

9/30/86

18A:64-52 to 18A:64-84

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:64-52 to 18A:64-84 ("State College Contracts Law")

LAWS OF: 1986

CHAPTER 43

BILL NO: A1177

Sponsor(s): Rocco

Date Introduced: Pre-filed

Committee: Assembly: Higher Education and Regulated Professions

Senate: Education

Amended during passage: Yes Substituted for S1470 (not attached since identical to A1177). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: February 13, 1986

Senate: June 2, 1986

Date of Approval: July 9, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 5-15-86 (with Statement).

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: ~~No~~ YES

Message on Signing: ~~Yes~~ NO

Following were printed:

Reports: Yes

Hearings: No

See Governor Kean's conditional veto to S1443--attached:

(OVER)

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974.90 New Jersey. Commission on the Future of the State Colleges.  
C697        Toward a University of New Jersey; the report of the . . .  
1984        February, 1984. Trenton, 1984.

See newspaper clipping file in N.J. Reference Department under "N.J.--Colleges and Universities--1986".

7-9-86

[SECOND OFFICIAL COPY REPRINT]

## ASSEMBLY, No. 1177

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman ROCCO

AN ACT concerning education and enacting an additional article to chapter 64 of Title 18A of the New Jersey Statutes to be known as the "State College Contracts Law."

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

## A. GENERAL PROVISIONS

1 1. This article shall be known and may be cited as the "State  
2 College Contracts Law."

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

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

3 b. "Contracting agent" means the business officer of the State  
4 college having the power to prepare advertisements to advertise  
5 for and receive bids and to make awards for the State college in  
6 connection with the purchases, contracts or agreements permitted  
7 by this article or the officer, committee or employee to whom the  
8 power has been delegated by the State college;

9 c. "Contracts" means contracts or agreements for the perfor-  
10 mance of work or the furnishing or hiring of services, materials  
11 or supplies as distinguished from contracts of employment;

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

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

18 f. "Extraordinary unspecifiable services" means services or

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

**Matter printed in italics thus is new matter.**

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

**\*—Assembly committee amendments adopted January 30, 1986.**

**\*\*—Senate amendments adopted May 15, 1986.**

19 products which cannot be reasonably described by written speci-  
20 fications;

21 g. "Professional services" means services rendered or per-  
22 formed by a person authorized by law to practice a recognized pro-  
23 fession and whose practice is regulated by law and the performance  
24 of which services requires knowledge of an advanced type in a field  
25 of learning acquired by a prolonged formal course of specialized  
26 instruction and study as distinguished from general academic in-  
27 struction or apprenticeship and training. Professional services also  
28 means services rendered in the performance of work that is original  
29 and creative in character in a recognized field of artistic endeavor.

30 h. "Project" means any work, undertaking, construction or al-  
31 teration;

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

35 j. "State college" means an institution of higher education estab-  
36 lished pursuant to chapter 64 of Title 18A of the New Jersey  
37 Statutes;

38 k. "Work" includes services and any other activity of a tangible  
39 or intangible nature performed or assumed pursuant to a contract  
40 or agreement with a State college.

#### B. PURCHASES, CONTRACTS, AGREEMENTS, ADVERTISING:

##### EXCEPTIONS

1 3. a. Any purchase, contract or agreement for the performance  
2 of any work or the furnishing or hiring of materials or supplies,  
3 the cost or price of which, together with any sums expended for  
4 the performance of any work or services in connection with the  
5 same project or the furnishing of similar materials or supplies  
6 during the same fiscal year, paid with or out of college funds,  
7 does not exceed the total sum of \$7,500.00 or, commencing January  
8 1, 1985, the amount determined pursuant to subsection b. of this  
9 section in any fiscal year may be made, negotiated and awarded by  
10 a contracting agent, when so authorized by resolution of the board  
10A of trustees of the State college without public advertising for bids  
10B and bidding therefor.

10C b. Commencing January 1, 1985 and every two years thereafter,  
10D the Governor, in consultation with the Department of the Treasury,  
10E shall adjust the threshold amount set forth in subsection a. of this  
10F section in direct proportion to the rise or fall of the Consumer Price  
10G Index for all urban consumers in the New York and Northeastern  
10H New Jersey and the Philadelphia areas as reported by the United  
10I States Department of Labor. The adjustment shall become effec-  
10J tive on July 1 of the year in which it is reported.\*

11 c. Any purchase, contract or agreement made pursuant to this  
 12 section may be awarded for a period of 12 consecutive months, not-  
 13 withstanding that the 12-month period does not coincide with the  
 14 fiscal year. The Department of Higher Education shall adopt and  
 15 promulgate rules and regulations concerning the methods of ac-  
 16 counting for all contracts that do not coincide with the fiscal year.

