

# 18A:64-6

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 369  
**NJSA:** 18A:64-6 (Raises statutory threshold for public advertisement of bids under "State College Contracts Law")  
**BILL NO:** A2641 (Substituted for S1543)  
**SPONSOR(S):** Greenwald and Manzo  
**DATE INTRODUCED:** May 3, 2004  
**COMMITTEE:** **ASSEMBLY:** Appropriations  
**SENATE:** Education  
**AMENDED DURING PASSAGE:** Yes  
**DATE OF PASSAGE:** **ASSEMBLY:** January 9, 2006  
**SENATE:** January 9, 2006  
**DATE OF APPROVAL:** January 12, 2006

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (2<sup>nd</sup> reprint enacted)

**A2641**

[SPONSOR'S STATEMENT](#): (Begins on page 12 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**S1543**

[SPONSOR'S STATEMENT](#): (Begins on page 12 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

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IS 3/13/08

P.L. 2005, CHAPTER 369, *approved January 12, 2006*  
Assembly, No. 2641 (*Second Reprint*)

1 **AN ACT** concerning the awarding of State college and university  
2 contracts <sup>1</sup>[and] <sup>1</sup>, <sup>1</sup> amending <sup>1</sup>N.J.S.18A:64-6,<sup>1</sup> P.L.1986, c.43  
3 and P.L.1992, c.61 <sup>1</sup>and repealing <sup>2</sup>[parts of the statutory law]  
4 section 20 of P.L.1986, c.43<sup>2</sup> <sup>1</sup>.

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

- 8  
9 <sup>1</sup>1. N.J.S.18A:64-6 is amended to read as follows:  
10 18A:64-6. The board of trustees of a State college shall have  
11 general supervision over and shall be vested with the conduct of the  
12 college. It shall have the power and duty to:
- 13 a. Adopt and use a corporate seal;
  - 14 b. Determine the educational curriculum and program of the  
15 college consistent with the programmatic mission of the institution or  
16 approved by the Commission on Higher Education;
  - 17 c. Determine policies for the organization, administration and  
18 development of the college;
  - 19 d. Study the educational and financial needs of the college;  
20 annually acquaint the Governor and Legislature with the condition of  
21 the college; and prepare and present the annual budget to the  
22 Governor, the Division of Budget and Accounting in the Department  
23 of the Treasury and the Legislature in accordance with law;
  - 24 e. Disburse all moneys appropriated to the college by the  
25 Legislature and all moneys received from tuition, fees, auxiliary  
26 services and other sources;
  - 27 f. Direct and control expenditures and transfers of funds  
28 appropriated to the college and tuition received by the college, in  
29 accordance with the provisions of the State budget and appropriation  
30 acts of the Legislature, reporting changes and additions thereto and  
31 transfers thereof to the Director of the Division of Budget and  
32 Accounting in the State Department of the Treasury and as to funds  
33 received from other sources, direct and control expenditures and  
34 transfers in accordance with the terms of any applicable trusts, gifts,  
35 bequests, or other special provisions. All accounts of the college shall  
36 be subject to audit by the State at any time;
  - 37 g. In accordance with the provisions of the State budget and  
38 **[appropriation]** appropriation acts of the Legislature, appoint and fix  
39 the compensation of a president of the college, who shall be the

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 AAP committee amendments adopted June 14, 2004.

<sup>2</sup> Senate SED committee amendments adopted June 9, 2005.

1 executive officer of the college and an ex officio member of the board  
2 of trustees, without vote, and shall serve at the pleasure of the board  
3 of trustees;

4 h. Notwithstanding the provisions of Title 11, Civil Service, of the  
5 Revised Statutes, upon nomination by the president appoint a treasurer  
6 and such deans and other professional members of the academic,  
7 administrative and teaching staffs as defined in section 13 of P.L.1986,  
8 c.42 (C.18A:64-21.2) as shall be required and fix their compensation  
9 and terms of employment in accordance with salary ranges and policies  
10 which shall prescribe qualifications for various classifications and shall  
11 limit the percentage of the educational staff that may be in any given  
12 classification;

13 i. Upon nomination by the president, appoint, remove, promote and  
14 transfer such other officers, agents or employees as may be required  
15 for carrying out the purposes of the college and assign their duties,  
16 determine their salaries and prescribe qualifications for all positions,  
17 all in accordance with the provisions of Title 11, Civil Service, of the  
18 Revised Statutes;

19 j. Grant diplomas, certificates and degrees;

20 k. Pursuant to the provisions of the "State College Contracts Law,"  
21 P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and  
22 agreements for the purchase of lands, buildings, equipment, materials,  
23 supplies and services; enter into contracts and agreements with the  
24 State or any of its political subdivisions or with the United States, or  
25 with any public body, department or other agency of the State or the  
26 United States or with any individual, firm, or corporation, which are  
27 deemed necessary or advisable by the board for carrying out the  
28 purposes of the college;

29 l. If necessary, take and condemn land and other property in the  
30 manner provided by the "Eminent Domain Act of 1971," P.L.1971,  
31 c.361 (C.20:3-1 et seq.), whenever authorized by law to purchase land  
32 or other property;

33 m. Adopt, after consultation with the president and faculty, bylaws  
34 and make and promulgate such rules, regulations and orders, not  
35 inconsistent with the provisions of this article, that are necessary and  
36 proper for the administration and operation of the college and the  
37 carrying out of its purposes;

38 n. Establish fees for room and board sufficient for the operation,  
39 maintenance, and rental of student housing and food service facilities;

40 o. Fix and determine tuition rates and other fees to be paid by  
41 students;

42 p. Accept from any government or governmental department,  
43 agency or other public or private body or from any other source grants  
44 or contributions of money or property, which the board may use for or  
45 in aid of any of its purposes;

46 q. Acquire by gift, purchase, condemnation or otherwise, own,

1 lease, dispose of, use and operate property, whether real, personal or  
 2 mixed, or any interest therein, which is necessary or desirable for  
 3 college purposes;

4 r. Employ architects to plan buildings; secure bids for the  
 5 construction of buildings and for the equipment thereof; make  
 6 contracts for the construction of buildings and for equipment; and  
 7 supervise the construction of buildings;

8 s. Manage and maintain, and provide for the payment of all charges  
 9 and expenses in respect to all properties utilized by the college;

10 t. Borrow money for the needs of the college, as deemed requisite  
 11 by the board, in such amounts, and for such time and upon such terms  
 12 as may be determined by the board, provided that this borrowing shall  
 13 not be deemed or construed to create or constitute a debt, liability, or  
 14 a loan or pledge of the credit, or be payable out of property or funds,  
 15 other than moneys appropriated for that purpose, of the State;

16 u. Authorize any new program, educational department or school  
 17 consistent with the institution's programmatic mission or approved by  
 18 the commission;

19 v. (Deleted by amendment, P.L.1994, c.48); [and]

20 w. Pursuant to the "State College Contracts Law," P.L.1986, c.43  
 21 (C.18A:64-52 et seq.), award contracts and agreements for the  
 22 [performance of any construction work or the furnishing of any  
 23 materials or supplies to the lowest] purchase of goods and services,  
 24 as distinct from contracts or agreements for the construction of  
 25 buildings and other improvements, to that responsible bidder whose  
 26 bid, conforming to the invitation for bids, will be most advantageous  
 27 to the State [colleges] college, price and other factors considered; and

28 x. Pursuant to the "State College Contracts Law," P.L.1986, c.43  
 29 (C.18A:64-52 et seq.), award contracts and agreements for the  
 30 construction of buildings and other improvements <sup>2</sup>[, either]<sup>2</sup> to the  
 31 lowest responsible bidder, whose bid, conforming to the invitation for  
 32 bids, will be the most advantageous to the State college <sup>2</sup>[, or to the  
 33 bidder whose proposal, conforming to the request for proposals, will  
 34 be most advantageous to the State college, depending upon the  
 35 method of contracting] <sup>2</sup>.<sup>1</sup>

36 (cf: P.L.1994, c.48, s.96)

37

38 <sup>1</sup>[1.] 2.<sup>1</sup> Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended  
 39 to read as follows:

40 2. As used in this article, unless the context otherwise indicates:

41 a. "Board of trustees" means the board of a State college;

42 b. "Contracting agent" means the business officer of the State  
 43 college having the power to prepare advertisements, to advertise for  
 44 and receive bids, and to make awards for the State college in  
 45 connection with the purchases, contracts or agreements permitted by  
 46 this article or the officer, committee or employee to whom the power

- 1 has been delegated by the State college;
- 2 c. "Contracts" means contracts or agreements for the performance  
3 of work or the furnishing or hiring of services, materials or supplies,  
4 as distinguished from contracts of employment;
- 5 d. "Legal newspaper" means a newspaper circulating in this State  
6 which has been printed and published in the English language at least  
7 once a week for at least one year continuously;
- 8 e. "Materials" includes goods and property subject to chapter 2 of  
9 Title 12A of the New Jersey Statutes, apparatus or any other tangible  
10 thing, except real property or any interest therein;
- 11 f. "Extraordinary unspecifiable services" means services or  
12 products which cannot be reasonably described by written  
13 specifications;
- 14 g. "Professional services" means services rendered or performed by  
15 a person authorized by law to practice a recognized profession and  
16 whose practice is regulated by law and the performance of which  
17 services requires knowledge of an advanced type in a field of learning  
18 acquired by a prolonged formal course of specialized instruction and  
19 study as distinguished from general academic instruction or  
20 apprenticeship and training. Professional services also means services  
21 rendered in the performance of work that is original and creative in  
22 character in a recognized field of artistic endeavor;
- 23 h. "Project" means any work, undertaking, construction or  
24 alteration;
- 25 i. "Purchases" are transactions, for a valuable consideration,  
26 creating or acquiring an interest in goods, services and property except  
27 real property or any interest therein;
- 28 j. "State college" means an institution of higher education  
29 established pursuant to chapter 64 of Title 18A of the New Jersey  
30 Statutes;
- 31 k. "Work" includes services and any other activity of a tangible or  
32 intangible nature performed or assumed pursuant to a contract or  
33 agreement with a State college ;
- 34 l. "Information technology" means telecommunication goods and  
35 services, including, but not limited to, software, hardware and systems  
36 implementation and support for voice, data and video <sup>2</sup>[<sup>1</sup>;
- 37 m. "Design-build method" means the use of a single contract to  
38 accomplish the design and construction of a facility;
- 39 n. "Construction manager-at-risk" means a sole proprietorship,  
40 partnership, corporation, or other legal entity that assumes the risk for  
41 construction, rehabilitation, alteration or repair of a facility at the  
42 contracted price as a general contractor and provides consultation to  
43 the institution regarding construction during and after the design of the  
44 facility<sup>1</sup>]<sup>2</sup>.
- 45 (cf: P.L.1986, c.43, s.2)

1       <sup>1</sup>[2.] 3.<sup>1</sup> Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to  
2 read as follows:

3       3. a. Any purchase, contract or agreement for the performance of  
4 any work or the furnishing or hiring of materials or supplies, the cost  
5 or price of which, together with any sums expended for the  
6 performance of any work or services in connection with the same  
7 project or the furnishing of similar materials or supplies during the  
8 same fiscal year, paid with or out of college funds, does not exceed the  
9 total sum of ~~[\$17,700]~~ <sup>2</sup>~~[\$25,000]~~ \$26,200<sup>2</sup> or, commencing January  
10 1, ~~[1997]~~ 2005, the amount determined pursuant to subsection b. of  
11 this section, in any fiscal year may be made, negotiated and awarded  
12 by a contracting agent, when so authorized by resolution of the board  
13 of trustees of the State college without public advertising for bids and  
14 bidding therefor.

15       b. Commencing January 1, ~~[1997]~~ 2005 and every two years  
16 thereafter, the Governor, in consultation with the Department of the  
17 Treasury, shall adjust the threshold amount set forth in subsection a.  
18 of this section in direct proportion to the rise or fall of the Consumer  
19 Price Index for all urban consumers in the New York and Northeastern  
20 New Jersey and the Philadelphia areas, as reported by the United  
21 States Department of Labor. The adjustment shall become effective  
22 on July 1 of the year in which it is reported.

23       c. Any purchase, contract or agreement made pursuant to this  
24 section may be awarded for a period of ~~[12]~~ 36 consecutive months,  
25 notwithstanding that the ~~[12]~~ 36 -month period does not coincide  
26 with the fiscal year.

27 (cf: P.L.1997, c.292, s.1)

28

29       <sup>1</sup>[3.] 4.<sup>1</sup> Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended  
30 to read as follows:

31       4. Every contract or agreement for the performance of any work  
32 or the furnishing or hiring of any materials or supplies, the cost or the  
33 contract price of which is to be paid with or out of college funds, not  
34 included within the terms of section 3 of this article, shall be made and  
35 awarded only by the State college after public advertising for bids and  
36 bidding therefor, except as provided otherwise in this article or  
37 specifically by any other law. No work, materials or supplies shall be  
38 undertaken, acquired or furnished for a sum exceeding in the  
39 aggregate ~~[\$17,700]~~ <sup>2</sup>~~[\$25,000]~~ \$26,200<sup>2</sup> or, commencing January  
40 1, ~~[1997]~~ 2005, the amount determined pursuant to subsection b. of  
41 section 3 of P.L.1986, c.43 (C.18A:64-54), except by written contract  
42 or agreement.

43 (cf: P.L.1997, c.292, s.2)

44

45       <sup>1</sup>[4.] 5.<sup>1</sup> Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended

1 to read as follows:

2 5. Any purchase, contract or agreement of the character described  
3 in section 4 of P.L.1986, c.43 (C.18A:64-55) may be made, negotiated  
4 or awarded by the State college by resolution at a public meeting of its  
5 board of trustees without public advertising for bids or bidding  
6 therefor if:

7 a. The subject matter thereof consists of:

8 (1) Professional services; or

9 (2) Extraordinary unspecifiable services and products which cannot  
10 reasonably be described by written specifications, subject, however, to  
11 procedures consistent with open public bidding whenever possible; or

12 (3) Materials or supplies which are not available from more than  
13 one potential bidder, including without limitation materials or supplies  
14 which are patented or copyrighted; or

15 (4) The doing of any work by employees of the State college; or

16 (5) The printing of all legal notices and legal briefs, records and  
17 appendices to be used in any legal proceeding to which the State  
18 college may be a party and the use of electronic data or media  
19 services, including the internet, for the printing of these legal notices  
20 and legal briefs, records and appendices ; or

21 (6) Textbooks, copyrighted materials, student produced  
22 publications and services incidental thereto, library materials including  
23 without limitation books, periodicals, newspapers, documents,  
24 pamphlets, photographs, reproductions, microfilms, pictorial or  
25 graphic works, musical scores, maps, charts, globes, sound recordings,  
26 slides, films, filmstrips, video and magnetic tapes, other printed or  
27 published matter and audiovisual and other materials of a similar  
28 nature, necessary binding or rebinding of library materials and  
29 specialized library services ,including electronic databases and digital  
30 formats ; or

31 (7) Food supplies and services, including food supplies and  
32 management contracts for student centers, dining rooms and  
33 cafeterias; or

34 (8) The supplying of any product or the rendering of any service  
35 by the public utility which is subject to the jurisdiction of the Board of  
36 Public Utilities, in accordance with tariffs and schedules of charges  
37 made, charged and exacted, filed with that board; or

38 (9) Equipment repair service if in the nature of an extraordinary  
39 unspecifiable service and necessary parts furnished in connection with  
40 the services; or

41 (10) Specialized machinery or equipment of a technical nature  
42 which will not reasonably permit the drawing of specifications, and the  
43 procurement thereof without advertising is in the public interest; or

44 (11) Insurance, including the purchase of insurance coverage and  
45 consulting services, which exceptions shall be in accordance with the  
46 requirements for extraordinary unspecifiable services; or



- 1 (12) Publishing of legal notices in newspapers as required by law  
2 and the use of electronic data or media services, including the internet,  
3 for the publication of the legal notices; or
- 4 (13) The acquisition of artifacts or other items of unique intrinsic,  
5 artistic or historic character; or
- 6 (14) The collection of amounts due on student loans, including  
7 without limitation loans guaranteed by or made with funds of the  
8 United States of America , and amounts due on other financial  
9 obligations to the State college, including but not limited to, the  
10 amounts due on tuition and fees and room and board ; or
- 11 (15) **[Professional consulting]** <sup>1</sup>**[Consulting]** Professional  
12 consulting<sup>1</sup> services; or
- 13 (16) Entertainment, including without limitation theatrical  
14 presentations, band and other concerts, movies and other audiovisual  
15 productions; or
- 16 (17) Contracts employing funds created by student activities fees  
17 charged to students or otherwise raised by students **[, not under the**  
18 **direct control of the college]** and expended by student organizations;  
19 or
- 20 (18) Printing <sup>1</sup>[and production and reproduction in electronic and  
21 digital formats, including compact discs]<sup>1</sup>, including without limitation  
22 catalogs, yearbooks and course announcements <sup>1</sup>and the production  
23 and reproduction of such material in electronic and digital formats,  
24 including compact discs<sup>1</sup>; or
- 25 (19) **[Data processing software programs, systems and service and**  
26 **the rental or lease of data processing equipment]** Information  
27 technology; or
- 28 (20) Personnel recruitment and advertising, including without  
29 limitation advertising seeking student enrollment; or
- 30 (21) Educational supplies, books, articles of clothing and other  
31 miscellaneous articles purchased by a State college **[bookstore]** for  
32 resale to college students and employees; or
- 33 (22) Purchase or rental of graduation caps and gowns and award  
34 certificates or plaques ; or
- 35 (23) Items available from vendors at costs below State contract  
36 pricing for the same product or service, which meets or exceeds the  
37 State contract terms or conditions; or
- 38 (24) Management <sup>1</sup>[and operation of property] contracts for  
39 bookstores, performing arts centers, residence halls, parking facilities  
40 and building operations; or
- 41 (25) Consulting services involving information technology,  
42 curricular or programmatic review, fund raising, transportation, safety  
43 or security; or
- 44 (26) Construction management services for construction, alteration  
45 or repair of any building or improvement; or

1       (27) Purchase or rental of equipment of a technical nature when the  
2 procurement thereof without advertising is necessary in order to assure  
3 standardization of equipment and interchangeability of parts in the  
4 public interest<sup>1</sup>.

