

ASSEMBLY, No. 3112

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 8, 2018

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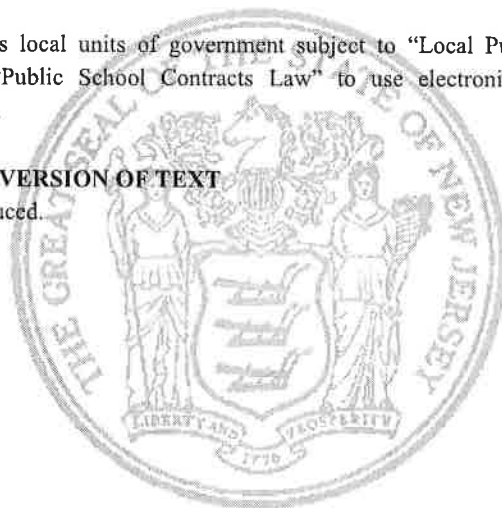
Assemblywoman Downey, Assemblymen Wirths, Space and Senator Addiego

SYNOPSIS

Authorizes local units of government subject to "Local Public Contracts Law" and "Public School Contracts Law" to use electronic procurement technologies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/30/2018)

1 **AN ACT** authorizing the electronic purchase of certain commodities
2 and services and sale of surplus personal property by local units
3 of government and school districts, supplementing P.L.1971,
4 c.198 (C.40A:11-1 et seq.), amending P.L.1971, c.199,
5 N.J.S.18A:20-6, and P.L.1978, c.91, and repealing P.L.2001,
6 c.30.

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

10
11 1. (New section) This act shall be known and may be cited as
12 the "Local Unit Electronic Procurement Act."

13
14 2. (New section) The Legislature finds and declares that
15 advances in electronic technology offer opportunities to enhance
16 governmental efficiencies. In order to explore these avenues of
17 improved government efficiency and commerce, it is in the best
18 interests of this State to allow local units of government to adopt
19 proven technologies for the procurement of goods, services, public
20 works construction, and sale of surplus personal and real property
21 through means of electronic technology, and to allow the
22 Department of Community Affairs to promulgate standards for the
23 use of these technologies that provide for the integrity and
24 procedural protections of sealed public bidding and competitive
25 contracting translated to an electronic environment.

26
27 3. (New section) As used in this P.L. , c. (c.) (pending
28 before the Legislature as this bill):

29 "Director" means the Director of the Division of Local
30 Government Services in the Department of Community Affairs;

31 "Electronic procurement" means the use of computer technology
32 and the Internet for the advertising and submission of public bids,
33 providing notice of revisions or addenda to advertisements or bid
34 documents, the receipt of proposals and quotations, competitive
35 contracting, the use of reverse auctions, and related practices to
36 assist in determining the lowest responsible bidder or proposer who
37 is most advantageous, price and other factors considered, as
38 appropriate, for goods and services, the sale of personal property,
39 and other public procurement-related activities and services as may
40 be determined appropriate by the director;

41 "Goods and services" means any work, labor, commodities,
42 equipment, materials, or supplies of any tangible or intangible
43 nature, except real property or any interest therein, provided or
44 performed through a contract awarded by a contracting agent,
45 including goods and property subject to N.J.S.12A:2-101 et seq.;

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 "Local unit" means a school district as defined in the "Public
2 School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting
3 unit as defined in the "Local Public Contracts Law," P.L.1971,
4 c.198 (C.40A:11-1 et seq.);

5 "Public works construction" means any contract that is subject to
6 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
7 56.25 et seq.); and

8 "Real property" shall include, in addition to the usual
9 connotations thereof, development rights or easements, or any right,
10 interest, or estate in the area extending above any real property, or
11 capital improvement thereon, to such a height or altitude as any
12 title, interest, or estate in real property may extend, commonly
13 known as "air rights," and subject to, but not limited to, the "Local
14 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).
15

16 4. (New section) Local units are authorized to use electronic
17 procurement practices for such purposes as may be authorized by
18 the governing body of the local unit, and subject to the provisions
19 of P.L. , c. (C.) (pending before the Legislature as
20 this bill).
21

22 5. (New section) A local unit or joint purchasing unit or
23 cooperative pricing system is also authorized to use electronic
24 procurement practices for the following purposes:

25 (a) to purchase electric generation service, electric related
26 service, gas supply service, or gas related service, either separately
27 or bundled, for its own facilities so long as the purchase otherwise
28 complies with the provisions of the "Electric Discount and Energy
29 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.); and

30 (b) the sale of surplus personal property that shall otherwise
31 comply with the provisions of section 36 of P.L.1971, c.198
32 (C.40A:11-36).

