

40A:11-4.7 to 40A:11-4.12 et al.
LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2018 **CHAPTER:** 156

NJSA: 40A:11-4.7 to 40A:11-4.12 et al. (Authorizes local units of government subject to "Local Public Contracts Law" and "Public School Contracts Law" to use electronic procurement technologies.)

BILL NO: A3112 (Substituted for S1599)

SPONSOR(S) Benson and others

DATE INTRODUCED: 2/8/2018

COMMITTEE: **ASSEMBLY:** State & Local Government

SENATE: State Government, Wagering, Tourism & Historic Preservation
Budget & Appropriations

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** 6/21/2018

SENATE: 10/29/2018

DATE OF APPROVAL: 12/17/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted) Yes

A3112

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes State & Local Government

SENATE: Yes State Gov., W, T. & Historic Pres.
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S1599

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes State Gov., W, T. & Historic Pres.
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/CL

§§1-6 -
C.40A:11-4.7 to
40A:11-4.12
§10 - Repealer
§11 - Note

P.L. 2018, CHAPTER 156, *approved December 17, 2018*
Assembly, No. 3112

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

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

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

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

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

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

31 "Electronic procurement" means the use of computer technology
32 and the Internet for the advertising and submission of public bids,
33 providing notice of revisions or addenda to advertisements or bid
34 documents, the receipt of proposals and quotations, competitive
35 contracting, the use of reverse auctions, and related practices to
36 assist in determining the lowest responsible bidder or proposer who
37 is most advantageous, price and other factors considered, as

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

Matter underlined thus is new matter.

1 appropriate, for goods and services, the sale of personal property,
2 and other public procurement-related activities and services as may
3 be determined appropriate by the director;

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

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

13 "Public works construction" means any contract that is subject to
14 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
15 56.25 et seq.); and

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

23

24 4. (New section) Local units are authorized to use electronic
25 procurement practices for such purposes as may be authorized by
26 the governing body of the local unit, and subject to the provisions
27 of P.L. , c. (C.) (pending before the Legislature as
28 this bill).

29

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

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

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

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

47

48 6. (New section) a. The director, in consultation with the State

1 Comptroller and pursuant to the “Administrative Procedure Act,”
2 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
3 regulations to effectuate the provisions of this act.

4 The rules promulgated pursuant to this section shall include, but
5 shall not be limited to, practices that, notwithstanding any other law
6 to the contrary:

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

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

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

14 The director shall also consult with the Attorney General to
15 develop safeguards to protect against collusion and bid rigging,
16 with the Division of Purchase and Property in the Department of
17 Treasury to develop practices used for electronic procurement, and
18 with the Office of Information Technology in, but not of, the
19 Department of Treasury, to ensure the privacy and security of
20 electronic transactions.

21 b. With regard to the notices, advertising bids, or requests for
22 proposals required to be published in an official newspaper of the
23 local unit, such notices, advertising bids, or requests for proposals,
24 as appropriate, shall not be eliminated under the provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill),
26 and shall continue to be published as required by law.

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

37

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

40 13. Sales of real property, capital improvements or personal
41 property; exceptions; procedure. Any county or municipality may
42 sell any real property, capital improvement or personal property, or
43 interests therein, not needed for public use, as set forth in the
44 resolution or ordinance authorizing the sale, other than county or
45 municipal lands, real property otherwise dedicated or restricted
46 pursuant to law, and, except as otherwise provided by law, all such
47 sales shall be made by one of the following methods:

1 (a) By open public sale at auction to the highest bidder after
2 advertisement thereof in a newspaper circulating in the municipality
3 or municipalities in which the lands are situated, by two insertions
4 at least once a week during two consecutive weeks, the last
5 publication to be not earlier than seven days prior to such sale. In
6 the case of public sales, the governing body may by resolution fix a
7 minimum price or prices, with or without the reservation of the
8 right to reject all bids where the highest bid is not accepted. Notice
9 of such reservation shall be included in the advertisement of the
10 sale and public notice thereof shall be given at the time of sale.
11 Such resolution may provide, without fixing a minimum price, that
12 upon the completion of the bidding, the highest bid may be accepted
13 or all the bids may be rejected. The invitation to bid may also
14 impose restrictions on the use to be made of such real property,
15 capital improvement or personal property, and any conditions of
16 sale as to buildings or structures, or as to the type, size, or other
17 specifications of buildings or structures to be constructed thereon,
18 or as to demolition, repair, or reconstruction of buildings or
19 structures, and the time within which such conditions shall be
20 operative, or any other conditions of sale, in like manner and to the
21 same extent as by any other vendor. Such conditions shall be
22 included in the advertisement, as well as the nature of the interest
23 retained by the county or municipality. Such restrictions or
24 conditions shall be related to a lawful public purpose and encourage
25 and promote fair and competitive bidding of the county or
26 municipality and shall not, in the case of a municipality, be
27 inconsistent with or impose a special or higher standard than any
28 zoning ordinance or building, plumbing, electrical, or similar code
29 or ordinance then in effect in the municipality.

