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NewJerseyNewsroom.com, 12-17-2009.

<http://www.newjerseynewsroom.com/state/gov-corzine-signs-legislation-designed-to-improve-oversight-of-local-government-spending>.

LAW/RWH

[Fourth Reprint]

ASSEMBLY, No. 1645

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

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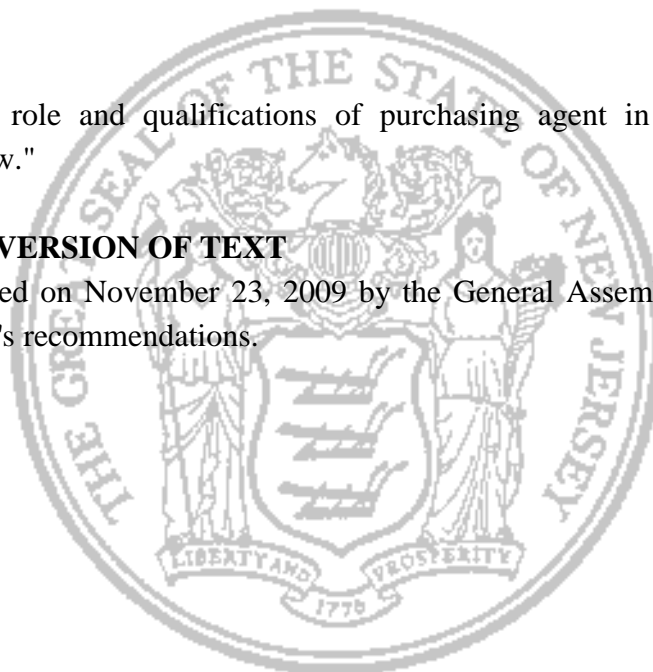
**Assemblywoman Vandervalk, Assemblymen Cryan, Giblin,
Assemblywomen Vainieri Huttle, Jasey, Pou, Senators Rice, Van Drew and
Oroho**

SYNOPSIS

Redefines role and qualifications of purchasing agent in "Local Public Contracts Law."

CURRENT VERSION OF TEXT

As amended on November 23, 2009 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning public contracts and amending P.L.1971, c.198.

2

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

5

6 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to
7 read as follows:

8 2. As used herein the following words have the following
9 definitions, unless the context otherwise indicates:

10 (1) "Contracting unit" means:

11 (a) Any county; or

12 (b) Any municipality; or

13 (c) Any board, commission, committee, authority or agency,
14 which is not a State board, commission, committee, authority or
15 agency, and which has administrative jurisdiction over any district
16 other than a school district, project, or facility, included or
17 operating in whole or in part, within the territorial boundaries of
18 any county or municipality which exercises functions which are
19 appropriate for the exercise by one or more units of local
20 government, and which has statutory power to make purchases and
21 enter into contracts awarded by a contracting agent for the provision
22 or performance of goods or services.

23 The term shall not include a private firm that has entered into a
24 contract with a public entity for the provision of water supply
25 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Contracting unit" shall not include a private firm or public
27 authority that has entered into a contract with a public entity for the
28 provision of wastewater treatment services pursuant to P.L.1995,
29 c.216 (C.58:27-19 et al.).

30 "Contracting unit" shall not include a duly incorporated
31 nonprofit association that has entered into a contract with the
32 governing body of a city of the first class for the provision of water
33 supply services or wastewater treatment services pursuant to section
34 2 of P.L.2002, c.47 (C.40A:11-5.1).

35 (2) "Governing body" means:

36 (a) The governing body of the county, when the purchase is to
37 be made or the contract or agreement is to be entered into by, or in
38 behalf of, a county; or

39 (b) The governing body of the municipality, when the purchase
40 is to be made or the contract or agreement is to be entered into by,
41 or on behalf of, a municipality; 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted January 24, 2008.

²Assembly AAP committee amendments adopted June 5, 2008.

³Senate floor amendments adopted February 23, 2009.

⁴Assembly amendments adopted in accordance with Governor's recommendations November 23, 2009.

1 (c) Any board, commission, committee, authority or agency of
2 the character described in subsection (1) (c) of this section.

3 (3) "Contracting agent" means the governing body of a
4 contracting unit, or its authorized designee, which has the power to
5 prepare the advertisements, to advertise for and receive bids and, as
6 permitted by this act, to make awards for the contracting unit in
7 connection with purchases, contracts or agreements.

8 (4) "Purchase" means a transaction, for a valuable
9 consideration, creating or acquiring an interest in goods, services
10 and property, except real property or any interest therein.

11 (5) (Deleted by amendment, P.L.1999, c.440.)

12 (6) "Professional services" means services rendered or
13 performed by a person authorized by law to practice a recognized
14 profession, whose practice is regulated by law, and the performance
15 of which services requires knowledge of an advanced type in a field
16 of learning acquired by a prolonged formal course of specialized
17 instruction and study as distinguished from general academic
18 instruction or apprenticeship and training. Professional services
19 may also mean services rendered in the provision or performance of
20 goods or services that are original and creative in character in a
21 recognized field of artistic endeavor.

22 (7) "Extraordinary unspecifiable services" means services which
23 are specialized and qualitative in nature requiring expertise,
24 extensive training and proven reputation in the field of endeavor.

25 (8) (Deleted by amendment, P.L.1999, c.440.)

26 (9) "Work" includes services and any other activity of a tangible
27 or intangible nature performed or assumed pursuant to a contract or
28 agreement with a contracting unit.

29 (10) "Homemaker--home health services" means at home
30 personal care and home management provided to an individual or
31 members of the individual's family who reside with the individual,
32 or both, necessitated by the individual's illness or incapacity.
33 "Homemaker--home health services" includes, but is not limited to,
34 the services of a trained homemaker.

35 (11) "Recyclable material" means those materials which would
36 otherwise become municipal solid waste, and which may be
37 collected, separated or processed and returned to the economic
38 mainstream in the form of raw materials or products.

39 (12) "Recycling" means any process by which materials which
40 would otherwise become solid waste are collected, separated or
41 processed and returned to the economic mainstream in the form of
42 raw materials or products.

43 (13) "Marketing" means the sale, disposition, assignment, or
44 placement of designated recyclable materials with, or the granting
45 of a concession to, a reseller, processor, materials recovery facility,
46 or end-user of recyclable material, in accordance with a district
47 solid waste management plan adopted pursuant to P.L.1970, c.39
48 (C.13:1E-1 et seq.) and shall not include the collection of such

1 recyclable material when collected through a system of routes by
2 local government unit employees or under a contract administered
3 by a local government unit.

4 (14) "Municipal solid waste" means, as appropriate to the
5 circumstances, all residential, commercial and institutional solid
6 waste generated within the boundaries of a municipality; or the
7 formal collection of such solid wastes or recyclable material in any
8 combination thereof when collected through a system of routes by
9 local government unit employees or under a contract administered
10 by a local government unit.