33 Contracts awarded for the administration of electronic
34 procurement practices shall be subject to the requirements of the
35 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)
36 and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,
37 except that they shall be considered as purposes for which
38 competitive contracting may be used.
39

40 6. (New section) a. The director, in consultation with the State
41 Comptroller and pursuant to the "Administrative Procedure Act,"
42 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
43 regulations to effectuate the provisions of this act.

44 The rules promulgated pursuant to this section shall include, but
45 shall not be limited to, practices that, notwithstanding any other law
46 to the contrary:

47 (1) convert the law, principals, safeguards, and procedures
48 related to sealed bidding to an electronic procurement environment;

1 (2) authorize local units of government to accept commercial
2 standards for electronic forms of bid security; and

3 (3) establish minimum standards that must be met by systems
4 and services providing and administering electronic procurement
5 activities.

6 The director shall also consult with the Attorney General to
7 develop safeguards to protect against collusion and bid rigging,
8 with the Division of Purchase and Property in the Department of
9 Treasury to develop practices used for electronic procurement, and
10 with the Office of Information Technology in, but not of, the
11 Department of Treasury, to ensure the privacy and security of
12 electronic transactions.

13 b. With regard to the notices, advertising bids, or requests for
14 proposals required to be published in an official newspaper of the
15 local unit, such notices, advertising bids, or requests for proposals,
16 as appropriate, shall not be eliminated under the provisions of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 and shall continue to be published as required by law.

19 c. Notwithstanding any law, rule, or regulation to the contrary,
20 plans and specifications for public works construction contracts that
21 require the seal and signature of a professional engineer, architect,
22 or land surveyor may be included in an electronic file used for
23 electronic procurement as long as the original document from which
24 the electronic file is derived contains a physical or electronic seal
25 and signature as otherwise required by law; however, if and when
26 the State Board of Engineers and Land Surveyors and the New
27 Jersey State Board of Architects adopt rules to permit digital seals
28 and signatures, those rules shall supersede this provision.
29

30 7. Section 13 of P.L.1971, c.199 (C.40A:12-13) is amended to
31 read as follows:

32 13. Sales of real property, capital improvements or personal
33 property; exceptions; procedure. Any county or municipality may
34 sell any real property, capital improvement or personal property, or
35 interests therein, not needed for public use, as set forth in the
36 resolution or ordinance authorizing the sale, other than county or
37 municipal lands, real property otherwise dedicated or restricted
38 pursuant to law, and, except as otherwise provided by law, all such
39 sales shall be made by one of the following methods:

40 (a) By open public sale at auction to the highest bidder after
41 advertisement thereof in a newspaper circulating in the municipality
42 or municipalities in which the lands are situated, by two insertions
43 at least once a week during two consecutive weeks, the last
44 publication to be not earlier than seven days prior to such sale. In
45 the case of public sales, the governing body may by resolution fix a
46 minimum price or prices, with or without the reservation of the
47 right to reject all bids where the highest bid is not accepted. Notice
48 of such reservation shall be included in the advertisement of the

1 sale and public notice thereof shall be given at the time of sale.
2 Such resolution may provide, without fixing a minimum price, that
3 upon the completion of the bidding, the highest bid may be accepted
4 or all the bids may be rejected. The invitation to bid may also
5 impose restrictions on the use to be made of such real property,
6 capital improvement or personal property, and any conditions of
7 sale as to buildings or structures, or as to the type, size, or other
8 specifications of buildings or structures to be constructed thereon,
9 or as to demolition, repair, or reconstruction of buildings or
10 structures, and the time within which such conditions shall be
11 operative, or any other conditions of sale, in like manner and to the
12 same extent as by any other vendor. Such conditions shall be
13 included in the advertisement, as well as the nature of the interest
14 retained by the county or municipality. Such restrictions or
15 conditions shall be related to a lawful public purpose and encourage
16 and promote fair and competitive bidding of the county or
17 municipality and shall not, in the case of a municipality, be
18 inconsistent with or impose a special or higher standard than any
19 zoning ordinance or building, plumbing, electrical, or similar code
20 or ordinance then in effect in the municipality.

21 In any case in which a county or municipality intends to retain an
22 estate or interest in any real property, capital improvement or
23 personal property, in the nature of an easement, contingent or
24 reversionary, the invitation to bid and the advertisement required
25 herein shall require each bidder to submit one bid under each
26 Option A and Option B below.