30 In any case in which a county or municipality intends to retain an
31 estate or interest in any real property, capital improvement or
32 personal property, in the nature of an easement, contingent or
33 reversionary, the invitation to bid and the advertisement required
34 herein shall require each bidder to submit one bid under each
35 Option A and Option B below.

36 (1) Option A shall be for the real property, capital improvement
37 or personal property subject to the conditions or restrictions
38 imposed, or interest or estate retained, which the county or
39 municipality proposes to retain or impose.

40 (2) Option B shall be for the real property, capital improvement
41 or personal property to be sold free of all such restrictions,
42 conditions, interests or estates on the part of the county or
43 municipality.

44 The county or the municipality may elect or reject either or both
45 options and the highest bid for each. Such acceptance or rejection
46 shall be made not later than at the second regular meeting of the
47 governing body following the sale, and, if the governing body shall
48 not so accept such highest bid, or reject all bids, said bids shall be

1 deemed to have been rejected. Any such sale may be adjourned at
2 the time advertised for not more than one week without
3 readvertising.

4 (b) At private sale, when authorized by resolution, in the case of
5 a county, or by ordinance, in the case of a municipality, in the
6 following cases:

7 (1) A sale to any political subdivision, agency, department,
8 commission, board or body corporate and politic of the State of
9 New Jersey or to an interstate agency or body of which the State of
10 New Jersey is a member or to the United States of America or any
11 department or agency thereof.

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

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

39 (4) A sale of an easement upon any real property previously
40 conveyed by any county or municipality may be made when the
41 governing body of any county, by resolution, or any municipality,
42 by ordinance, has elected to release the public rights in the nature of
43 easements, in, on, over or under any real property within the county
44 or the municipality, as the case may be, upon such terms as shall be
45 agreed upon with the owner of such lands, if the use of such rights
46 is no longer desirable, necessary or required for public purposes.

47 (5) A sale to the owner of the real property contiguous to the
48 real property being sold; provided that the property being sold is

1 less than the minimum size required for development under the
2 municipal zoning ordinance and is without any capital improvement
3 thereon; except that when there is more than one owner with real
4 property contiguous thereto, said property shall be sold to the
5 highest bidder from among all such owners. Any such sale shall be
6 for not less than the fair market value of said real property. When
7 there is only one owner with real property contiguous to the
8 property being sold, and the property is less than an eighth of the
9 minimum size required for development under the municipal zoning
10 ordinance and is without any capital improvement thereon, the fair
11 market value of that property may be determined by negotiation
12 between the local unit and the owner of the contiguous real
13 property. The negotiated sum shall be subject to approval by
14 resolution of the governing body, but in no case shall that sum be
15 less than one dollar.

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

1 Any county or municipality selling any real property, capital
2 improvement or personal property pursuant to subsection (b) of this
3 section shall file with the Director of the Division of Local
4 Government Services in the Department of Community Affairs,
5 sworn affidavits verifying the publication of advertisements as
6 required by this subsection.

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

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

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

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

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

2 18A:20-6. Any lands or rights or interests therein sold by any
3 board of education, except lands conveyed as part of a lease
4 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold
5 **【at】** , after advertisement of public sale, to the highest bidder 【
6 after】 . A board of education is authorized to use electronic
7 procurement practices in accordance with P.L. , c. (C.)
8 (pending before the Legislature as this bill) for the advertisement of
9 sale or lease of land and real property thereon, and shall also
10 publish advertisement of the sale or lease in a newspaper published
11 in the district, or, if none is published therein, then in a newspaper
12 circulating in the district, in which the same is situate, at least once
13 a week for two weeks prior to the sale, unless:

