

18A:18A-5 and 18A:18A-42

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:18A-5 and 18A:18A-42

(Public School Contracts
Law-energy conservation)

LAWS OF: 1984

CHAPTER: 49

Bill No: A316

Sponsor(s): Palaia and others

Date Introduced: Pre-filed

Committee: Assembly: Education

Senate: Education

Amended during passage: Yes

Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: Feb. 27, 1984

Senate: May 21, 1984

Date of Approval: June 14, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

Rules and Regulations, referred to in committee statements:
N.J.A.C. 14A:12-1.1 et. seq.

49
6-14-84

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 316

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen PALAIA, VILLANE, FELICE, Assemblywoman
GARVIN, Assemblymen SCHUBER, KOSCO, ROONEY, KERN,
ROCCO, DORIA, CHARLES and NAPLES

AN ACT concerning the duration of certain contracts entered into
for energy conservation purposes and amending *N. J. S.
18A:18A-5 and* N. J. S. 18A:18A-42.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 18A:18A-42 is amended to read as follows:

2 18A:18A-42. Any board of education may enter into a contract
3 exceeding the fiscal year for the

4 a. Supplying of:

5 (1) Fuel for heating purposes, for any term not exceeding in
6 the aggregate, three years; ***[or]***

7 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles
8 or equipment for any term not exceeding in the aggregate, three
9 years; ***[or]***

9A (3) *Thermal energy produced by a cogeneration facility, for use*
9B *for heating or air conditioning or both, for any term not exceeding*
9C *20 years, when the contract is approved by the Board of Public*
9D *Utilities. For the purposes of this paragraph, "cogeneration"*
9E *means the simultaneous production in one facility of electric power*
9F *and other forms of useful energy such as heating or process steam;*
9G *or**

10 b. **[The plowing]** *Plowing* and removal of snow and ice for any
11 term not exceeding in the aggregate, three years; or

12 c. **[The collection]** *Collection* and disposal of garbage and refuse,
13 for any term not exceeding in the aggregate, three years; or

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted February 23, 1984.

14 d. Data processing service, for any term of not more than five
15 years; or

16 e. Insurance, including the purchase of insurance coverages,
17 insurance consultant or administrative services, and including par-
18 ticipation in a joint self-insurance fund, risk management program
19 or related services provided by a school board insurance group, for
20 any term of not more than three years; or

21 f. Leasing or servicing of automobiles, motor vehicles, electronic
22 communications equipment, machinery and equipment of every
23 nature and kind, for any term not exceeding *in* the aggregate five
24 years; provided, however, such contracts shall be entered into only
25 subject to and in accordance with rules and regulations promul-
26 gated by the State Board of Education; or

27 g. **【The supplying】** *Supplying* of any product or the rendering
28 of any service by a telephone company which is subject to the
29 jurisdiction of the Board of Public Utilities for a term not exceed-
30 ing five years; or

31 h. Materials, supplies or services that are required on a recur-
32 ring basis from year to year, for any term not exceeding in the
33 aggregate two years; however, such contract may be renewed
34 yearly for a period not exceeding three additional years without
35 any further solicitation for bids or bidding upon a finding by the
36 board that the services are being performed in an effective and
37 efficient manner, or that the materials and supplies continue to meet
38 the original specifications. If a board of education elects to renew
39 an existing contract, the terms and conditions of the existing
40 contract shall remain substantially unchanged and any increase in
41 the contract cost over the three year period shall be no greater than
42 a total of 20% over the initial cost; or

43 i. Driver education instruction conducted by private, licensed
44 driver education schools, for any term not exceeding in the aggre-
45 gate, three years; or

46 j. *Performance of work or services or the furnishing of materials,*
47 *supplies or equipment for the purpose of conserving energy in*
48 *buildings owned by any local board of education, the entire price*
49 *of which shall be established as a percentage of the resultant sav-*
50 *ings in energy costs, for a term not to exceed 10 years; except that*
51 *these contracts shall be entered into only subject to and in accord-*
52 *ance with rules and regulations promulgated by the Department of*
53 *Energy pursuant to the "Administrative Procedure Act," P. L.*
54 *1968, c. 410 (C. 52:14B-1 et seq.) establishing a methodology for*
55 *computing energy costs.*

56 All multiyear leases and contracts entered into pursuant to this
57 section 18A:18A-42 except contracts for the leasing or servicing of

58 equipment supplied by a telephone company which is subject to the
 59 jurisdiction of the Board of Public Utilities [and except] *,* con-
 60 tracts for insurance coverages, insurance consultant or administra-
 61 tive services, participation or membership in a joint self-insurance
 62 fund, risk management programs or related services of a school
 63 board insurance group, *or contracts for thermal energy authorized
 64 pursuant to subsection a. above,*and contracts for the performance
 65 of work or services or the furnishing of materials, supplies or
 66 equipment to promote energy conservation authorized pursuant to
 67 paragraph (j) of this section shall contain a clause making them
 68 subject to the availability and appropriation annually of sufficient
 69 funds as may be required to meet the extended obligation, or
 70 contain an annual cancellation clause.