27 (1) Option A shall be for the real property, capital improvement
28 or personal property subject to the conditions or restrictions
29 imposed, or interest or estate retained, which the county or
30 municipality proposes to retain or impose.

31 (2) Option B shall be for the real property, capital improvement
32 or personal property to be sold free of all such restrictions,
33 conditions, interests or estates on the part of the county or
34 municipality.

35 The county or the municipality may elect or reject either or both
36 options and the highest bid for each. Such acceptance or rejection
37 shall be made not later than at the second regular meeting of the
38 governing body following the sale, and, if the governing body shall
39 not so accept such highest bid, or reject all bids, said bids shall be
40 deemed to have been rejected. Any such sale may be adjourned at
41 the time advertised for not more than one week without
42 readvertising.

43 (b) At private sale, when authorized by resolution, in the case of
44 a county, or by ordinance, in the case of a municipality, in the
45 following cases:

46 (1) A sale to any political subdivision, agency, department,
47 commission, board or body corporate and politic of the State of
48 New Jersey or to an interstate agency or body of which the State of

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1 New Jersey is a member or to the United States of America or any
2 department or agency thereof.

3 (2) A sale to a person submitting a bid pursuant to subsection
4 (a) of this section, where all bids have been rejected, provided that
5 the terms and price agreed to shall in no event be less than the
6 highest bid rejected, and provided further that the terms and
7 conditions of sale shall remain identical.

8 (3) A sale by any county or municipality, when it has or shall
9 have conveyed its right, title and interest in any real property,
10 capital improvement or personal property not needed for public use,
11 and it was assumed and intended that there should be conveyed a
12 good and sufficient title in fee simple to said real property, capital
13 improvement or personal property, free of all encumbrances and the
14 full consideration has been paid therefor, and it shall thereafter
15 appear that the title conveyed was insufficient or that said county or
16 municipality at the time of said conveyance was not the owner of
17 some estate or interest in said real property, capital improvement or
18 personal property or of some encumbrances thereon, and the county
19 or municipality shall thereafter acquire a good and sufficient title in
20 fee simple, free of all encumbrances of said real property, capital
21 improvement or personal property or shall acquire such outstanding
22 estate or interest therein or outstanding encumbrance thereon and
23 said county or municipality, by resolution of the governing body
24 and without the payment of any additional consideration, has
25 deemed to convey or otherwise transfer to said purchaser, his heirs
26 or assigns, such after-acquired title, or estate or interest in, or
27 encumbrance upon, such real property, capital improvement or
28 personal property to perfect the title or interest previously
29 conveyed.

30 (4) A sale of an easement upon any real property previously
31 conveyed by any county or municipality may be made when the
32 governing body of any county, by resolution, or any municipality,
33 by ordinance, has elected to release the public rights in the nature of
34 easements, in, on, over or under any real property within the county
35 or the municipality, as the case may be, upon such terms as shall be
36 agreed upon with the owner of such lands, if the use of such rights
37 is no longer desirable, necessary or required for public purposes.

38 (5) A sale to the owner of the real property contiguous to the
39 real property being sold; provided that the property being sold is
40 less than the minimum size required for development under the
41 municipal zoning ordinance and is without any capital improvement
42 thereon; except that when there is more than one owner with real
43 property contiguous thereto, said property shall be sold to the
44 highest bidder from among all such owners. Any such sale shall be
45 for not less than the fair market value of said real property. When
46 there is only one owner with real property contiguous to the
47 property being sold, and the property is less than an eighth of the
48 minimum size required for development under the municipal zoning

1 ordinance and is without any capital improvement thereon, the fair
2 market value of that property may be determined by negotiation
3 between the local unit and the owner of the contiguous real
4 property. The negotiated sum shall be subject to approval by
5 resolution of the governing body, but in no case shall that sum be
6 less than one dollar.

