treasury, or any other entity, to participate in any public  
33 work.

34 If a rebuttable presumption has arisen that a contractor or  
35 subcontractor listed by the commissioner under section 13 of <sup>1</sup>["this  
36 act"] P.L.1963, c.150 (C.34:11-56.37)<sup>1</sup> has an interest in another  
37 firm, corporation or partnership, the adversely affected contractor or  
38 subcontractor, including the firm, corporation or partnership, which  
39 would by virtue of a finding of "interest" be prevented under this  
40 section from being awarded public work, may request a hearing,  
41 which shall be conducted in accordance with the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
43 (cf: P.L.2007, c.67, s.1)  
44

45 <sup>1</sup>2. Section 7 of P.L.1996, c.16 (C.52:34-6.2) is amended to read  
46 as follows:

1       7. a. Notwithstanding the provisions of any other law to the  
2 contrary except the provisions of R.S.30:4-95, and as an alternative  
3 to the procedures concerning the awarding of public contracts  
4 provided in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the  
5 Division of Purchase and Property in the Department of the  
6 Treasury may enter into cooperative purchasing agreements with  
7 one or more other states, or political subdivisions thereof, for the  
8 purchase of goods and services. A cooperative purchasing  
9 agreement shall allow the jurisdictions which are parties thereto to  
10 standardize and combine their requirements for the purchase of a  
11 particular good or service into a single contract solicitation which  
12 shall be competitively bid and awarded by one of the jurisdictions  
13 on behalf of jurisdictions participating in the contract.

14       b. (1) The director may elect to purchase goods or services  
15 through a contract awarded pursuant to a cooperative purchasing  
16 agreement whenever the director determines this to be the most  
17 cost-effective method of procurement. Prior to entering into any  
18 contract to be awarded or already awarded through a cooperative  
19 purchasing agreement, the director shall review and approve the  
20 specifications and proposed terms and conditions of the contract.

21       (2) The director may also elect to purchase goods or services  
22 through a contract awarded pursuant to a nationally-recognized and  
23 accepted cooperative purchasing agreement that has been developed  
24 utilizing a competitive bidding process, in which other states  
25 participate, whenever the director determines this to be the most  
26 cost-effective method of procurement. Prior to entering into any  
27 contract to be awarded through a nationally-recognized and  
28 accepted cooperative purchasing agreement that has been developed  
29 utilizing a competitive bidding process, the director shall review  
30 and approve the specifications and proposed terms and conditions  
31 of the contract.

32       (3) Notwithstanding any other law to the contrary, any  
33 contracting unit authorized to purchase goods, or to contract for  
34 services, may make purchases and contract for services through the  
35 use of a nationally-recognized and accepted cooperative purchasing  
36 agreement that has been developed utilizing a competitive bidding  
37 process by another contracting unit within the State of New Jersey,  
38 or within any other state, when available. A contracting unit may  
39 only purchase and contract for construction services for a public  
40 works project through a cooperative purchasing agreement  
41 competitively bid in compliance with P.L. \_\_\_\_\_, c. \_\_\_\_\_  
42 (pending before the Legislature as this bill) and let by a contracting  
43 unit in the State of New Jersey. Public works projects undertaken  
44 by a contracting unit through a cooperative purchasing agreement  
45 are subject to the "Public Works Contractor Registration Act,"  
46 P.L.1999, c.238 (C.34:11-56.48 et seq.) and the "New Jersey  
47 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).  
48 Prior to making purchases or contracting for services, the

1 contracting unit shall determine that the use of the cooperative  
2 purchasing agreement shall result in cost savings after all factors,  
3 including charges for service, material, and delivery, have been  
4 considered.

5 (4) A contracting unit shall not utilize a time-and-materials  
6 contract available through a cooperative purchasing agreement for  
7 public works construction projects subject to the “New Jersey  
8 Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.).

9 (5) For the purposes of prevailing wage enforcement, a  
10 contracting unit that awards a cooperative contract for public works  
11 construction shall verify and maintain an accurate copy of:

12 (a) the name, principal business address in the State, and  
13 telephone number of the contractor; or

14 (b) if the contractor's principal business address is not within the  
15 State, the name and address of the contractor's custodian of records  
16 and agent for service of process in this State.

17 (6) A contracting unit that establishes a cooperative purchasing  
18 agreement for public works construction shall require awarded  
19 contractors to submit copies of the certified payroll records for  
20 every public works construction project performed under the  
21 contract and retain those copies for a period of not less than three  
22 years. Contractors shall be prohibited from performing public  
23 works projects under a cooperative purchasing agreement if they:

24 (a) fail to provide copies of submitted certified payroll records  
25 on more than three occasions; or

26 (b) are found to have violated the “New Jersey Prevailing Wage  
27 Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.) by the Department of  
28 Labor and Workforce Development.