1 *2. N. J. S. 18A:18A-5 is amended to read as follows:

2 18A:18A-5. Exceptions to requirement for advertising. Any
 3 purchase, contract or agreement of the character described in
 4 N. J. S. 18A:18A-4 may be made, negotiated or awarded by the
 5 board of education by resolution at a public meeting without public
 6 advertising for bids and bidding therefor if

7 a. The subject matter thereof consists of:

8 (1) Professional services;
 9 (2) Extraordinary unspecifiable services which cannot reason-
 10 ably be described by written specifications, which exception as to
 11 extraordinary unspecifiable services shall be construed narrowly in
 12 favor of open competitive bidding where possible and the State
 13 Board of Education is authorized to establish rules and regula-
 14 tions limiting its use in accordance with the intention herein
 15 expressed; and the board of education shall in each instance state
 16 supporting reasons for its action in the resolution awarding the
 17 contract for extraordinary unspecifiable services;

18 (3) The doing of any work by employees of the contracting unit;

19 (4) The printing of all legal notices; and legal briefs, records
 20 and appendices to be used in any legal proceeding in which the
 21 contracting party may be a party;

22 (5) Textbooks, copyrighted materials, kindergarten supplies,
 23 and student produced publications and services incidental thereto;

24 (6) Food supplies, including food supplies for home economic
 25 classes, when purchased pursuant to rules and regulations of the
 26 State board and in accordance with the provisions of N. J. S.
 27 18A:18A-6;

28 (7) The supplying of any product or the rendering of any service
 29 by a public utility, which is subject to the jurisdiction of the Board
 30 of Public Utility Commissioners, in accordance with the tariffs and
 31 schedules of charges made, charged and exacted, filed with said
 32 board;

33 (8) The printing of bonds and documents necessary to the issu-
34 ance and sale thereof by a board of education;

35 (9) Equipment repair service if in the nature of an extraordinary
36 unspecifiable service and necessary parts furnished in connection
37 with such services;

38 (10) Insurance, including the purchase of insurance coverage
39 and consultant services;

40 (11) Publishing of legal notices in newspapers as required by
41 law;

42 (12) The acquisition of artifacts or other items of unique in-
43 trinsic, artistic or historic character;

44 (13) Election expenses, including advertising expenses incidental
45 thereto;

46 (14) Electronic data processing service obtained from another
47 board of education;

48 (15) Driver education courses provided by licensed driver educa-
49 tion schools.

50 (16) *Performance of work or services or the furnishing of*
51 *materials, supplies or equipment for the purpose of conserving*
52 *energy in buildings owned by any local board of education, the*
53 *entire price of which shall be established as a percentage of the*
54 *resultant savings in energy costs.*

55 b. It is to be made or entered into with the United States of
56 America, the State of New Jersey, county or municipality or any
57 board, body, officer, agency or authority or any other state or sub-
58 division thereof.

59 c. The board of education has advertised for bids pursuant to
60 N. J. S. 18A:18A-4 on two occasions and has received no bids in
61 response to its advertisement and, after reasonable inquiry, it is
62 determined that no board, body, officer, agency or authority of the
63 United States, or of the State of New Jersey or of any county or
64 municipality in which the board of education is located is willing
65 and able to perform any work or furnish or hire any materials or
66 supplies in conformity with the specifications of the board of
67 education. Any such contract or agreement entered into pursuant
68 to this subsection c. may be made, negotiated or awarded only upon
69 adoption of a resolution by the affirmative vote of two-thirds of
70 the full membership of the board of education at a meeting thereof
71 authorizing such a contract or agreement. Any amendment or
72 modification of the terms, conditions, restrictions and specifications
73 which were the subject of the competitive bidding pursuant to
74 N. J. S. 18A:18A-4 shall be stated in the resolution awarding the
75 **contract.**

76 d. The board of education has advertised for bids pursuant to
77 N. J. S. 18A:18A-4 on two occasions and has rejected such bids on
78 each occasion because the board of education has determined that
79 they are not reasonable as to price on the basis of cost estimates
80 prepared for the board of education prior to the advertising
81 therefor or have not been independently arrived at in open compe-
82 tition, but no such contract or agreement may be entered into after
83 such rejection of bids, unless:

84 (1) Notification of the intention to negotiate and a reasonable
85 opportunity to negotiate shall have been given by the board of
86 education to each responsible bidder;

87 (2) The negotiated price is lower than the lowest rejected bid
88 price of a responsible bidder who bid thereon and is the lowest
89 negotiated price offered by any responsible supplier and is a rea-
90 sonable price for such work, materials, supplies or services;

91 (3) Any amendment or modification of the terms, conditions,
92 restrictions and specifications which were the subject of competitive
93 bidding pursuant to N. J. S. 18A:18A-4 shall be stated in the
94 resolution awarding the contract; and

95 (4) The negotiated price is lower than the price of the same or
96 equivalent materials or supplies available from the State, county
97 or municipality in which the board of education is located.