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

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

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

20

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

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

40 (1) After advertisement of the request for bids to lease to the
41 highest bidder in a newspaper published in the school district, or, if
42 none is published therein, then in a newspaper circulating in the
43 district in which the same is situate, at least once a week for two
44 weeks prior to the date fixed for the receipt and opening of bids,
45 and, at the discretion of the board of education, electronic
46 advertisement, unless:

47 (2) The same is leased to the federal government, State, a
48 political subdivision thereof, another school district, any board,

1 body or commission of a municipality within the school district, any
2 volunteer fire company or rescue squad actively engaged in the
3 protection of life and property and duly incorporated under the laws
4 of the State of New Jersey, or to any American Legion post,
5 Veterans of Foreign Wars, or other recognized veterans'
6 organization of the United States of America, located in the
7 municipality or the county, as a meeting place for such
8 organization, or to a nonprofit child care service organization duly
9 incorporated under the laws of the State of New Jersey, or to a
10 nonprofit hospital duly licensed under the laws of the State of New
11 Jersey, or to a nonprofit organization duly licensed under the laws
12 of the State of New Jersey to provide emergency shelter for the
13 homeless, or to a nonprofit senior citizen organization, or to a
14 nonprofit historic preservation organization duly incorporated under
15 the laws of the State of New Jersey, in which case the same may be
16 leased by private agreement for a nominal fee without
17 advertisement for bids.

18 b. Any lease in excess of five years shall be approved by the
19 Commissioner of Education.

20 (cf: P.L.2007, c.137, s.47)

21

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

23

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

26

27

28

STATEMENT

29

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

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

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

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

48 c) the sale of real property that shall otherwise comply with the

1 sale and lease provisions of the "Local Lands and Buildings Law,"
2 P.L.1971, c.199 (C.40A:12-1).

3 A local unit using electronic procurement technologies must
4 continue to publish any notices, advertising bids, and requests for
5 proposals required by law to be published in the official newspaper
6 of the local unit.

7 Contracts awarded for the administration of electronic
8 procurement practices pursuant to the bill would be subject to the
9 requirements of the "Local Public Contracts Law," P.L.1971, c.198
10 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"
11 N.J.S.18A:18A-1 et seq., as appropriate, except that they are to be
12 considered as purposes for which competitive contracting may be
13 used.

14 The bill also requires the Director of the Division of Local
15 Government Services in the Department of Community Affairs, in
16 consultation with other State government entities, to promulgate
17 rules and regulations to effectuate the provisions of the bill.

18

19

20

21

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

ASSEMBLY, No. 3112

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 8, 2018

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

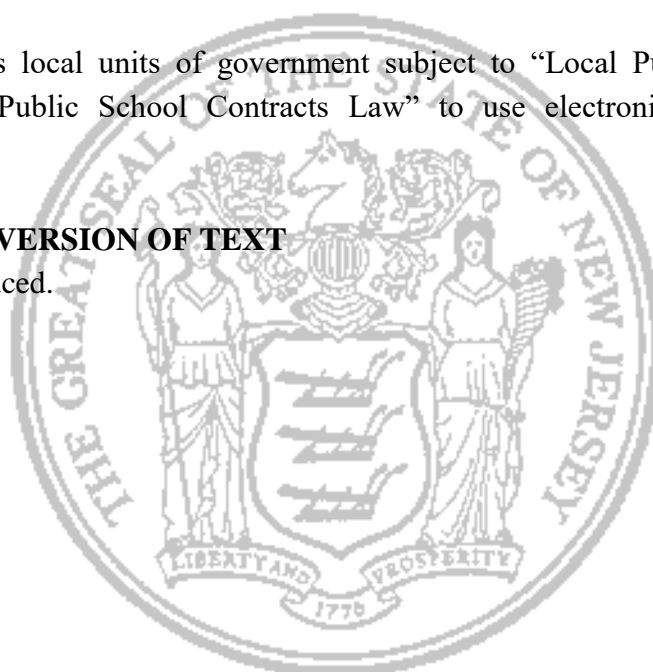
Assemblywoman Downey, Assemblymen Wirths, Space and Senator Addiego

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (cf: P.L.2000, c.126, s.26)

38
39 8. N.J.S.18A:20-6 is amended to read as follows:

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

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

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

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

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

10

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

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

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

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

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

8 b. Any lease in excess of five years shall be approved by the
9 Commissioner of Education.