11 (15) "Distribution" (when used in relation to electricity) means
12 the process of conveying electricity from a contracting unit that is a
13 generator of electricity or a wholesale purchaser of electricity to
14 retail customers or other end users of electricity.

15 (16) "Transmission" (when used in relation to electricity) means
16 the conveyance of electricity from its point of generation to a
17 contracting unit that purchases it on a wholesale basis for resale.

18 (17) "Disposition" means the transportation, placement, reuse,
19 sale, donation, transfer or temporary storage of recyclable materials
20 for all possible uses except for disposal as municipal solid waste.

21 (18) "Cooperative marketing" means the joint marketing by two
22 or more contracting units of the source separated recyclable
23 materials designated in a district recycling plan required pursuant to
24 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written
25 cooperative agreement entered into by the participating contracting
26 units thereof.

27 (19) "Aggregate" means the sums expended or to be expended
28 for the provision or performance of any goods or services in
29 connection with the same immediate purpose or task, or the
30 furnishing of similar goods or services, during the same contract
31 year through a contract awarded by a contracting agent.

32 (20) "Bid threshold" means the dollar amount set in section 3 of
33 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
34 advertise for and receive sealed bids in accordance with procedures
35 set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

36 (21) "Contract" means any agreement, including but not limited
37 to a purchase order or a formal agreement, which is a legally
38 binding relationship enforceable by law, between a vendor who
39 agrees to provide or perform goods or services and a contracting
40 unit which agrees to compensate a vendor, as defined by and subject
41 to the terms and conditions of the agreement. A contract also may
42 include an arrangement whereby a vendor compensates a
43 contracting unit for the vendor's right to perform a service, such as,
44 but not limited to, operating a concession.

45 (22) "Contract year" means the period of 12 consecutive months
46 following the award of a contract.

47 (23) "Competitive contracting" means the method described in
48 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-

1 4.5) of contracting for specialized goods and services in which
2 formal proposals are solicited from vendors; formal proposals are
3 evaluated by the purchasing agent or counsel or administrator; and
4 the governing body awards a contract to a vendor or vendors from
5 among the formal proposals received.

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

12 (25) “Library and educational goods and services” means
13 textbooks, copyrighted materials, student produced publications and
14 services incidental thereto, including but not limited to books,
15 periodicals, newspapers, documents, pamphlets, photographs,
16 reproductions, microfilms, pictorial or graphic works, musical
17 scores, maps, charts, globes, sound recordings, slides, films,
18 filmstrips, video and magnetic tapes, other printed or published
19 matter and audiovisual and other materials of a similar nature,
20 necessary binding or rebinding of library materials, and specialized
21 computer software used as a supplement or in lieu of textbooks or
22 reference material.

23 (26) “Lowest price” means the least possible amount that meets
24 all requirements of the request of a contracting agent.

25 (27) “Lowest responsible bidder or vendor” means the bidder or
26 vendor: (a) whose response to a request for bids offers the lowest
27 price and is responsive; and (b) who is responsible.

28 (28) “Official newspaper” means any newspaper designated by
29 the contracting unit pursuant to R.S.35:1-1 et seq.

30 (29) “Purchase order” means a document issued by the
31 contracting agent authorizing a purchase transaction with a vendor
32 to provide or perform goods or services to the contracting unit,
33 which, when fulfilled in accordance with the terms and conditions
34 of a request of a contracting agent and other provisions and
35 procedures that may be established by the contracting unit, will
36 result in payment by the contracting unit.

37 (30) ⁴**[a.]**⁴ “Purchasing agent” means the individual duly
38 assigned the authority, responsibility, and accountability for the
39 purchasing activity of the contracting unit, and **[**who has such
40 duties as are defined by an authority appropriate to the form and
41 structure of the contracting unit, and **]** ⁴**[administration of the**
42 **contracting unit’s responsibilities]** who has such duties as are
43 **defined by an authority appropriate to the form and structure of the**
44 **contracting unit**⁴, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.)
45 **and who possesses a qualified purchasing agent certificate**⁴.

46 ⁴**[b. “Qualified Purchasing Agent” means a purchasing agent**
47 **who is the holder of a qualified purchasing agent certificate issued**

- 1 pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).】⁴
2 (31) “Quotation” means the response to a formal or informal
3 request made by a contracting agent by a vendor for provision or
4 performance of goods or services, when the aggregate cost is less
5 than the bid threshold. Quotations may be in writing, or taken
6 verbally if a record is kept by the contracting agent.
- 7 (32) “Responsible” means able to complete the contract in
8 accordance with its requirements, including but not limited to
9 requirements pertaining to experience, moral integrity, operating
10 capacity, financial capacity, credit, and workforce, equipment, and
11 facilities availability.
- 12 (33) “Responsive” means conforming in all material respects to
13 the terms and conditions, specifications, legal requirements, and
14 other provisions of the request.
- 15 (34) “Public works” means building, altering, repairing,
16 improving or demolishing any public structure or facility
17 constructed or acquired by a contracting unit to house local
18 government functions or provide water, waste disposal, power,
19 transportation, and other public infrastructures.
- 20 (35) “Director” means the Director of the Division of Local
21 Government Services in the Department of Community Affairs.
- 22 (36) “Administrator” means a municipal administrator appointed
23 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
24 administrator, a municipal manager or a municipal administrator
25 appointed pursuant to the “Optional Municipal Charter Law,”
26 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager
27 appointed pursuant to “the municipal manager form of government
28 law,” R.S.40:79-1 et seq.; or the person holding responsibility for
29 the overall operations of an authority that falls under the “Local
30 Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et
31 seq.).
- 32 (37) “Concession” means the granting of a license or right to act
33 for or on behalf of the contracting unit, or to provide a service
34 requiring the approval or endorsement of the contracting unit, and
35 which may or may not involve a payment or exchange, or provision
36 of services by or to the contracting unit.
- 37 (38) “Index rate” means the rate of annual percentage increase,
38 rounded to the nearest half-percent, in the Implicit Price Deflator
39 for State and Local Government Purchases of Goods and Services,
40 computed and published quarterly by the United States Department
41 of Commerce, Bureau of Economic Analysis.
- 42 (39) “Proprietary” means goods or services of a specialized
43 nature, that may be made or marketed by a person or persons having
44 the exclusive right to make or sell them, when the need for such
45 goods or services has been certified in writing by the governing
46 body of the contracting unit to be necessary for the conduct of its
47 affairs.

1 (40) "Service or services" means the performance of work, or the
2 furnishing of labor, time, or effort, or any combination thereof, not
3 involving or connected to the delivery or ownership of a specified
4 end product or goods or a manufacturing process. Service or
5 services may also include an arrangement in which a vendor
6 compensates the contracting unit for the vendor's right to operate a
7 concession.