1 4. Every contract or agreement for the performance of any work  
 2 or the furnishing or hiring of any materials or supplies, the cost  
 3 or the contract price of which is to be paid with or out of college  
 4 funds, not included within the terms of section 3 of this article,  
 5 shall be made and awarded only by the State college after public  
 6 advertising for bids and bidding therefor except as provided  
 7 otherwise in this article or specifically by any other law. No work,  
 8 materials or supplies shall be undertaken, acquired or furnished  
 9 for a sum exceeding in the aggregate \$7,500.00 or, commencing  
 10 January 1, 1985, the amount determined pursuant to subsection b.  
 11 of section 3 of this act except by written contract or agreement.

1 5. Any purchase, contract or agreement of the character de-  
 2 scribed in section 4 of this article, *may* be made, negotiated or  
 3 awarded by the State college by resolution at a public meeting of its  
 4 board of trustees without public advertising for bids or bidding  
 4A therefor if:

5 a. The subject matter thereof consists of:

- 6 (1) Professional services; or,
- 7 (2) Extraordinary unspecifiable services and products which  
 8 cannot reasonably be described by written specification, subject  
 9 however, to the rules and regulations of the Board of Higher  
 10 Education consistent with open public bidding whenever pos-  
 11 sible; or
- 12 (3) Materials or supplies which are not available from more  
 13 than one potential bidder, including without limitation materials  
 14 or supplies 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; or
- 19 (6) Textbooks, copyrighted materials, student produced publica-  
 20 tions and services incidental thereto, library materials including  
 21 without limitation books, periodicals, newspapers, documents,  
 22 pamphlets, photographs, reproductions, microfilms, pictorial or  
 23 graphic works, musical scores, maps, charts, globes, sound record-  
 24 ings, slides, films, filmstrips, video and magnetic tapes, other  
 25 printed or published matter and audiovisual and other materials

26 of a similar nature, necessary binding or rebinding of library  
27 materials and specialized library services; or

28 (7) Food supplies and services including food supplies and  
29 management contracts for student centers, dining rooms and cafe-  
30 terias pursuant to rules and regulations of the Board of Higher  
31 Education; or

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

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

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

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

46 (12) Publishing of legal notices in newspapers as required by  
47 law; or

48 (13) The acquisition of artifacts or other items of unique, in-  
49 trinsic, artistic or historic character; or

50 (14) The collection of amounts due on student loans, including  
51 without limitation loans guaranteed by or made with funds of the  
52 United States of America; or

53 (15) Professional consulting services; or

54 (16) Entertainment, including without limitation theatrical pre-  
55 sentations, band and other concerts, movies and other audiovisual  
56 productions; or

57 (17) Contracts employing funds created by student activities  
58 fees charged to students or otherwise raised by students not under  
59 the direct control of the college and expended by student organiza-  
60 tions; or

61 (18) Printing, including without limitation catalogs, yearbooks  
62 and course announcements; or

63 (19) Data processing software programs, systems and service  
64 and the rental or lease of data processing equipment; or

65 (20) Personnel recruitment and advertising including, without  
66 limitation, advertising seeking student enrollment; or

67 (21) Educational supplies, books, articles of clothing and other

68 miscellaneous articles purchased by a State college bookstore for  
69 resale to college students and employees; or

70 (22) Purchase or rental of graduation caps and gowns and  
71 award certificates or plaques.

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

76 c. The State college has advertised for bids pursuant to section 4  
77 of this article on two occasions and (i) has received no bids on  
78 both occasions in response to its advertisement, or (ii) has rejected  
79 the bids on two occasions because the State college has determined  
80 that they are not reasonable as to price, on the basis of cost esti-  
81 mates prepared for or by the State college prior to the advertising  
82 therefor, or have not been independently arrived at in open com-  
83 petition, or (iii) on one occasion no bids were received pursuant  
84 to (i) and on one occasion all bids were rejected pursuant to (ii),  
85 in whatever sequence; any contract or agreement may then be  
86 negotiated by a two-thirds affirmative vote of the authorized mem-  
87 bership of the board of trustees authorizing the contract or agree-  
88 ment; provided that:

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

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

99 (3) Any minor amendment or modification of any of the terms,  
100 conditions, restrictions and specifications, which were the subject  
101 of competitive bidding pursuant to section 4 of this act, shall be  
102 stated in the resolution awarding the contract or agreement;  
103 except that if on the second occasion the bids received are rejected  
104 as unreasonable as to price, the State college shall notify each  
105 responsible bidder, submitting bids on the second occasion of its  
106 intention to negotiate and afford each bidder a reasonable oppor-  
107 tunity to negotiate, but the State college shall not award the  
108 contract or agreement unless the negotiated price is lower than  
109 the lowest rejected bid price submitted on the second occasion by  
110 a responsible bidder, is the lowest negotiated price offered by any

111 reasonable vendor, and is a reasonable price for the work, ma-  
112 terials, supplies or services.