10 (cf: P.L.2007, c.137, s.47)

11
12 10. P.L.2001, c.30 is repealed.

13
14 11. This act shall take effect on the first day of the 10th month
15 next following enactment.

16
17
18 STATEMENT

19
20 This bill would authorize local units of government to use
21 electronic procurement technologies. The bill defines "local unit"
22 as contracting units as defined in the "Local Public Contracts Law,"
23 P.L.1971, c.198 (C.40A:11-1 et seq.). The bill authorizes these
24 local units to use electronic procurement practices for such
25 purposes as may be authorized by the governing body of the local
26 unit, and subject to the provisions of the bill.

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

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

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

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

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

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

A3112 BENSON, MUKHERJI

11

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

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

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3112

STATE OF NEW JERSEY

DATED: MAY 10, 2018

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 3112.

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

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

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

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

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

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

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

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

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3112

STATE OF NEW JERSEY

DATED: SEPTEMBER 27, 2018

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Assembly Bill No. 3112.

This bill would authorize local units of government to use electronic procurement technologies. The bill defines "local unit" as a school district under the "Public Schools Contracts Law" or a contracting unit under the "Local Public Contracts Law." The bill authorizes these local units to use electronic procurement practices for such purposes as may be authorized by the governing body of the local unit, and subject to the provisions of the bill.

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

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

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

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

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

Contracts awarded for the administration of electronic procurement practices pursuant to the bill would be subject to the requirements of the "Local Public Contracts Law" and the "Public School Contracts Law," as appropriate, except that they are to be considered as purposes for which competitive contracting may be used.

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3112

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2018

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3112.

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

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

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

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

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

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

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

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

As reported, this bill is identical to Senate Bill No. 1599, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill allows local government units, including counties, municipalities, and school districts, to use electronic procurement systems.

Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process.

The OLS cannot predict the number of local units that would develop an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.

The bill also repeals P.L.2001, c.30, the "Local Unit Electronic Technology Pilot Program and Study Act," which currently allows local units to purchase and sell certain items using on-line procurement systems.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3112
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JUNE 26, 2018

SUMMARY

- Synopsis:** Authorizes local units of government subject to “Local Public Contracts Law” and “Public School Contracts Law” to use electronic procurement technologies.
- Type of Impact:** Indeterminate potential decrease in local costs.
- Agencies Affected:** Division of Local Government Services (Department of Community Affairs), State Comptroller, Office of the Attorney General, Division of Purchase and Property (Department of Treasury), and the Office of Information Technology.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Cost	Indeterminate Potential Decrease		

- The Office of Legislative Services (OLS) estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill would allow local government units, including counties, municipalities, and school districts, to use electronic procurement systems.
- Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process.
- The OLS cannot predict the number of local units that would develop an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.
- The bill also would repeal P.L.2001, c.30, the “Local Unit Electronic Technology Pilot Program and Study Act,” which currently allows local units to purchase and sell certain items using on-line procurement systems.

BILL DESCRIPTION

The bill authorizes local government units subject to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) and “Public School Contracts Law,” (N.J.S.18A:18A-1 et seq.) to use electronic procurement technologies. The bill authorizes local units to use electronic procurement practices for such purposes as may be authorized by the governing body of the local unit, subject to the provisions of the bill. The bill requires a local unit that utilizes an electronic procurement system to continue to publish advertising bids and requests for proposal in its official newspaper.

Under the bill, local units, joint purchasing units, and cooperative pricing systems are also authorized to use electronic procurement practices for the following purposes: (1) the purchase of electric generation service, electric related service, gas supply service, or gas related service, either separately or bundled, for its own facilities, so long as the purchase otherwise complies with the provisions of the “Electric Discount and Energy Competition Act,” P.L.1999, c.23 (C.48:3-49 et al.); (2) the sale of surplus personal property in compliance with the provisions of section 36 of P.L.1971, c.198 (C.40A:11-36); and (3) the sale or lease of real and personal property pursuant to the provisions of the “Local Lands and Buildings Law,” P.L.1971 c.1999 (C.40A:12-1 et seq.), and State laws governing the sale of public school property.