98 Whenever a board of education shall determine that a bid was
99 not arrived at independently in open competition pursuant to this
100 subsection d. of N. J. S. 18A:18A-5, it shall thereupon notify the
101 county prosecutor of the county in which the board of education is
102 located and the Attorney General of the facts upon which its
103 determination is based, and when appropriate, it may institute
104 appropriate proceedings in any State or federal court of compe-
105 tent jurisdiction for a violation of any State or federal antitrust
106 law or laws relating to the unlawful restraint of trade.

107 e. The board of education has solicited and received at least
108 three quotations on materials, supplies or equipment for which a
109 State contract has been issued pursuant to N. J. S. 18A:18A-10,
110 and the lowest responsible quotation is at least 10% less than the
111 price the board would be charged for the identical materials,
112 supplies or equipment, in the same quantities, under the State
113 contract.

114 Any such contract or agreement entered into pursuant to sub-
115 section d. of subsection e. may be made, negotiated or awarded only
116 upon adoption of a resolution by the affirmative vote of two-thirds
117 of the full membership of the board of education at a meeting
118 thereof authorizing such a contract or agreement.*

1 ***[2.]*** *3.* This act shall take effect immediately.

64 *services or the furnishing of materials, supplies or equipment to*
 65 *promote energy conservation authorized pursuant to paragraph (j)*
 66 *of this section shall contain a clause making them subject to the*
 67 *availability and appropriation annually of sufficient funds as may*
 68 *be required to meet the extended obligation, or contain an annual*
 69 *cancellation clause.*

1 2. This act shall take effect immediately.

STATEMENT

Rising energy costs, combined with capped budgets and limited revenues, are putting local school districts in an ever worsening economic plight. Significant energy conservation efforts, however, require prohibitively high capital investments.

Many firms selling energy efficient equipment or energy consulting services are willing to enter into multiyear contracts or agreements which would establish as the price of their equipment or service a percentage of the savings in energy costs. Attractive as these arrangements may seem, the limitation on school contracts precludes local boards of education from taking advantage of them.

This bill amends the "Public School Contracts Law," N. J. S. 18A:18A-1 et seq. to eliminate the limitation on shared savings arrangements for energy conservation purposes to conform with section 15 of the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-15).

This bill also corrects grammatical errors in the text of the law.

A316(1984)

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 316

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1984

PROVISIONS:

This bill as amended authorizes boards of education to enter into multi-year contracts to buy energy conservation equipment, supplies and services. Further, it authorizes the selling price of such equipment to be established in terms of a percentage of the savings in energy costs and that such price and payments shall be determined according to rules and regulations promulgated by the Department of Energy. In addition, as amended, this bill exempts such contracts from the bidding requirement.

BACKGROUND:

Many firms selling energy efficient equipment or energy consultant services are willing to enter into multi-year contracts or agreements which would establish the price of their equipment or service as a percentage of the savings in energy costs. Current statutory limitations on school contracts preclude local boards of education from taking advantage of such arrangements. This bill would eliminate the limitation on shared savings arrangements for energy conservation purposes.

By amending the Public School Contracts Law the schools would be able to take advantage of such services that are currently available to municipalities and counties.

AMENDMENTS:

Technical amendments are necessary to bring this bill into conformity with recently enacted statutory changes. In addition the committee amended the bill to exempt such contracts from the bidding requirement.

SENATE EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 316

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MAY 14, 1984

PROVISIONS:

This bill authorizes boards of education to enter into multi-year contracts to buy energy conservation equipment, supplies and services. Further, it authorizes the selling price of such equipment to be established in terms of a percentage of the savings in energy costs and that such price and payments shall be determined according to rules and regulations promulgated by the Department of Energy. In addition, as amended, this bill exempts such contracts from the bidding requirement.

BACKGROUND:

Many firms selling energy efficient equipment or energy consultant services are willing to enter into multi-year contracts or agreements which would establish the price of their equipment or service as a percentage of the savings in energy costs. Current statutory limitations on school contracts preclude local boards of education from taking advantage of such arrangements. This bill would eliminate the limitation on shared savings arrangements for energy conservation purposes.

By amending the Public School Contracts Law the schools would be able to take advantage of such services that are currently available to municipalities and counties.



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Release: THURSDAY, JUNE 14, 1984

JUN 18 1984

185 W. State Street
Trenton, N. J.

Governor Thomas H. Kean today signed legislation which will allow school districts to enter into long-term contracts for the installation and maintenance of energy saving equipment in buildings owned by the district.

The Bill, A-316, is sponsored by Assemblyman Joseph A. Palaia, R-Monmouth. It exempts energy-saving projects from state statutes which normally prohibit school districts from entering into long term contracts.

"In many cases companies which do this kind of work are willing to accept part of the savings in energy costs as payment for their services," Kean said. "Naturally, this requires a long-term contract to allow the recovery of enough savings to pay the contractor and make significant savings to the district as well,"

Under the terms of the Palaia bill, school boards would be able to enter into contracts for up to ten years with companies for the performance of work or services or the furnishing of materials, supplies or equipment for the purpose of energy conservation.

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