7 In the case of any sale of real property hereafter made pursuant
8 to subsection (b) of this section, in no event shall the price agreed
9 upon with the owner be less than the difference between the highest
10 bid accepted for the real property subject to easements (Option A)
11 and the highest bid rejected for the real property not subject to
12 easements (Option B). After the adoption of the resolution or
13 ordinance, and compliance by the owner of said real property with
14 the terms thereof, said real property shall be free, and entirely
15 discharged of and from such rights of the public and of the county
16 or municipality, as the case may be, but no such release shall affect
17 the right of lawful occupancy or use of any such real property by
18 any municipal or private utility to occupy or use any such real
19 property lawfully occupied or used by it. A list of the property so
20 authorized to be sold, pursuant to subsection (b) of this section,
21 together with the minimum prices, respectively, as determined by
22 the governing body, shall be included in the resolution or ordinance
23 authorizing the sale, and said list shall be posted on the bulletin
24 board or other conspicuous space in the building which the
25 governing body usually holds its regular meetings, and
26 advertisement thereof made in a newspaper circulating in the
27 municipality or municipalities in which the real property, capital
28 improvement or personal property is situated, within five days
29 following enactment of said resolution or ordinance. Offers for any
30 or all properties so listed may thereafter be made to the governing
31 body or its designee for a period of 20 days following the
32 advertisement herein required, at not less than said minimum prices,
33 by any prospective purchaser, real estate broker, or other authorized
34 representative. In any such case, the governing body may
35 reconsider its resolution or ordinance, not later than 30 days after its
36 enactment, and advertise the real property, capital improvement, or
37 personal property in question for public sale pursuant to subsection
38 (a) of this section.

39 Any county or municipality selling any real property, capital
40 improvement or personal property pursuant to subsection (b) of this
41 section shall file with the Director of the Division of Local
42 Government Services in the Department of Community Affairs,
43 sworn affidavits verifying the publication of advertisements as
44 required by this subsection.

45 (c) By private sale of a municipality in the following case: A
46 sale to a private developer by a municipality, when acting in
47 accordance with the "Local Redevelopment and Housing Law,"
48 P.L.1992, c.79 (C.40A:12A-1 et al.).

1 (d) A county or municipality is also authorized to use electronic
2 procurement practices in accordance with the provisions of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) for the
4 sale or lease of real property pursuant to the "Local Lands and
5 Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

6 All sales, either public or private, may be made for cash or upon
7 credit. A deposit not exceeding 10% of the minimum price or value
8 of the property to be sold may be required of all bidders. When
9 made upon credit, the county or municipality may accept a
10 purchase-money mortgage, upon terms and conditions which shall
11 be fixed by the resolution of the governing body; provided,
12 however, that such mortgage shall be fully payable within five years
13 from the date of the sale and shall bear interest at a rate equal to
14 that authorized under Title 31 of the Revised Statutes, as amended
15 and supplemented, and the regulations issued pursuant thereto, or
16 the rate last paid by the county or municipality upon any issue of
17 notes pursuant to the "Local Bond Law" (N.J.S.40A:2-1 et seq.),
18 whichever is higher. The governing body may, by resolution, fix
19 the time for closing of title and payment of the consideration.

20 In all sales made pursuant to this section, the governing body of
21 any county or municipality may provide for the payment of a
22 commission to any real estate broker, or authorized representative
23 other than the purchaser actually consummating such sale;
24 provided, however, that no commission shall be paid unless notice
25 of the governing body's intention to pay such a commission shall
26 have been included in the advertisement of sale and the recipient
27 thereof shall have filed an affidavit with the governing body stating
28 that said recipient is not the purchaser. Said commissions shall not
29 exceed, in the aggregate, 5% of the sale price, and be paid, where
30 there has been a public sale, only in the event that the sum of the
31 commission and the highest bid price does not exceed the next
32 highest bid price (exclusive of any real estate broker's commission).
33 As used in this section, "purchaser" shall mean and include any
34 person, corporation, company, association, society, firm,
35 partnership, or other business entity owning or controlling, directly
36 or indirectly, more than 10% of the purchasing entity.
37 (cf: P.L.2000, c.126, s.26)

38

39 8. N.J.S.18A:20-6 is amended to read as follows:

40 18A:20-6. Any lands or rights or interests therein sold by any
41 board of education, except lands conveyed as part of a lease
42 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold
43 **[at] , after advertisement of** public sale, to the highest bidder **[,**
44 **after] .** A board of education is authorized to use electronic
45 procurement practices in accordance with P.L. , c. (C.)
46 (pending before the Legislature as this bill) for the advertisement of
47 sale or lease of land and real property thereon, and shall also
48 publish advertisement of the sale or lease in a newspaper published

1 in the district, or, if none is published therein, then in a newspaper
2 circulating in the district, in which the same is situate, at least once
3 a week for two weeks prior to the sale, unless:

4 a. The same are sold to the State, or a political subdivision
5 thereof, in which case they may be sold at private sale without
6 advertisement; or

7 b. The sale or other disposition thereof in some other manner is
8 provided for in this Title.