113 Whenever a State college shall determine that a bid was not  
114 arrived at independently in open competition pursuant to sub-  
115 section c. (ii) of section 5 of this article, it shall thereupon notify  
116 the Attorney General of the facts upon which its determination is  
117 based and, when appropriate, it may institute appropriate pro-  
118 ceedings in any State or federal court of competent jurisdiction  
119 for a violation of any State or federal antitrust law or laws relating  
120 to the unlawful restraint of trade.

1 6. Any purchase, contract, or agreement may be made, negotiated  
2 or awarded by a State college without public advertising for bids  
3 and bidding therefor, notwithstanding that the cost or contract  
4 price will exceed \$7,500.00 or, commencing January 1, 1985, the  
5 amount determined pursuant to subsection b. of section 3 of this  
6 act when an emergency affecting the health, safety or welfare of  
7 occupants of college property requires the immediate delivery of  
8 the materials or supplies or the performance of the work, if the  
8A purchases, contracts or agreements are awarded or made in the  
8B following manner:

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

18 b. Upon the furnishing of the work, materials or supplies in  
19 accordance with the terms of the contract or agreement, the con-  
20 tractor furnishing the work, materials or supplies is entitled to  
21 be paid therefor and the State college is obligated for the payment.

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

1 7. No purchase, contract or agreement which is single in char-  
2 acter or which necessarily or by reason of the quantities required  
3 to effectuate the purpose of the purchase, contract or agreement  
4 includes the furnishing of additional services or equipment or  
5 buying materials or supplies or the doing of additional work, shall  
6 be subdivided so as to bring it or any of the parts thereof under  
7 the maximum price or cost limitation set forth in this article or  
8 in a regulation of the Board of Higher Education thus dispensing



9 with the requirement of public advertising and bidding therefor.  
 10 Where the doing of any work is included in or incident to the  
 11 performance or completion of any project which is single in char-  
 12 acter or inclusive of the furnishing of additional work, materials  
 13 or supplies or which requires the furnishing of more than one  
 14 article of materials or supplies, all of the work, materials or  
 15 supplies requisite for the completion of the project shall be in-  
 16 cluded in one purchase, contract or agreement.

1 8. Except as provided in this article, every State college shall,  
 2 on an annual basis or at such lesser intervals as may be fixed by it,  
 3 solicit by public advertisement the submission of bids for the  
 4 furnishing of all work, materials and supplies which can be pur-  
 5 chased or agreed or contracted to be furnished only after public  
 6 advertising for bids and bidding therefor.

1 9. Any State college, without advertising for bids, or after  
 2 having rejected all bids obtained pursuant to advertising therefor,  
 3 may purchase any materials, supplies or equipment pursuant to  
 4 a contract or contracts for those materials, supplies or equipment  
 5 entered into on behalf of the State by the Division of Purchase  
 6 and Property.

#### C. JOINT PURCHASING AGREEMENTS

1 10. The board of trustees of two or more State colleges may  
 2 provide jointly by agreement for the purchasing of work, materials,  
 3 or supplies for their respective colleges, and also, may, pursuant  
 4 to regulations of the Board of Higher Education enter into a joint  
 5 purchasing agreement with other units of State or local govern-  
 6 ment.

1 11. a. Joint agreements shall set forth the categories of work,  
 2 materials or supplies to be purchased, the manner of advertising  
 3 for bids and of awarding of contracts, the method of payments  
 4 by each participating State college, or other governmental unit  
 5 and other matters deemed necessary to carry out the purposes  
 6 of the agreement.

7 b. Funds for each participant's share of expenditures for pur-  
 8 chases under any joint agreement shall be appropriated and paid  
 9 in the manner set forth in the agreement and in the same manner  
 10 as appropriations are made for other expenses of the participant.

1 12. Joint purchases and all agreements pertaining thereto shall  
 2 be subject to all provisions of law and the applicable rules and  
 3 regulations of the Board of Higher Education.

## D. SPECIFICATIONS AND PLANS

1 13. All specifications for any purchase, contract or agreement  
2 governed by this article shall be drafted in a manner to encourage  
3 free, open and competitive bidding. In particular, no specifications  
4 under this article may:

5 a. Require a standard, restriction, condition or limitation not  
6 directly related to the purpose, function or activity for which the  
7 purchase, contract or agreement is made; or

8 b. Require that any bidder be a resident of, or that his place of  
9 business be located in, the county in which the purchase will be  
10 made or the contract or agreement performed unless the physical  
11 proximity of the bidder is requisite to the efficient and economical  
12 purchase or performance of the contract or agreement; or

13 c. Discriminate on the basis of race, religion, sex or national  
14 origin; or

15 d. Require with regard to any purchase, contract or agreement  
16 the furnishing of any "brand name," although specifications may  
17 in all cases require "brand name or equivalent" nor shall materials  
18 or supplies which are patented or copyrighted be specified unless  
19 the resolution authorizing the purchase, contract or agreement sets  
20 forth the manner in which the special need for the patented or  
21 copyrighted materials or supplies is directly related to the perfor-  
22 mance or purpose for which the purchase, contract or agreement is  
23 made; or

24 e. Fail to include any option for renewal, extension or release  
25 which the *State* college may intend to exercise or require;  
25A or

26 f. Fail to include any terms and conditions necessary for the  
27 performance of any extra work; or

28 g. Fail to disclose any matter necessary to the substantial per-  
29 formance of the contract or agreement.