Contracts awarded for the administration of electronic procurement practices pursuant to the bill are subject to the requirements of the “Local Public Contracts Law” and the “Public School Contracts Law,” except that they shall be considered purposes for which competitive contracting may be used. Competitive contracting is a procedure used to procure various specialized goods and services, which involves the solicitation of formal proposals from vendors through advertisement of a request for proposals. Due to the specialized nature of the goods of services, the evaluation and ranking of the formal proposals may include criteria other than the lowest price. The bill requires the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with other State government entities, to promulgate rules and regulations to effectuate the provisions of the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill would allow local government units, including counties, municipalities, and school districts, to use electronic procurement systems.

Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process. Specifically, the use of technology-based procurement system may allow local units to allocate staff more efficiently and reduce costs associated with the current paper-based public contracting and purchasing system. Electronic purchasing systems also could help local units increase the transparency of the contracting and bidding process, achieve value and promote competition, expand the supplier base, maintain financial controls, measure contractor performance, and promote efficiency in

workflow and approval authority. It should also be noted that the potential costs associated with developing and implementing the electronic purchasing systems would vary depending on the system that is adopted.

The OLS cannot predict the number of local government units that would develop and implement an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.

The OLS also notes that the bill would repeal P.L.2001, c.30, the “Local Unit Electronic Technology Pilot Program and Study Act,” which currently allows local units to purchase and sell certain items using on-line procurement systems. That law restricts on-line purchases to bulk commodities, including, but not limited to, rock salt, petroleum products, asphalt, paper products, and chemicals. Local units interested in participating in the pilot program are required to submit a written plan to the Director of the Division of Local Government Services setting forth the following information: (1) whether the system is to be used for purchases, sales, or both; (2) the commodities and services that are to be purchased, and the personal property that is to be sold on the system; (3) whether the system is to be conducted as an “in-house” auction or operated through an on-line purchasing agent; and (4) a description of the proposed system in sufficient enough detail to allow the director to determine whether all aspects of the proposed purchase and sale have been addressed. The director may accept the plan, reject the plan, request additional information, or conditionally accept the plan. The bill replaces this pilot program with a less cumbersome process for developing electronic procurement system.

Section: Local Government

*Analyst: Joseph A. Pezzulo
Assistant Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1599

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Addiego

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



S1599 BEACH, OROHO

2

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

7

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

10

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

13

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

26

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

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

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

41 "Goods and services" means any work, labor, commodities,
42 equipment, materials, or supplies of any tangible or intangible
43 nature, except real property or any interest therein, provided or

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

Matter underlined thus is new matter.

S1599 BEACH, OROHO

1 performed through a contract awarded by a contracting agent,
2 including goods and property subject to N.J.S.12A:2-101 et seq.;

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

7 "Public works construction" means any contract that is subject to
8 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
9 56.25 et seq.); and

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

17

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

23

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

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

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

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

41

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

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

S1599 BEACH, OROHO

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

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

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

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

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

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

31

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

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

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

S1599 BEACH, OROHO

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

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

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

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

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

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

S1599 BEACH, OROHO

1 (1) A sale to any political subdivision, agency, department,
2 commission, board or body corporate and politic of the State of
3 New Jersey or to an interstate agency or body of which the State of
4 New Jersey is a member or to the United States of America or any
5 department or agency thereof.

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

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

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

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

S1599 BEACH, OROHO

1 there is only one owner with real property contiguous to the
2 property being sold, and the property is less than an eighth of the
3 minimum size required for development under the municipal zoning
4 ordinance and is without any capital improvement thereon, the fair
5 market value of that property may be determined by negotiation
6 between the local unit and the owner of the contiguous real
7 property. The negotiated sum shall be subject to approval by
8 resolution of the governing body, but in no case shall that sum be
9 less than one dollar.

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

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

S1599 BEACH, OROHO

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

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

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

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

42

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

44 18A:20-6. Any lands or rights or interests therein sold by any
45 board of education, except lands conveyed as part of a lease
46 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold
47 **[at]** , after advertisement of public sale, to the highest bidder **[,**
48 after] . A board of education is authorized to use electronic

S1599 BEACH, OROHO

9

1 procurement practices in accordance with P.L. , c. (C.)
2 (pending before the Legislature as this bill) for the advertisement of
3 sale or lease of land and real property thereon, and shall also
4 publish advertisement of the sale or lease in a newspaper published
5 in the district, or, if none is published therein, then in a newspaper
6 circulating in the district, in which the same is situate, at least once
7 a week for two weeks prior to the sale, unless:

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

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

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

14

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

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

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

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

1 municipality or the county, as a meeting place for such
2 organization, or to a nonprofit child care service organization duly
3 incorporated under the laws of the State of New Jersey, or to a
4 nonprofit hospital duly licensed under the laws of the State of New
5 Jersey, or to a nonprofit organization duly licensed under the laws
6 of the State of New Jersey to provide emergency shelter for the
7 homeless, or to a nonprofit senior citizen organization, or to a
8 nonprofit historic preservation organization duly incorporated under
9 the laws of the State of New Jersey, in which case the same may be
10 leased by private agreement for a nominal fee without
11 advertisement for bids.

