

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 55

NJSA:18A:18A-46.1

(School purchasing irregularities -- limit state-imposed penalties)

BILL NO:S808 (Substituted for A2313)

SPONSOR(S):Cafiero and Zane

DATE INTRODUCED: March 2, 1998

COMMITTEE:

*ASSEMBLY:*Education

*SENATE:*Education

AMENDED DURING PASSAGE:Yes

DATE OF PASSAGE:

*ASSEMBLY:*December 17, 1998; Re-enacted March 29, 1999

*SENATE:*December 17, 1998; Re-enacted March 22, 1999

DATE OF APPROVAL:April 9, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *Yes* Senate Committee Substitute (3R)
(Amendments during passage denoted by superscript numbers)

SCS for S808

SPONSORS STATEMENT: *No*

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *Yes* (2)

June 25, 1998

November 23, 1998

LEGISLATIVE FISCAL ESTIMATE: *Yes* (2)

[December 18, 1998](#)

[January 11, 1999](#)

[SCS for S808 2nd REPRINT](#): *Yes* (Vetoed by Governor)

S808

[SPONSORS STATEMENT](#): *Yes* (Begins on page 2 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

A2313

[SPONSORS STATEMENT](#) *Yes* (Begins on page 2 of original bill)

COMMITTEE STATEMENT:

[ASSEMBLY](#): *Yes*

Identical to Assembly Statement for S808 SCS

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

[LEGISLATIVE FISCAL ESTIMATE](#): *Yes*

Identical to Legislative Fiscal Estimate of 12-18-98 for S808 SCS

GOVERNOR'S ACTIONS

[VETO MESSAGE](#): *Yes*

[GOVERNOR'S PRESS RELEASE ON CONDITIONAL VETO](#): *Yes* February 18, 1999

[GOVERNOR'S PRESS RELEASE ON SIGNING](#): *Yes* April 9, 1999

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

P.L. 1999, CHAPTER 55, *approved April 9, 1999*
Senate Committee Substitute (*Third Reprint*) for
Senate, No. 808

1 AN ACT concerning public school contracting and supplementing
2 chapter 18A of Title 18A of the New Jersey Statutes.

3

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

6

7 1. ²a.² Notwithstanding any law to the contrary, ¹except as
8 otherwise provided in this section,¹ the Commissioner of Education
9 shall not withhold State funds from any school district, or require any
10 school district to remit any State funds previously paid to that district,
11 because of any act or omission by the district which the commissioner
12 determines to have been taken or permitted to occur in violation of the
13 extraordinary unspecifiable services exception to the requirements for
14 public advertisement and bidding as set forth in N.J.S.18A:18A-5,
15 unless the commissioner determines that: ²[a.](1)² the act or omission
16 was the result of any collusion between any officer or employee of the
17 district and any contract vendor; or ²[b.](2)² the act or omission was
18 prompted by an intent on the part of any officer or employee of the
19 district to evade the public advertisement and bidding requirements of
20 the "Public School Contracts Law," N.J.S.18A:18A-1 et seq ³; or (3)
21 a prior act or omission resulted in a withholding of State funds or a
22 remission of State funds due to a violation of the extraordinary
23 unspecifiable services exception to the requirements for public
24 advertisement and bidding as set forth in N.J.S. 18A:18A-5³.

25 ¹ ²b.² If the commissioner determines that the violation was
26 caused by negligence ³[beyond an error in judgement] and none of the
27 provisions in paragraph (3) in subsection 1.a. are met³, the amount of
28 State funds withheld shall not exceed 10% of the contract amount, or
29 in the case of multiple contracts, 10% of the total amount of the
30 contracts, or \$25,000, whichever is less.¹

31 ²c. ³[The commissioner shall promptly remit to a school district
32 any funds remitted by that district to the State prior to the effective
33 date of this act due to the commissioner's determination that an act or
34 omission by the district had been taken or permitted to occur in

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:

¹ Senate floor amendments adopted June 25, 1998.

² Assembly floor amendments adopted November 23, 1998.

³ Senate amendments adopted in accordance with Governor's recommendations February 25, 1999.