30 Any specification adopted by the State college which knowingly  
31 excludes prospective bidders by reason of the impossibility of  
32 performance, bidding or qualification by any but one bidder, except  
33 as provided herein, shall be null and void and of no effect, and  
34 the purchase, contract or agreement shall be readvertised, and the  
35 original purchase, contract or agreement shall be set aside by the  
36 board of trustees of the State college.

## E. BIDDING

1 14. All advertisements for bids shall be published in a legal  
2 newspaper sufficiently in advance of the date fixed for receiving  
3 the bid to promote competitive bidding but in no event less than  
4 10 days prior to that date. The advertisement shall designate the  
5 manner of submitting and of receiving the bids and the time and  
6 place at which the bids will be received. If the published specifica-  
7 tions provide for receipt of bids by mail, those bids which are  
8 mailed to the State college shall be sealed and shall be opened only  
9 at such time and place as all bids received are unsealed and an-  
10 nounced. At that time and place, the contracting agent of the State  
11 college shall publicly receive the bids and thereupon immediately  
12 proceed to unseal them and publicly announce the contents, which  
13 announcement shall be made in the presence of any parties bidding  
14 or their agents who are then and there present. A proper record of  
15 the prices and terms shall be made. No bids shall be received after  
16 the time designated in the advertisement.

1 15. No bid shall be accepted which does not conform to the speci-  
2 fications furnished therefor. Nothing contained in this article  
3 shall be construed as depriving any State college of the right to  
4 reject all bids.

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

17 The college may require a bid guaranty alone without also  
18 requiring a performance bond or other security in the contract.

1 17. In addition to or independent of the guaranty which may  
2 be required pursuant to this article, the State college may require  
3 that the successful bidder provide a surety company bond or other  
4 security acceptable to the State college:

5 a. For the faithful performance of all provisions of the advertise-  
6 ment for bids, the specifications and any other documents issued  
7 to bidders or a repair or maintenance bond; and

8 b. In a form which may be required in the specifications or other  
9 documents issued to bidders.

10 In every case in which a performance bond is required the re-  
11 quirement shall be set forth in the specifications or other documents  
12 issued to all bidders, and every bidder shall be required to submit  
13 with the bid a certificate from a surety company stating that it  
14 will provide that bidder with a performance bond in the specified  
15 amount and form.

#### F. AWARDING CONTRACTS

1 18. The State college shall award the contract or reject all bids  
2 within such time as may be specified in the specifications or other  
3 documents issued to all bidders, but in no case more than 60 days,  
4 except the bids of any bidders who consent thereto, either before  
5 or after the 60 day period, may, at the request of the State college,  
6 be held for consideration for such longer period of time as may be  
7 agreed. All bid security except the security of the three apparent  
8 lowest responsible bidders shall, if requested, be returned within  
9 30 days from the opening of the bids, Sundays and holidays ex-  
10 cepted, and the bids of those bidders shall be considered as with-  
11 drawn. Within three days, Sundays and holidays excepted, after  
12 the awarding of the contract and the approval of the successful  
13 bidder's performance bond, if any, the bid guaranty of the remain-  
14 ing bidders shall be returned to them.

1 19. All purchases, contracts or agreements which require public  
2 advertisement for bids shall be awarded by the board of trustees  
3 to the lowest responsible bidder.

4 Prior to the award of any other purchase, contract or agree-  
5 ment the estimated cost of which is 20% or more of the amount  
6 set forth in this act or, commencing January 1, 1985, 20% of the  
7 amount determined by the Governor pursuant to subsection b. of  
8 section 3 of this act the contracting agent shall, except in the case  
9 of professional services, solicit quotations therefor whenever prac-  
10 ticable, and the award thereof shall be made, in accordance with  
11 section 3 of this article, on the basis of the lowest responsible quo-  
12 tation received which is most advantageous to the State college,  
13 price and other factors considered; however, if the contracting  
14 agent deems it impractical to solicit competitive quotations or hav-  
15 ing sought the quotations determines that the award should not be  
16 on the basis of the lowest quotation received, the contracting agent

17 shall file a statement of explanation of the reason or reasons there-  
 18 for which shall be placed on file with the purchase, contract, or  
 19 agreement.