9 (cf: P.L.1986, c.183, s.2)

10

11 9. Section 1 of P.L.1978, c.91 (C.18A:20-8.2) is amended to
12 read as follows:

13 1. a. Except as otherwise provided pursuant to section 14 of
14 P.L.2007, c.137 (C.18A:7G-45), whenever any board of education
15 shall by resolution determine that any tract of land, whether there is
16 a building thereon or not, or part or all of a school building, is not
17 necessary for school purposes, but which it does not desire to
18 dispose of for reason that the property may, at some future time,
19 again be required for school purposes, it may authorize the lease
20 thereof for a term extending beyond the official life of the board;
21 provided that the noneducational uses of such building or tract of
22 land are compatible with the establishment and operation of a
23 school, as determined by the Commissioner of Education, if joint
24 occupancy of such site is considered. A board of education is
25 authorized to use electronic procurement practices in accordance
26 with the provisions of P.L. , c. (C.) (pending before the
27 Legislature as this bill) for the advertisement of lease of land, and
28 any building on that land. The lease shall be binding upon the
29 successor board as follows:

30 (1) After advertisement of the request for bids to lease to the
31 highest bidder in a newspaper published in the school district, or, if
32 none is published therein, then in a newspaper circulating in the
33 district in which the same is situate, at least once a week for two
34 weeks prior to the date fixed for the receipt and opening of bids,
35 and, at the discretion of the board of education, electronic
36 advertisement, unless:

37 (2) The same is leased to the federal government, State, a
38 political subdivision thereof, another school district, any board,
39 body or commission of a municipality within the school district, any
40 volunteer fire company or rescue squad actively engaged in the
41 protection of life and property and duly incorporated under the laws
42 of the State of New Jersey, or to any American Legion post,
43 Veterans of Foreign Wars, or other recognized veterans'
44 organization of the United States of America, located in the
45 municipality or the county, as a meeting place for such
46 organization, or to a nonprofit child care service organization duly
47 incorporated under the laws of the State of New Jersey, or to a
48 nonprofit hospital duly licensed under the laws of the State of New

1 Jersey, or to a nonprofit organization duly licensed under the laws
2 of the State of New Jersey to provide emergency shelter for the
3 homeless, or to a nonprofit senior citizen organization, or to a
4 nonprofit historic preservation organization duly incorporated under
5 the laws of the State of New Jersey, in which case the same may be
6 leased by private agreement for a nominal fee without
7 advertisement for bids.

8 b. Any lease in excess of five years shall be approved by the
9 Commissioner of Education.
10 (cf: P.L.2007, c.137, s.47)

11

12 10. P.L.2001, c.30 is repealed.

13

14 11. This act shall take effect on the first day of the 10th month
15 next following enactment.

16

17

18

STATEMENT

19

20 This bill would authorize local units of government to use
21 electronic procurement technologies. The bill defines "local unit"
22 as contracting units as defined in the "Local Public Contracts Law,"
23 P.L.1971, c.198 (C.40A:11-1 et seq.). The bill authorizes these
24 local units to use electronic procurement practices for such
25 purposes as may be authorized by the governing body of the local
26 unit, and subject to the provisions of the bill.

27 Under the bill, a local unit, joint purchasing unit, or cooperative
28 pricing system is also authorized to use electronic procurement
29 practices for the following purposes:

30 a) the purchase of electric generation service, electric related
31 service, gas supply service, or gas related service, either separately
32 or bundled, for its own facilities so long as the purchase otherwise
33 complies with the provisions of the "Electric Discount and Energy
34 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.);

35 b) the sale of surplus personal property that shall otherwise
36 comply with the provisions of section 36 of P.L.1971, c.198
37 (C.40A:11-36); and

38 c) the sale of real property that shall otherwise comply with the
39 sale and lease provisions of the "Local Lands and Buildings Law,"
40 P.L.1971, c.199 (C.40A:12-1).

41 A local unit using electronic procurement technologies must
42 continue to publish any notices, advertising bids, and requests for
43 proposals required by law to be published in the official newspaper
44 of the local unit.

45 Contracts awarded for the administration of electronic
46 procurement practices pursuant to the bill would be subject to the
47 requirements of the "Local Public Contracts Law," P.L.1971, c.198
48 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"

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1 N.J.S.18A:18A-1 et seq., as appropriate, except that they are to be
2 considered as purposes for which competitive contracting may be
3 used.

4 The bill also requires the Director of the Division of Local
5 Government Services in the Department of Community Affairs, in
6 consultation with other State government entities, to promulgate
7 rules and regulations to effectuate the provisions of the bill.