29 (7) The contracting unit that lets a cooperative contract shall  
30 publicly post on its website the following information for all public  
31 works construction projects completed in the preceding month:

32 (a) the contracting unit where the project was completed;

33 (b) the contract number of the cooperative contract utilized;

34 (c) the contractor that performed the public works construction  
35 project;

36 (d) the cost of the project; and

37 (e) confirmation certified payroll records were received.

38 (8) Contracting units implementing a cooperative purchasing  
39 agreement shall solicit from the Commissioner of Labor and  
40 Workforce Development the list produced and maintained pursuant  
41 to P.L.1963, c.150 (C.34:11-56.37) and shall:

42 (a) not award a cooperative contract to a contractor or  
43 subcontractor listed by the commissioner;

44 (b) verify on a monthly basis after the time of award and for the  
45 duration of the contract term that any contractor or subcontractor  
46 awarded a cooperative contract was not added to the list by the  
47 commissioner;

1       (c) terminate a contract with a contractor or subcontractor listed  
2 by the commissioner after the time of the cooperative contract  
3 award; and

4       (d) cause a contractor to terminate a subcontract with a  
5 subcontractor listed by the commissioner after the time of the  
6 cooperative contract award.

7       (9) The Director of the Division of Local Government Services  
8 in the Department of Community Affairs shall prohibit a  
9 contracting unit from serving as a lead agency for a cooperative  
10 purchasing agreement if the contracting unit fails to comply with  
11 the requirements of this section.

12       (10) If any provision of P.L.     , c.     (pending before the  
13 Legislature as this bill) or its application to any person or  
14 circumstances is held invalid, the invalidity does not affect other  
15 provisions or applications of P.L.     , c.     (pending before the  
16 Legislature as this bill) which can be given effect without the  
17 invalid provision or application, and to this end the provisions of  
18 P.L.     , c.     (pending before the Legislature as this bill) are  
19 severable.

20       For purposes of this paragraph, "contracting unit" means any  
21 county, municipality, special district, school district, fire district,  
22 State college or university, public research university, county  
23 college, or any board, commission, committee, authority or agency,  
24 which is not a State board, commission, committee, authority or  
25 agency, and which has administrative jurisdiction over any district,  
26 included or operating in whole or in part, within the territorial  
27 boundaries of any county or municipality which exercises functions  
28 which are appropriate for the exercise by one or more units of local  
29 government, and which has statutory power to make purchases and  
30 enter into contracts awarded by a contracting agent for the provision  
31 or performance of goods or services, and the New Jersey Transit  
32 Corporation created pursuant to P.L.1979, c.150 (C.27:25-1 et seq.).

33       For purposes of this paragraph, "time-and-materials contract"  
34 means a contract for the actual costs for materials and acquiring  
35 services on the basis of direct labor hours at specified fixed hourly  
36 rates that include wages, overhead, general and administrative  
37 expenses, and profit.

38       c. The director may solicit bids and award contracts on behalf  
39 of this State and other jurisdictions which are parties to a  
40 cooperative purchasing agreement provided that the agreement  
41 specifies that each jurisdiction participating in a contract is solely  
42 responsible for the payment of the purchase price and cost of  
43 purchases made by it under the terms of any contract awarded  
44 pursuant to the agreement.

45       d. The director may promulgate rules and regulations pursuant  
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-

1 1 et seq.), which are necessary to effectuate the purposes of this  
2 section.<sup>1</sup>

3 (cf: P.L.2018, c.162, s.14)

4

5 <sup>1</sup>3. (New section) Notwithstanding any provision of law to the  
6 contrary, a contracting unit may award indefinite delivery,  
7 indefinite quantity contracts for goods or services, including public  
8 works, without final plans and specifications for an individual  
9 project, provided the contract advertisement promotes free, open,  
10 and competitive bidding and sets forth the process by which  
11 individual purchase orders may be issued. A contracting unit may  
12 issue purchase orders under an indefinite delivery, indefinite  
13 quantity contract provided the items for delivery were specified in  
14 the contract advertisement and a process for adding items for  
15 delivery is provided in the contract advertisement.<sup>1</sup>

16

17 <sup>1</sup>**[2.] 4.**<sup>1</sup> This act shall take effect 90 days following the date of  
18 enactment.