1 violation of the extraordinary unspecifiable services exception to the
2 requirements for public advertisement and bidding as set forth in
3 N.J.S.18A:18A-5, unless the commissioner determines that a provision
4 set forth in paragraphs (1) or (2) in subsection a. or subsection b. of
5 this section is applicable.】 Any school district from which the
6 commissioner withheld funds or has sought to collect funds prior to
7 the effective date of this act due to a determination that the district
8 acted or permitted an action to occur in violation of the extraordinary
9 unspecifiable services exception to the requirements for public
10 advertising and bidding as set forth in N.J.S.18A:18A-5 may apply to
11 the commissioner for restoration of funds so withheld. If the
12 commissioner determines that none of the provisions set forth in
13 paragraphs (1), (2) or (3) in subsection 1.a. or in subsection 1.b.
14 applies, the commissioner shall remit to the school district the
15 applicable funds previously withheld or forgive any amounts pending
16 collection.³

17 d. ²The limitations placed upon the commissioner ²【to withhold
18 State funds from a district or to require that a district remit State
19 funds】² pursuant to this act shall not restrict the commissioner's
20 authority to supervise the compliance by school districts with the
21 requirements of the "Public School Contracts Law," N.J.S.18A:18A-1
22 et seq., and to seek all other remedies pursuant to Title 18A of the
23 New Jersey Statutes.

24
25 2. This act shall take effect immediately ¹and shall apply to any
26 determination of the commissioner that is subject to an administrative
27 appeal pending as of the effective date of this act¹.

28
29
30
31
32 Provides limitation on withholding of State funds from school districts
33 by the Commissioner of Education for certain violations.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 808

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1998

The Assembly Education Committee favorably reports Senate Bill No. 808 (1R).

This bill provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding in the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. If, however, the commissioner determines a violation of the extraordinary unspecifiable services exception to have been caused by negligence beyond an error in judgment, the amount of State funds withheld would not exceed 10% of the contract amount, or in the case of multiple contracts, 10% of the total amount of the contracts, or \$25,000, whichever is less. The limitations placed upon the commissioner to withhold State funds from a district or to require that a district remit State funds pursuant to the bill would not restrict the commissioner's authority to supervise the compliance by school districts with the requirements of the "Public School Contracts Law" and to seek all other remedies pursuant to Title 18A of the New Jersey Statutes.

The provisions of the bill would apply to any determination of the commissioner that is subject to an administrative appeal pending as of the effective date of the act.

As reported by committee, this bill is identical to Assembly Bill No.2313.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 808**

STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Senate Education Committee reports without recommendation Senate Bill No. 808 as a Senate committee substitute.

This committee substitute provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding in the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. The limitations placed upon the commissioner to withhold State funds from a district or to require that a district remit State funds pursuant to this act would not restrict the commissioner's authority to supervise the compliance by school districts with the requirements of the "Public School Contracts Law" and to seek all other remedies pursuant to Title 18A of the New Jersey Statutes.

The committee reported the substitute with the understanding that the sponsor would propose amendments to address the case of a violation of the extraordinary unspecifiable services exception caused by negligence or bad judgment.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 808

with Senate Floor Amendments
(Proposed By Senator CAFIERO)

ADOPTED: JUNE 25, 1998

These amendments provide that if the commissioner determines a violation of the extraordinary unspecifiable services exception to have been caused by negligence beyond an error in judgment, the amount of State funds withheld would not exceed 10% of the contract amount, or in the case of multiple contracts, 10% of the total amount of the contracts, or \$25,000, whichever is less. The amendments also clarify that the bill will apply to any determination of the commissioner that is subject to an administrative appeal pending as of the effective date of the act.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 808

with Assembly Floor Amendments
(Proposed By Assemblyman GIBSON)

ADOPTED: NOVEMBER 23, 1998

These amendments provide that if, prior to the bill's effective date, a school district remitted any funds to the State due to the determination by the Commissioner of Education that an act or omission by the district was taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding under the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the commissioner will be required to promptly remit these funds to the school district, unless certain conditions are determined to be applicable.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 808

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: DECEMBER 18, 1998

Senate Committee Substitute for Senate Bill No. 808 (1R) of 1998 provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding found at N.J.S.18A:18A-5 of the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. Senate Bill No. 808 SCS (1R) does, however, provide that if a violation of the extraordinary unspecifiable services exception to the competitive bidding process is determined to be the result of negligence beyond an error in judgement, the State may withhold an amount that does not exceed 10% of the total amount represented by the contract or contracts, or \$25,000, whichever is less. The act is to apply to any determination of the commissioner that is subject to an administrative appeal pending on the date of the bill's enactment.