1 20. Whenever two or more quotations or bids of equal amounts  
 2 are the lowest quotations or bids submitted by responsible parties,  
 3 the college may award the contract to any one of the parties, as, in  
 4 its discretion, it may determine.

#### G. FORM OF CONTRACTS AND BONDS

1 21. The Board of Higher Education may, subject to the require-  
 2 ments of law, prescribe the form and manner in which contracts  
 3 shall be made and executed and the form and manner of execution  
 4 and approval of all bids, performance and other bonds.

1 22. Any purchase, contract or agreement made pursuant to this  
 2 article may include liquidated damages for the violation of any  
 3 of the terms and conditions thereof or the failure to perform the  
 4 contract or agreement in accordance with its terms, conditions or  
 5 the terms and conditions of this article.

#### H. CONSTRUCTION CONTRACTS

1 23. Purchases, contracts or agreements for the construction of  
 2 buildings and other improvements shall be subject to all the terms  
 3 and conditions of this article and to the terms and conditions of this  
 4 subdivision H.

1 24. All plans and specifications for the erection, alteration,  
 2 improvement or repair of college buildings shall be drawn by or  
 3 under the supervision of an appropriate officer employed by the  
 4 college to whom these powers shall have been delegated by the  
 5 Board of Trustees. *All capital expenditures in excess of \$500,000.00*  
 6 *shall be subject to the approval of the Board of Higher Education.*

1 25. In the preparation of plans and specifications for the con-  
 2 struction, alteration or repair of any building by a State college,  
 3 when the entire cost of the work and materials will exceed  
 4 *\$7,500.00 or, commencing January 1, 1985, the amount determined*  
 5 *pursuant to subsection b. of section 3 of this act*, separate plans  
 6 and specifications shall be prepared for each of the following to  
 6A include all work and materials related thereto or to be performed  
 6B or furnished in connection therewith:

- 7 (a) the plumbing and gas fitting work;
- 8 (b) the heating and ventilating systems and equipment;
- 9 (c) the electrical work, including any electrical power plants;
- 10 (d) the structural steel and ornamental iron work;
- 11 (e) all other work and materials required for the completion of
- 12 the project.

13 The contracting agent shall advertise for and receive in the  
 14 manner provided by law (1) separate bids for each of the foregoing  
 15 categories (a) through (e) and (2) bids for all work and materials  
 16 required to complete the entire project if awarded as a single  
 17 contract. All bids submitted shall set forth the name or names of,  
 18 and evidence of performance security from, all subcontractors to  
 19 whom the bidder will subcontract the work described in the fore-  
 20 going categories (a) through (e).

21 Contracts shall be awarded to the lowest responsible bidder.  
 22 A contract shall be awarded in the following manner: if the sum  
 23 total of the amounts bid by the lowest responsible bidder for each  
 24 category (a) through (e) is less than the amount bid by the lowest  
 25 responsible bidder for all the work and materials, the college shall  
 26 award separate contracts for each of the categories to the lowest  
 27 responsible bidder therefor, but if the sum total of the amount bid  
 28 by the lowest responsible bidder for each category is not less than  
 29 the amount bid by the lowest responsible bidder for all the work  
 30 and materials, the college shall award a single contract to the  
 31 lowest responsible bidder for all of the work and materials.

1 26. All specifications for the doing of any construction work for  
 2 a State college shall fix the date before which the work shall be  
 3 completed, or the number of working days to be allowed for its  
 4 completion, and every contract shall contain a provision for a  
 5 deduction from the contract price for any moneys paid by the  
 6 college to any inspector necessarily employed by it on the work  
 7 for any number of days in excess of the number allowed in the  
 8 specifications.

#### I. SALE OF PERSONAL PROPERTY

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

4 a. If the estimated fair value of the property to be sold exceeds  
 5 \$7,500.00 or, commencing January 1, 1985, the amount determined  
 6 pursuant to subsection b. of section 3 of this act in any one sale and  
 6A the property does not consist of perishable goods, it shall be sold  
 6B at public sale to the highest bidder.

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

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

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

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

32 f. If the estimated fair value of the property to be sold does  
33 not exceed \$7,500.00 or, commencing January 1, 1985, the amount  
34 determined pursuant to subsection b. of section 3 of this act in any  
35 one sale or the property consists of perishable goods, it may be sold  
36 at private sale without advertising for bids.