8 ⁴(41) "Qualified purchasing agent certificate" means a certificate
9 granted by the director pursuant to section 9 of P.L.1971, c.198
10 (C.40A:11-9).⁴

11 (cf: P.L.2002, c.47, s.7)

12
13 2. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to
14 read as follows:

15 3. a. When the cost or price of any contract awarded by the
16 contracting agent in the aggregate does not exceed in a contract year
17 the total sum of \$17,500 ¹or the threshold amount adjusted by the
18 Governor pursuant to section c. of this section¹, the contract may
19 be awarded by a purchasing agent ⁴or other employee so designated
20 by the governing body⁴ when so authorized by ordinance or
21 resolution, as appropriate to the contracting unit, ⁴of the governing
22 body of the contracting unit⁴ without public advertising for bids,
23 except that the governing body of any contracting unit may adopt an
24 ordinance or resolution to set a lower threshold for the receipt of
25 public bids or the solicitation of competitive quotations. If the
26 purchasing agent is qualified pursuant to subsection b. of section 9
27 of P.L.1971, c.198 (C.40A:11-9) ⁴In the case of a qualified
28 purchasing agent If a purchasing agent has been appointed⁴, the
29 governing body of the contracting unit may establish that the bid
30 threshold may be up to \$25,000 ¹or the threshold amount adjusted
31 by the Governor pursuant to section c. of this section¹ ⁴or the
32 threshold amount adjusted by the Governor pursuant to subsection
33 c. of this section⁴. Such authorization may be granted for each
34 contract or by a general delegation of the power to negotiate and
35 award such contracts pursuant to this section.

36 b. Any contract made pursuant to this section may be awarded
37 for a period of 24 consecutive months, except that contracts for
38 professional services pursuant to subparagraph (i) of paragraph (a)
39 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may
40 be awarded for a period not exceeding 12 consecutive months. The
41 Division of Local Government Services shall adopt and promulgate
42 rules and regulations concerning the methods of accounting for all
43 contracts that do not coincide with the contracting unit's fiscal year.

44 c. The Governor, in consultation with the Department of the
45 Treasury, shall, no later than March 1 of every fifth year beginning

1 in the fifth year after the year in which P.L.1999, c.440 takes effect,
 2 adjust the threshold ~~amount~~ ¹~~amounts~~ amount¹ ⁴~~and the~~
 3 higher threshold ~~amount~~ ¹~~amounts~~ amount¹ which the
 4 governing body is permitted to establish, as set forth in subsection
 5 a. of this section, or the threshold ~~amount~~ amounts resulting from
 6 any adjustment under this subsection⁴, in direct proportion to the
 7 rise or fall of the index rate as that term is defined in section 2 of
 8 P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to the
 9 nearest \$1,000. The Governor shall, no later than June 1 of every
 10 fifth year, notify each governing body of the adjustment. The
 11 adjustment shall become effective on July 1 of the year in which it
 12 is made.

13 (cf: P.L.1999, c.440, s.7)

14
 15 3. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to
 16 read as follows:

17 9. a. ⁴~~2(1)~~²⁴ The governing body of ²~~any~~ ⁴~~every~~² any⁴
 18 contracting unit ~~may~~ ⁴~~shall~~ may⁴ by ordinance, in the case of a
 19 municipality, by ordinance or resolution, as the case may be, in the
 20 case of a county, or by resolution in all other cases, ²~~establish the~~
 21 office of purchasing agent] designate an individual² [, or a
 22 purchasing department or a purchasing board,] ²~~with~~ to serve as
 23 the contracting unit's purchasing agent. The individual designated
 24 as the purchasing agent pursuant to this subsection shall be
 25 assigned² the authority, responsibility, and accountability ²~~as its~~
 26 contracting agent,]² for the purchasing activity for the contracting
 27 unit, to prepare public advertising for bids and to receive bids for
 28 the provision or performance of goods or services on behalf of the
 29 contracting unit and to award contracts permitted pursuant to
 30 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) in the
 31 name of the contracting unit, and conduct any activities as may be
 32 necessary or appropriate to the purchasing function of the
 33 contracting unit ²~~. Except as provided pursuant to subsection i of~~
 34 this section, the governing body of each contracting unit shall
 35 employ at least one qualified purchasing agent.] ⁴~~as the governing~~
 36 body of the contracting unit may authorize] as its contracting
 37 agent⁴. The individual designated to serve as the purchasing agent
 38 of a contracting unit pursuant to this subsection shall ⁴~~be a~~
 39 qualified purchasing agent.² possess a qualified purchasing agent
 40 certificate pursuant to this section.⁴ The ²~~position of purchasing~~
 41 agent, or qualified purchasing agent, as the case may be,]
 42 individual designated as the purchasing agent pursuant to this
 43 subsection² may be ²~~filled by~~² a part-time or full-time employee
 44 of the contracting unit, ²~~by contract with an individual] an
 45 independent contractor,² or ²~~by~~² an individual employed by~~

1 another contracting unit through ²[an interlocal] a shared² services
 2 agreement.

3 ⁴²(2) The provisions of this subsection shall not apply to a
 4 contracting unit exempted pursuant to the provisions of subsection
 5 j. of this section.²]⁴

6 b. The Director of the Division of Local Government Services,
 7 after consultation with the Commissioner of Education, shall
 8 establish criteria to qualify individuals who have completed
 9 appropriate training [and possess such purchasing experience as
 10 deemed necessary to exercise such supplemental authority as may
 11 be set forth in subsection a. of section 3 of P.L.1971, c.198
 12 (C.40A:11-3)] ⁴and possess such purchasing experience as deemed
 13 necessary⁴ to ⁴[exercise such supplementary authority set forth in
 14 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) and
 15 section 1 of P.L.1977, c.114 (C.18A:18A-3)²] serve as a purchasing
 16 agent⁴, and, when determined to be necessary ⁴by the director⁴,
 17 have passed ²[a test certified and] an examination² administered by
 18 the ²[State] director² pursuant to this section. ⁴[These criteria also
 19 shall authorize county purchasing agents certified pursuant to
 20 P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such
 21 supplemental authority as may be set forth in subsection a. of
 22 section 3 of P.L.1971, c.198 (C.40A:11-3).]⁴ The criteria
 23 established by the director shall include, but are not limited to, the
 24 following:

25 (1) is a citizen of the United States;

26 (2) is of good moral character;

27 (3) is a high school graduate or equivalent;

28 (4) has ⁴at least⁴ two years of higher education, ⁴[or] and⁴ two
 29 years of full time governmental experience performing duties
 30 relative to those of public procurement⁴[, or a combination of the
 31 above] provided, however, that additional years of experience may
 32 be substituted for years of higher education, on a one to one basis⁴ ;

33 (5) has successfully received certificates indicating satisfactory
 34 completion of a series of training courses in public procurement as
 35 determined by the director and provided by either the Division of
 36 Local Government Services, or, with the approval of the director,
 37 by a county college or Rutgers, The State University of New Jersey,
 38 ²all² under the supervision of instructors ²[approved] who meet
 39 criteria established² by the director⁴].²The criteria for the courses
 40 shall include, to the extent practicable and feasible, that these
 41 courses are made available during normal business hours of the
 42 normal work week and over the Internet²]⁴;