5       b. It is to be made or entered into with the United States of  
6 America, the State of New Jersey, a county or municipality or any  
7 board, body, or officer, agency or authority or any other state or  
8 subdivision thereof.

9       c. The State college has advertised for bids pursuant to section 4  
10 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has  
11 received no bids on both occasions in response to its advertisement, or  
12 (ii) has rejected the bids on two occasions because the State college  
13 has determined that they are not reasonable as to price, on the basis of  
14 cost estimates prepared for or by the State college prior to the  
15 advertising therefor, or have not been independently arrived at in open  
16 competition, or (iii) on one occasion no bids were received pursuant  
17 to (i) and on one occasion all bids were rejected pursuant to (ii), in  
18 whatever sequence; any contract or agreement may then be negotiated  
19 by a two-thirds affirmative vote of the authorized membership of the  
20 board of trustees authorizing the contract or agreement; provided that:

21       (1) A reasonable effort is just made by the contracting agent to  
22 determine that the same or equivalent materials or supplies at a cost  
23 which is lower than the negotiated price are not available from any  
24 agency or authority of the United States, the State of New Jersey or  
25 of the county in which the State college is located, or any municipality  
26 in close proximity to the State college;

27       (2) The terms, conditions, restrictions and specifications set forth  
28 in the negotiated contract or agreement are not substantially different  
29 from those which were the subject of competitive bidding pursuant to  
30 section 4 of this article; and

31       (3) Any minor amendment or modification of any of the terms,  
32 conditions, restrictions and specifications, which were the subject of  
33 competitive bidding pursuant to section 4 of P.L.1986, c.43  
34 (C.18A:64-55), shall be stated in the resolution awarding the contract  
35 or agreement; except that if on the second occasion the bids received  
36 are rejected as unreasonable as to price, the State college shall notify  
37 each responsible bidder submitting bids on the second occasion of its  
38 intention to negotiate and afford each bidder a reasonable opportunity  
39 to negotiate, but the State college shall not award the contract or  
40 agreement unless the negotiated price is lower than the lowest rejected  
41 bid price submitted on the second occasion by a responsible bidder, is  
42 the lowest negotiated price offered by any reasonable vendor, and is  
43 a reasonable price for the work, materials, supplies or services.  
44 Whenever a State college shall determine that a bid was not arrived at  
45 independently in open competition pursuant to subsection c. (ii) of this  
46 section, it shall thereupon notify the Attorney General of the facts

1 upon which its determination is based and, when appropriate, it may  
2 institute appropriate proceedings in any State or federal court of  
3 competent jurisdiction for a violation of any State or federal antitrust  
4 law or laws relating to the unlawful restraint of trade.

5 (cf: P.L.1994, c.48, s.111)

6

7 <sup>1</sup>[5.] 6.<sup>1</sup> Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to  
8 read as follows:

9 6. Any purchase, contract, or agreement may be made, negotiated  
10 or awarded by a State college without public advertising for bids and  
11 bidding therefor, notwithstanding that the cost or contract price will  
12 exceed ~~[\$17,700]~~ <sup>2</sup>~~[\$25,000]~~ \$26,200<sup>2</sup> or, commencing January 1,  
13 ~~[1997]~~ 2005, the amount determined pursuant to subsection b. of  
14 section 3 of P.L.1986, c.43 (C.18A:64-54), when an emergency  
15 affecting the health, safety or welfare of occupants of college property  
16 requires the immediate delivery of the materials or supplies or the  
17 performance of the work, if the purchases, contracts or agreements are  
18 awarded or made in the following manner:

19 a. A written requisition for the performance of the work or the  
20 furnishing of materials or supplies, certified by the employee in charge  
21 of the building, facility or equipment where the emergency occurred,  
22 is filed with the contracting agent or his deputy in charge describing  
23 the nature of the emergency, the time of its occurrence, and the need  
24 for invoking this section. The contracting agent, or his deputy in  
25 charge, being satisfied that the emergency exists, is authorized to  
26 award a contract for the work, materials or supplies.

27 b. Upon the furnishing of the work, materials or supplies in  
28 accordance with the terms of the contract or agreement, the contractor  
29 furnishing the work, materials or supplies is entitled to be paid  
30 therefor and the State college is obligated for the payment.

31 c. The board of trustees may prescribe rules and procedures to  
32 implement the requirements of this section.

33 (cf: P.L.1997, c.292, s.3)

34

35 <sup>1</sup>[6.] 7.<sup>1</sup> Section 9 of P.L.1986, c.43 (C.18A:64-60) is amended  
36 to read as follows:

37 9. a. Any State college, without advertising for bids, or after  
38 having rejected all bids obtained pursuant to advertising therefor, may  
39 purchase any materials, supplies, goods, services or equipment  
40 pursuant to a contract or contracts for those materials, supplies,  
41 goods, services or equipment entered into on behalf of the State by the  
42 Division of Purchase and Property or <sup>1</sup>entered into by some other  
43 governmental agency. <sup>1</sup>any municipality or county in this State<sup>1</sup>.

44 b. A State college may also use, without advertising for bids, or  
45 having rejected all bids obtained pursuant to advertising, the Federal  
46 Supply Schedules of the General Services Administration <sup>1</sup>[as

1 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
2 Pub.L.103-355, and federal regulations adopted thereunder] subject  
3 to the following conditions:

4 (1) the price of the goods or services being procured is no greater  
5 than the price offered to federal agencies;

6 (2) the State college receives the benefit of federally mandated  
7 price reductions during the term of the contract and is protected from  
8 price increases during that time; and

9 (3) the price of the goods or services being procured is no greater  
10 than the price of the same or equivalent goods or services under any  
11 State contract, unless the State college determines that because of  
12 factors other than price, selection of a vendor from the Federal Supply  
13 Schedules would be more advantageous to the State college<sup>1</sup>.

14 c. Whenever a purchase is made <sup>1</sup>pursuant to this section<sup>1</sup>, the  
15 State college shall place its order with the vendor offering the lowest  
16 price, including delivery charges, that best meets the requirements of  
17 the State college. Prior to placing such an order, the State college  
18 shall document with specificity that the materials, supplies, goods,  
19 services or equipment selected best meet the requirements of the State  
20 college.

21 (cf: P.L.1996, c.16, s.5)

22  
23 <sup>1</sup>[7.] §.1 Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended  
24 to read as follows:

25 14. All advertisements for bids shall be published in a legal  
26 newspaper sufficiently in advance of the date fixed for receiving the  
27 bids to promote competitive bidding but in no event less than 10 days  
28 prior to that date for any construction projects or any other contract  
29 or purchase. In addition to being published in a legal newspaper,  
30 advertisements may also be posted using electronic data or media  
31 services, including the internet. The advertisement shall designate the  
32 manner of submitting and of receiving the bids and the time and place  
33 at which the bids will be received. If the published specifications  
34 provide for receipt of bids by mail, those bids which are mailed to the  
35 State college shall be sealed and shall be opened only at such time and  
36 place as all bids received are unsealed and announced. At that time and  
37 place, the contracting agent of the State college shall publicly receive  
38 the bids and thereupon immediately proceed to unseal them and  
39 publicly announce the contents, which announcement shall be made in  
40 the presence of any parties bidding or their agents who are then and  
41 there present. A proper record of the prices and terms shall be made.  
42 No bids shall be received after the time designated in the  
43 advertisement.

44 (cf: P.L.1994, c.48, s.115)

45  
46 <sup>1</sup>9. Section 16 of P.L.1986, c.43 (C.18A:64-67) is amended to read

1 as follows:

2 16. There may be required from any person bidding on any  
3 purchase, contract or agreement, advertised in accordance with law,  
4 that the bid be accompanied by a guaranty payable to the State college  
5 that, if the purchase, contract or agreement is awarded to him, he will  
6 enter into a contract therefor [and will furnish any performance bond  
7 or other security which may be required pursuant to section 17 of this  
8 article]. The guaranty shall be in the amount of 10% of the bid but  
9 not in excess of \$20,000.00, except as otherwise provided herein, and  
10 may be given, at the option of the bidder, by certified check, cashier's  
11 check or bid bond. For a construction contract the guaranty shall be  
12 in the amount of 10% of the bid. In the event that any law or  
13 regulation of the United States imposes any condition upon the  
14 awarding of a monetary grant to any State college, which condition  
15 requires a guaranty in an amount other than 10% of the bid or in  
16 excess of \$20,000.00, the provisions of this section shall not apply and  
17 the requirements of the law or regulation of the United States shall  
18 govern.

19 The college may require a bid guaranty alone without also requiring  
20 a performance bond or other security in the contract.<sup>1</sup>

21 (cf: P.L.1986, c.43, s.16)

22

23 <sup>1</sup>10. Section 17 of P.L.1986, c.43 (C.18A:64-68) is amended to  
24 read as follows:

25 17. a. In addition to or independently of the guaranty which may  
26 be required pursuant to this article, the State college may require that  
27 the successful bidder provide a surety company bond or other security  
28 acceptable to the State college:

29 (1) For the faithful performance of all provisions of the  
30 advertisement for bids, the specifications and any other documents  
31 issued to bidders or a repair or maintenance bond; and

32 (2) In a form which may be required in the specifications or other  
33 documents issued to bidders.

34 b. In every case in which a performance bond is required, the  
35 requirement shall be set forth in the specifications or other documents  
36 issued to all bidders [, and every bidder shall be required to submit  
37 with the bid a certificate from a surety company stating that it will  
38 provide that bidder with a performance bond in the specified amount  
39 and form].

40 c. The State college shall require that all performance bonds be  
41 issued by a surety which meets the following standards:

42 (1) The surety shall have the minimum surplus and capital stock or  
43 net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is  
44 appropriate, at the time the invitation to bid is issued; and

45 (2) With respect to all payment and performance bonds in the  
46 amount of \$850,000 or more, (a) if the amount of the bond is at least

1 \$850,000 but not more than \$3.5 million, the surety shall hold a  
2 current certificate of authority, issued by the United States Secretary  
3 of the Treasury pursuant to 31 U.S.C.9305, that is valid in the State  
4 of New Jersey as listed annually in the United States Treasury Circular  
5 570, except that if the surety has been operational for a period in  
6 excess of five years, the surety shall be deemed to meet the  
7 requirements of this subparagraph if it is rated in one of the three  
8 highest categories by an independent, nationally recognized United  
9 States rating company that determines the financial stability of  
10 insurance companies, which rating company or companies shall be  
11 determined pursuant to standards promulgated by the Commissioner  
12 of Insurance by regulation adopted pursuant to the "Administrative  
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (b) if the  
14 amount of the bond is more than \$3.5 million, then the surety shall  
15 hold a current certificate of authority, issued by the United States  
16 Secretary of the Treasury pursuant to 31 U.S.C. 9305, that is valid in  
17 the State of New Jersey as listed annually in the United States  
18 Treasury Circular 570 and, if the surety has been operational for a  
19 period in excess of five years, shall be rated in one of the three highest  
20 categories by an independent, nationally recognized United States  
21 rating company that determines the financial stability of insurance  
22 companies, which rating company or companies shall be determined  
23 pursuant to standards promulgated by the Commissioner of Insurance  
24 by regulation adopted pursuant to the "Administrative Procedure Act,"  
25 P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the  
26 provisions of subparagraph (b) of this paragraph which does not hold  
27 a certificate of authority issued by the United States Secretary of the  
28 Treasury shall be exempt from the requirement to hold such a  
29 certificate if the surety meets an equivalent set of standards developed  
30 by the Commissioner of Insurance through regulation which at least  
31 equal, and may exceed, the general criteria required for issuance of a  
32 certificate of authority by the United States Secretary of the Treasury  
33 pursuant to 31 U.S.C. 9305. A surety company seeking such an  
34 exemption shall, not later than the 180th day following the effective  
35 date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the  
36 appropriate State college that it meets that equivalent set of standards  
37 set forth by the commissioner as promulgated.

38 d. A State college shall not accept more than one payment and  
39 performance bond to cover a single construction contract. The State  
40 college may accept a single bond executed by more than one surety to  
41 cover a single construction contract only if the combined underwriting  
42 limitations of all the named sureties, as set forth in the most current  
43 annual revision of United States Treasury Circular 570, or as  
44 determined by the Commissioner of Insurance pursuant to  
45 R.S.17:18-9, meet or exceed the amount of the contract to be  
46 performed.

1 e. A board, officer or agent contracting on behalf of a State college  
2 shall not accept a payment or performance bond unless there is  
3 attached thereto a Surety Disclosure Statement and Certification to  
4 which each surety executing the bond shall have subscribed. This  
5 statement and certification shall be complete in all respects and duly  
6 acknowledged according to law, and shall have substantially the  
7 following form:

8 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

9  
10 , surety(ies) on the attached bond, hereby  
11 certifies(y) the following:

12 (1) The surety meets the applicable capital and surplus  
13 requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most  
14 current annual filing with the New Jersey Department of Insurance.

15 (2) The capital (where applicable) and surplus, as determined in  
16 accordance with the applicable laws of this State, of the surety(ies)  
17 participating in the issuance of the attached bond is (are) in the  
18 following amount(s) as of the calendar year ended December 31,  
19 (most recent calendar year for which capital and surplus amounts are  
20 available), which amounts have been certified as indicated by certified  
21 public accountants (indicating separately for each surety that surety's  
22 capital and surplus amounts, together with the name and address of the  
23 firm of certified public accounts that shall have certified those  
24 amounts):

25  
26  
27  
28 .  
29 (3) (a) With respect to each surety participating in the issuance of  
30 the attached bond that has received from the United States Secretary  
31 of the Treasury a certificate of authority pursuant to 31 U.S.C.9305,  
32 the underwriting limitation established therein and the date as of which  
33 that limitation was effective is as follows (indicating for each such  
34 surety that surety's underwriting limitation and the effective date  
35 thereof):

36  
37  
38  
39  
40 .  
41 (b) With respect to each surety participating in the issuance of the  
42 attached bond that has not received such a certificate of authority from  
43 the United States Secretary of the Treasury, the underwriting  
44 limitation of that surety as established pursuant to R.S.17:18-9 as of  
45 (date on which such limitation was so established) is as follows  
46 (indicating for each such surety that surety's underwriting limitation

1 and the date on which that limitation was established):

2

3

4

5

6 (4) The amount of the bond to which this statement and  
7 certification is attached is \$ .

8 (5) If, by virtue of one or more contracts of reinsurance, the  
9 amount of the bond indicated under item (4) above exceeds the total  
10 underwriting limitation of all sureties on the bond as set forth in items  
11 (3)(a) or (3)(b) above, or both, then for each such contract of  
12 reinsurance:

13 (a) The name and address of each such reinsurer under that  
14 contract and the amount of that reinsurer's participation in the contract  
15 is as follows:

16

17

18

19

; and

20 (b) Each surety that is party to any such contract of reinsurance  
21 certifies that each reinsurer listed under item (5)(a) satisfies the credit  
22 for reinsurance requirement established under P.L.1993, c.243  
23 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the  
24 date on which the bond to which this statement and certification is  
25 attached shall have been filed with the appropriate public agency.

26

CERTIFICATE

27

(to be completed by an authorized certifying agent

28

for each surety on the bond)

29

30 I (name of agent) , as (title of agent) for (name of  
31 surety) , a corporation/mutual insurance company/other (indicating  
32 type of business organization) (circle one) domiciled in (state of  
33 domicile) , DO HEREBY CERTIFY that, to the best of my  
34 knowledge, the foregoing statements made by me are true, and  
35 ACKNOWLEDGE that, if any of those statements are false, this bond  
36 is VOID.

37

38

39

(Signature of certifying agent)

40

41

(Printed name of certifying agent)

42

43

(Title of certifying agent)<sup>1</sup>

44

(cf: P.L.1995, c.384, s.4)

45

46

<sup>1</sup>11. Section 18 of P.L.1986, c.43 (C.18A:64-69) is amended to



1 read as follows:

2 18. The State college shall award the contract or reject all bids  
3 within such time as may be specified in the specifications or other  
4 documents issued to all bidders, but in no case more than 60 days,  
5 except the bids of any bidders who consent thereto, either before or  
6 after the 60 day period, may, at the request of the State college, be  
7 held for consideration for such longer period of time as may be agreed.  
8 [All bid security except the security of the three apparent lowest  
9 responsible bidders shall, if requested, be returned within 30 days from  
10 the opening of the bids, Sundays and holidays excepted, and the bids  
11 of those bidders shall be considered as withdrawn.] Within three days,  
12 Sundays and holidays excepted, after the awarding of the contract and  
13 the approval of the successful bidder's performance bond, if any, the  
14 bid guaranty of the remaining bidders shall be returned to them.<sup>1</sup>  
15 (cf: P.L.1986, c.43, s.18)

16

17 <sup>1</sup>12. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to  
18 read as follows:

19 19. All [purchases,] contracts or agreements for the purchase of  
20 goods and services, as distinct from contracts or agreements for the  
21 construction of buildings and other improvements, which require  
22 public advertisement for bids shall be awarded by the board of trustees  
23 to the [lowest] responsible bidder whose bid, conforming to the  
24 invitation for bids, will be most advantageous to the State college,  
25 price and other factors considered.