#### J. CONTRACTS EXTENDING BEYOND THE FISCAL YEAR

1 28. A State college may only enter a contract exceeding 12 con-  
2 secutive months for the :

3 a. Supplying of

4 (1) fuel for heating purposes for any term not exceeding in the  
5 aggregate three years; or

6 (2) fuel or oil for use in automobiles, autobuses, motor vehicles  
7 or equipment for any term not exceeding in the aggregate three  
8 years; or

9 b. Plowing and removal of snow and ice for any term not exceed-  
10 ing in the aggregate three years; or

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

13 d. Data processing programs, systems and services or rental or  
14 lease of data processing equipment for any term of not more than  
15 five years; or

16 e. Insurance for any term of not more than three years; or

17 f. Leasing or service of automobiles, motor vehicles, electronic  
 18 communications equipment, machinery and equipment of every  
 19 nature and kind for any term not exceeding in the aggregate five  
 20 years; however, these contracts shall be entered into only subject  
 21 to and in accordance with the rules and regulations promulgated  
 22 by the Board of Higher Education; or

23 g. Supplying of any product or rendering of any service by a  
 24 telephone company which is subject to the jurisdiction of the  
 25 Board of Public Utilities for a term not exceeding five years; or

26 h. *Providing* of food supplies and services, including food sup-  
 27 plies and management contracts for student centers, dining rooms  
 28 and cafeterias, for a term not exceeding three years[.]; or

29-30 i. *Performance of work or services or the furnishing of ma-  
 31 terials or supplies for the purpose of conserving energy in buildings  
 32 owned by, or operations conducted by, the contracting unit, the  
 33 entire price of which is to be established as a percentage of the  
 34 resultant savings in energy costs, for a term not exceeding 10 years;  
 35 provided that a contract is entered into only subject to and in  
 36 accordance with rules and regulations adopted by the Department  
 37 of Energy establishing a methodology for computing energy cost  
 38 savings; or*

39 j. *Any single project for the construction, reconstruction or re-  
 40 habilitation of a public building, structure or facility, or a public  
 41 works project including the retention of the services of an architect  
 42 or engineer in connection with the project, for the length of time  
 43 necessary for the completion of the actual construction; or*

44 k. *The management and operation of bookstores for a term not  
 45 exceeding five years.*

46 All multi-year leases and contracts entered into pursuant to this  
 47 section, except contracts for the leasing or servicing of equipment  
 48 supplied by a telephone company which is subject to the jurisdic-  
 49 tion of the Board of Public Utilities *or contracts and agreements  
 50 for the provision of work or the supplying of equipment to promote  
 51 energy conservation and authorized pursuant to subsection i. of  
 52 this section*, shall contain a clause making them subject to the  
 53 availability and appropriation annually of sufficient funds to meet  
 54 the extended obligation or contain an annual cancellation clause.

#### K. REGULATIONS OF THE BOARD OF HIGHER EDUCATION

1 29. The Board of Higher Education is authorized to adopt, pur-  
 2 suant to the "Administrative Procedure Act," P. L. 1968, c. 410  
 3 (C. 52:14B-1), rules and regulations to implement the provisions  
 4 of this article, *and to ensure compliance with all applicable health  
 5 and life safety statutes, rules and regulations.*



## L. MISCELLANEOUS

1 30. No action for damages shall lie against the Board of Higher  
2 Education, any State official, any State college or its board of  
3 trustees or any of its officers because of any action taken by virtue  
4 of the provisions of this article.

1 31. Any State college may enter into an agreement indemnifying  
2 the United States of America or any board, body, officer or agency  
3 thereof from any liability for loss or damage to the person or  
4 property of others resulting from any project undertaken or to  
5 be undertaken by the federal government for the benefit of the  
6 State college or any project the cost of which or any part thereof  
7 is to be paid out of federal funds.

1 32. Any action, purchase, sale, contract or agreement taken,  
2 made or entered into prior to the effective date of this article is  
3 validated and confirmed provided that in no event shall multi-year  
4 leases or contracts entered into prior to the effective date of this  
5 article be renewed or extended except in accordance with the terms  
6 and provisions of this article.

1 *\*\*33. Prior to the conclusion of any contract or subcontract for  
2 the performance of work substantially similar to that performed  
3 by negotiations unit employees, a State college shall allow for rea-  
4 sonable consultation with the appropriate bargaining unit repre-  
5 sentative regarding such action. The negotiations unit's represen-  
6 tative shall be entitled to review the supporting documentation con-  
7 cerning the purchase, contract or subcontract and to an assessment  
8 of the impact of that purchase, contract or subcontract on the  
9 negotiations unit employees of the college.\*\**

1 *\*[\*33. The State colleges or any agency thereof shall not enter  
2 into any outside contract for services substantially similar to those  
3 performed by employees of the State colleges. However, the pro-  
4 visions of this section shall not apply to any contract which is in  
5 effect on the effective date of this act.\*]\**

1 *\*[\*34.\*]\* \*\*[\*33.\*]\*\* \*\*34.\*\* This act shall take effect immedi-  
2 ately.*

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HIGHER EDUCATION—COLLEGES, UNIVERSITIES

Establishes procedures by which the State colleges may purchase  
or contract for any work or the furnishing or hiring of materials  
or supplies.

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## L. MISCELLANEOUS

1 30. No action for damages shall lie against the Board of Higher  
2 Education, any State official, any State college or its board of  
3 trustees or any of its officers because of any action taken by virtue  
4 of the provisions of this article.