43 (6) has submitted completed application forms, including proof
 44 of education and experience, as set forth in ²[subsection c. of this
 45 section] this subsection² , accompanied by a fee in the amount of
 46 ⁴[\$50] \$150⁴ payable to the State Treasurer, to the Director of the

1 Division of Local Government Services at least 30 days prior to the
2 administration of a State ⁴qualifying⁴ examination;

3 (7) has successfully passed a State ⁴qualifying⁴ examination
4 ⁴for a qualified purchasing agent certificate⁴. The director shall
5 hold examinations semi-annually or at such times as the director
6 may deem appropriate ⁴for certification of qualified purchasing
7 agents⁴. An individual shall be eligible to take the State
8 ⁴qualifying⁴ examination for a qualified purchasing agent without
9 having taken the courses required pursuant to paragraph (5) of this
10 subsection if the individual has been certified by the division as a
11 certified municipal finance officer, a certified county finance
12 officer, or a certified county purchasing officer ², or has been
13 certified by the Department of Education as a school board
14 administrator².

15 The director shall issue a qualified purchasing agent certificate to
16 an individual who passes the ⁴qualifying⁴ examination upon
17 payment to the director of a fee of ⁴[\$50] \$25⁴ which shall be
18 payable to the State Treasurer.

19 c. ²The criteria established by the director to authorize
20 purchasing agents, pursuant to subsection b. of this section, shall
21 include, but are not limited to, completion of a course in green
22 product purchasing, as established by the director pursuant to
23 regulation. Any person qualified pursuant to subsection b. of this
24 section prior to the establishment of the course in green product
25 purchasing, shall in order to continue to be qualified, take and
26 successfully complete the course within four years from the date the
27 course is established. For the purposes of this subsection and
28 section 2 of P.L.2007, c.332 (C.40A:11-9.1), "green product" means
29 any commodity or service that has a lesser or reduced negative
30 effect on human health and the environment when compared with
31 competing commodities or services. Items considered in this
32 comparison may include, but are not limited to: raw materials
33 acquisition, production, manufacturing, packaging, distribution,
34 reuse, operation, maintenance, disposal, energy efficiency, recycled
35 content resource use, transportation, and durability.

36 d. (1)² Renewal of the qualified purchasing agent certification
37 shall be required every three years, subject to the applicant's
38 fulfillment of continuing education requirements, the submission of
39 an application for renewal, and the payment of a renewal fee, all as
40 determined by the director.

41 ²(2)² In the event that an individual holding a qualified
42 purchasing agent certificate allows the certificate to lapse by failing
43 to renew the certificate, the individual shall be required to apply to
44 take the qualifying examination required pursuant to subsection b.
45 of this section and pay a fee as determined by the director ⁴,except
46 that when an individual applies within six months of the expiration

1 of the certificate, the application may be made in the same manner
2 as renewal⁴.

3 ²[d.] ⁴[(3) Where the holder of a qualified purchasing agent
4 certificate has allowed the certificate to expire by failing to renew
5 the certificate, a new application and certificate shall be required.
6 If application is made within six months of the expiration of the
7 certificate, application may be made in the same manner as renewal
8 but the application shall be accompanied by the fee for a new
9 application.]⁴

10 e. (1)² An individual who obtained a qualified purchasing agent
11 certificate prior to enactment of P.L. , c. (C.) (pending
12 before the Legislature as this bill) shall be exempt from taking the
13 State qualifying examination, but shall adhere to all requirements
14 for renewal pursuant to subsection ²[c.] d.² of this section. If such
15 a qualified purchasing agent certificate expires due to the failure of
16 the holder to renew the certificate as prescribed in subsection ²[c.]
17 d.² of this section, that individual shall be required to pass the
18 qualifying ²[test] examination² as provided pursuant to subsection
19 b. of this section in order to be issued a new qualified purchasing
20 agent certificate.

21 ²[e.] (2) An individual who has been certified by the
22 Department of Education as a school business administrator and has
23 performed duties relative to public procurement for at least three
24 years shall be exempt from taking the courses required pursuant to
25 paragraph (5) of subsection b. of this section and the state
26 qualifying examination, and upon application to the director and the
27 payment of the fee imposed pursuant to subsection b. of this
28 section, shall be issued a qualified purchasing agent certificate.

29 ²f. ² Those persons who have been performing the duties of a
30 purchasing agent ⁴[²or who have been performing on a full time
31 basis public procurement duties²⁴ for a ²[municipality or county]
32 contracting unit² pursuant to ²[P.L.1970,] P.L.1971,² c.198
33 (C.40A:11-1 et seq.), or school board pursuant to P.L.1977, c.114
34 (C.18A:18A-1 et seq.) for at least three ²continuous² years, prior to
35 the first day of the sixth month following the promulgation of rules
36 and regulations to effectuate the purposes of P.L. , c. (C.)
37 (pending before the Legislature as this bill), ⁴and did not possess a
38 qualified purchasing agent certificate at that time,⁴ may take the
39 State qualifying examination, if not otherwise exempt under
40 subsection ²[d.] e.² of this section, without the courses required in
41 subsection b. of this section.

42 ²[f.] ²g. ⁴[(1) Each contracting unit ²subject to the provisions
43 of subsection a. of this section² shall appoint a qualified purchasing
44 agent ²to serve as its purchasing agent² within three years of the
45 enactment of P.L. , c. (C.) (pending before the Legislature as
46 this bill). ²If the director determines in writing that the courses

1 required pursuant to paragraph (5) of subsection b. of this section
2 are not available in sufficient number to enable contracting units to
3 comply with the provisions of this paragraph, the director may
4 extend the deadline imposed by this paragraph by up to two years.²

5 (2) A contracting unit²subject to the provisions of subsection a.
6 of this section² that has not appointed a qualified purchasing agent
7 within three years of the enactment of P.L. , c. (C.) (pending
8 before the Legislature as this bill)²or by such deadline as may be
9 extended by the director pursuant to paragraph 1 of this subsection²
10 may be granted up to two additional years to meet this requirement,
11 upon certification to the director that the contracting unit has made
12 a good faith effort to appoint a²qualified² purchasing agent. Such
13 certification shall include documentation of such good faith efforts.

14 (3)⁴²【If in the office of purchasing agent a vacancy occurs in a
15 position formerly held by a qualified purchasing agent,】 Following
16 the appointment of a⁴【qualified purchasing agent as the】⁴
17 purchasing agent for a contracting unit pursuant to subsection a. of
18 this section,⁴【and】⁴ if the person appointed no longer performs
19 such duties,² the governing body or chief executive officer, as
20 appropriate to the form of government, may appoint, for a period
21 not to exceed one year commencing from the date of the vacancy, a
22 person who does not possess a qualified purchasing agent certificate
23 to serve as a temporary purchasing agent. Any person so appointed
24 may, with the approval of the director, be reappointed as a
25 temporary purchasing agent for²a maximum of² one additional year
26 following the end of the first temporary appointment. No
27 contracting unit shall employ a temporary purchasing agent for
28 more than two consecutive years.