26 Prior to the award of any [other purchase,] contract or agreement  
27 which does not require public advertisement, the estimated cost of  
28 which is 20% or more of the amount set forth in this act or,  
29 commencing January 1, 1985, 20% of the amount determined by the  
30 Governor pursuant to subsection b. of section 3 of this act, the  
31 contracting agent shall, except in the case of professional services,  
32 solicit quotations therefor whenever practicable, and the award thereof  
33 shall be made, in accordance with section 3 of this article, on the basis  
34 of the [lowest responsible quotation received] quotation, conforming  
35 to the request for proposals, which is most advantageous to the State  
36 college, price and other factors considered; however, if the contracting  
37 agent deems it impractical to solicit competitive quotations or having  
38 sought the quotations determines that the award should not be made  
39 on [the] that basis [of the lowest quotation received], the contracting  
40 agent shall file a statement of explanation of the reason or reasons  
41 therefor, which shall be placed on file with the purchase, contract, or  
42 agreement.<sup>1</sup>

43 (cf: P.L.1986, c.43, s.19)

44

45 <sup>1</sup>[8.] 13.<sup>1</sup> Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is  
46 amended to read as follows:

1 2. a. Whenever the entire cost for the construction, alteration or  
2 repair of any building by a State college will exceed the amount  
3 determined pursuant to subsection b. of section 3 of P.L.1986, c.43  
4 (C.18A:64-54), the contracting agent shall <sup>2</sup>[. except as otherwise  
5 provided pursuant to subsection c. of this section.]<sup>2</sup> advertise for and  
6 receive in the manner provided by law:

7 (1) separate bids for the following categories of work:

8 (a) the plumbing and gas fitting work;

9 (b) the heating and ventilating systems and equipment;

10 (c) the electrical work, including any electrical power plants;

11 (d) the structural steel and ornamental iron work;

12 (e) all other work and materials required for the completion of the  
13 project, or

14 (2) bids for all work and materials required to complete the entire  
15 project if awarded as a single contract, or

16 (3) both (1) and (2) above.

17 All bids submitted shall set forth the names and license numbers of  
18 <sup>1</sup>[, and evidence of performance security from,]<sup>1</sup> all subcontractors to  
19 whom the bidder will subcontract the work described in the foregoing  
20 categories (a) through (e).

21 b. Contracts <sup>2</sup>[awarded under subsection a. of this section]<sup>2</sup> shall  
22 be awarded to the lowest responsible bidder whose bid, conforming to  
23 the invitation for bids, will be the most advantageous to the State  
24 college. <sup>1</sup>Whenever two or more bids of equal amounts are the lowest  
25 bids submitted by responsible parties, the college may award the  
26 contract to any of the parties, as, in its discretion, it may determine.<sup>1</sup>

27 <sup>2</sup>[c. In cases of bids for construction, alteration or repair of any  
28 building, if the contracting agent does not advertise for and receive  
29 bids in the manner provided for in subsection a. of this section, the  
30 contracting agent shall use one of the following procedures:

31 (1) bids for work using the design-build method, when sufficient  
32 information is available to permit a design-build firm to prepare a  
33 response to a State college's request for proposal; or

34 (2) <sup>1</sup>[bids for work using the construction manager-agent method,  
35 when the construction manager-agent may represent the State college  
36 in a fiduciary capacity and may perform general conditions as provided  
37 in the contract; or

38 (3) <sup>1</sup> bids for work using construction manager-at-risk method,  
39 when the construction manager-at-risk assumes the risk for  
40 construction at the contracted price.

41 Contracts awarded under this subsection shall be awarded to the  
42 bidder whose proposal, conforming to the requests for proposal, will  
43 be most advantageous to the State college.]<sup>2</sup>

44 (cf: P.L.1992, c.61, s.2)

1       <sup>1</sup>[9.] 14.<sup>1</sup> Section 26 of P.L.1986, c.43 (C.18A:64-77) is amended  
2 to read as follows:

3       26. All specifications for the doing of any construction work for a  
4 State college shall fix the date before which the work shall be  
5 completed, or the number of working days to be allowed for its  
6 completion, and every contract shall contain a provision [for] that if  
7 the construction work is not completed by the date fixed for  
8 completion or in the number of days allowed for completion, as set  
9 forth in the specifications, there shall be a deduction from the contract  
10 price for any moneys paid by the college [to any inspector necessarily  
11 employed by it on the work for any number of days in excess of the  
12 number allowed in the specifications] <sup>1</sup>to other contractors<sup>1</sup> for the  
13 completion of the project<sup>1</sup>. This requirement shall not preclude the  
14 State college from seeking liquidated damages or other remedies<sup>1</sup>.  
15 (cf: P.L.1986, c.43, s.26)

16  
17       <sup>1</sup>[10.]15.<sup>1</sup> Section 27 of P.L.1986, c.43 (C.18A:64-78) is  
18 amended to read as follows:

19       27. Any college may, by resolution of its board of trustees,  
20 authorize the sale in the following manner of its personal property not  
21 needed for college purposes:

22       a. If the estimated fair value of the property to be sold exceeds  
23 [\$17,700]<sup>2</sup> [~~\$25,000~~] \$26,200<sup>2</sup> or, commencing January 1, [1997]  
24 2005, the amount determined pursuant to subsection b. of section 3 of  
25 P.L.1986, c.43 (C.18A:64-54), in any one sale and the property does  
26 not consist of perishable goods, it shall be sold at public sale to the  
27 highest bidder.

28       b. Notice of the date, time and place of the public sale, together  
29 with a description of the items to be sold and the conditions of sale,  
30 shall be published once in a legal newspaper. Sales shall be held not  
31 less than seven nor more than 14 days after the publication of the  
32 notice thereof.

33       c. Personal property may be sold to the United States, the State of  
34 New Jersey, another college or to any body politic by private sale  
35 without advertising for bids.

36       d. If no bids are received, the property may then be sold at private  
37 sale without further publication or notice thereof but in no event at  
38 less than the estimated fair value; or the State college may, if it so  
39 elects, reoffer the property at public sale. As used herein, "estimated  
40 fair value" means the market value of the property if sold by a willing  
41 seller to a willing buyer less the cost to the college of continuing to  
42 store or maintain the property.

43       e. A State college may reject all bids if it determines a rejection to  
44 be in the public interest. In any case in which the college has rejected  
45 all bids, it may readvertise the personal property for a subsequent  
46 public sale. If it elects to reject all bids at a second public sale pursuant

1 to this section, it may then sell the personal property without further  
 2 publication or notice thereof at private sale, but in no event shall the  
 3 negotiated price at the private sale be less than the amount of the  
 4 highest bid rejected at the preceding two public sales, nor shall the  
 5 terms or conditions of sale be changed or amended.

6 f. If the estimated fair value of the property to be sold does not  
 7 exceed ~~[\$17,700]~~ <sup>2</sup>~~[\$25,000]~~ \$26,200<sup>2</sup> or, commencing January 1,  
 8 ~~[1997]~~ 2005, the amount determined pursuant to subsection b. of  
 9 section 3 of P.L.1986, c.43 (C.18A:64-54), in any one sale or the  
 10 property consists of perishable goods, it may be sold at private sale  
 11 without advertising for bids.

12 (cf: P.L.1997, c.292, s.4)

13  
 14 <sup>1</sup>~~[11.]~~ 16.<sup>1</sup> Section 28 of P.L.1986, c.43 (C.18A:64-79) is  
 15 amended to read as follows:

16 28. A State college may only enter a contract exceeding ~~[12]~~ 36  
 17 consecutive months for the:

18 a. Supplying of ~~[(1)]~~ <sup>1</sup>~~[ Fuel]~~ fuel<sup>1</sup> and oil for heating and other  
 19 purposes and utilities for any term not exceeding in the aggregate  
 20 ~~[three]~~ five years; or

21 ~~[(2)]~~ Fuel or oil for use in automobiles, autobuses, motor vehicles  
 22 or equipment for any term not exceeding in the aggregate three years;  
 23 or]

24 b. Plowing and removal of snow and ice for any term not exceeding  
 25 in the aggregate ~~[three]~~ five years; or

26 c. Collection and disposal of garbage and refuse for any term not  
 27 exceeding in the aggregate ~~[three]~~ five years; or

28 d. ~~[Data processing programs, systems and services or rental or~~  
 29 ~~lease of data processing equipment]~~ <sup>1</sup>~~[Information]~~ Purchase, lease  
 30 or servicing of information<sup>1</sup> technology for any term of not more than  
 31 five years; or

32 e. Insurance for any term of not more than ~~[three]~~ five years; or

33 f. Leasing or service of automobiles, motor vehicles, ~~[electronic~~  
 34 ~~communications equipment]~~ <sup>1</sup>~~[information technology ,]~~<sup>1</sup> machinery  
 35 and equipment of every nature and kind for any term not exceeding in  
 36 the aggregate five years; or

37 g. ~~[ Supplying of any product or rendering of any service by a~~  
 38 ~~telephone company which is subject to the jurisdiction of the Board of~~  
 39 ~~Public Utilities, for a term not exceeding five years; or]~~ ~~(Deleted by~~  
 40 ~~amendment, P.L. , c. )~~ ~~(now pending before the Legislature as this~~  
 41 ~~bill)~~

42 h. Providing of food supplies and services, including food supplies  
 43 and management contracts for student centers, dining rooms , vending  
 44 operations, and cafeterias, for a term not exceeding ~~[three]~~ five years;  
 45 or

1 i. Performance of work or services or the furnishing of materials or  
 2 supplies for the purpose of conserving energy in buildings owned by,  
 3 or operations conducted by, the contracting unit, the entire price of  
 4 which is to be established as a percentage of the resultant savings in  
 5 energy costs, for a term not exceeding 10 years; provided that a  
 6 contract is entered into only subject to and in accordance with [rules  
 7 and regulations adopted] <sup>1</sup>rules and regulations adopted and<sup>1</sup>  
 8 guidelines promulgated by the [Department of Energy] Board of  
 9 Public Utilities establishing a methodology for computing energy cost  
 10 savings; or

11 j. Any single project for the construction, reconstruction or  
 12 rehabilitation of a public building, structure or facility, or a public  
 13 works project, including the retention of the services of an architect  
 14 [or] , engineer , construction manager, or other consultant in  
 15 connection with the project, for the length of time necessary for the  
 16 completion of the actual construction; or

17 k. The management and operation of bookstores <sup>1</sup>[or other  
 18 auxiliary services] , performing arts centers, residence halls, parking  
 19 facilities and building operations<sup>1</sup> for a term not exceeding five years;  
 20 or

21 l. The provision of banking, financial services, and e-commerce  
 22 services for a term not exceeding five years; or

23 m. The provision of services for maintenance and repair of building  
 24 systems, including, but not limited to, fire alarms, fire suppression  
 25 systems, security systems, and heating, ventilation, and air  
 26 conditioning systems for a term not exceeding five years <sup>1</sup>; or

27 n. Purchase of alternative energy or the purchase or lease of  
 28 alternative energy services or equipment for conservation or cost  
 29 saving purposes for a term not exceeding 10 years<sup>1</sup> .

30 All multiyear leases and contracts entered into pursuant to this  
 31 section, except [contracts for the leasing or servicing of equipment  
 32 supplied by a telephone company which is subject to the jurisdiction  
 33 of the Board of Public Utilities or] contracts and agreements for the  
 34 provision of work or the supplying of equipment to promote energy  
 35 conservation and authorized pursuant to subsection i. of this section,  
 36 shall contain a clause making them subject to the availability and  
 37 appropriation annually of sufficient funds to meet the extended  
 38 obligation or contain an annual cancellation clause.

39 (cf: P.L.1994, c.48, s.117)

40

41 <sup>1</sup>17. <sup>2</sup>[The following sections are hereby repealed:]<sup>2</sup>

42 Section 20 of P.L.1986, c.43 (C.18A:64-71) <sup>2</sup>[:

43 Section 24 of P.L.1986, c.43 (C.18A:64-75)] is repealed<sup>2</sup> .<sup>1</sup>

44

45 <sup>1</sup>[12. Sections 1 through 7, 9,10 and 11 of this] 18. This<sup>1</sup> act  
 46 shall take effect <sup>1</sup>[immediately, and section 8 shall take effect 60

1 days] on the 60th day<sup>1</sup> after enactment and apply to <sup>1</sup>[projects bid]  
2 contracts for which bids are solicited on and<sup>1</sup> after <sup>1</sup>[that date] the  
3 effective date<sup>1</sup>.  
4  
5  
6 \_\_\_\_\_  
7  
8 Raises the statutory threshold for the public advertisement of bids  
9 under the "State College Contracts Law" and makes other changes to  
10 that law.

# ASSEMBLY, No. 2641

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## STATE OF NEW JERSEY

### 211th LEGISLATURE

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INTRODUCED MAY 3, 2004

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Assemblyman LOUIS MANZO**

**District 31 (Hudson)**

**Co-Sponsored by:**

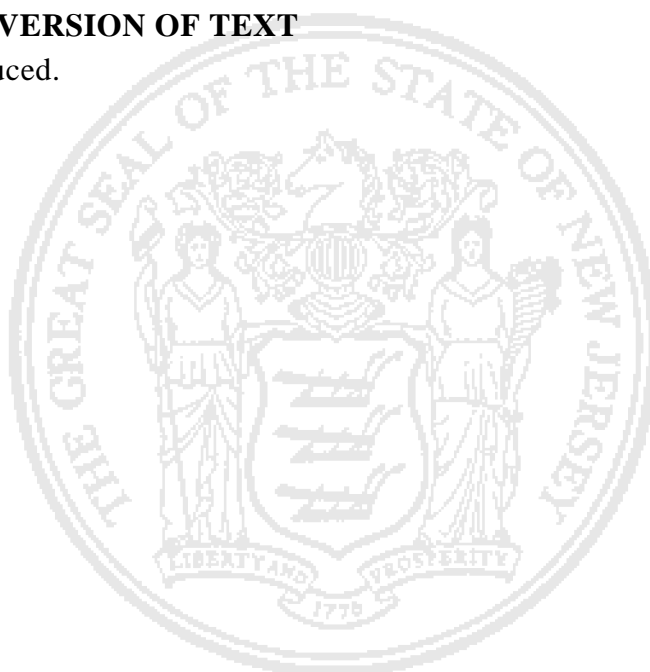
**Assemblyman Diegnan**

**SYNOPSIS**

Raises the statutory threshold for the public advertisement of bids under the "State College Contracts Law" and makes other changes to that law.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/28/2004)**

A2641 GREENWALD, MANZO

2

1 AN ACT concerning the awarding of State college and university  
2 contracts and amending P.L.1986, c.43 and P.L.1992, c.61.

3

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

6

7 1. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to read  
8 as follows:

9 2. As used in this article, unless the context otherwise indicates:

10 a. "Board of trustees" means the board of a State college;

11 b. "Contracting agent" means the business officer of the State  
12 college having the power to prepare advertisements, to advertise for  
13 and receive bids, and to make awards for the State college in  
14 connection with the purchases, contracts or agreements permitted by  
15 this article or the officer, committee or employee to whom the power  
16 has been delegated by the State college;

17 c. "Contracts" means contracts or agreements for the performance  
18 of work or the furnishing or hiring of services, materials or supplies,  
19 as distinguished from contracts of employment;

20 d. "Legal newspaper" means a newspaper circulating in this State  
21 which has been printed and published in the English language at least  
22 once a week for at least one year continuously;

23 e. "Materials" includes goods and property subject to chapter 2 of  
24 Title 12A of the New Jersey Statutes, apparatus or any other tangible  
25 thing, except real property or any interest therein;

26 f. "Extraordinary unspecifiable services" means services or  
27 products which cannot be reasonably described by written  
28 specifications;

29 g. "Professional services" means services rendered or performed by  
30 a person authorized by law to practice a recognized profession and  
31 whose practice is regulated by law and the performance of which  
32 services requires knowledge of an advanced type in a field of learning  
33 acquired by a prolonged formal course of specialized instruction and  
34 study as distinguished from general academic instruction or  
35 apprenticeship and training. Professional services also means services  
36 rendered in the performance of work that is original and creative in  
37 character in a recognized field of artistic endeavor;

38 h. "Project" means any work, undertaking, construction or  
39 alteration;

40 i. "Purchases" are transactions, for a valuable consideration,  
41 creating or acquiring an interest in goods, services and property except  
42 real property or any interest therein;

43 j. "State college" means an institution of higher education

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**



1 established pursuant to chapter 64 of Title 18A of the New Jersey  
2 Statutes;

3 k. "Work" includes services and any other activity of a tangible or  
4 intangible nature performed or assumed pursuant to a contract or  
5 agreement with a State college ;

6 l. "Information technology" means telecommunication goods and  
7 services, including, but not limited to, software, hardware and systems  
8 implementation and support for voice, data and video.

9 (cf: P.L.1986, c.43, s.2)

10

11 2. Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to read  
12 as follows:

13 3. a. Any purchase, contract or agreement for the performance of  
14 any work or the furnishing or hiring of materials or supplies, the cost  
15 or price of which, together with any sums expended for the  
16 performance of any work or services in connection with the same  
17 project or the furnishing of similar materials or supplies during the  
18 same fiscal year, paid with or out of college funds, does not exceed the  
19 total sum of ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~  
20 2005, the amount determined pursuant to subsection b. of this section,  
21 in any fiscal year may be made, negotiated and awarded by a  
22 contracting agent, when so authorized by resolution of the board of  
23 trustees of the State college without public advertising for bids and  
24 bidding therefor.

25 b. Commencing January 1, ~~[1997]~~ 2005 and every two years  
26 thereafter, the Governor, in consultation with the Department of the  
27 Treasury, shall adjust the threshold amount set forth in subsection a.  
28 of this section in direct proportion to the rise or fall of the Consumer  
29 Price Index for all urban consumers in the New York and Northeastern  
30 New Jersey and the Philadelphia areas, as reported by the United  
31 States Department of Labor. The adjustment shall become effective  
32 on July 1 of the year in which it is reported.