The Office of Legislative Services notes that Middle Township is currently the only school district in which the commissioner has made a determination of a violation of the extraordinary unspecifiable services provision of N.J.S.18A:18A-5 and the commissioner has ordered the remittance of \$138,360 of State funds previously paid. The commissioner's order for Middle Township is currently being appealed to the State Board of Education. Other districts in regard to which the commissioner may eventually make a determination, but which are currently engaged in the Department of Education's internal

appeals process, include the Lakewood and Elizabeth School Districts. Lakewood is appealing an amount equal to \$7,025 and Elizabeth is appealing two violations totaling \$345, 751.

OLS notes that under the provisions of Senate Bill No. 808 SCS(1R) Middle Township would be required to remit \$138,360, only if it could be proven that the violation was the result of either collusion between the school district and a vendor, or was the result of an intent to evade the public advertisement and bidding requirements of the "Public School Contracts Law." However, if the violation is the result of negligence beyond an error in judgement, the penalty would be reduced from \$138,360 to \$13,836 (10% of the district's repayment obligation).

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 808

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JANUARY 11, 1999

Senate Committee Substitute for Senate Bill No. 808 (2R) of 1998 provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding found at N.J.S.18A:18A-5 of the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. Senate Bill No. 808 SCS (2R) does, however, provide that if a violation of the extraordinary unspecifiable services exception to the competitive bidding process is determined to be the result of negligence beyond an error in judgement, the State may withhold an amount that does not exceed 10% of the total amount represented by the contract or contracts, or \$25,000, whichever is less. Further, the bill requires the State to reimburse districts for any funds remitted by a district prior to the bill's effective date for a violation of the extraordinary unspecifiable services exception to the competitive bidding process unless the above provisions apply.

The Office of Legislative Services notes that the provisions of this bill may reduce the penalties levied against two districts that have been assessed penalties since 1997, Middle Township (\$138,360) and Bridgeton (\$33,000). Middle Township has not had any funds withheld since it is currently appealing the commissioner's determination of a violation. Under the provisions of Senate Bill No. 808 SCS (2R) Middle Township would be required to remit \$138,360 only if it could be proven that the violation was the result of either

collusion between the school district and a vendor, or was the result of an intent to evade the public advertisement and bidding requirements of the “Public School Contracts Law.” However, if the violation is the result of negligence beyond an error in judgement, the penalty would be reduced from \$138,360 to \$13,836 (10% of the district’s repayment obligation). Also under the bill Bridgeton will be eligible to receive a reimbursement for the penalty it previously paid unless the provisions described above apply to the violation for which the penalty was assessed.

Two other districts, Lakewood (\$7,025) and Elizabeth (\$345,751), are currently appealing penalties for alleged violations through the Department of Education's internal appeals process which occurs prior to the commissioner’s final determination. Information concerning the number of districts assessed penalties prior to 1997 for violations of the extraordinary unspecified services provision of the “Public School Contracts Law” is not currently available from the Department of Education.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 808