29 ²【g.】² h.² The director may revoke or suspend a qualified
30 purchasing agent certificate for dishonest practices or willful or
31 intentional failure, neglect, or refusal to comply with the laws
32 relating to procurement, or for other good cause. The governing
33 body, together with the chief executive officer of any contracting
34 unit, or a²【school】² board² of education², may request²【a review
35 by】² the director²【of】 to review² the behavior or practices of a
36 person holding a qualified purchasing agent certificate²【, except
37 after a proper hearing before】 . Prior to taking any adverse action
38 against a person,² the director or the director's designee
39 ²【following】 shall convene a hearing, upon² due notice², affording
40 the person an opportunity to be heard². If the qualified purchasing
41 agent certificate held by a person serving as a purchasing agent is
42 revoked,²【that person shall be removed from his or her position by
43 the director, the position shall be declared vacant,】 the director
44 shall order that person to no longer perform the duties of
45 ⁴【contracting】 purchasing⁴ agent,² and the person shall not be

1 eligible to ²[hold that position] serve as a ⁴[contracting]
2 purchasing⁴ agent² or to make application for recertification for a
3 period of five years from the date of revocation.

4 ²[h.] i.² ⁴[If a governing body ²or a board of education² fails or
5 refuses to comply with the provisions of this section and has
6 received an order from the director to do so, the members of the
7 governing body ²or board of education² who willfully fail or refuse
8 to comply shall each be subject to a personal penalty of \$25 for
9 each day after the date fixed for final action that the failure or
10 refusal to comply continues. The amount of penalty may be
11 recovered by the director in the name of the State as a personal debt
12 of the member of the governing body ²or board of education², and
13 shall be paid, upon receipt, to the State Treasurer.

14 ²[i.] j. (1) Any contracting unit, the annual operating budget of
15 which is less than \$2,500,000, shall be exempt from the provisions
16 of subsection a. of this section. Any contracting unit eligible for an
17 exemption pursuant to this paragraph shall notify the director in
18 writing of its exemption pursuant to this paragraph.

19 (2)² The director may grant an exemption from the requirements
20 of ²subsection a. of² this section to a contracting unit ²not exempted
21 pursuant to paragraph (1) of this subsection² that demonstrates that
22 the purchasing activity of the contracting unit is minimal or would
23 otherwise not benefit from the appointment of a qualified
24 purchasing agent. Such an exemption shall be valid for five years
25 from the date of issuance, at which time the contracting unit must
26 reapply for an exemption or appoint a qualified purchasing agent.
27 Upon receipt of an application for an exemption pursuant to this
28 ²[subsection] paragraph², the director shall review the application
29 and approve or deny the request.

30 ²[j.] k.² If a contracting unit has available funds for employee
31 training or education, the contracting unit ²[shall] may² make such
32 funds available to defray or reimburse in whole or in part the cost of
33 courses taken by an employee pursuant to paragraph (5) of
34 subsection b. of this section.

35 ²[k.] l.²⁴ The director ⁴[shall] may⁴ adopt and promulgate
36 rules and regulations to effectuate the purposes of this ⁴[section]
37 act. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1
38 et seq.) to the contrary, any such regulations shall be effective
39 immediately upon filing with the Office of Administrative Law and
40 shall be effective for a period not to exceed 365 days and may
41 thereafter be amended, adopted or readopted by the director in
42 accordance with the requirements of P.L.1968, c.410. In order to
43 better manage the workload of implementing the provisions of this
44 act, the director may establish a transition process for administering
45 an examination for individuals serving as purchasing agents on the
46 effective date of this act, issuing and renewing qualified purchasing

1 agent certificates to eligible individuals, prescribing a schedule by
2 which such certificates will be issued and renewed, and such other
3 matters as the director determines to be necessary to the
4 implementation of this act."⁴

5 (cf: P.L.1999, c.440, s.15)

6
7 ³4. (New section) ⁴[a. Notwithstanding any provision of law to
8 the contrary, an] An⁴ individual who is the duly authorized
9 purchasing agent of a contracting unit ⁴and does not possess a
10 qualified purchasing agent certificate⁴ on the date of enactment of
11 P.L. , c. (pending before the Legislature as this bill) may
12 continue to be ⁴[authorized to serve as the purchasing agent for that
13 contracting unit after the effective date of P.L. , c. (pending
14 before the Legislature as this bill) although the individual has not
15 satisfied the new criteria for certification or renewal established by
16 P.L. , c. (pending before the Legislature as this bill)] referred to
17 as the purchasing agent, but the bid threshold for that contracting
18 unit shall be set at \$17, 500 until such time as that individual
19 obtains a qualified purchasing agent certificate. A contracting unit
20 exercising this authority shall file a letter to this effect with the
21 director⁴.

22 ⁴[b. An individual who is the duly authorized purchasing agent
23 of a contracting unit on the date of enactment of P.L. ,
24 c. (pending before the Legislature as this bill) and who was
25 qualified, pursuant to subsection b. of section 9 of P.L.1971, c.198
26 (C.40A:11-9), to exercise supplemental authority under subsection
27 a. of section 3 of P.L.1971, c.198 (C.40A:11-3) prior to the date of
28 enactment of P.L. , c. (pending before the Legislature as this
29 bill), may continue to be authorized to exercise supplemental
30 authority under subsection a. of section 3 of P.L.1971, c.198
31 (C.40A:11-3) after the effective date of P.L. , c. (pending before
32 the Legislature as this bill) so long as the individual continues to
33 comply with the criteria established pursuant to subsection b. of
34 section 9 of P.L.1971, c.198 (C.40A:11-9) that were in effect prior
35 to the date of enactment of P.L. , c. (pending before the
36 Legislature as this bill), notwithstanding that the individual has not
37 satisfied the new criteria for certification or renewal established by
38 P.L. , c. (pending before the Legislature as this bill).

39 c. Notwithstanding any provision of law to the contrary, a
40 contracting unit that has authorized an individual to serve
41 as purchasing agent prior to the date of enactment of P.L. ,
42 c. (pending before the Legislature as this bill) shall not be
43 required to designate or appoint a qualified purchasing agent to
44 serve as the purchasing agent for the contracting unit until such
45 time as the individual serving as the purchasing agent on the date of
46 enactment of P.L. , c. (pending before the Legislature as this

1 bill) is replaced or ceases to perform the duties of purchasing
2 agent.³**I**⁴

3
4 ⁴5. Section 1 of P.L.1971, c.413 (C.40A:9-140.1) is amended to
5 read as follows:

6 1. As used in this act:

7 a. "Director" means the Director of the Division of Local
8 Government Services.

9 b. "Municipal finance officer" means a municipal director of
10 finance, assistant director of finance, fiscal officer, municipal
11 comptroller, assistant comptroller, municipal treasurer, assistant
12 municipal treasurer or deputy treasurer who is not a member of the
13 governing body of a municipality.