12 b. Any lease in excess of five years shall be approved by the
13 Commissioner of Education.

14 (cf: P.L.2007, c.137, s.47)

15

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

17

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

20

21

22

STATEMENT

23

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

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

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

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

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

45 A local unit using electronic procurement technologies must
46 continue to publish any notices, advertising bids, and requests for
47 proposals required by law to be published in the official newspaper
48 of the local unit.

S1599 BEACH, OROHO

11

1 Contracts awarded for the administration of electronic
2 procurement practices pursuant to the bill would be subject to the
3 requirements of the "Local Public Contracts Law," P.L.1971, c.198
4 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"
5 N.J.S.18A:18A-1 et seq., as appropriate, except that they are to be
6 considered as purposes for which competitive contracting may be
7 used.

8 The bill also requires the Director of the Division of Local
9 Government Services in the Department of Community Affairs, in
10 consultation with other State government entities, to promulgate
11 rules and regulations to effectuate the provisions of the bill.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 1599

STATE OF NEW JERSEY

DATED: SEPTEMBER 27, 2018

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 1599.

This bill would authorize local units of government to use electronic procurement technologies. The bill defines "local unit" as a school district under the "Public Schools Contracts Law" or a contracting unit under the "Local Public Contracts Law." The bill authorizes these local units to use electronic procurement practices for such purposes as may be authorized by the governing body of the local unit, and subject to the provisions of the bill.

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

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

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

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

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

Contracts awarded for the administration of electronic procurement practices pursuant to the bill would be subject to the requirements of the "Local Public Contracts Law" and the "Public School Contracts Law," as appropriate, except that they are to be considered as purposes for which competitive contracting may be used.

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1599

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1599.

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

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

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

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

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

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

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

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

As reported, this bill is identical to Assembly Bill No. 3112, as also reported by committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill allows local government units, including counties, municipalities, and school districts, to use electronic procurement systems.

Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process.

The OLS cannot predict the number of local units that would develop an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.

The bill also repeals P.L.2001, c.30, the "Local Unit Electronic Technology Pilot Program and Study Act," which currently allows local units to purchase and sell certain items using on-line procurement systems.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1599
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: OCTOBER 17, 2018

SUMMARY

- Synopsis:** Authorizes local units of government subject to “Local Public Contracts Law” and “Public School Contracts Law” to use electronic procurement technologies.
- Type of Impact:** Indeterminate potential decrease in local costs.
- Agencies Affected:** Division of Local Government Services (Department of Community Affairs), State Comptroller, Office of the Attorney General, Division of Purchase and Property (Department of Treasury), and the Office of Information Technology.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Cost	Indeterminate Potential Decrease		

- The Office of Legislative Services (OLS) estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill would allow local government units, including counties, municipalities, and school districts, to use electronic procurement systems.
- Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process.
- The OLS cannot predict the number of local units that would develop an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.
- The bill also would repeal P.L.2001, c.30, the “Local Unit Electronic Technology Pilot Program and Study Act,” which currently allows local units to purchase and sell certain items using on-line procurement systems.

BILL DESCRIPTION

The bill permits local government units subject to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) or “Public School Contracts Law,” N.J.S.18A:18A-1 et seq., to use electronic procurement technologies for purposes authorized by the governing body of the local unit, subject to the provisions of the bill. The bill requires a local unit that utilizes an electronic procurement system to continue to publish advertising bids and requests for proposal in its official newspaper.

Under the bill, local units, joint purchasing units, and cooperative pricing systems are also authorized to use electronic procurement practices for the following purposes: (1) the purchase of electric generation service, electric related service, gas supply service, or gas related service, either separately or bundled, for its own facilities, so long as the purchase otherwise complies with the provisions of the “Electric Discount and Energy Competition Act,” P.L.1999, c.23 (C.48:3-49 et al.); (2) the sale of surplus personal property in compliance with the provisions of section 36 of P.L.1971, c.198 (C.40A:11-36); and (3) the sale or lease of real or personal property pursuant to the provisions of the “Local Lands and Buildings Law,” P.L.1971 c.199 (C.40A:12-1 et seq.), and State laws governing the sale of public school property.