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED JUNE 4, 1998

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

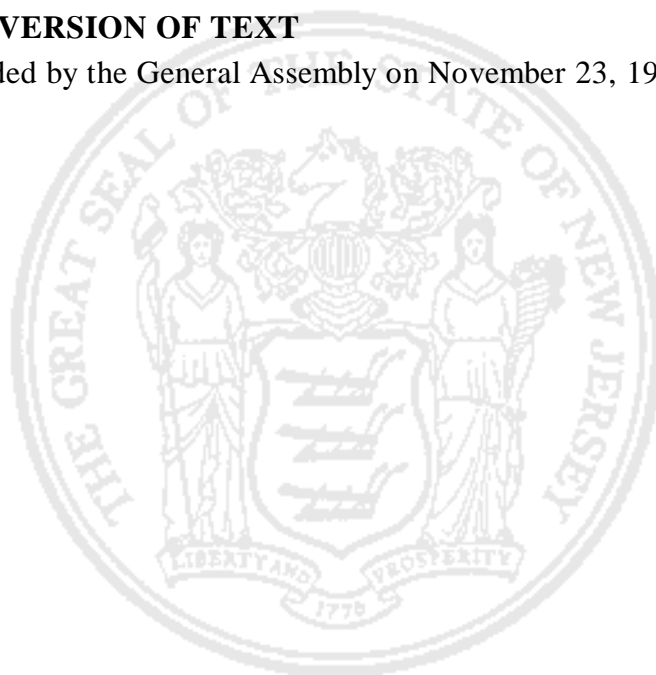
Assemblymen Gibson, Stuhltrager and Asselta

SYNOPSIS

Provides limitation on withholding of State funds from school districts by the Commissioner of Education for certain violations.

CURRENT VERSION OF TEXT

As amended by the General Assembly on November 23, 1998.



(Sponsorship Updated As Of: 11/24/1998)

1 AN ACT concerning public school contracting and supplementing
2 chapter 18A of Title 18A of the New Jersey Statutes.

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

6
7 1. ²a.² Notwithstanding any law to the contrary, ¹except as
8 otherwise provided in this section,¹ the Commissioner of Education
9 shall not withhold State funds from any school district, or require any
10 school district to remit any State funds previously paid to that district,
11 because of any act or omission by the district which the commissioner
12 determines to have been taken or permitted to occur in violation of the
13 extraordinary unspecifiable services exception to the requirements for
14 public advertisement and bidding as set forth in N.J.S.18A:18A-5,
15 unless the commissioner determines that: ²[a.](1)² the act or
16 omission was the result of any collusion between any officer or
17 employee of the district and any contract vendor; or ²[b.](2)² the act
18 or omission was prompted by an intent on the part of any officer or
19 employee of the district to evade the public advertisement and bidding
20 requirements of the "Public School Contracts Law," N.J.S.18A:18A-1
21 et seq.

22 ¹ ²b.² If the commissioner determines that the violation was
23 caused by negligence beyond an error in judgment, the amount of State
24 funds withheld shall not exceed 10% of the contract amount, or in the
25 case of multiple contracts, 10% of the total amount of the contracts,
26 or \$25,000, whichever is less.¹

27 ² c. The commissioner shall promptly remit to a school district any
28 funds remitted by that district to the State prior to the effective date
29 of this act due to the commissioner's determination that an act or
30 omission by the district had been taken or permitted to occur in
31 violation of the extraordinary unspecifiable services exception to the
32 requirements for public advertisement and bidding as set forth in
33 N.J.S.18A:18A-5, unless the commissioner determines that a provision
34 set forth in paragraphs (1) or (2) in subsection a. or subsection b. of
35 this section is applicable.

36 d.² The limitations placed upon the commissioner ²[to withhold
37 State funds from a district or to require that a district remit State
38 funds]² pursuant to this act shall not restrict the commissioner's
39 authority to supervise the compliance by school districts with the
40 requirements of the "Public School Contracts Law," N.J.S.18A:18A-1
41 et seq., and to seek all other remedies pursuant to Title 18A of 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:

¹ Senate floor amendments adopted June 25, 1998.

² Assembly floor amendments adopted November 23, 1998.

1 New Jersey Statutes.

2

3 2. This act shall take effect immediately ¹and shall apply to any
4 determination of the commissioner that is subject to an administrative
5 appeal pending as of the effective date of this act¹.

SENATE, No. 808

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 2, 1998

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Prohibits State funds to be withheld from a school district as a penalty for violations of the Public School Contracts Law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public school contracting and supplementing
2 chapter 18A of Title 18A of the New Jersey Statutes.