14 c. "Local unit" means a municipality or a utility owned by a
15 single municipality or owned jointly by one or more municipalities,
16 which together do not comprise a county.

17 d. "Chief financial officer" means the official appointed
18 pursuant to section 5 of P.L.1988, c.110 (C.40A:9-140.10) to be
19 responsible for the proper financial administration of the
20 municipality under the "Local Government Supervision Act
21 (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.); the "Local Bond
22 Law," (N.J.S.40A:2-1 et seq.); the "Local Budget Law,"
23 (N.J.S.40A:4-1 et seq.); the "Local Fiscal Affairs Law,"
24 (N.J.S.40A:5-1 et seq.); and the "Local Public Contracts Law,"
25 P.L.1971, c.198 (C.40A:11-1 et seq.) in those municipalities that
26 have not appointed a purchasing agent pursuant to that law; and
27 such other statutes, and such rules and regulations promulgated by
28 the Director of the Division of Local Government Services, the
29 Local Finance Board, or any other State agency, as may pertain to
30 the financial administration of the municipality.⁴

31 (cf: P.L.1991,c.175, s.1)

32
33 ⁴6. N.J.S.18A:18A-3 is amended to read as follows:

34 a. When the cost or price of any contract awarded by the
35 purchasing agent in the aggregate, does not exceed in a contract
36 year the total sum of \$17,500, the contract may be awarded by a
37 purchasing agent when so authorized by resolution of the board of
38 education without public advertising for bids and bidding therefor,
39 except that the board of education may adopt a resolution to set a
40 lower threshold for the receipt of public bids or the solicitation of
41 competitive quotations. If the purchasing agent **[is]** possesses a
42 qualified purchasing agent certificate pursuant to subsection b. of
43 section 9 of P.L.1971, c.198 (C.40A:11-9) the board of education
44 may establish that the bid threshold may be up to \$25,000. Such
45 authorization may be granted for each contract or by a general
46 delegation of the power to negotiate and award such contracts
47 pursuant to this section.

1 b. Commencing in the fifth year after the year in which
2 P.L.1999, c.440 takes effect, and every five years thereafter, the
3 Governor, in consultation with the Department of the Treasury,
4 shall adjust the threshold amount and the higher threshold amount
5 which the board of education is permitted to establish as set forth in
6 subsection a. of this section or the threshold amount resulting from
7 any adjustment under this subsection, in direct proportion to the rise
8 or fall of the index rate as that term is defined in N.J.S.18A:18A-2,
9 and shall round the adjustment to the nearest \$1,000. The Governor
10 shall notify all local school districts of the adjustment no later than
11 June 1 of every fifth year. The adjustment shall become effective
12 on July 1 of the year in which it is made.

13 Any contract made pursuant to this section may be awarded for a
14 period of 24 consecutive months, except that contracts for
15 professional services pursuant to paragraph (1) of subsection a. of
16 N.J.S.18A:18A-5 may be awarded for a period not exceeding 12
17 consecutive months.⁴
18 (cf: P.L. 1999, c.440, s.51)

19
20 ³[4.] ⁴[5.³] 7.⁴ This act shall take effect on the first day of the
21 ⁴[seventh] thirteenth⁴ month next following enactment, but the
22 Director of the Division of Local Government Services in the
23 Department of Community Affairs may take such anticipatory
24 action in advance thereof as shall be necessary for the
25 implementation of this act.

ASSEMBLY, No. 1645

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Redefines role and qualifications of purchasing agent in "Local Public Contracts Law."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public contracts and amending P.L.1971, c.198.

2

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

5

6 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to
7 read as follows:

8 2. As used herein the following words have the following
9 definitions, unless the context otherwise indicates:

10 (1) "Contracting unit" means:

11 (a) Any county; or

12 (b) Any municipality; or

13 (c) Any board, commission, committee, authority or agency,
14 which is not a State board, commission, committee, authority or
15 agency, and which has administrative jurisdiction over any district
16 other than a school district, project, or facility, included or
17 operating in whole or in part, within the territorial boundaries of
18 any county or municipality which exercises functions which are
19 appropriate for the exercise by one or more units of local
20 government, and which has statutory power to make purchases and
21 enter into contracts awarded by a contracting agent for the provision
22 or performance of goods or services.

23 The term shall not include a private firm that has entered into a
24 contract with a public entity for the provision of water supply
25 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Contracting unit" shall not include a private firm or public
27 authority that has entered into a contract with a public entity for the
28 provision of wastewater treatment services pursuant to P.L.1995,
29 c.216 (C.58:27-19 et al.).

30 "Contracting unit" shall not include a duly incorporated
31 nonprofit association that has entered into a contract with the
32 governing body of a city of the first class for the provision of water
33 supply services or wastewater treatment services pursuant to section
34 2 of P.L.2002, c.47 (C.40A:11-5.1).

35 (2) "Governing body" means:

36 (a) The governing body of the county, when the purchase is to
37 be made or the contract or agreement is to be entered into by, or in
38 behalf of, a county; or

39 (b) The governing body of the municipality, when the purchase
40 is to be made or the contract or agreement is to be entered into by,
41 or on behalf of, a municipality; or

42 (c) Any board, commission, committee, authority or agency of
43 the character described in subsection (1) (c) of this section.

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 (3) "Contracting agent" means the governing body of a
2 contracting unit, or its authorized designee, which has the power to
3 prepare the advertisements, to advertise for and receive bids and, as
4 permitted by this act, to make awards for the contracting unit in
5 connection with purchases, contracts or agreements.
- 6 (4) "Purchase" means a transaction, for a valuable
7 consideration, creating or acquiring an interest in goods, services
8 and property, except real property or any interest therein.
- 9 (5) (Deleted by amendment, P.L.1999, c.440.)
- 10 (6) "Professional services" means services rendered or
11 performed by a person authorized by law to practice a recognized
12 profession, whose practice is regulated by law, and the performance
13 of which services requires knowledge of an advanced type in a field
14 of learning acquired by a prolonged formal course of specialized
15 instruction and study as distinguished from general academic
16 instruction or apprenticeship and training. Professional services
17 may also mean services rendered in the provision or performance of
18 goods or services that are original and creative in character in a
19 recognized field of artistic endeavor.
- 20 (7) "Extraordinary unspecifiable services" means services which
21 are specialized and qualitative in nature requiring expertise,
22 extensive training and proven reputation in the field of endeavor.
- 23 (8) (Deleted by amendment, P.L.1999, c.440.)
- 24 (9) "Work" includes services and any other activity of a tangible
25 or intangible nature performed or assumed pursuant to a contract or
26 agreement with a contracting unit.
- 27 (10) "Homemaker--home health services" means at home
28 personal care and home management provided to an individual or
29 members of the individual's family who reside with the individual,
30 or both, necessitated by the individual's illness or incapacity.
31 "Homemaker--home health services" includes, but is not limited to,
32 the services of a trained homemaker.
- 33 (11) "Recyclable material" means those materials which would
34 otherwise become municipal solid waste, and which may be
35 collected, separated or processed and returned to the economic
36 mainstream in the form of raw materials or products.
- 37 (12) "Recycling" means any process by which materials which
38 would otherwise become solid waste are collected, separated or
39 processed and returned to the economic mainstream in the form of
40 raw materials or products.
- 41 (13) "Marketing" means the sale, disposition, assignment, or
42 placement of designated recyclable materials with, or the granting
43 of a concession to, a reseller, processor, materials recovery facility,
44 or end-user of recyclable material, in accordance with a district
45 solid waste management plan adopted pursuant to P.L.1970, c.39
46 (C.13:1E-1 et seq.) and shall not include the collection of such
47 recyclable material when collected through a system of routes by

1 local government unit employees or under a contract administered
2 by a local government unit.