33 c. Any purchase, contract or agreement made pursuant to this  
34 section may be awarded for a period of ~~[12]~~ 36 consecutive months,  
35 notwithstanding that the ~~[12]~~ 36 -month period does not coincide  
36 with the fiscal year.

37 (cf: P.L.1997, c.292, s.1)

38

39 3. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to read  
40 as follows:

41 4. Every contract or agreement for the performance of any work  
42 or the furnishing or hiring of any materials or supplies, the cost or the  
43 contract price of which is to be paid with or out of college funds, not  
44 included within the terms of section 3 of this article, shall be made and  
45 awarded only by the State college after public advertising for bids and  
46 bidding therefor, except as provided otherwise in this article or

1 specifically by any other law. No work, materials or supplies shall be  
2 undertaken, acquired or furnished for a sum exceeding in the  
3 aggregate ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~  
4 2005, the amount determined pursuant to subsection b. of section 3  
5 of P.L.1986, c.43 (C.18A:64-54), except by written contract or  
6 agreement.

7 (cf: P.L.1997, c.292, s.2)

8

9 4. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to read  
10 as follows:

11 5. Any purchase, contract or agreement of the character described  
12 in section 4 of P.L.1986, c.43 (C.18A:64-55) may be made, negotiated  
13 or awarded by the State college by resolution at a public meeting of its  
14 board of trustees without public advertising for bids or bidding  
15 therefor if:

16 a. The subject matter thereof consists of:

17 (1) Professional services; or

18 (2) Extraordinary unspecifiable services and products which cannot  
19 reasonably be described by written specifications, subject, however, to  
20 procedures consistent with open public bidding whenever possible; or

21 (3) Materials or supplies which are not available from more than  
22 one potential bidder, including without limitation materials or supplies  
23 which are patented or copyrighted; or

24 (4) The doing of any work by employees of the State college; or

25 (5) The printing of all legal notices and legal briefs, records and  
26 appendices to be used in any legal proceeding to which the State  
27 college may be a party and the use of electronic data or media  
28 services, including the internet, for the printing of these legal notices  
29 and legal briefs, records and appendices ; or

30 (6) Textbooks, copyrighted materials, student produced  
31 publications and services incidental thereto, library materials including  
32 without limitation books, periodicals, newspapers, documents,  
33 pamphlets, photographs, reproductions, microfilms, pictorial or  
34 graphic works, musical scores, maps, charts, globes, sound recordings,  
35 slides, films, filmstrips, video and magnetic tapes, other printed or  
36 published matter and audiovisual and other materials of a similar  
37 nature, necessary binding or rebinding of library materials and  
38 specialized library services , including electronic databases and digital  
39 formats ; or

40 (7) Food supplies and services, including food supplies and  
41 management contracts for student centers, dining rooms and  
42 cafeterias; or

43 (8) The supplying of any product or the rendering of any service  
44 by the public utility which is subject to the jurisdiction of the Board of  
45 Public Utilities, in accordance with tariffs and schedules of charges  
46 made, charged and exacted, filed with that board; or

- 1 (9) Equipment repair service if in the nature of an extraordinary  
2 unspecifiable service and necessary parts furnished in connection with  
3 the services; or
- 4 (10) Specialized machinery or equipment of a technical nature  
5 which will not reasonably permit the drawing of specifications, and the  
6 procurement thereof without advertising is in the public interest; or
- 7 (11) Insurance, including the purchase of insurance coverage and  
8 consulting services, which exceptions shall be in accordance with the  
9 requirements for extraordinary unspecifiable services; or
- 10 (12) Publishing of legal notices in newspapers as required by law  
11 and the use of electronic data or media services, including the internet,  
12 for the publication of the legal notices; or
- 13 (13) The acquisition of artifacts or other items of unique intrinsic,  
14 artistic or historic character; or
- 15 (14) The collection of amounts due on student loans, including  
16 without limitation loans guaranteed by or made with funds of the  
17 United States of America , and amounts due on other financial  
18 obligations to the State college, including but not limited to, the  
19 amounts due on tuition and fees and room and board ; or
- 20 (15) **[Professional consulting]** Consulting services; or
- 21 (16) Entertainment, including without limitation theatrical  
22 presentations, band and other concerts, movies and other audiovisual  
23 productions; or
- 24 (17) Contracts employing funds created by student activities fees  
25 charged to students or otherwise raised by students **[**, not under the  
26 direct control of the college**]** and expended by student organizations;  
27 or
- 28 (18) Printing and production and reproduction in electronic and  
29 digital formats, including compact discs, including without limitation  
30 catalogs, yearbooks and course announcements; or
- 31 (19) **[Data processing software programs, systems and service and**  
32 **the rental or lease of data processing equipment]** Information  
33 technology; or
- 34 (20) Personnel recruitment and advertising, including without  
35 limitation advertising seeking student enrollment; or
- 36 (21) Educational supplies, books, articles of clothing and other  
37 miscellaneous articles purchased by a State college **[bookstore]** for  
38 resale to college students and employees; or
- 39 (22) Purchase or rental of graduation caps and gowns and award  
40 certificates or plaques ; or
- 41 (23) Items available from vendors at costs below State contract  
42 pricing for the same product or service, which meets or exceeds the  
43 State contract terms or conditions; or
- 44 (24) Management and operation of property.
- 45 b. It is to be made or entered into with the United States of  
46 America, the State of New Jersey, a county or municipality or any

1 board, body, or officer, agency or authority or any other state or  
2 subdivision thereof.

3 c. The State college has advertised for bids pursuant to section 4  
4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has  
5 received no bids on both occasions in response to its advertisement, or  
6 (ii) has rejected the bids on two occasions because the State college  
7 has determined that they are not reasonable as to price, on the basis of  
8 cost estimates prepared for or by the State college prior to the  
9 advertising therefor, or have not been independently arrived at in open  
10 competition, or (iii) on one occasion no bids were received pursuant  
11 to (i) and on one occasion all bids were rejected pursuant to (ii), in  
12 whatever sequence; any contract or agreement may then be negotiated  
13 by a two-thirds affirmative vote of the authorized membership of the  
14 board of trustees authorizing the contract or agreement; provided that:

15 (1) A reasonable effort is just made by the contracting agent to  
16 determine that the same or equivalent materials or supplies at a cost  
17 which is lower than the negotiated price are not available from any  
18 agency or authority of the United States, the State of New Jersey or  
19 of the county in which the State college is located, or any municipality  
20 in close proximity to the State college;

21 (2) The terms, conditions, restrictions and specifications set forth  
22 in the negotiated contract or agreement are not substantially different  
23 from those which were the subject of competitive bidding pursuant to  
24 section 4 of this article; and

25 (3) Any minor amendment or modification of any of the terms,  
26 conditions, restrictions and specifications, which were the subject of  
27 competitive bidding pursuant to section 4 of P.L.1986, c.43  
28 (C.18A:64-55), shall be stated in the resolution awarding the contract  
29 or agreement; except that if on the second occasion the bids received  
30 are rejected as unreasonable as to price, the State college shall notify  
31 each responsible bidder submitting bids on the second occasion of its  
32 intention to negotiate and afford each bidder a reasonable opportunity  
33 to negotiate, but the State college shall not award the contract or  
34 agreement unless the negotiated price is lower than the lowest rejected  
35 bid price submitted on the second occasion by a responsible bidder, is  
36 the lowest negotiated price offered by any reasonable vendor, and is  
37 a reasonable price for the work, materials, supplies or services.  
38 Whenever a State college shall determine that a bid was not arrived at  
39 independently in open competition pursuant to subsection c. (ii) of this  
40 section, it shall thereupon notify the Attorney General of the facts  
41 upon which its determination is based and, when appropriate, it may  
42 institute appropriate proceedings in any State or federal court of  
43 competent jurisdiction for a violation of any State or federal antitrust  
44 law or laws relating to the unlawful restraint of trade.

45 (cf: P.L.1994, c.48, s.111)

1       5. Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to read  
2 as follows:

3       6. Any purchase, contract, or agreement may be made, negotiated  
4 or awarded by a State college without public advertising for bids and  
5 bidding therefor, notwithstanding that the cost or contract price will  
6 exceed [~~\$17,700~~] \$25,000 or, commencing January 1, [~~1997~~] 2005,  
7 the amount determined pursuant to subsection b. of section 3 of  
8 P.L.1986, c.43 (C.18A:64-54), when an emergency affecting the  
9 health, safety or welfare of occupants of college property requires the  
10 immediate delivery of the materials or supplies or the performance of  
11 the work, if the purchases, contracts or agreements are awarded or  
12 made in the following manner:

13       a. A written requisition for the performance of the work or the  
14 furnishing of materials or supplies, certified by the employee in charge  
15 of the building, facility or equipment where the emergency occurred,  
16 is filed with the contracting agent or his deputy in charge describing  
17 the nature of the emergency, the time of its occurrence, and the need  
18 for invoking this section. The contracting agent, or his deputy in  
19 charge, being satisfied that the emergency exists, is authorized to  
20 award a contract for the work, materials or supplies.

21       b. Upon the furnishing of the work, materials or supplies in  
22 accordance with the terms of the contract or agreement, the contractor  
23 furnishing the work, materials or supplies is entitled to be paid  
24 therefor and the State college is obligated for the payment.

25       c. The board of trustees may prescribe rules and procedures to  
26 implement the requirements of this section.

27 (cf: P.L.1997, c.292, s.3)

28

29       6. Section 9 of P.L.1986, c.43 (C.18A:64-60) is amended to read  
30 as follows:

31       9. a. Any State college, without advertising for bids, or after  
32 having rejected all bids obtained pursuant to advertising therefor, may  
33 purchase any materials, supplies, goods, services or equipment  
34 pursuant to a contract or contracts for those materials, supplies,  
35 goods, services or equipment entered into on behalf of the State by the  
36 Division of Purchase and Property or entered into by some other  
37 governmental agency.

38       b. A State college may also use, without advertising for bids, or  
39 having rejected all bids obtained pursuant to advertising, the Federal  
40 Supply Schedules of the General Services Administration as permitted  
41 by the "Federal Acquisition Streamlining Act of 1994,"  
42 Pub.L.103-355, and federal regulations adopted thereunder.

43       c. Whenever a purchase is made, the State college shall place its  
44 order with the vendor offering the lowest price, including delivery  
45 charges, that best meets the requirements of the State college. Prior  
46 to placing such an order, the State college shall document with

1 specificity that the materials, supplies, goods, services or equipment  
2 selected best meet the requirements of the State college.

3 (cf: P.L.1996, c.16, s.5)

4

5 7. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to read  
6 as follows:

7 14. All advertisements for bids shall be published in a legal  
8 newspaper sufficiently in advance of the date fixed for receiving the  
9 bids to promote competitive bidding but in no event less than 10 days  
10 prior to that date for any construction projects or any other contract  
11 or purchase. In addition to being published in a legal newspaper,  
12 advertisements may also be posted using electronic data or media  
13 services, including the internet. The advertisement shall designate the  
14 manner of submitting and of receiving the bids and the time and place  
15 at which the bids will be received. If the published specifications  
16 provide for receipt of bids by mail, those bids which are mailed to the  
17 State college shall be sealed and shall be opened only at such time and  
18 place as all bids received are unsealed and announced. At that time and  
19 place, the contracting agent of the State college shall publicly receive  
20 the bids and thereupon immediately proceed to unseal them and  
21 publicly announce the contents, which announcement shall be made in  
22 the presence of any parties bidding or their agents who are then and  
23 there present. A proper record of the prices and terms shall be made.  
24 No bids shall be received after the time designated in the  
25 advertisement.

26 (cf: P.L.1994, c.48, s.115)

27

28 8. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read  
29 as follows:

30 2. a. Whenever the entire cost for the construction, alteration or  
31 repair of any building by a State college will exceed the amount  
32 determined pursuant to subsection b. of section 3 of P.L.1986, c.43  
33 (C.18A:64-54), the contracting agent shall , except as otherwise  
34 provided pursuant to subsection c. of this section, advertise for and  
35 receive in the manner provided by law:

36 (1) separate bids for the following categories of work:

37 (a) the plumbing and gas fitting work;

38 (b) the heating and ventilating systems and equipment;

39 (c) the electrical work, including any electrical power plants;

40 (d) the structural steel and ornamental iron work;

41 (e) all other work and materials required for the completion of the  
42 project, or

43 (2) bids for all work and materials required to complete the entire  
44 project if awarded as a single contract, or

45 (3) both (1) and (2) above.

46 All bids submitted shall set forth the names and license numbers of,

1 and evidence of performance security from, all subcontractors to  
2 whom the bidder will subcontract the work described in the foregoing  
3 categories (a) through (e).

4 b. Contracts awarded under subsection a. of this section shall be  
5 awarded to the lowest responsible bidder whose bid, conforming to the  
6 invitation for bids, will be the most advantageous to the State college.

7 c. In cases of bids for construction, alteration or repair of any  
8 building, if the contracting agent does not advertise for and receive  
9 bids in the manner provided for in subsection a. of this section, the  
10 contracting agent shall use one of the following procedures:

11 (1) bids for work using the design-build method, when sufficient  
12 information is available to permit a design-build firm to prepare a  
13 response to a State college's request for proposal; or

14 (2) bids for work using the construction manager-agent method,  
15 when the construction manager-agent may represent the State college  
16 in a fiduciary capacity and may perform general conditions as provided  
17 in the contract; or

18 (3) bids for work using construction manager at-risk method, when  
19 the construction manager at risk assumes the risk for construction at  
20 the contracted price.

21 Contracts awarded under this subsection shall be awarded to the  
22 bidder whose proposal, conforming to the requests for proposal, will  
23 be most advantageous to the State college.

24 (cf: P.L.1992, c.61, s.2)

25

26 9. Section 26 of P.L.1986, c.43 (C.18A:64-77) is amended to read  
27 as follows:

28 26. All specifications for the doing of any construction work for a  
29 State college shall fix the date before which the work shall be  
30 completed, or the number of working days to be allowed for its  
31 completion, and every contract shall contain a provision [for] that if  
32 the construction work is not completed by the date fixed for  
33 completion or in the number of days allowed for completion, as set  
34 forth in the specifications, there shall be a deduction from the contract  
35 price for any moneys paid by the college [to any inspector necessarily  
36 employed by it on the work for any number of days in excess of the  
37 number allowed in the specifications] for the completion of the  
38 project.

39 (cf: P.L.1986, c.43, s.26)

40

41 10. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to  
42 read as follows:

43 27. Any college may, by resolution of its board of trustees,  
44 authorize the sale in the following manner of its personal property not  
45 needed for college purposes:

46 a. If the estimated fair value of the property to be sold exceeds

1    ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~ 2005, the  
2 amount determined pursuant to subsection b. of section 3 of P.L.1986,  
3 c.43 (C.18A:64-54), in any one sale and the property does not consist  
4 of perishable goods, it shall be sold at public sale to the highest bidder.

5       b. Notice of the date, time and place of the public sale, together  
6 with a description of the items to be sold and the conditions of sale,  
7 shall be published once in a legal newspaper. Sales shall be held not  
8 less than seven nor more than 14 days after the publication of the  
9 notice thereof.

10      c. Personal property may be sold to the United States, the State of  
11 New Jersey, another college or to any body politic by private sale  
12 without advertising for bids.

13      d. If no bids are received, the property may then be sold at private  
14 sale without further publication or notice thereof but in no event at  
15 less than the estimated fair value; or the State college may, if it so  
16 elects, reoffer the property at public sale. As used herein, "estimated  
17 fair value" means the market value of the property if sold by a willing  
18 seller to a willing buyer less the cost to the college of continuing to  
19 store or maintain the property.

20      e. A State college may reject all bids if it determines a rejection to  
21 be in the public interest. In any case in which the college has rejected  
22 all bids, it may readvertise the personal property for a subsequent  
23 public sale. If it elects to reject all bids at a second public sale pursuant  
24 to this section, it may then sell the personal property without further  
25 publication or notice thereof at private sale, but in no event shall the  
26 negotiated price at the private sale be less than the amount of the  
27 highest bid rejected at the preceding two public sales, nor shall the  
28 terms or conditions of sale be changed or amended.

29      f. If the estimated fair value of the property to be sold does not  
30 exceed ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~ 2005,  
31 the amount determined pursuant to subsection b. of section 3 of  
32 P.L.1986, c.43 (C.18A:64-54), in any one sale or the property consists  
33 of perishable goods, it may be sold at private sale without advertising  
34 for bids.