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

6
7 1. Notwithstanding any law to the contrary, the Commissioner of
8 Education shall not withhold State funds, which funds are otherwise
9 due to a district, because of any act or omission by the district which
10 the commissioner determines to have been taken or permitted to occur
11 in violation of the provisions of the "Public School Contracts Law,"
12 N.J.S.18A:18A-1 et seq. The district also shall not be required by the
13 commissioner to remit to the State any funds previously paid to the
14 district, which funds the commissioner determines to have been
15 expended in violation of the provisions of N.J.S.18A:18A-1 et seq.
16 In addition, the commissioner shall promptly remit to a district any
17 funds presently withheld by the State or any funds previously remitted
18 by the district to the State, upon the claim of the commissioner that
19 the funds are attributable to funds previously expended by the district
20 in violation of the provisions of N.J.S.18A:18A-1 et seq.

21
22 2. This act shall take effect immediately.

23
24

25 STATEMENT

26
27 This bill supplements the "Public School Contracts Law,"
28 N.J.S.18A:18A-1 et seq., and would prevent the Commissioner of
29 Education from imposing penalties on a school district for any act or
30 omission by the district which violates the provisions of the "Public
31 School Contracts Law." In addition, the school district which is
32 determined to have violated the "Public School Contracts Law," would
33 not be required to remit to the State any funds previously paid to the
34 district, which funds were determined to have been expended in
35 violation of the "Public School Contracts Law." The bill also would
36 require the commissioner to promptly remit to a district any funds
37 withheld by the State or any funds previously remitted by the district
38 to the State, upon the claim of the commissioner that the funds are
39 attributable to funds previously expended by the district in violation of
40 the "Public School Contracts Law."

ASSEMBLY, No. 2313

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JULY 27, 1998

Sponsored by:

Assemblyman JOHN C. GIBSON

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman GARY W. STUHLTRAGER

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Assemblyman Asselta

SYNOPSIS

Provides limitation on withholding of State funds from school districts by the Commissioner of Education for certain violations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public school contracting and supplementing
2 chapter 18A of Title 18A of the New Jersey Statutes.

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

6
7 1. Notwithstanding any law to the contrary, except as otherwise
8 provided in this section, the Commissioner of Education shall not
9 withhold State funds from any school district, or require any school
10 district to remit any State funds previously paid to that district,
11 because of any act or omission by the district which the commissioner
12 determines to have been taken or permitted to occur in violation of the
13 extraordinary unspecifiable services exception to the requirements for
14 public advertisement and bidding as set forth in N.J.S.18A:18A-5,
15 unless the commissioner determines that: a. the act or omission was
16 the result of any collusion between any officer or employee of the
17 district and any contract vendor; or b. the act or omission was
18 prompted by an intent on the part of any officer or employee of the
19 district to evade the public advertisement and bidding requirements of
20 the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

21 If the commissioner determines that the violation was caused by
22 negligence beyond an error in judgment, the amount of State funds
23 withheld shall not exceed 10% of the contract amount, or in the case
24 of multiple contracts, 10% of the total amount of the contracts, or
25 \$25,000, whichever is less.

26 The limitations placed upon the commissioner to withhold State
27 funds from a district or to require that a district remit State funds
28 pursuant to this act shall not restrict the commissioner's authority to
29 supervise the compliance by school districts with the requirements of
30 the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., and to
31 seek all other remedies pursuant to Title 18A of the New Jersey
32 Statutes.

33
34 2. This act shall take effect immediately and shall apply to any
35 determination of the commissioner that is subject to an administrative
36 appeal pending as of the effective date of this act.

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38

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STATEMENT

40

41 This bill provides that the Commissioner of Education may not
42 withhold State funds from any school district, or require any school
43 district to remit any State funds previously paid to that district,
44 because of any act or omission by the district which the commissioner
45 determines to have been taken or permitted to occur in violation of the
46 extraordinary unspecifiable services exception to the requirements for

1 public advertisement and bidding in the "Public School Contracts
2 Law," unless the commissioner determines that: 1) the act or omission
3 was the result of any collusion between any officer or employee of the
4 district and any contract vendor; or 2) the act or omission was
5 prompted by an intent on the part of any officer or employee of the
6 district to evade the public advertisement and bidding requirements of
7 that law. If, however, the commissioner determines a violation of the
8 extraordinary unspecifiable services exception to have been caused by
9 negligence beyond an error in judgment, the amount of State funds
10 withheld would not exceed 10% of the contract amount, or in the case
11 of multiple contracts, 10% of the total amount of the contracts, or
12 \$25,000, whichever is less. The limitations placed upon the
13 commissioner to withhold State funds from a district or to require that
14 a district remit State funds pursuant to the bill would not restrict the
15 commissioner's authority to supervise the compliance by school
16 districts with the requirements of the "Public School Contracts Law"
17 and to seek all other remedies pursuant to Title 18A of the New Jersey
18 Statutes.