1 31. Any State college may enter into an agreement indemnifying  
2 the United States of America or any board, body, officer or agency  
3 thereof from any liability for loss or damage to the person or  
4 property of others resulting from any project undertaken or to  
5 be undertaken by the federal government for the benefit of the  
6 State college or any project the cost of which or any part thereof  
7 is to be paid out of federal funds.

1 32. Any action, purchase, sale, contract or agreement taken,  
2 made or entered into prior to the effective date of this article is  
3 validated and confirmed provided that in no event shall multi-year  
4 leases or contracts entered into prior to the effective date of this  
5 article be renewed or extended except in accordance with the terms  
6 and provisions of this article.

1 \*33. *The State colleges or any agency thereof shall not enter into*  
2 *any outside contract for services substantially similar to those per-*  
3 *formed by employees of the State colleges. However, the provisions*  
4 *of this section shall not apply to any contract which is in effect on*  
5 *the effective date of this act.\**

1 \*~~[33.]~~\* 34.\* This act shall take effect immediately.

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§ 1261-1265 STATEMENT

This bill establishes procedures by which the State colleges may purchase or contract for the performance of any work or the furnishing or hiring of materials or supplies.

The bill covers the following areas of contracting procedures:

1. Purchases, contracts and advertising requirements and exceptions;
2. Joint purchasing agreements;
3. Specifications and plans;
4. Bidding requirements;
5. Awarding of contracts;
6. Form of contracts and bonds;
7. Construction contracts;
8. Sale of college property; and
9. Contracts extending beyond the fiscal year.

A1177(1986)

The State colleges are subject to the provisions of P. L. 1954, c. 48 (C. 52:34-6 et seq.), commonly known as the State Public Contracts Law. This has created serious difficulties for the colleges which, as institutions of higher education, have unique needs. These contracting provisions are more suitable to the needs of the colleges, and will enable them to operate more effectively. The provisions are similar to those of the "County College Contracts Law" (P. L. 1982, c. 189; C. 18:64A-25.1 et seq.) and the "Public School Contracts Law" (P. L. 1977, c. 114; N. J. S. 18A:18A-1 et seq.).

In addition, this bill provides that employees of the State colleges will not be replaced by outside contracting when the employees of the college are performing services substantially similar to services which would be provided by outside contractors. This would not apply to contracts in effect on the effective date of this act.

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ASSEMBLY HIGHER EDUCATION AND REGULATED  
PROFESSIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1177**

with Assembly committee amendment

**STATE OF NEW JERSEY**

DATED: JANUARY 30, 1986

The Assembly Higher Education and Regulated Professions Committee favorably reports Assembly Bill No. 1177 with amendment.

This bill establishes procedures by which the State colleges may purchase or contract for the performance of any work or the furnishing or hiring of materials or supplies.

The bill covers the following areas of contracting procedures:

1. Purchases contracts and advertising requirements and exceptions;
2. Joint purchasing agreements;
3. Specifications and plans;
4. Bidding requirements;
5. Awarding of contracts;
6. Form of contracts and bonds;
7. Construction contracts;
8. Sale of college property; and
9. Contracts extending beyond the fiscal year.

Currently, State colleges are subject to the provisions of P. L. 1954, c. 48 (C. 52:34-6 et seq.), commonly known as the State Public Contracts Law.

The committee amended the bill to conform it to recommendations contained in Governor Kean's conditional veto of Senate Bill No. 1443 (2nd OCR). Senate Bill No. 1443 was substituted for Assembly Bill No. 2795 during the 1984-85 legislative session. The committee amendments delete section 33 of the bill which had provided that the State colleges could not enter into any outside contract for services substantially similar to those performed by employees of the college.

This bill was pre-filed for introduction in the 1986 session pending technical review. As amended, the bill includes the changes required by technical review which has been performed.

**BACKGROUND**

This bill is part of a three bill package which was introduced into the Legislature to provide each State college with greater operational autonomy. As indicated previously, the State colleges are currently

subject to the State Public Contracts Law, P. L. 1954, c. 48. The contracting provisions in Assembly Bill No. 1177 will provide the colleges with greater flexibility by recognizing their unique needs as institutions of higher education. The provisions of Assembly Bill No. 1177 are similar to those of the "County College Contracts Law," (P. L. 1982, c. 189) and the "Public School Contracts Law," (P. L. 1977, c. 114).

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SENATE EDUCATION COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1177**

[OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: MAY 12, 1986

The Senate Education Committee favorably reports Assembly Bill No. 1177 OCR.

This bill establishes procedures by which the State Colleges may purchase or contract for the performance of any work or the furnishing or hiring of materials or supplies.