35 (cf: P.L.1997, c.292, s.4)

36  
37      11. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to  
38 read as follows:

39      28. A State college may only enter a contract exceeding ~~[12]~~ 36  
40 consecutive months for the:

41      a. Supplying of

42      ~~[(1)]~~ Fuel and oil for heating and other purposes and utilities for  
43 any term not exceeding in the aggregate ~~[three]~~ five years; or

44      ~~[(2)]~~ Fuel or oil for use in automobiles, autobuses, motor vehicles  
45 or equipment for any term not exceeding in the aggregate three years;  
46 or]



- 1        b. Plowing and removal of snow and ice for any term not exceeding  
2 in the aggregate [~~three~~] five years; or
- 3        c. Collection and disposal of garbage and refuse for any term not  
4 exceeding in the aggregate [~~three~~] five years; or
- 5        d. [~~Data processing programs, systems and services or rental or~~  
6 ~~lease of data processing equipment~~] Information technology for any  
7 term of not more than five years; or
- 8        e. Insurance for any term of not more than [~~three~~] five years; or
- 9        f. Leasing or service of automobiles, motor vehicles, [~~electronic~~  
10 ~~communications equipment~~] information technology , machinery and  
11 equipment of every nature and kind for any term not exceeding in the  
12 aggregate five years; or
- 13        g. [~~Supplying of any product or rendering of any service by a~~  
14 ~~telephone company which is subject to the jurisdiction of the Board of~~  
15 ~~Public Utilities, for a term not exceeding five years; or~~] (~~Deleted by~~  
16 ~~amendment, P.L. , c.~~ )(~~Now pending before the Legislature as this~~  
17 ~~bill~~)
- 18        h. Providing of food supplies and services, including food supplies  
19 and management contracts for student centers, dining rooms , vending  
20 operations, and cafeterias, for a term not exceeding [~~three~~] five years;  
21 or
- 22        i. Performance of work or services or the furnishing of materials or  
23 supplies for the purpose of conserving energy in buildings owned by,  
24 or operations conducted by, the contracting unit, the entire price of  
25 which is to be established as a percentage of the resultant savings in  
26 energy costs, for a term not exceeding 10 years; provided that a  
27 contract is entered into only subject to and in accordance with [~~rules~~  
28 ~~and regulations adopted~~] guidelines promulgated by the [~~Department~~  
29 ~~of Energy~~] Board of Public Utilities establishing a methodology for  
30 computing energy cost savings; or
- 31        j. Any single project for the construction, reconstruction or  
32 rehabilitation of a public building, structure or facility, or a public  
33 works project, including the retention of the services of an architect  
34 [~~or~~] , engineer , construction manager, or other consultant in  
35 connection with the project, for the length of time necessary for the  
36 completion of the actual construction; or
- 37        k. The management and operation of bookstores or other auxiliary  
38 services for a term not exceeding five years; or
- 39        l. The provision of banking, financial services, and e-commerce  
40 services for a term not exceeding five years; or
- 41        m. The provision of services for maintenance and repair of building  
42 systems, including, but not limited to, fire alarms, fire suppression  
43 systems, security systems, and heating, ventilation, and air  
44 conditioning systems for a term no exceeding five years .
- 45        All multiyear leases and contracts entered into pursuant to this

1 section, except [contracts for the leasing or servicing of equipment  
2 supplied by a telephone company which is subject to the jurisdiction  
3 of the Board of Public Utilities or] contracts and agreements for the  
4 provision of work or the supplying of equipment to promote energy  
5 conservation and authorized pursuant to subsection i. of this section,  
6 shall contain a clause making them subject to the availability and  
7 appropriation annually of sufficient funds to meet the extended  
8 obligation or contain an annual cancellation clause.  
9 (cf: P.L.1994, c.48, s.117)

10

11 12. Sections 1 through 7, 9,10 and 11 of this act shall take effect  
12 immediately, and section 8 shall take effect 60 days after enactment  
13 and apply to projects bid after that date.

14

15

16

#### STATEMENT

17

18 This bill amends the "State College Contracts Law," P.L.1986,  
19 c.43.

20 The bill raises to \$25,000 the threshold above which a contract  
21 must be publicly advertised and publicly bid. Commencing January 1,  
22 2005, and every two years thereafter, the Governor will adjust this  
23 amount in proportion to the rise or fall of the Consumer Price Index.

24 The bill makes changes to the section of law that enumerates  
25 exemptions to the requirement for public advertising and bidding. The  
26 bill exempts contracts that concern: the use of electronic data or media  
27 services, including the internet, for the printing of legal notices and  
28 briefs used in any legal proceeding to which the State college is a  
29 party; electronic databases and digital formats in regard to specialized  
30 library services; the use of electronic data or media services, including  
31 the internet, for the publication of legal notices; the collection of  
32 amounts due on certain obligations to the State college, including but  
33 not limited to, the amounts due on tuition and fees and room and  
34 board; consulting services; the production and reproduction in  
35 electronic and digital formats, including compact discs, of such items  
36 as catalogs, yearbooks and course announcements; information  
37 technology, defined as telecommunications goods and services,  
38 including, but not limited to, software, hardware and systems  
39 implementation and support for voice, data and video; and items  
40 available from vendors at costs below State contract pricing for the  
41 same product or service, which meets or exceeds the State contract  
42 terms or conditions.

43 The bill provides that a State college, without advertising for bids,  
44 or after having rejected all bids obtained pursuant to advertising, may  
45 purchase any materials, supplies, goods, services or equipment  
46 pursuant to a contract for those items entered into on behalf of a

1 governmental agency. The law currently provides that under these  
2 conditions the State college could purchase materials, supplies, goods,  
3 services or equipment pursuant to a contract entered into on behalf of  
4 the State by the Division of Purchase and Property.

5 The bill extends the period for which a contract may be awarded  
6 from 12 to 36 months and adds to the list of types of contracts that  
7 may exceed the 36-month period. Contracts concerning the provision  
8 of banking, financial services, and e-commerce services and the  
9 provision of services for maintenance and repair of building systems,  
10 including fire alarms, fire suppression systems, security systems, and  
11 heating, ventilation and air conditioning systems may all be bid for a  
12 term not exceeding five years.

13 Under current law, in the case of contracts for the construction,  
14 alteration or repair of any building by a State college, the contracting  
15 agent must advertise for and receive: separate bids for various  
16 categories of work; bids for all work and materials required to  
17 complete the entire project; or both. These contracts are awarded to  
18 the lowest responsible bidder whose bid will be the most advantageous  
19 to the State college. This bill will permit State colleges to also use  
20 one of the following procedures in the case of bids for the  
21 construction, alteration or repair of any building: bids for work using  
22 the design-build method; bids for work using the construction  
23 manager-agent method; or bids for work using the construction  
24 manager at-risk method. Contracts awarded pursuant to these  
25 procedures will be awarded to the bidder whose proposal will be most  
26 advantageous to the State college.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2641**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 14, 2004

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2641, with committee amendments.

Assembly Bill No. 2641, as amended, makes various changes to the law governing the State colleges and universities.

The bill amends the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), to raise to \$25,000 the threshold above which a contract must be publicly advertised and publicly bid. Commencing January 1, 2005, and every two years thereafter, the Governor will adjust this amount in proportion to the rise or fall of the Consumer Price Index.

The bill revises the method by which boards of trustees may award contracts or agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements. Under the bill, the board will award the contract to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered. Under current law, contracts are awarded to the lowest responsible bidder.

The bill changes the law that enumerates exemptions to the requirement for public advertising and bidding. The bill exempts contracts that concern: the use of electronic data or media services, including the internet, for the printing of legal notices and briefs used in any legal proceeding to which the State college is a party; electronic databases and digital formats in regard to specialized library services; the use of electronic data or media services, including the internet, for the publication of legal notices; the collection of amounts due on certain obligations to the State college, including but not limited to the amounts due on tuition and fees and room and board; the production and reproduction of such items as catalogs, yearbooks and course announcements in electronic and digital formats, including compact discs; information technology, defined as telecommunications goods and services, including but not limited to software, hardware and systems implementation and support for voice, data and video; items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract

terms or conditions; management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security; construction management services for construction, alteration or repair of any building or improvement; or purchase or rental of equipment of a technical nature, when the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

The bill provides that a State college, without advertising for bids, or after having rejected all bids obtained pursuant to advertising, may purchase any materials, supplies, goods, services or equipment pursuant to a contract for those items entered into on behalf of any municipality or county in the State. The law currently provides that under these conditions the State college could purchase materials, supplies, goods, services or equipment pursuant to a contract entered into on behalf of the State by the Division of Purchase and Property.

The bill extends the period for which a contract may be awarded from 12 to 36 months and adds to the list of types of contracts that may exceed the 36-month period. A State college will be permitted to enter a contract for a term not exceeding five years for the provision of banking, financial services, and e-commerce services and the provision of services for maintenance and repair of building systems, including fire alarms, fire suppression systems, security systems, and heating, ventilation and air conditioning systems. A State college will be permitted to enter a contract for a term not exceeding ten years for the purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes.

Under current law, in the case of contracts for the construction, alteration or repair of any building by a State college, the contracting agent must advertise for and receive: separate bids for various categories of work; bids for all work and materials required to complete the entire project; or both. These contracts are awarded to the lowest responsible bidder whose bid will be the most advantageous to the State college. This bill permits State colleges to also use one of the following methods of contracting for the construction, alteration or repair of any building when the college does not advertise: the design-build method; or the construction manager-at-risk method. Contracts awarded pursuant to these procedures will be awarded to the bidder whose proposal will be most advantageous to the State college.

**FISCAL IMPACT:**

No fiscal information was made available on the provisions of this bill.

COMMITTEE AMENDMENTS:

The amendments:

- \* revise the method used by State colleges and universities to evaluate bids in regard to contracts for the purchase of goods and services;
- \* add definitions of "design-build method" and "construction manager-at-risk";
- \* include, in the list of exemptions to the requirement for public advertising and bidding, contracts concerning: management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; specific types of consulting services; construction management services for construction, alteration or repair of any building or improvement; and the purchase or rental of technical equipment when it is necessary in the public interest to assure standardization of equipment and interchangeability of parts;
- \* include conditions for purchasing from the Federal Supply Schedules;
- \* eliminate language that refers to a consent of surety being submitted with a bid;
- \* permit State colleges and universities to enter contracts for the purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 10 years;
- \* repeal a section of law that would undermine the State college or university's ability to enter into a design-build contract;
- \* repeal a section of law concerning bids of equal amounts and insert the repealed language in the section of law concerning the method of evaluation used for bids concerning contracts for the construction of buildings and other improvements; and
- \* provide that all the sections of the bill will take effect 60 days after the date of enactment and will apply to contracts for which bids are solicited on and after the effective date.

# SENATE EDUCATION COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 2641**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 9, 2005

The Senate Education Committee reports favorably Assembly Bill No. 2641(1R) with committee amendments.

As amended, this bill makes various changes to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.). The bill raises to \$26,200 the threshold above which a contract must be publicly advertised and publicly bid. Commencing January 1, 2005, and every two years thereafter, the Governor will adjust this amount in proportion to the rise or fall of the Consumer Price Index. The change in the threshold amount is designed to ensure that the threshold amount for State colleges and universities is the same, and continues to be the same, as the threshold amount applicable to county colleges pursuant to the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.

The bill revises the method by which boards of trustees may award contracts for the purchase of goods and services. For these contracts the board will award the contract to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered. The bill does not change the method for awarding contracts for the construction of buildings and other improvements. Under current law, both types of contracts are awarded to the lowest responsible bidder whose bid will be the most advantageous to the State colleges.

The bill changes the law that enumerates exemptions to the requirement for public advertising and bidding. The bill exempts contracts that concern: the use of electronic data or media services, including the internet, for the printing of legal notices and briefs used in any legal proceeding to which the State college is a party; electronic databases and digital formats in regard to specialized library services; the use of electronic data or media services, including the internet, for the publication of legal notices; the collection of amounts due on certain obligations to the State college, including but not limited to the amounts due on tuition and fees and room and board; the production and reproduction of such items as catalogs, yearbooks and course

announcements in electronic and digital formats, including compact discs; information technology, defined as telecommunications goods and services, including but not limited to software, hardware and systems implementation and support for voice, data and video; items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions; management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security; construction management services for construction, alteration or repair of any building or improvement; or purchase or rental of equipment of a technical nature, when the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

The bill provides that a State college, without advertising for bids, or after having rejected all bids obtained pursuant to advertising, may purchase any materials, supplies, goods, services or equipment pursuant to a contract for those items entered into on behalf of any municipality or county in the State. The law currently provides that under these conditions the State college could purchase materials, supplies, goods, services or equipment pursuant to a contract entered into on behalf of the State by the Division of Purchase and Property.

The bill extends the period for which a contract may be awarded from 12 to 36 months and adds to the list of types of contracts that may exceed the 36-month period. A State college will be permitted to enter a contract for a term not exceeding five years for the provision of banking, financial services, and e-commerce services and the provision of services for maintenance and repair of building systems, including fire alarms, fire suppression systems, security systems, and heating, ventilation and air conditioning systems. A State college will be permitted to enter a contract for a term not exceeding ten years for the purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes.

The committee amended the bill to:

- \* delete the option for State colleges and universities to use the design build method or the construction manager-at-risk method for awarding contracts for the construction, alteration or repair of buildings; and

- \* increase the bidding threshold above which a contract must be publicly advertised and publicly bid from \$25,000 to \$26,200, the current threshold for county colleges.

As reported, this bill is identical to Senate Bill No. 1543 with committee amendments.



**SENATE, No. 1543**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MAY 6, 2004

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**Senator BERNARD F. KENNY, JR.**

**District 33 (Hudson)**

**SYNOPSIS**

Raises the statutory threshold for the public advertisement of bids under the "State College Contracts Law" and makes other changes to that law.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning the awarding of State college and university  
2 contracts and amending P.L.1986, c.43 and P.L.1992, c.61.

3

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

6

7 1. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to read  
8 as follows:

9 2. As used in this article, unless the context otherwise indicates:

10 a. "Board of trustees" means the board of a State college;

11 b. "Contracting agent" means the business officer of the State  
12 college having the power to prepare advertisements, to advertise for  
13 and receive bids, and to make awards for the State college in  
14 connection with the purchases, contracts or agreements permitted by  
15 this article or the officer, committee or employee to whom the power  
16 has been delegated by the State college;

17 c. "Contracts" means contracts or agreements for the performance  
18 of work or the furnishing or hiring of services, materials or supplies,  
19 as distinguished from contracts of employment;

20 d. "Legal newspaper" means a newspaper circulating in this State  
21 which has been printed and published in the English language at least  
22 once a week for at least one year continuously;

23 e. "Materials" includes goods and property subject to chapter 2 of  
24 Title 12A of the New Jersey Statutes, apparatus or any other tangible  
25 thing, except real property or any interest therein;

26 f. "Extraordinary unspecifiable services" means services or  
27 products which cannot be reasonably described by written  
28 specifications;

29 g. "Professional services" means services rendered or performed by  
30 a person authorized by law to practice a recognized profession and  
31 whose practice is regulated by law and the performance of which  
32 services requires knowledge of an advanced type in a field of learning  
33 acquired by a prolonged formal course of specialized instruction and  
34 study as distinguished from general academic instruction or  
35 apprenticeship and training. Professional services also means services  
36 rendered in the performance of work that is original and creative in  
37 character in a recognized field of artistic endeavor;

38 h. "Project" means any work, undertaking, construction or  
39 alteration;

40 i. "Purchases" are transactions, for a valuable consideration,  
41 creating or acquiring an interest in goods, services and property except  
42 real property or any interest therein;

43 j. "State college" means an institution of higher education

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 established pursuant to chapter 64 of Title 18A of the New Jersey  
2 Statutes;

3 k. "Work" includes services and any other activity of a tangible or  
4 intangible nature performed or assumed pursuant to a contract or  
5 agreement with a State college ;

6 l. "Information technology" means telecommunication goods and  
7 services, including, but not limited to, software, hardware and systems  
8 implementation and support for voice, data and video.

9 (cf: P.L.1986, c.43, s.2)

10

11 2. Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to read  
12 as follows:

13 3. a. Any purchase, contract or agreement for the performance of  
14 any work or the furnishing or hiring of materials or supplies, the cost  
15 or price of which, together with any sums expended for the  
16 performance of any work or services in connection with the same  
17 project or the furnishing of similar materials or supplies during the  
18 same fiscal year, paid with or out of college funds, does not exceed the  
19 total sum of ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~  
20 2005, the amount determined pursuant to subsection b. of this section,  
21 in any fiscal year may be made, negotiated and awarded by a  
22 contracting agent, when so authorized by resolution of the board of  
23 trustees of the State college without public advertising for bids and  
24 bidding therefor.

25 b. Commencing January 1, ~~[1997]~~ 2005 and every two years  
26 thereafter, the Governor, in consultation with the Department of the  
27 Treasury, shall adjust the threshold amount set forth in subsection a.  
28 of this section in direct proportion to the rise or fall of the Consumer  
29 Price Index for all urban consumers in the New York and Northeastern  
30 New Jersey and the Philadelphia areas, as reported by the United  
31 States Department of Labor. The adjustment shall become effective  
32 on July 1 of the year in which it is reported.

33 c. Any purchase, contract or agreement made pursuant to this  
34 section may be awarded for a period of ~~[12]~~ 36 consecutive months,  
35 notwithstanding that the ~~[12]~~ 36 -month period does not coincide  
36 with the fiscal year.

37 (cf: P.L.1997, c.292, s.1)

38

39 3. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to read  
40 as follows:

41 4. Every contract or agreement for the performance of any work  
42 or the furnishing or hiring of any materials or supplies, the cost or the  
43 contract price of which is to be paid with or out of college funds, not  
44 included within the terms of section 3 of this article, shall be made and  
45 awarded only by the State college after public advertising for bids and  
46 bidding therefor, except as provided otherwise in this article or

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1 specifically by any other law. No work, materials or supplies shall be  
2 undertaken, acquired or furnished for a sum exceeding in the  
3 aggregate ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~  
4 2005, the amount determined pursuant to subsection b. of section 3  
5 of P.L.1986, c.43 (C.18A:64-54), except by written contract or  
6 agreement.