19 The provisions of the bill would apply to any determination of the
20 commissioner that is subject to an administrative appeal pending as of
21 the effective date of the act.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2313

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1998

The Assembly Education Committee favorably reports Assembly Bill No. 2313.

This bill provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding in the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. If, however, the commissioner determines a violation of the extraordinary unspecifiable services exception to have been caused by negligence beyond an error in judgment, the amount of State funds withheld would not exceed 10% of the contract amount, or in the case of multiple contracts, 10% of the total amount of the contracts, or \$25,000, whichever is less. The limitations placed upon the commissioner to withhold State funds from a district or to require that a district remit State funds pursuant to the bill would not restrict the commissioner's authority to supervise the compliance by school districts with the requirements of the "Public School Contracts Law" and to seek all other remedies pursuant to Title 18A of the New Jersey Statutes.

The provisions of the bill would apply to any determination of the commissioner that is subject to an administrative appeal pending as of the effective date of the act.

As reported by committee, this bill is identical to Senate Bill No. 808 (1R).

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 2313

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: DECEMBER 18, 1998

Assembly Bill No. 2313 of 1998 provides that the Commissioner of Education may not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding found at N.J.S. 18A:18A-5 of the "Public School Contracts Law," unless the commissioner determines that: 1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or 2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of that law. Assembly Bill No. 2313 does, however, provide that if a violation of the extraordinary unspecifiable services exception to the competitive bidding process is determined to be the result of negligence beyond an error in judgement, the State may withhold an amount that does not exceed 10% of the total amount represented by the contract or contracts, or \$25,000, whichever is less. The act is to apply to any determination of the commissioner that is subject to an administrative appeal pending on the date of the bill's enactment.

The Office of Legislative Services notes that Middle Township is currently the only school district in which the commissioner has made a determination of a violation of the extraordinary unspecifiable services provision of N.J.S.18A:18A-5 and the commissioner has ordered the remittance of \$138,360 of State funds previously paid. The commissioner's order for Middle Township is currently being appealed to the State Board of Education. Other districts in regard to which the commissioner may eventually make a determination, but which are currently engaged in the Department of Education's internal appeals process, include the Lakewood and Elizabeth School Districts. Lakewood is appealing an amount equal to \$7,025 and Elizabeth is appealing two violations totaling \$345, 751.

OLS notes that under the provisions of Assembly Bill No. 2313 Middle Township would be required to remit \$138,360, only if it could

be proven that the violation was the result of either collusion between the school district and a vendor, or was the result of an intent to evade the public advertisement and bidding requirements of the "Public School Contracts Law." However, if the violation is the result of negligence beyond an error in judgement, the penalty would be reduced from \$138,360 to \$13,836 (10% of the district's repayment obligation).

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 808
(SECOND REPRINT)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Committee Substitute for Senate Bill No. 808 (Second Reprint) with my recommendations for reconsideration.

Summary of Bill

The bill prevents the commissioner of the Department of Education (DOE) from withholding or requiring the remittance of state funds as a penalty for a school district's violation of the extraordinary unspecifiable services exception to the public advertisement and bidding requirements of the "Public School Contracts Law" (Contracts Law). This prohibition shall not apply, however, if the commissioner determines that the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of the law.

The bill further provides that if the commissioner determines that the violation was caused by negligence "beyond an error in judgment," the amount of State funds withheld shall not exceed 10% of the contract amount. In the case of multiple contracts, the amount withheld shall not exceed 10% of the total amount of the contracts, or \$25,000, whichever is less.

Further, the bill requires the commissioner to return funds remitted by any school district prior to the effective date of the act, for any violation of the public advertising and bidding requirements as set forth in the Contracts Law. This provision applies unless the commissioner determines that there has been collusion or intent to evade under certain circumstances.