3 (14) "Municipal solid waste" means, as appropriate to the
4 circumstances, all residential, commercial and institutional solid
5 waste generated within the boundaries of a municipality; or the
6 formal collection of such solid wastes or recyclable material in any
7 combination thereof when collected through a system of routes by
8 local government unit employees or under a contract administered
9 by a local government unit.

10 (15) "Distribution" (when used in relation to electricity) means
11 the process of conveying electricity from a contracting unit that is a
12 generator of electricity or a wholesale purchaser of electricity to
13 retail customers or other end users of electricity.

14 (16) "Transmission" (when used in relation to electricity) means
15 the conveyance of electricity from its point of generation to a
16 contracting unit that purchases it on a wholesale basis for resale.

17 (17) "Disposition" means the transportation, placement, reuse,
18 sale, donation, transfer or temporary storage of recyclable materials
19 for all possible uses except for disposal as municipal solid waste.

20 (18) "Cooperative marketing" means the joint marketing by two
21 or more contracting units of the source separated recyclable
22 materials designated in a district recycling plan required pursuant to
23 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written
24 cooperative agreement entered into by the participating contracting
25 units thereof.

26 (19) "Aggregate" means the sums expended or to be expended
27 for the provision or performance of any goods or services in
28 connection with the same immediate purpose or task, or the
29 furnishing of similar goods or services, during the same contract
30 year through a contract awarded by a contracting agent.

31 (20) "Bid threshold" means the dollar amount set in section 3 of
32 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
33 advertise for and receive sealed bids in accordance with procedures
34 set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

35 (21) "Contract" means any agreement, including but not limited
36 to a purchase order or a formal agreement, which is a legally
37 binding relationship enforceable by law, between a vendor who
38 agrees to provide or perform goods or services and a contracting
39 unit which agrees to compensate a vendor, as defined by and subject
40 to the terms and conditions of the agreement. A contract also may
41 include an arrangement whereby a vendor compensates a
42 contracting unit for the vendor's right to perform a service, such as,
43 but not limited to, operating a concession.

44 (22) "Contract year" means the period of 12 consecutive months
45 following the award of a contract.

46 (23) "Competitive contracting" means the method described in
47 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
48 4.5) of contracting for specialized goods and services in which

1 formal proposals are solicited from vendors; formal proposals are
2 evaluated by the purchasing agent or counsel or administrator; and
3 the governing body awards a contract to a vendor or vendors from
4 among the formal proposals received.

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

11 (25) “Library and educational goods and services” means
12 textbooks, copyrighted materials, student produced publications and
13 services incidental thereto, including but not limited to books,
14 periodicals, newspapers, documents, pamphlets, photographs,
15 reproductions, microfilms, pictorial or graphic works, musical
16 scores, maps, charts, globes, sound recordings, slides, films,
17 filmstrips, video and magnetic tapes, other printed or published
18 matter and audiovisual and other materials of a similar nature,
19 necessary binding or rebinding of library materials, and specialized
20 computer software used as a supplement or in lieu of textbooks or
21 reference material.

22 (26) “Lowest price” means the least possible amount that meets
23 all requirements of the request of a contracting agent.

24 (27) “Lowest responsible bidder or vendor” means the bidder or
25 vendor: (a) whose response to a request for bids offers the lowest
26 price and is responsive; and (b) who is responsible.

27 (28) “Official newspaper” means any newspaper designated by
28 the contracting unit pursuant to R.S.35:1-1 et seq.

29 (29) “Purchase order” means a document issued by the
30 contracting agent authorizing a purchase transaction with a vendor
31 to provide or perform goods or services to the contracting unit,
32 which, when fulfilled in accordance with the terms and conditions
33 of a request of a contracting agent and other provisions and
34 procedures that may be established by the contracting unit, will
35 result in payment by the contracting unit.

36 (30) a. “Purchasing agent” means the individual duly assigned
37 the authority, responsibility, and accountability for the purchasing
38 activity of the contracting unit, and [who has such duties as are
39 defined by an authority appropriate to the form and structure of the
40 contracting unit, and] administration of the contracting unit’s
41 responsibilities, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

42 b. “Qualified Purchasing Agent” means a purchasing agent
43 who is the holder of a qualified purchasing agent certificate issued
44 pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).

45 (31) “Quotation” means the response to a formal or informal
46 request made by a contracting agent by a vendor for provision or
47 performance of goods or services, when the aggregate cost is less

- 1 than the bid threshold. Quotations may be in writing, or taken
2 verbally if a record is kept by the contracting agent.
- 3 (32) “Responsible” means able to complete the contract in
4 accordance with its requirements, including but not limited to
5 requirements pertaining to experience, moral integrity, operating
6 capacity, financial capacity, credit, and workforce, equipment, and
7 facilities availability.
- 8 (33) “Responsive” means conforming in all material respects to
9 the terms and conditions, specifications, legal requirements, and
10 other provisions of the request.
- 11 (34) “Public works” means building, altering, repairing,
12 improving or demolishing any public structure or facility
13 constructed or acquired by a contracting unit to house local
14 government functions or provide water, waste disposal, power,
15 transportation, and other public infrastructures.
- 16 (35) “Director” means the Director of the Division of Local
17 Government Services in the Department of Community Affairs.
- 18 (36) “Administrator” means a municipal administrator appointed
19 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
20 administrator, a municipal manager or a municipal administrator
21 appointed pursuant to the “Optional Municipal Charter Law,”
22 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager
23 appointed pursuant to “the municipal manager form of government
24 law,” R.S.40:79-1 et seq.; or the person holding responsibility for
25 the overall operations of an authority that falls under the “Local
26 Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et
27 seq.).
- 28 (37) “Concession” means the granting of a license or right to act
29 for or on behalf of the contracting unit, or to provide a service
30 requiring the approval or endorsement of the contracting unit, and
31 which may or may not involve a payment or exchange, or provision
32 of services by or to the contracting unit.
- 33 (38) “Index rate” means the rate of annual percentage increase,
34 rounded to the nearest half-percent, in the Implicit Price Deflator
35 for State and Local Government Purchases of Goods and Services,
36 computed and published quarterly by the United States Department
37 of Commerce, Bureau of Economic Analysis.
- 38 (39) “Proprietary” means goods or services of a specialized
39 nature, that may be made or marketed by a person or persons having
40 the exclusive right to make or sell them, when the need for such
41 goods or services has been certified in writing by the governing
42 body of the contracting unit to be necessary for the conduct of its
43 affairs.
- 44 (40) “Service or services” means the performance of work, or the
45 furnishing of labor, time, or effort, or any combination thereof, not
46 involving or connected to the delivery or ownership of a specified
47 end product or goods or a manufacturing process. Service or
48 services may also include an arrangement in which a vendor

1 compensates the contracting unit for the vendor's right to operate a
2 concession.