The bill covers the following areas of contracting procedures:

1. Purchases contracts and advertising requirements and exceptions;
2. Joint purchasing agreements;
3. Specifications and plans;
4. Bidding requirements;
5. Awarding of contracts;
6. Form of contracts and bonds;
7. Construction contracts;
8. Sale of college property; and,
9. Contracts extending beyond the fiscal year.

Currently, State colleges are subject to the provisions of P. L. 1954, c. 48 (C. 52:34-6 et seq.), commonly known as the State Public Contracts Law.

**BACKGROUND:**

This bill is part of a package of bills which are designed to implement the recommendations of the Commission on the Future of the State Colleges and which are intended to provide each State college greater operational autonomy. As indicated previously, the State colleges are currently subject to the State Public Contracts Law, P. L. 1954, c. 48. The contracting provisions in Assembly Bill No. 1177 will provide the colleges with greater flexibility by recognizing their unique needs as institutions of higher education. The provisions of Assembly Bill No. 1177 are similar to those of the "County College Contracts Law," (P. L. 1982, c. 189) and the "Public School Contracts Law," (P. L. 1977, c. 114).

This bill is identical to Senate Bill No. 1470.

**ADOPTED**  
**MAY 15 1986**

SENATE Amendments  
Proposed by Senator Feldman  
to

ASSEMBLY Bill No. 1177 QCR  
Sponsored by Assemblyman Rocco

Amend:

Page	Sec.	Line
15	After 32	6
15	33	1

Insert new section as follows:

"33. ~~(New section)~~ Prior to the conclusion of any contract or subcontract for the performance of work substantially similar to that performed by negotiations unit employees, a State college shall allow for reasonable consultation with the appropriate bargaining unit representative regarding such action. The negotiations unit's representative shall be entitled to review the supporting documentation concerning the purchase, contract or subcontract and to an assessment of the impact of that purchase, contract or subcontract on the negotiations unit employees of the college."

Omit "33" insert "34"

STATEMENT

These amendments require that a State college consult with the appropriate bargaining unit concerning the contracting or subcontracting of work substantially similar to that performed by negotiations unit employees.

**MAY 15 1986**

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

April 26, 1985

SENATE BILL NO. 1443 (2nd OCR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1443 (2nd OCR) with my recommendations for reconsideration.

This bill, entitled the "State College Contracts Law," establishes procedures by which the State colleges may purchase or contract for the performance of any work or the furnishing of materials or supplies. This bill is part of the three-bill package which will give each State college the operational autonomy needed to pursue its own strengths and mission within a more flexible framework.

As I indicated in my State-of-the-State Message this past January, I strongly support the concept of State college autonomy. However, due to an amendment adopted by this Legislature, which in my judgment severely hampers autonomy in the area of State college purchasing, I find that I cannot sign this legislation, as it appears before me today.

On February 25, 1985, this bill was amended to include a provision prohibiting the colleges from contracting for services substantially similar to those performed by employees of State colleges. This subcontracting amendment is inappropriate and should be deleted from the bill for the following reasons.

First, I find this provision to be fiscally unsound. I believe that certain functions are subcontracted out by the colleges because by doing so, certain operations can be run more efficiently and at a lower cost than if the same work was to be performed by employees of the college. The overall result of this policy is better service and lower fees for students.

Second, I believe that the subcontracting clause is both fiscally and administratively limiting to the colleges. The purpose of this legislative package is to grant State colleges autonomy and Senate Bill No. 1443, in particular, is designed to give the State colleges greater flexibility with regard to purchasing. This amendment would only tighten the reins of the institutions and, therefore, I find the subcontracting provision to be counter-productive to the goals of autonomy.



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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Finally, in many areas including purchasing, the State colleges have for too long labored under severe restraints which have not been imposed upon other public institutions of higher education in the State of New Jersey. By including this subcontracting amendment, I would be advocating the continuation of the practice of singling out State colleges for treatment which is not applicable to other institutions of higher education. In effect, I would be acting in contravention to the best interests of the State colleges by seeking to further restrict these institutions' purchasing and contracting abilities.

Since the subcontracting clause was first adopted by the Legislature, I have instructed my office to seek its removal. I maintain now, as I have in the past, that these institutions of higher education must be free to enter into contractual arrangements with private business and industry, with school systems, with other public sector organizations and with one another to provide such services as each is best qualified and equipped to perform. I believe that the kind of protectionism advanced in the subcontracting amendment is short sighted and against the longer range interests of the colleges, their employees, their students and the public.

Accordingly, I herewith return Senate Bill No. 1443 (2nd OCR) and recommend that it be amended as follows:

<u>Page 15, Section 33, Lines 1-5:</u>	Delete in entirety
<u>Page 15, Section 34, Line 1:</u>	Delete "34." insert "33."

Respectfully,  
/s/ Thomas H. Kean  
GOVERNOR

[seal]

Attest:  
/s/ W. Cary Edwards  
Chief Counsel