Contracts awarded for the administration of electronic procurement practices pursuant to the bill are subject to the requirements of the “Local Public Contracts Law” or the “Public School Contracts Law,” except that the contracts shall be considered purposes for which competitive contracting may be used. Competitive contracting is a procedure used to procure various specialized goods and services, which involves the solicitation of formal proposals from vendors through advertisement of a request for proposals. Due to the specialized nature of the goods and services, the evaluation and ranking of the formal proposals may include criteria other than the lowest price. The bill requires the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with other State government entities, to promulgate rules and regulations to effectuate the provisions of the bill.

The bill also repeals P.L.2001, c.30, the “Local Unit Electronic Technology Pilot Program and Study Act,” which currently allows local units to purchase and sell certain items using on-line procurement systems. That law restricts on-line purchases to bulk commodities, including, but not limited to, rock salt, petroleum products, asphalt, paper products, and chemicals.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of the bill could result in an indeterminate potential decrease in local costs. The bill would allow local government units, including counties, municipalities, and school districts, to use electronic procurement systems.

Although local units may incur increased up-front expenditures associated with developing and implementing the electronic purchasing systems, these potential costs could be offset by savings not achievable through the current public contracting process. Specifically, the use of technology-based procurement system may allow local units to allocate staff more efficiently and reduce costs associated with the current paper-based public contracting and purchasing system.

Electronic purchasing systems also could help local units increase the transparency of the contracting and bidding process, achieve value and promote competition, expand the supplier base, maintain financial controls, measure contractor performance, and promote efficiency in workflow and approval authority. It should also be noted that the potential costs associated with developing and implementing the electronic purchasing systems would vary depending on the system that is adopted.

The OLS cannot predict the number of local government units that would develop and implement an electronic purchasing system as a result of the bill because the provisions of the bill are permissive in nature. As a result, the OLS cannot quantify the fiscal impact of the bill.

The OLS also notes that the bill would repeal P.L.2001, c.30, the “Local Unit Electronic Technology Pilot Program and Study Act,” which currently allows local units to purchase and sell certain bulk commodities using on-line procurement systems. Local units interested in participating in the pilot program are required to submit a written plan to the Director of the Division of Local Government Services setting forth the following information: (1) whether the system is to be used for purchases, sales, or both; (2) the commodities and services that are to be purchased, and the personal property that is to be sold on the system; (3) whether the system is to be conducted as an “in-house” auction or operated through an on-line purchasing agent; and (4) a description of the proposed system in sufficient enough detail to allow the director to determine whether all aspects of the proposed purchase and sale have been addressed. The director may accept the plan, reject the plan, request additional information, or conditionally accept the plan. The bill replaces this pilot program with a less cumbersome process for developing an electronic procurement system.

However, the OLS notes that local units that currently use a limited electronic procurement system may experience reduced potential cost savings as a result of the enactment of this bill, as these local units may have already realized some of the savings associated with the use of an electronic procurement system.

Section: Local Government
Analyst: Joseph A. Pezzulo
Assistant Research Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



[Home](#) | [Administration](#) ▾ | [Key Initiatives](#) ▾ | [News and Events](#) ▾ | [Social](#) ▾ | [Contact Us](#) ▾

Newark, N.J.

Governor Murphy Takes Action on Legislation

12/17/2018

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A360 (Chiaravalloti, Danielsen, Mukherji/Pou, Cruz-Perez) – Prohibits consumer reporting agencies from charging certain fees related to security freezes on consumer reports.

A1039 (Houghtaling, Dancer, Andrzejczak, Space, Taliaferro/Gopal, Oroho) – Directs the Division of Travel and Tourism to publish on its website information of farm-to-table restaurants.

A2182 (DeAngelo, Wimberly, Quijano/Scutari, Singleton) – Establishes an apprenticeship requirement to qualify for an electrical contractor's license.

A3112 (Benson, Mukherji, Karabinchak/Beach, Oroho) – Authorizes local units of government subject to "Local Public Contracts Law" and "Public School Contracts Law" to use electronic procurement technologies.