7 (cf: P.L.1997, c.292, s.2)

8

9 4. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to read  
10 as follows:

11 5. Any purchase, contract or agreement of the character described  
12 in section 4 of P.L.1986, c.43 (C.18A:64-55) may be made, negotiated  
13 or awarded by the State college by resolution at a public meeting of its  
14 board of trustees without public advertising for bids or bidding  
15 therefor if:

16 a. The subject matter thereof consists of:

17 (1) Professional services; or

18 (2) Extraordinary unspecifiable services and products which cannot  
19 reasonably be described by written specifications, subject, however, to  
20 procedures consistent with open public bidding whenever possible; or

21 (3) Materials or supplies which are not available from more than  
22 one potential bidder, including without limitation materials or supplies  
23 which are patented or copyrighted; or

24 (4) The doing of any work by employees of the State college; or

25 (5) The printing of all legal notices and legal briefs, records and  
26 appendices to be used in any legal proceeding to which the State  
27 college may be a party and the use of electronic data or media  
28 services, including the internet, for the printing of these legal notices  
29 and legal briefs, records and appendices ; or

30 (6) Textbooks, copyrighted materials, student produced  
31 publications and services incidental thereto, library materials including  
32 without limitation books, periodicals, newspapers, documents,  
33 pamphlets, photographs, reproductions, microfilms, pictorial or  
34 graphic works, musical scores, maps, charts, globes, sound recordings,  
35 slides, films, filmstrips, video and magnetic tapes, other printed or  
36 published matter and audiovisual and other materials of a similar  
37 nature, necessary binding or rebinding of library materials and  
38 specialized library services , including electronic databases and digital  
39 formats ; or

40 (7) Food supplies and services, including food supplies and  
41 management contracts for student centers, dining rooms and  
42 cafeterias; or

43 (8) The supplying of any product or the rendering of any service  
44 by the public utility which is subject to the jurisdiction of the Board of  
45 Public Utilities, in accordance with tariffs and schedules of charges  
46 made, charged and exacted, filed with that board; or

- 1 (9) Equipment repair service if in the nature of an extraordinary  
2 unspecifiable service and necessary parts furnished in connection with  
3 the services; or
- 4 (10) Specialized machinery or equipment of a technical nature  
5 which will not reasonably permit the drawing of specifications, and the  
6 procurement thereof without advertising is in the public interest; or
- 7 (11) Insurance, including the purchase of insurance coverage and  
8 consulting services, which exceptions shall be in accordance with the  
9 requirements for extraordinary unspecifiable services; or
- 10 (12) Publishing of legal notices in newspapers as required by law  
11 and the use of electronic data or media services, including the internet,  
12 for the publication of the legal notices; or
- 13 (13) The acquisition of artifacts or other items of unique intrinsic,  
14 artistic or historic character; or
- 15 (14) The collection of amounts due on student loans, including  
16 without limitation loans guaranteed by or made with funds of the  
17 United States of America , and amounts due on other financial  
18 obligations to the State college, including but not limited to, the  
19 amounts due on tuition and fees and room and board ; or
- 20 (15) **[Professional consulting]** Consulting services; or
- 21 (16) Entertainment, including without limitation theatrical  
22 presentations, band and other concerts, movies and other audiovisual  
23 productions; or
- 24 (17) Contracts employing funds created by student activities fees  
25 charged to students or otherwise raised by students **[**, not under the  
26 direct control of the college**]** and expended by student organizations;  
27 or
- 28 (18) Printing and production and reproduction in electronic and  
29 digital formats, including compact discs, including without limitation  
30 catalogs, yearbooks and course announcements; or
- 31 (19) **[Data processing software programs, systems and service and**  
32 **the rental or lease of data processing equipment]** Information  
33 technology; or
- 34 (20) Personnel recruitment and advertising, including without  
35 limitation advertising seeking student enrollment; or
- 36 (21) Educational supplies, books, articles of clothing and other  
37 miscellaneous articles purchased by a State college **[bookstore]** for  
38 resale to college students and employees; or
- 39 (22) Purchase or rental of graduation caps and gowns and award  
40 certificates or plaques ; or
- 41 (23) Items available from vendors at costs below State contract  
42 pricing for the same product or service, which meets or exceeds the  
43 State contract terms or conditions; or
- 44 (24) Management and operation of property.
- 45 b. It is to be made or entered into with the United States of  
46 America, the State of New Jersey, a county or municipality or any

1 board, body, or officer, agency or authority or any other state or  
2 subdivision thereof.

3 c. The State college has advertised for bids pursuant to section 4  
4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has  
5 received no bids on both occasions in response to its advertisement, or  
6 (ii) has rejected the bids on two occasions because the State college  
7 has determined that they are not reasonable as to price, on the basis of  
8 cost estimates prepared for or by the State college prior to the  
9 advertising therefor, or have not been independently arrived at in open  
10 competition, or (iii) on one occasion no bids were received pursuant  
11 to (i) and on one occasion all bids were rejected pursuant to (ii), in  
12 whatever sequence; any contract or agreement may then be negotiated  
13 by a two-thirds affirmative vote of the authorized membership of the  
14 board of trustees authorizing the contract or agreement; provided that:

15 (1) A reasonable effort is just made by the contracting agent to  
16 determine that the same or equivalent materials or supplies at a cost  
17 which is lower than the negotiated price are not available from any  
18 agency or authority of the United States, the State of New Jersey or  
19 of the county in which the State college is located, or any municipality  
20 in close proximity to the State college;

21 (2) The terms, conditions, restrictions and specifications set forth  
22 in the negotiated contract or agreement are not substantially different  
23 from those which were the subject of competitive bidding pursuant to  
24 section 4 of this article; and

25 (3) Any minor amendment or modification of any of the terms,  
26 conditions, restrictions and specifications, which were the subject of  
27 competitive bidding pursuant to section 4 of P.L.1986, c.43  
28 (C.18A:64-55), shall be stated in the resolution awarding the contract  
29 or agreement; except that if on the second occasion the bids received  
30 are rejected as unreasonable as to price, the State college shall notify  
31 each responsible bidder submitting bids on the second occasion of its  
32 intention to negotiate and afford each bidder a reasonable opportunity  
33 to negotiate, but the State college shall not award the contract or  
34 agreement unless the negotiated price is lower than the lowest rejected  
35 bid price submitted on the second occasion by a responsible bidder, is  
36 the lowest negotiated price offered by any reasonable vendor, and is  
37 a reasonable price for the work, materials, supplies or services.  
38 Whenever a State college shall determine that a bid was not arrived at  
39 independently in open competition pursuant to subsection c. (ii) of this  
40 section, it shall thereupon notify the Attorney General of the facts  
41 upon which its determination is based and, when appropriate, it may  
42 institute appropriate proceedings in any State or federal court of  
43 competent jurisdiction for a violation of any State or federal antitrust  
44 law or laws relating to the unlawful restraint of trade.

45 (cf: P.L.1994, c.48, s.111)

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1       5. Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to read  
2 as follows:

3       6. Any purchase, contract, or agreement may be made, negotiated  
4 or awarded by a State college without public advertising for bids and  
5 bidding therefor, notwithstanding that the cost or contract price will  
6 exceed ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~ 2005,  
7 the amount determined pursuant to subsection b. of section 3 of  
8 P.L.1986, c.43 (C.18A:64-54), when an emergency affecting the  
9 health, safety or welfare of occupants of college property requires the  
10 immediate delivery of the materials or supplies or the performance of  
11 the work, if the purchases, contracts or agreements are awarded or  
12 made in the following manner:

13       a. A written requisition for the performance of the work or the  
14 furnishing of materials or supplies, certified by the employee in charge  
15 of the building, facility or equipment where the emergency occurred,  
16 is filed with the contracting agent or his deputy in charge describing  
17 the nature of the emergency, the time of its occurrence, and the need  
18 for invoking this section. The contracting agent, or his deputy in  
19 charge, being satisfied that the emergency exists, is authorized to  
20 award a contract for the work, materials or supplies.

21       b. Upon the furnishing of the work, materials or supplies in  
22 accordance with the terms of the contract or agreement, the contractor  
23 furnishing the work, materials or supplies is entitled to be paid  
24 therefor and the State college is obligated for the payment.

25       c. The board of trustees may prescribe rules and procedures to  
26 implement the requirements of this section.

27 (cf: P.L.1997, c.292, s.3)

28

29       6. Section 9 of P.L.1986, c.43 (C.18A:64-60) is amended to read  
30 as follows:

31       9. a. Any State college, without advertising for bids, or after  
32 having rejected all bids obtained pursuant to advertising therefor, may  
33 purchase any materials, supplies, goods, services or equipment  
34 pursuant to a contract or contracts for those materials, supplies,  
35 goods, services or equipment entered into on behalf of the State by the  
36 Division of Purchase and Property or entered into by some other  
37 governmental agency.

38       b. A State college may also use, without advertising for bids, or  
39 having rejected all bids obtained pursuant to advertising, the Federal  
40 Supply Schedules of the General Services Administration as permitted  
41 by the "Federal Acquisition Streamlining Act of 1994,"  
42 Pub.L.103-355, and federal regulations adopted thereunder.

43       c. Whenever a purchase is made, the State college shall place its  
44 order with the vendor offering the lowest price, including delivery  
45 charges, that best meets the requirements of the State college. Prior  
46 to placing such an order, the State college shall document with

1 specificity that the materials, supplies, goods, services or equipment  
2 selected best meet the requirements of the State college.

3 (cf: P.L.1996, c.16, s.5)

4

5 7. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to read  
6 as follows:

7 14. All advertisements for bids shall be published in a legal  
8 newspaper sufficiently in advance of the date fixed for receiving the  
9 bids to promote competitive bidding but in no event less than 10 days  
10 prior to that date for any construction projects or any other contract  
11 or purchase. In addition to being published in a legal newspaper,  
12 advertisements may also be posted using electronic data or media  
13 services, including the internet. The advertisement shall designate the  
14 manner of submitting and of receiving the bids and the time and place  
15 at which the bids will be received. If the published specifications  
16 provide for receipt of bids by mail, those bids which are mailed to the  
17 State college shall be sealed and shall be opened only at such time and  
18 place as all bids received are unsealed and announced. At that time and  
19 place, the contracting agent of the State college shall publicly receive  
20 the bids and thereupon immediately proceed to unseal them and  
21 publicly announce the contents, which announcement shall be made in  
22 the presence of any parties bidding or their agents who are then and  
23 there present. A proper record of the prices and terms shall be made.  
24 No bids shall be received after the time designated in the  
25 advertisement.

26 (cf: P.L. 1994, c.48, s.115)

27

28 8. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read  
29 as follows:

30 2. a. Whenever the entire cost for the construction, alteration or  
31 repair of any building by a State college will exceed the amount  
32 determined pursuant to subsection b. of section 3 of P.L.1986, c.43  
33 (C.18A:64-54), the contracting agent shall , except as otherwise  
34 provided pursuant to subsection c. of this section, advertise for and  
35 receive in the manner provided by law:

36 (1) separate bids for the following categories of work:

37 (a) the plumbing and gas fitting work;

38 (b) the heating and ventilating systems and equipment;

39 (c) the electrical work, including any electrical power plants;

40 (d) the structural steel and ornamental iron work;

41 (e) all other work and materials required for the completion of the  
42 project, or

43 (2) bids for all work and materials required to complete the entire  
44 project if awarded as a single contract, or

45 (3) both (1) and (2) above.

46 All bids submitted shall set forth the names and license numbers of,



1 and evidence of performance security from, all subcontractors to  
2 whom the bidder will subcontract the work described in the foregoing  
3 categories (a) through (e).

4 b. Contracts awarded under subsection a. of this section shall be  
5 awarded to the lowest responsible bidder whose bid, conforming to the  
6 invitation for bids, will be the most advantageous to the State college.

7 c. In cases of bids for construction, alteration or repair of any  
8 building, if the contracting agent does not advertise for and receive  
9 bids in the manner provided for in subsection a. of this section, the  
10 contracting agent shall use one of the following procedures:

11 (1) bids for work using the design-build method, when sufficient  
12 information is available to permit a design-build firm to prepare a  
13 response to a State college's request for proposal; or

14 (2) bids for work using the construction manager-agent method,  
15 when the construction manager-agent may represent the State college  
16 in a fiduciary capacity and may perform general conditions as provided  
17 in the contract; or

18 (3) bids for work using construction manager at-risk method, when  
19 the construction manager at risk assumes the risk for construction at  
20 the contracted price.

21 Contracts awarded under this subsection shall be awarded to the  
22 bidder whose proposal, conforming to the requests for proposal, will  
23 be most advantageous to the State college.

24 (cf: P.L.1992, c.61, s.2)

25  
26 9. Section 26 of P.L.1986, c.43 (C.18A:64-77) is amended to read  
27 as follows:

28 26. All specifications for the doing of any construction work for a  
29 State college shall fix the date before which the work shall be  
30 completed, or the number of working days to be allowed for its  
31 completion, and every contract shall contain a provision [for] that if  
32 the construction work is not completed by the date fixed for  
33 completion or in the number of days allowed for completion, as set  
34 forth in the specifications, there shall be a deduction from the contract  
35 price for any moneys paid by the college [to any inspector necessarily  
36 employed by it on the work for any number of days in excess of the  
37 number allowed in the specifications] for the completion of the  
38 project.

39 (cf: P.L.1986, c.43, s.26)

40  
41 10. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to  
42 read as follows:

43 27. Any college may, by resolution of its board of trustees,  
44 authorize the sale in the following manner of its personal property not  
45 needed for college purposes:

46 a. If the estimated fair value of the property to be sold exceeds

1    ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~ 2005, the  
2 amount determined pursuant to subsection b. of section 3 of P.L.1986,  
3 c.43 (C.18A:64-54), in any one sale and the property does not consist  
4 of perishable goods, it shall be sold at public sale to the highest bidder.

5       b. Notice of the date, time and place of the public sale, together  
6 with a description of the items to be sold and the conditions of sale,  
7 shall be published once in a legal newspaper. Sales shall be held not  
8 less than seven nor more than 14 days after the publication of the  
9 notice thereof.

10      c. Personal property may be sold to the United States, the State of  
11 New Jersey, another college or to any body politic by private sale  
12 without advertising for bids.

13      d. If no bids are received, the property may then be sold at private  
14 sale without further publication or notice thereof but in no event at  
15 less than the estimated fair value; or the State college may, if it so  
16 elects, reoffer the property at public sale. As used herein, "estimated  
17 fair value" means the market value of the property if sold by a willing  
18 seller to a willing buyer less the cost to the college of continuing to  
19 store or maintain the property.

20      e. A State college may reject all bids if it determines a rejection to  
21 be in the public interest. In any case in which the college has rejected  
22 all bids, it may readvertise the personal property for a subsequent  
23 public sale. If it elects to reject all bids at a second public sale pursuant  
24 to this section, it may then sell the personal property without further  
25 publication or notice thereof at private sale, but in no event shall the  
26 negotiated price at the private sale be less than the amount of the  
27 highest bid rejected at the preceding two public sales, nor shall the  
28 terms or conditions of sale be changed or amended.

29      f. If the estimated fair value of the property to be sold does not  
30 exceed ~~[\$17,700]~~ \$25,000 or, commencing January 1, ~~[1997]~~ 2005,  
31 the amount determined pursuant to subsection b. of section 3 of  
32 P.L.1986, c.43 (C.18A:64-54), in any one sale or the property consists  
33 of perishable goods, it may be sold at private sale without advertising  
34 for bids.

35 (cf: P.L.1997, c.292, s.4)

36

37      11. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to  
38 read as follows:

39      28. A State college may only enter a contract exceeding ~~[12]~~ 36  
40 consecutive months for the:

41      a. Supplying of

42      ~~[(1)]~~ Fuel and oil for heating and other purposes and utilities for  
43 any term not exceeding in the aggregate ~~[three]~~ five years; or

44      ~~[(2)]~~ Fuel or oil for use in automobiles, autobuses, motor vehicles  
45 or equipment for any term not exceeding in the aggregate three years;  
46 or]

- 1       b. Plowing and removal of snow and ice for any term not exceeding  
2 in the aggregate ~~[three]~~ five years; or
- 3       c. Collection and disposal of garbage and refuse for any term not  
4 exceeding in the aggregate ~~[three]~~ five years; or
- 5       d. ~~[Data processing programs, systems and services or rental or~~  
6 ~~lease of data processing equipment]~~ Information technology for any  
7 term of not more than five years; or
- 8       e. Insurance for any term of not more than ~~[three]~~ five years; or
- 9       f. Leasing or service of automobiles, motor vehicles, ~~[electronic~~  
10 ~~communications equipment]~~ information technology, machinery and  
11 equipment of every nature and kind for any term not exceeding in the  
12 aggregate five years; or
- 13       g. ~~[ Supplying of any product or rendering of any service by a~~  
14 ~~telephone company which is subject to the jurisdiction of the Board of~~  
15 ~~Public Utilities, for a term not exceeding five years; or]~~ ~~(Deleted by~~  
16 ~~amendment, P.L. , c. )(Now pending before the Legislature as this~~  
17 ~~bill)~~
- 18       h. Providing of food supplies and services, including food supplies  
19 and management contracts for student centers, dining rooms, vending  
20 operations, and cafeterias, for a term not exceeding ~~[three]~~ five years;  
21 or
- 22       i. Performance of work or services or the furnishing of materials or  
23 supplies for the purpose of conserving energy in buildings owned by,  
24 or operations conducted by, the contracting unit, the entire price of  
25 which is to be established as a percentage of the resultant savings in  
26 energy costs, for a term not exceeding 10 years; provided that a  
27 contract is entered into only subject to and in accordance with ~~[rules~~  
28 ~~and regulations adopted]~~ guidelines promulgated by the ~~[Department~~  
29 ~~of Energy]~~ Board of Public Utilities establishing a methodology for  
30 computing energy cost savings; or
- 31       j. Any single project for the construction, reconstruction or  
32 rehabilitation of a public building, structure or facility, or a public  
33 works project, including the retention of the services of an architect  
34 ~~[or]~~ , engineer , construction manager, or other consultant in  
35 connection with the project, for the length of time necessary for the  
36 completion of the actual construction; or
- 37       k. The management and operation of bookstores or other auxiliary  
38 services for a term not exceeding five years; or
- 39       l. The provision of banking, financial services, and e-commerce  
40 services for a term not exceeding five years; or
- 41       m. The provision of services for maintenance and repair of building  
42 systems, including, but not limited to, fire alarms, fire suppression  
43 systems, security systems, and heating, ventilation, and air  
44 conditioning systems for a term no exceeding five years .
- 45       All multiyear leases and contracts entered into pursuant to this

1 section, except [contracts for the leasing or servicing of equipment  
2 supplied by a telephone company which is subject to the jurisdiction  
3 of the Board of Public Utilities or] contracts and agreements for the  
4 provision of work or the supplying of equipment to promote energy  
5 conservation and authorized pursuant to subsection i. of this section,  
6 shall contain a clause making them subject to the availability and  
7 appropriation annually of sufficient funds to meet the extended  
8 obligation or contain an annual cancellation clause.  
9 (cf: P.L.1994, c.48, s.117)

10

11 12. Sections 1 through 7, 9,10 and 11 of this act shall take effect  
12 immediately, and section 8 shall take effect 60 days after enactment  
13 and apply to projects bid after that date.