B. Recommended Action

As originally enacted in 1977, the Public School Contracts Law (Contracts Law) was intended to protect the public from the improper use of local property taxes and to ensure accountability of school districts by placing the same advertising requirements on school districts as are required of localities. Currently, the Commissioner of Education is authorized to withhold or require the remittance of State aid to ensure that the bidding requirements of the Contracts Law and other school laws are met.

While it may be appropriate to protect school districts from the imposition of penalties in certain limited circumstances, this bill goes too far in restricting the commissioner's authority in enforcing the Contracts Law. In order to strike a proper balance between the interest of the school districts and the public, I recommend the bill be

amended to require that school district officials meet the current standards set for violations of the extraordinary unspecifiable services exception after one violation has been committed. Accordingly, school district officials will be put on notice as to the standards by which their future actions will be judged by the commissioner but will be offered greater protections for a first violation. Additionally, I recommend that school district officials be judged by a simple negligence standard. Negligence “beyond an error in judgment” is an undefined legal standard and places too great a burden in proving violations of the law.

Finally, I recommend that a school district from which the commissioner withheld funds or ordered that funds be withheld prior to the effective date of the act be required to apply to the commissioner for restoration of funds or forgiveness of any amounts pending collection. That application will provide the commissioner with the proper information on which to base a decision to restore funds withheld or to forgive any amounts pending collection.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill No. 808 (Second Reprint) with the following recommendations:

Page 2, Section 1, Line 21:

Insert after “seq.” “; or (3) a prior act or omission resulted in a withholding of State funds or a remission of State funds due to a violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding as set forth in N.J.S. 18A:18A-5.”

Page 2, Section 1, Line 23:

Delete “beyond an error in judgment” and insert after “negligence” “and none of the provisions in paragraph (3) in subsection 1.a. are met.”

Page 2, Section 1, Lines 27-35:

Delete and insert “(c) Any school district from which the commissioner withheld funds or has sought to collect funds prior to the effective date of this act due to a determination that the district acted or permitted an action to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertising and bidding as set forth in N.J.S.18A:18A-5 may apply to the commissioner for restoration of funds so withheld. If the commissioner determines that none of the provisions set forth in paragraphs (1), (2) or (3) in subsection 1a. or in subsection 1.b. applies, the commissioner shall remit to the school district the applicable funds

previously withheld or forgive any amounts pending collection.”

Respectfully,

Christine Todd Whitman
Governor

Attest:

John J. Farmer, Jr.
Chief Counsel to the Governor

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: February 18, 1999

Gov. Christie Whitman today conditionally vetoed the following piece of legislation:

SCS for S-808/A-2313, sponsored by Senators James S. Cafiero (R- Cape May/Atlantic/Cumberland) and Raymond J. Zane (D-Salem/Cumberland/Gloucester) and Assembly Members John C. Gibson (R-Cape May/Atlantic/Cumberland) and Gary W. Stuhltrager (Salem/Cumberland/Gloucester), which would have prevented the Commissioner of the Department of Education (DOE) from withholding or requiring the remittance of state funds as a penalty for a school district's violation of the extraordinary unspecifiable services exception to the public advertisement and bidding requirements of the Public Contracts Law.

The Governor said in her conditional veto that while it may be appropriate to protect school districts from the imposition of penalties in certain limited circumstances, this bill goes too far in restricting the commissioner's authority in enforcing the Contracts Law. The Governor said in order to strike a proper balance between the interests of the school districts and the public, she recommends that the bill be amended to require that school district officials meet the current standards set for violations of the extraordinary unspecifiable services exception after one violation is committed. Accordingly, the Governor said, school districts officials will be put on notice as to the standards by which their future actions will be judged by the Commissioner, but will be offered greater protections for a first violation. Additionally, Gov. Whitman said, she recommends that school district officials be judged by a simple negligence standard. She said that negligence "beyond an error in judgment" is an undefined legal standard and places too great a burden in proving violations of the law. Finally, the Governor recommended that a school district from which the Commissioner withheld funds or ordered that funds be withheld prior to the effective date of the act be required to apply to the Commissioner for restoration of funds or forgiveness of any amounts pending collection. She said that the application will provide the Commissioner with the proper information on which to base a decision to restore funds withheld or to forgive any amounts pending collection.