A3731 (Tully, Swain, Wimberly/Lagana) – Establishes "County Code Pilot Program" for certain counties.

A4102 (Johnson, DeAngelo/Weinberg) – Allows cigar bars and lounges to renew lapsed exemption from ban on indoor smoking under certain circumstances.

S724 (Greenstein, Diegnan/Pinkin, Giblin, Jasey) – Allows pharmacy interns and pharmacy externs to administer certain vaccines under direct supervision of pharmacist and requires reporting of certain vaccine administrations.

S869 (Sweeney, Cunningham, Oroho/Jimenez, Lagana, Vainieri Huttie, Benson) – Permits establishment by county and four-year institutions of higher education of three plus one degree programs for receipt of baccalaureate degree after spending three years at county college and one year at senior institution.

S870 (Sweeney, Cunningham/Jasey, Schaer, Calabrese) – Establishes Dual Enrollment Study Commission.

S1869 (Scutari/Caputo, Holley) – Prohibits sale of certain alarm business signs and decals.

S1958 (Gopal, Scutari/Mukherji, Lopez, DeAngelo) – Establishes permit to allow seasonal retail consumption license holders to sell alcoholic beverages during certain off-season dates.

S2397 (Gopal/Schaer, Karabinchak, Pinkin) – Requires institutions of higher education to provide alternative arrangements to students unable to complete certain assignments by regular due date or register for courses because of day of religious observance.

S2839 (Gopal, Oroho, Greenstein/Houghtaling, Zwicker, DeAngelo) – Makes General Fund supplemental appropriation of \$250,000 to New Jersey Manufacturing Extension Program, Inc.

[Copy of Statement on S2839](#)

S2845 (Vitale/Spearman, Mejia, Lopez) – Amends Fiscal Year 2019 appropriations act to revise increase in Work

First New Jersey benefits.

SJR18 (Pou, Greenstein/Murphy) – Establishes "Commission to Review Constructive Sentences of Life Imprisonment on Juvenile Offenders."

Additionally, Governor Murphy announced that he has conditionally vetoed the following bills:

A4342 (Tully, Swain, Benson, Jones/Lagana) – Requires public school student to carry identification card at school-sponsored, off-campus activities and requires principal to keep list of students on school buses used for school-sponsored activities in case of emergencies.

[Copy of Statement on A4342](#)

S393 (Madden, Singleton/DeAngelo, Murphy, Verrelli) – Establishes Talent Network Program in DOLWD.

[Copy of Statement on S393](#)

S1697 (Sarlo, Oroho/DeAngelo, Lagana, Space) – Exempts fuel used for operation of certain school buses from petroleum products gross receipts tax and motor fuel tax; clarifies tax treatment of certain dyed fuel thereunder; clarifies determination of taxable estates of certain decedents.

[Copy of Statement on S1697](#)

S2531 (Beach/Jones) – Allows county governing body in certain counties to abolish offices of superintendent and deputy superintendent of elections and transfer functions to county board of elections.

[Copy of Statement on S2531](#)

Governor Murphy also announced that he has absolute vetoed the following bills:

S2455 (Sweeney, Oroho/Murphy, McKnight, Mosquera) – Transfers county college employees and retirees from membership in SEHBP to membership in SHBP.

[Copy of Statement on S2455](#)

S3074 (Lagana/Pintor Marin, Greenwald) - Provides for procurement by State of pharmacy benefits manager, automated reverse auction services, and claims adjudication services.

[Copy of Statement on S3074](#)

[Back to Top](#)

Powered by  [Translate](#) [Select Language](#)

[Translator Disclaimer](#)

Governor Phil Murphy

Statewide

[Home](#)

[Key Initiatives](#)

[Social](#)

[NJ Home](#)

[Administration](#)

[Economy & Jobs](#)

[Facebook](#)

[Services A to Z](#)

[Governor Phil Murphy](#)

[Education](#)

[Twitter](#)

[Departments/Agencies](#)

[Lt. Governor Sheila](#)

[Environment](#)

[Instagram](#)

[FAQs](#)

[Oliver](#)

[Health](#)

[Snapchat](#)

[Contact Us](#)

[First Lady Tammy](#)

[Law & Justice](#)

[YouTube](#)

[Privacy Notice](#)

[Snyder Murphy](#)

[Transportation](#)

[Contact Us](#)

[Legal Statement &](#)

[Disclaimers](#)