14

15

16

#### STATEMENT

17

18 This bill amends the "State College Contracts Law," P.L.1986,  
19 c.43.

20 The bill raises to \$25,000 the threshold above which a contract  
21 must be publicly advertised and publicly bid. Commencing January 1,  
22 2005, and every two years thereafter, the Governor will adjust this  
23 amount in proportion to the rise or fall of the Consumer Price Index.

24 The bill makes changes to the section of law that enumerates  
25 exemptions to the requirement for public advertising and bidding. The  
26 bill exempts contracts that concern: the use of electronic data or media  
27 services, including the internet, for the printing of legal notices and  
28 briefs used in any legal proceeding to which the State college is a  
29 party; electronic databases and digital formats in regard to specialized  
30 library services; the use of electronic data or media services, including  
31 the internet, for the publication of legal notices; the collection of  
32 amounts due on certain obligations to the State college, including but  
33 not limited to, the amounts due on tuition and fees and room and  
34 board; consulting services; the production and reproduction in  
35 electronic and digital formats, including compact discs, of such items  
36 as catalogs, yearbooks and course announcements; information  
37 technology, defined as telecommunications goods and services,  
38 including, but not limited to, software, hardware and systems  
39 implementation and support for voice, data and video; and items  
40 available from vendors at costs below State contract pricing for the  
41 same product or service, which meets or exceeds the State contract  
42 terms or conditions.

43 The bill provides that a State college, without advertising for bids,  
44 or after having rejected all bids obtained pursuant to advertising, may  
45 purchase any materials, supplies, goods, services or equipment  
46 pursuant to a contract for those items entered into on behalf of a

1 governmental agency. The law currently provides that under these  
2 conditions the State college could purchase materials, supplies, goods,  
3 services or equipment pursuant to a contract entered into on behalf of  
4 the State by the Division of Purchase and Property.

5 The bill extends the period for which a contract may be awarded  
6 from 12 to 36 months and adds to the list of types of contracts that  
7 may exceed the 36-month period. Contracts concerning the provision  
8 of banking, financial services, and e-commerce services and the  
9 provision of services for maintenance and repair of building systems,  
10 including fire alarms, fire suppression systems, security systems, and  
11 heating, ventilation and air conditioning systems may all be bid for a  
12 term not exceeding five years.

13 Under current law, in the case of contracts for the construction,  
14 alteration or repair of any building by a State college, the contracting  
15 agent must advertise for and receive: separate bids for various  
16 categories of work; bids for all work and materials required to  
17 complete the entire project; or both. These contracts are awarded to  
18 the lowest responsible bidder whose bid will be the most advantageous  
19 to the State college. This bill will permit State colleges to also use  
20 one of the following procedures in the case of bids for the  
21 construction, alteration or repair of any building: bids for work using  
22 the design-build method; bids for work using the construction  
23 manager-agent method; or bids for work using the construction  
24 manager at-risk method. Contracts awarded pursuant to these  
25 procedures will be awarded to the bidder whose proposal will be most  
26 advantageous to the State college.

# SENATE EDUCATION COMMITTEE

## STATEMENT TO

### **SENATE, No. 1543**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: June 9, 2005

The Senate Education Committee reports favorably Senate Bill No.1543 with committee amendments.

As amended, this bill makes various changes to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.). The bill raises to \$26,200 the threshold above which a contract must be publicly advertised and publicly bid. Commencing January 1, 2005, and every two years thereafter, the Governor will adjust this amount in proportion to the rise or fall of the Consumer Price Index. The change in the threshold amount is designed to ensure that the threshold amount for State colleges and universities is the same, and continues to be the same, as the threshold amount applicable to county colleges pursuant to the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

The bill revises the method by which boards of trustees may award contracts for the purchase of goods and services. For these contracts the board will award the contract to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered. The bill does not change the method for awarding contracts for the construction of buildings and other improvements. Under current law, both types of contracts are awarded to the lowest responsible bidder whose bid will be the most advantageous to the State colleges.

The bill changes the law that enumerates exemptions to the requirement for public advertising and bidding. The bill exempts contracts that concern: the use of electronic data or media services, including the internet, for the printing of legal notices and briefs used in any legal proceeding to which the State college is a party; electronic databases and digital formats in regard to specialized library services; the use of electronic data or media services, including the internet, for the publication of legal notices; the collection of amounts due on certain obligations to the State college, including but not limited to the amounts due on tuition and fees and room and board; the production and reproduction of such items as catalogs, yearbooks and course announcements in electronic and digital formats, including compact discs; information technology, defined as telecommunications goods

and services, including but not limited to software, hardware and systems implementation and support for voice, data and video; items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions; management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security; construction management services for construction, alteration or repair of any building or improvement; or purchase or rental of equipment of a technical nature, when the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

The bill provides that a State college, without advertising for bids, or after having rejected all bids obtained pursuant to advertising, may purchase any materials, supplies, goods, services or equipment pursuant to a contract for those items entered into on behalf of any municipality or county in the State. The law currently provides that under these conditions the State college could purchase materials, supplies, goods, services or equipment pursuant to a contract entered into on behalf of the State by the Division of Purchase and Property.

The bill extends the period for which a contract may be awarded from 12 to 36 months and adds to the list of types of contracts that may exceed the 36-month period. A State college will be permitted to enter a contract for a term not exceeding five years for the provision of banking, financial services, and e-commerce services and the provision of services for maintenance and repair of building systems, including fire alarms, fire suppression systems, security systems, and heating, ventilation and air conditioning systems. A State college will be permitted to enter a contract for a term not exceeding ten years for the purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes.

The committee amended the bill to:

- \* delete the option for State colleges and universities to use the design build method, the construction manager-at-risk method, or the construction manager agent method for awarding contracts for the construction, alteration or repair of buildings;

- \* increase the bidding threshold above which a contract must be publicly advertised and publicly bid from \$25,000 to \$26,200, the current threshold for county colleges;

- \* revise the method used by State colleges and universities to evaluate bids in regard to contracts for the purchase of goods and services;

- \* include, in the list of exemptions to the requirement for public advertising and bidding, contracts concerning: management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; specific types of consulting services;

construction management services for construction, alteration or repair of any building or improvement; and the purchase or rental of technical equipment when it is necessary in the public interest to assure standardization of equipment and interchangeability of parts;

- \* include conditions for purchasing from the Federal Supply Schedules;

- \* eliminate language that refers to a consent of surety being submitted with a bid;

- \* permit State colleges and universities to enter contracts for the purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 10 years;

- \* repeal a section of law concerning bids of equal amounts and insert the repealed language in the section of law concerning the method of evaluation used for bids concerning contracts for the construction of buildings and other improvements;

- \* provide that all the sections of the bill will take effect 60 days after the date of enactment and will apply to contracts for which bids are solicited on and after the effective date; and

As reported, this bill is identical to Assembly Bill No. 2641(1R) with committee amendments.



# 4:9-15.43

## LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

**LAWS OF:** 2005 **CHAPTER:** 37

**NJSA:** 4:9-15.43 (Requires identification and record keeping for sales of certain fertilizers)

**BILL NO:** A3260 (Substituted for S1898)

**SPONSOR(S):** Barnes and others

**DATE INTRODUCED:** September 27, 2004

**COMMITTEE:** **ASSEMBLY:** Law and Public Safety  
**SENATE:** Law and Public Safety and Veterans' Affairs

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** January 24, 2005

**SENATE:** December 13, 2004

**DATE OF APPROVAL:** February 25, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) 2<sup>nd</sup> reprint enacted

### A3260

[SPONSOR'S STATEMENT:](#) (Begins on page 2 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

### S1898

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 3/14/07

P.L. 2005, CHAPTER 37, *approved February 25, 2005*  
Assembly, No. 3260 (*Second Reprint*)

1 AN ACT concerning the sale of <sup>2</sup>[ammonium nitrate fertilizer]certain  
2 commercial fertilizers<sup>2</sup> and <sup>2</sup>amending and<sup>2</sup> supplementing  
3 <sup>2</sup>[chapter 9 of Title 4 of the Revised Statutes] P.L.1970, c.66<sup>2</sup>.  
4

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

8 <sup>2</sup>1. Section 3 of P.L.1970, c.66 (C.4:9-15.3) is amended to read as  
9 follows:

10 3. As used in this act:

11 (a) "Commercial fertilizer" means a fertilizer material, mixed  
12 fertilizer or any other substance containing one or more recognized  
13 plant nutrients which is used for its plant nutrient content, which is  
14 designed for use or claimed to have value in promoting plant growth,  
15 and which is sold, offered for sale, or intended for sale; except that it  
16 shall not be considered to include unmanipulated animal or vegetable  
17 manures, agricultural liming materials, or wood ashes.

18 (b) "Specialty fertilizer" means a commercial fertilizer distributed  
19 primarily for nonfarm use, such as home gardens, lawns, shrubbery,  
20 flowers, golf courses, parks, cemeteries, greenhouses, and nurseries.

21 (c) "Customer formulated mix" means a commercial fertilizer  
22 prepared expressly for, and according to specifications furnished prior  
23 to mixing by, the customer.

24 (d) "Soil conditioner" means any substance intended or claimed to  
25 improve the chemical, physical or biological characteristics of the soil  
26 which is sold, offered for sale, or intended for sale; except that it shall  
27 not be considered to include decomposed organic material having an  
28 ash content not exceeding 25% by dry weight, unmanipulated animal  
29 or vegetable manures, agricultural liming materials, or any other  
30 materials that may be exempted by regulation.

31 (e) "Brand" means a term, design, or trademark used in connection  
32 with a soil conditioner or with one or more grades of commercial  
33 fertilizer.

34 (f) "Grade" means the percentage of total nitrogen, available  
35 phosphoric acid, and soluble potash stated in whole numbers in the  
36 same terms, order, and percentages as in the guaranteed analysis;  
37 provided, however, that fertilizer materials, bone meal, and similar raw

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 ALP committee amendments adopted October 21, 2004.

<sup>2</sup> Senate SLP committee amendments adopted November 8, 2004.

1 materials may be guaranteed in fractional units.

2 (g) "Guaranteed analysis" means the minimum percentage of plant  
3 nutrients claimed and set forth in the manner prescribed in subsection  
4 10(c) of this act.

5 (h) "Index value" means an expression of the actual analysis of a  
6 fertilizer compared to the guaranteed analysis determined according to  
7 the following formula. Multiply the total nitrogen value by 3, the  
8 available phosphoric acid value by 2, and the soluble potash value by  
9 one, and then add these figures separately for the actual analysis and  
10 for the guaranteed analysis to obtain, respectively, the total actual  
11 value and the total guaranteed value. The index value is obtained by  
12 dividing the total actual value by the total guaranteed value.

13 (i) "Official sample" means any sample of commercial fertilizer or  
14 soil conditioner taken by an agent of the Department of Agriculture  
15 and designated as "official" by the department.

16 (j) "Person" includes any individual, partnership, association, firm,  
17 or corporation.

18 (k) "Distributor" means any person who imports, consigns,  
19 manufactures, produces, compounds, mixes, or blends commercial  
20 fertilizer or soil conditioner or who offers for sale, sells, barter, or  
21 otherwise supplies such products in this State.

22 (l) "Licensee" means a person who is licensed, or is required to be  
23 licensed, to distribute commercial fertilizers or soil conditioners under  
24 the provisions of this act.

25 (m) "Manufacturing facility" means any place where a commercial  
26 fertilizer or soil conditioner is manufactured, produced, compounded,  
27 mixed, blended, or in any way altered chemically or physically.

28 (n) "Label" means the display of all written, printed, or graphic  
29 matter on the immediate container or a statement accompanying a  
30 commercial fertilizer or soil conditioner.

31 (o) "Labeling" means all written, printed, or graphic matter on or  
32 accompanying any commercial fertilizer or soil conditioner, or the  
33 contents of any advertisements, brochures, posters, or television or  
34 radio announcements used in promoting the sale of such commercial  
35 fertilizer or soil conditioner.

36 (p) "Ton" means a net weight of 2,000 pounds avoirdupois.

37 (q) "Per cent" or "percentage" refers to the percentage by weight.

38 (r) "Department" means the New Jersey Department of Agriculture  
39 and includes the State Board of Agriculture, the Secretary of  
40 Agriculture, the State Chemist, and all employees and agents thereof.

41 (s) "State board" means the State Board of Agriculture of New  
42 Jersey.

43 (t) "Secretary" means the Secretary of Agriculture of New Jersey.

44 (u) "State Chemist" means the person appointed by the State  
45 board, subject to the supervision of the secretary, for the purpose of  
46 administering this act.

1       (v) "Restricted commercial fertilizer" means any commercial  
 2 fertilizer that in the judgment of the State Chemist, in consultation  
 3 with the Domestic Security Preparedness Task Force, has the potential  
 4 to be used as a "destructive device" as defined in subsection c. of  
 5 N.J.S. 2C:39-1 or an "explosive" as defined in subsection e. of N.J.S.  
 6 2C:39-1 or otherwise presents an unreasonable threat to public safety.  
 7 "Restricted commercial fertilizer" shall include, but not be limited to,  
 8 the chemical compound ammonium nitrate.<sup>2</sup>  
 9 (cf: P.L.1983, c.419, s.1)

10  
 11       <sup>2</sup>[1.] 2.<sup>2</sup> a. Every manufacturer or distributor of <sup>2</sup>a restricted<sup>2</sup>  
 12 commercial <sup>2</sup>[fertilizers or soil conditioners licensed pursuant to  
 13 section 5 of P.L.1970, c.66 (C.4:9-15.5)] fertilizer<sup>2</sup> shall record <sup>2</sup>, on  
 14 forms provided by the secretary,<sup>2</sup> <sup>1</sup>the number of<sup>1</sup> a valid State or  
 15 federal driver's license <sup>1</sup>[number] bearing a photograph<sup>1</sup>, or other  
 16 picture identification card number approved for buyer identification by  
 17 the State Board of Agriculture, <sup>1</sup>and make a clear copy of that  
 18 identification,<sup>1</sup> before offering for sale or selling <sup>2</sup>[ammonium nitrate]  
 19 restricted commercial<sup>2</sup> fertilizer to that buyer.

20       b. Licensed manufacturers or distributors shall maintain for at least  
 21 two years a record of all sales of <sup>2</sup>[ammonium nitrate] restricted  
 22 commercial<sup>2</sup> fertilizer including:

23       (1) the date of sale or delivery of the fertilizer;

24       (2) the name <sup>1</sup>[and],<sup>1</sup> address <sup>1</sup>and copy of the driver's license or  
 25 picture identification card<sup>1</sup> of the person to whom the fertilizer was  
 26 sold or delivered;

27       (3) the amount of the fertilizer; and

28       (4) any other information as may be required by the State Board of  
 29 Agriculture.

30       c. Licensed manufacturers or distributors shall annually compile  
 31 and report the information required pursuant to subsection a. of this  
 32 section to the State Board of Agriculture.

33       d. The State Board of Agriculture shall refuse to grant or renew a  
 34 license of a manufacturer or distributor who fails to comply with the  
 35 reporting requirements set forth in subsections a. and b. of this section.

36       e. A licensed manufacturer or distributor may refuse to offer for  
 37 sale or sell <sup>2</sup>[ammonium nitrate] restricted commercial<sup>2</sup> fertilizer to  
 38 buyers attempting to purchase ammonium nitrate out of season, in  
 39 unusual quantities or under suspect purchase patterns.

40       f. The State Board of <sup>1</sup>[Agriculture] Agriculture<sup>1</sup>, after  
 41 consultation with the <sup>2</sup>[Attorney General] Domestic Security  
 42 Preparedness Task Force<sup>2</sup>, shall promulgate regulations implementing  
 43 the provisions of this section.

44  
 45       <sup>2</sup>3. (New section) A distributor of restricted commercial fertilizer

1 shall immediately report any suspect purchase pattern, theft or loss of  
2 inventory of a restricted commercial fertilizer to the appropriate law  
3 enforcement agency.<sup>2</sup>

4  
5 <sup>2</sup>4. (New section) Notwithstanding any provision of law to the  
6 contrary, any person who refuses to sell a restricted commercial  
7 fertilizer to any person, or any person who reports information to a  
8 law enforcement official or agency concerning the suspect purchase  
9 pattern of any person attempting to purchase a restricted commercial  
10 fertilizer shall be immune from any civil liability on account of the  
11 report, unless such person has acted in bad faith or with malicious  
12 purpose.<sup>2</sup>

13  
14 <sup>2</sup>[2.] <sup>5.</sup><sup>2</sup> This act shall take effect on the first day of the fourth  
15 month following enactment.

16  
17  
18 \_\_\_\_\_  
19  
20 Requires identification and record keeping for sales of certain  
21 fertilizers.

# ASSEMBLY, No. 3260

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED SEPTEMBER 27, 2004

**Sponsored by:**

**Assemblyman PETER J. BARNES, JR.**

**District 18 (Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**SYNOPSIS**

Requires identification to purchase ammonium nitrate fertilizer.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/28/2004)**

1 AN ACT concerning the sale of ammonium nitrate fertilizer and  
2 supplementing chapter 9 of Title 4 of the Revised Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. a. Every manufacturer or distributor of commercial fertilizers  
8 or soil conditioners licensed pursuant to section 5 of P.L.1970, c.66  
9 (C.4:9-15.5) shall record a valid State or federal driver's license  
10 number, or other picture identification card number approved for  
11 buyer identification by the State Board of Agriculture, before offering  
12 for sale or selling ammonium nitrate fertilizer to that buyer.

13 b. Licensed manufacturers or distributors shall maintain for at least  
14 two years a record of all sales of ammonium nitrate fertilizer including:

15 (1) the date of sale or delivery of the fertilizer;

16 (2) the name and address of the person to whom the fertilizer was  
17 sold or delivered;

18 (3) the amount of the fertilizer; and

19 (4) any other information as may be required by the State Board of  
20 Agriculture.

21 c. Licensed manufacturers or distributors shall annually compile  
22 and report the information required pursuant to subsection a. of this  
23 section to the State Board of Agriculture.

24 d. The State Board of Agriculture shall refuse to grant or renew a  
25 license of a manufacturer or distributor who fails to comply with the  
26 reporting requirements set forth in subsections a. and b. of this section.

27 e. A licensed manufacturer or distributor may refuse to offer for  
28 sale or sell ammonium nitrate fertilizer to buyers attempting to  
29 purchase ammonium nitrate out of season, in unusual quantities or  
30 under suspect purchase patterns.

31 f. The State Board of Agriculture, after consultation with the  
32 Attorney General, shall promulgate regulations implementing the  
33 provisions of this section.

34  
35 2. This act shall take effect on the first day of the fourth month  
36 following enactment.

37

38

39

STATEMENT

40

41 This bill would require persons licensed to manufacture or  
42 distribute fertilizer in this State to obtain a photo identification of  
43 anyone buying ammonium nitrate fertilizer. The licensee also would  
44 be required to keep a record of all sales of ammonium nitrate fertilizer.  
45 The record shall include: (1) the date of the sale or delivery; (2) the



1 purchaser's name and address; (3) the amount of fertilizer sold; and  
2 (4) any other information required by the State Board of Agriculture.

3 A license will not be granted or renewed if the manufacturer or  
4 distributor does not comply with the bill's provisions.

5 The bill also specifies that licensed manufacturers or distributors  
6 may refuse sell ammonium nitrate fertilizer to buyers attempting to  
7 purchase ammonium nitrate out of season, in unusual quantities or  
8 under suspect purchase patterns.

9 This bill is in response to the growing use of ammonium nitrate in  
10 terrorist bombs. A recent federal Department of Homeland Security  
11 bulletin warned that terrorists might use ammonium nitrate bombs to  
12 strike the country's public transportation system this summer.  
13 Ammonium nitrate bombs were used in a series of deadly bombings in  
14 Istanbul, Turkey in November 2003, a nightclub bombing in Bali,  
15 Indonesia in October 2002, the 1995 Oklahoma City bombing, as well  
16 as in the 1993 World Trade Center attack. While ammonium nitrate  
17 has legitimate uses in the farming and industrial explosive industries,  
18 its sale and distribution should be monitored.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3260**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 21, 2004

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 3260.

Assembly Bill No. 3260, as amended and reported by the committee, requires persons licensed to manufacture or distribute fertilizer in this State to obtain a photo identification of anyone buying ammonium nitrate fertilizer. The licensee also would be required to keep a record of all sales of ammonium nitrate fertilizer. The record shall include: (1) the date of the sale or delivery; (2) the purchaser's name and address, as well as a copy of the purchaser's driver's license; (3) the amount of fertilizer sold; and (4) any other information required by the State Board of Agriculture. A license will not be granted or renewed if the manufacturer or distributor does not comply with the bill's provisions.

The amended bill also specifies that licensed manufacturers or distributors may refuse to sell ammonium nitrate fertilizer to buyers attempting to purchase ammonium nitrate out of season, in unusual quantities or under suspect purchase patterns.

According to the sponsor, this bill is in response to the growing use of ammonium nitrate in terrorist bombs. A recent federal Department of Homeland Security bulletin warned that terrorists might use ammonium nitrate bombs to strike the country's public transportation system. Ammonium nitrate bombs were used in a series of deadly bombings in Istanbul, Turkey in November 2003, a nightclub bombing in Bali, Indonesia in October 2002, the 1995 Oklahoma City bombing, as well as in the 1993 World Trade Center attack. While ammonium nitrate has legitimate uses in the farming and industrial explosive industries, its sale and distribution should be monitored.

#### COMMITTEE AMENDMENTS

The committee amended the bill to clarify that the driver's license or other identification that a seller is to obtain from the purchaser prior to a sale of ammonium nitrate must have a photograph. The amendments also clarify that the copy of the buyer's photo identification must be included in the information that must be

maintained on record for two years.

A technical correction also was made to the bill.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 3260**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 8, 2004

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably Assembly Bill No. 3260 (1R).

As amended and reported by the committee, this bill requires persons licensed to manufacture or distribute fertilizer in this State to obtain a photo identification of anyone buying restricted commercial fertilizer, as defined in the bill. The licensee also would be required to keep a record, on forms to be provided by the Secretary of Agriculture, of all sales of restricted commercial fertilizer. The record shall include: (1) the date of the sale or delivery; (2) the purchaser's name and address, as well as a copy of the purchaser's driver's license; (3) the amount of fertilizer sold; and (4) any other information required by the State Board of Agriculture. A license will not be granted or renewed if the manufacturer or distributor does not comply with the bill's provisions.

The bill also specifies that licensed manufacturers or distributors may refuse to sell restricted commercial fertilizer to buyers attempting to purchase out of season, in unusual quantities or under suspect purchase patterns.

As amended by the committee, the bill also requires a distributor of restricted commercial fertilizer to immediately report any suspect purchase pattern, theft or loss of inventory of a restricted commercial fertilizer to the appropriate law enforcement agency.

The amended bill further provides that any person who refuses to sell a restricted commercial fertilizer to any person, or any person who reports information to a law enforcement official or agency concerning the suspect purchase pattern of any person attempting to purchase a restricted commercial fertilizer would be immune from any civil liability on account of the report, unless the person has acted in bad faith or with malicious purpose.

The committee amended the bill to provide a definition of "restricted commercial fertilizer" which would be regulated under the

bill. As received by the committee, the bill regulated ammonium nitrate fertilizer. The amendments also provide that the information required to be obtained from buyers be recorded on a standard form provided by the Secretary of Agriculture. In addition, the amendments require that manufacturers and distributors report suspect purchase patterns or theft or loss of inventory to law enforcement, and provide immunity for those who comply with reporting requirements, except for bad faith or malicious purpose. Finally, the Secretary of Agriculture is required to consult with the Domestic Security Preparedness Task Force in promulgating regulations to effectuate the bill's provisions. As introduced, the secretary was required to consult with the Attorney General.

As amended and reported by the committee, this bill is identical to the Senate Committee Substitute for Senate Bill No. 1898, which also was reported by the committee on this same date.

**SENATE, No. 1898**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED OCTOBER 4, 2004

**Sponsored by:**

**Senator ANDREW R. CIESLA**  
**District 10 (Monmouth and Ocean)**

**Co-Sponsored by:**

**Senators Kyrillos, T.Kean and Lance**

**SYNOPSIS**

Requires identification and record keeping for sales of certain fertilizers.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the sale of certain commercial fertilizers and  
2 amending and supplementing P.L.1970, c.66.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. (New section) The Legislature finds and declares:

8 a. The panel of scientists and security experts at the National  
9 Academy of Sciences recommended in 1998 that the Congress of the  
10 United States pass legislation requiring the purchasers of ammonium  
11 nitrate and other fertilizers to provide identification to dealers of such  
12 products, and that dealers maintain records of such purchases.

13 b. In the absence of national legislation the Legislature determines  
14 that it is in the public interest to regulate, document and monitor  
15 access to certain fertilizers designated by the Secretary of Agriculture  
16 that due to their explosive capabilities pose an unreasonable threat to  
17 public safety.

18

19 2. Section 2 of P.L.1970, c.66 (C.4:9-15.2) is amended to read as  
20 follows:

21 2. This act shall be administered by the New Jersey Department of  
22 Agriculture; provided, however, the Secretary of Agriculture shall  
23 consult with the Office of Counter-Terrorism in the Department of  
24 Law and Public Safety, and the Domestic Security Preparedness Task  
25 Force created pursuant to section 4 of P.L.2001, c.246 (C.App.A.9-  
26 67) in preparing rules and regulations implementing the provisions of  
27 (P.L. c. ) (now pending before the Legislature as this bill).

28 (cf: P.L.1970, c.66, s.2)

29

30 3. Section 3 of P.L.1970, c.66 (C.4:9-15.3) is amended to read as  
31 follows:

32 3. As used in this act:

33 (a) "Commercial fertilizer" means a fertilizer material, mixed  
34 fertilizer or any other substance containing one or more recognized  
35 plant nutrients which is used for its plant nutrient content, which is  
36 designed for use or claimed to have value in promoting plant growth,  
37 and which is sold, offered for sale, or intended for sale; except that it  
38 shall not be considered to include unmanipulated animal or vegetable  
39 manures, agricultural liming materials, or wood ashes.

40 (b) "Specialty fertilizer" means a commercial fertilizer distributed  
41 primarily for nonfarm use, such as home gardens, lawns, shrubbery,  
42 flowers, golf courses, parks, cemeteries, greenhouses, and nurseries.

43 (c) "Customer formulated mix" means a commercial fertilizer

**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 prepared expressly for, and according to specifications furnished prior  
2 to mixing by, the customer.

3 (d) "Soil conditioner" means any substance intended or claimed to  
4 improve the chemical, physical or biological characteristics of the soil  
5 which is sold, offered for sale, or intended for sale; except that it shall  
6 not be considered to include decomposed organic material having an  
7 ash content not exceeding 25% by dry weight, unmanipulated animal  
8 or vegetable manures, agricultural liming materials, or any other  
9 materials that may be exempted by regulation.

10 (e) "Brand" means a term, design, or trademark used in connection  
11 with a soil conditioner or with one or more grades of commercial  
12 fertilizer.

13 (f) "Grade" means the percentage of total nitrogen, available  
14 phosphoric acid, and soluble potash stated in whole numbers in the  
15 same terms, order, and percentages as in the guaranteed analysis;  
16 provided, however, that fertilizer materials, bone meal, and similar raw  
17 materials may be guaranteed in fractional units.

18 (g) "Guaranteed analysis" means the minimum percentage of plant  
19 nutrients claimed and set forth in the manner prescribed in subsection  
20 10(c) of this act.

21 (h) "Index value" means an expression of the actual analysis of a  
22 fertilizer compared to the guaranteed analysis determined according to  
23 the following formula. Multiply the total nitrogen value by 3, the  
24 available phosphoric acid value by 2, and the soluble potash value by  
25 one, and then add these figures separately for the actual analysis and  
26 for the guaranteed analysis to obtain, respectively, the total actual  
27 value and the total guaranteed value. The index value is obtained by  
28 dividing the total actual value by the total guaranteed value.

29 (i) "Official sample" means any sample of commercial fertilizer or  
30 soil conditioner taken by an agent of the Department of Agriculture  
31 and designated as "official" by the department.

32 (j) "Person" includes any individual, partnership, association, firm,  
33 or corporation.

34 (k) "Distributor" means any person who imports, consigns,  
35 manufactures, produces, compounds, mixes, or blends commercial  
36 fertilizer or soil conditioner or who offers for sale, sells, barter, or  
37 otherwise supplies such products in this State.

38 (l) "Licensee" means a person who is licensed, or is required to be  
39 licensed, to distribute commercial fertilizers or soil conditioners under  
40 the provisions of this act.

41 (m) "Manufacturing facility" means any place where a commercial  
42 fertilizer or soil conditioner is manufactured, produced, compounded,  
43 mixed, blended, or in any way altered chemically or physically.

44 (n) "Label" means the display of all written, printed, or graphic  
45 matter on the immediate container or a statement accompanying a  
46 commercial fertilizer or soil conditioner.



1 (o) "Labeling" means all written, printed, or graphic matter on or  
2 accompanying any commercial fertilizer or soil conditioner, or the  
3 contents of any advertisements, brochures, posters, or television or  
4 radio announcements used in promoting the sale of such commercial  
5 fertilizer or soil conditioner.

6 (p) "Ton" means a net weight of 2,000 pounds avoirdupois.

7 (q) "Per cent" or "percentage" refers to the percentage by weight.

8 (r) "Department" means the New Jersey Department of Agriculture  
9 and includes the State Board of Agriculture, the Secretary of  
10 Agriculture, the State Chemist, and all employees and agents thereof.

11 (s) "State board" means the State Board of Agriculture of New  
12 Jersey.

13 (t) "Secretary" means the Secretary of Agriculture of New Jersey.

14 (u) "State Chemist" means the person appointed by the State  
15 board, subject to the supervision of the secretary, for the purpose of  
16 administering this act.

17 (v) "Restricted commercial fertilizer" means any commercial  
18 fertilizer that in the judgment of the State Chemist in consultation with  
19 the Domestic Security Preparedness Task Force has the potential to be  
20 used as a "destructive device" as defined in subsection c. of N.J.S.  
21 2C:39-1 or an "explosive" as defined in subsection e. of N.J.S. 2C:39-  
22 1 or otherwise presents an unreasonable threat to public safety.  
23 "Restricted commercial fertilizer" shall include, but not be limited to,  
24 the chemical compound ammonium nitrate and the chemical compound  
25 anhydrous ammonia, as those terms are defined in Official Publication  
26 No.57 of the Association of American Plant Food Control Officials.  
27 (cf: P.L.1983, c.419, s.1)

28

29 4. (New section) A distributor of restricted commercial fertilizer  
30 may refuse to make a sale to a person attempting to purchase  
31 restricted commercial fertilizer if, in the opinion of the distributor, the  
32 person attempting to purchase a restricted commercial fertilizer is:

33 a. attempting to purchase restricted commercial fertilizers out of  
34 season;

35 b. attempting to purchase restricted commercial fertilizers in  
36 unusual quantities; or

37 c. attempting to purchase restricted commercial fertilizers under  
38 suspect purchase patterns.

39

40 5. (New section) A distributor of restricted commercial fertilizer  
41 shall immediately report any suspect purchase pattern, theft or loss of  
42 inventory of a restricted commercial fertilizer to the appropriate law  
43 enforcement agency.

44

45 6. (New section) Notwithstanding any provision of law to the  
46 contrary, any person who refuses to sell a restricted commercial

1 fertilizer to any person, or any person who reports information to a  
2 law enforcement official or agency concerning the suspect purchase  
3 pattern of any person attempting to purchase a restricted commercial  
4 fertilizer shall be immune from any civil liability on account of the  
5 report, unless such person has acted in bad faith or with malicious  
6 purpose.

7  
8 7. (New section) A distributor of restricted commercial fertilizer  
9 shall, prior to the completion of any sale, record on forms provided by  
10 the Secretary, the valid drivers' license number, name and address of  
11 any person seeking to purchase a restricted commercial fertilizer. In  
12 addition, the distributor shall record the amount of restricted  
13 commercial fertilizer sold.

14  
15 8. (New section) A distributor of restricted commercial fertilizer  
16 shall maintain records of the information required pursuant to section  
17 7 of (P.L. c. ) (now pending before the Legislature as this bill)  
18 for a period of two years following the sale of a restricted commercial  
19 fertilizer.

20  
21 9. (New section) The Secretary of Agriculture shall, pursuant to  
22 the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et  
23 seq.), adopt rules and regulations to effectuate the purposes of this  
24 act.

25  
26 10. This act shall take effect on the first day of the sixth month  
27 after enactment; provided, however, the Secretary of Agriculture and  
28 the Domestic Security Preparedness Task Force may take such  
29 anticipatory actions in advance of that date as may be necessary to  
30 provide for the effective implementation of this act on its effective  
31 date.

32  
33  
34 STATEMENT

35  
36 This bill would require distributors of ammonium nitrate and other  
37 fertilizers that can readily be used to create terrorist bombs to require  
38 identification from customers of such products, and maintain records  
39 of sales of such products.

40 When combined with diesel fuel or kerosene, ammonium nitrate can  
41 be used to create explosives like those that destroyed the Alfred P.  
42 Murrah Federal Building in Oklahoma City, and those used in the  
43 October 2002 nightclub bombings that killed 202 people in Bali.

44 Currently, the states of Nevada and South Carolina have laws  
45 requiring identification and record keeping of ammonium nitrate and  
46 other potentially explosive fertilizers.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1898**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 8, 2004

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1898.

This committee substitute requires persons licensed to manufacture or distribute fertilizer in this State to obtain a photo identification of anyone buying restricted commercial fertilizer, as defined in the substitute. The licensee also would be required to keep a record, on forms to be provided by the Secretary of Agriculture, of all sales of restricted commercial fertilizer. The record shall include: (1) the date of the sale or delivery; (2) the purchaser's name and address, as well as a copy of the purchaser's driver's license; (3) the amount of fertilizer sold; and (4) any other information required by the State Board of Agriculture. A license will not be granted or renewed if the manufacturer or distributor does not comply with the substitute's provisions.

The substitute also specifies that licensed manufacturers or distributors may refuse to sell restricted commercial fertilizer to buyers attempting to purchase out of season, in unusual quantities or under suspect purchase patterns.

The substitute also requires a distributor of restricted commercial fertilizer to immediately report any suspect purchase pattern, theft or loss of inventory of a restricted commercial fertilizer to the appropriate law enforcement agency.

The substitute further provides that any person who refuses to sell a restricted commercial fertilizer to any person, or any person who reports information to a law enforcement official or agency concerning the suspect purchase pattern of any person attempting to purchase a restricted commercial fertilizer would be immune from any civil liability on account of the report, unless the person has acted in bad faith or with malicious purpose.

This committee substitute is identical to Assembly Bill No. 3260 (1R), as amended and reported by the committee on this same date.