3 (cf: P.L.2002, c.47, s.7)

4

5 2. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to
6 read as follows:

7 3. a. When the cost or price of any contract awarded by the
8 contracting agent in the aggregate does not exceed in a contract year
9 the total sum of \$17,500 or the threshold amount adjusted by the
10 Governor pursuant to section c. of this section, the contract may be
11 awarded by a purchasing agent when so authorized by ordinance or
12 resolution, as appropriate to the contracting unit, of the governing
13 body of the contracting unit without public advertising for bids,
14 except that the governing body of any contracting unit may adopt an
15 ordinance or resolution to set a lower threshold for the receipt of
16 public bids or the solicitation of competitive quotations. [If the
17 purchasing agent is qualified pursuant to subsection b. of section 9
18 of P.L.1971, c.198 (C.40A:11-9)] In the case of a qualified
19 purchasing agent, the governing body of the contracting unit may
20 establish that the bid threshold may be up to \$25,000 or the
21 threshold amount adjusted by the Governor pursuant to section c. of
22 this section. Such authorization may be granted for each contract or
23 by a general delegation of the power to negotiate and award such
24 contracts pursuant to this section.

25 b. Any contract made pursuant to this section may be awarded
26 for a period of 24 consecutive months, except that contracts for
27 professional services pursuant to subparagraph (i) of paragraph (a)
28 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may
29 be awarded for a period not exceeding 12 consecutive months. The
30 Division of Local Government Services shall adopt and promulgate
31 rules and regulations concerning the methods of accounting for all
32 contracts that do not coincide with the contracting unit's fiscal year.

33 c. The Governor, in consultation with the Department of the
34 Treasury, shall, no later than March 1 of every fifth year beginning
35 in the fifth year after the year in which P.L.1999, c.440 takes effect,
36 adjust the threshold [amount] amounts and the higher threshold
37 [amount] amounts which the governing body is permitted to
38 establish, as set forth in subsection a. of this section, or the
39 threshold [amount] amounts resulting from any adjustment under
40 this subsection, in direct proportion to the rise or fall of the index
41 rate as that term is defined in section 2 of P.L.1971, c.198
42 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000.
43 The Governor shall, no later than June 1 of every fifth year, notify
44 each governing body of the adjustment. The adjustment shall
45 become effective on July 1 of the year in which it is made.

46 (cf: P.L.1999, c.440, s.7)

1 3. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read
2 as follows:

3 9. a. The governing body of any contracting unit **【may】** shall
4 by ordinance, in the case of a municipality, by ordinance or
5 resolution, as the case may be, in the case of a county, or by
6 resolution in all other cases, establish the office of purchasing agent
7 **【, or a purchasing department or a purchasing board,】** with the
8 authority, responsibility, and accountability as its contracting agent,
9 for the purchasing activity for the contracting unit, to prepare public
10 advertising for bids and to receive bids for the provision or
11 performance of goods or services on behalf of the contracting unit
12 and to award contracts permitted pursuant to subsection a. of
13 section 3 of P.L.1971, c.198 (C.40A:11-3) in the name of the
14 contracting unit, and conduct any activities as may be necessary or
15 appropriate to the purchasing function of the contracting unit.
16 Except as provided pursuant to subsection i of this section, the
17 governing body of each contracting unit shall employ at least one
18 qualified purchasing agent. The position of purchasing agent, or
19 qualified purchasing agent, as the case may be, may be filled by a
20 part-time or full-time employee of the contracting unit, by contract
21 with an individual, or by an individual employed by another
22 contracting unit through an interlocal services agreement.

23 b. The Director of the Division of Local Government Services,
24 after consultation with the Commissioner of Education, shall
25 establish criteria to qualify individuals who have completed
26 appropriate training **【and possess such purchasing experience as**
27 **deemed necessary to exercise such supplemental authority as may**
28 **be set forth in subsection a. of section 3 of P.L.1971, c.198**
29 **(C.40A:11-3)】, and, when determined to be necessary, have passed**
30 **a test certified and administered by the State pursuant to this**
31 **section.** These criteria also shall authorize county purchasing agents
32 certified pursuant to P.L.1981, c.380 (C.40A:9-30.1 et seq.) to
33 exercise such supplemental authority as may be set forth in
34 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3). The
35 criteria established by the director shall include, but are not limited
36 to, the following:

- 37 (1) is a citizen of the United States;
38 (2) is of good moral character;
39 (3) is a high school graduate or equivalent;
40 (4) has two years of higher education, or two years of full time
41 governmental experience performing duties relative to those of
42 public procurement, or a combination of the above;
43 (5) has successfully received certificates indicating satisfactory
44 completion of a series of training courses in public procurement as
45 determined by the director and provided by either the Division of
46 Local Government Services, or, with the approval of the director,
47 by a county college or Rutgers, The State University of New Jersey,

- 1 under the supervision of instructors approved by the director;
2 (6) has submitted completed application forms, including proof
3 of education and experience, as set forth in subsection c. of this
4 section, accompanied by a fee in the amount of \$50 payable to the
5 State Treasurer, to the Director of the Division of Local
6 Government Services at least 30 days prior to the administration of
7 a State qualifying examination;
8 (7) has successfully passed a State qualifying examination. The
9 director shall hold examinations semi-annually or at such times as
10 the director may deem appropriate for certification of qualified
11 purchasing agents. An individual shall be eligible to take the State
12 qualifying examination for a qualified purchasing agent without
13 having taken the courses required pursuant to paragraph (5) of this
14 subsection if the individual has been certified by the division as a
15 certified municipal finance officer, a certified county finance
16 officer, or a certified county purchasing officer, or has been
17 certified by the Department of Education as a school board
18 administrator.
19 The director shall issue a qualified purchasing agent certificate to
20 an individual who passes the qualifying examination upon payment
21 to the director of a fee of \$50 which shall be payable to the State
22 Treasurer.
23 c. Renewal of the qualified purchasing agent certification shall
24 be required every three years, subject to the applicant's fulfillment
25 of continuing education requirements, the submission of an
26 application for renewal, and the payment of a renewal fee, all as
27 determined by the director. In the event that an individual holding a
28 qualified purchasing agent certificate allows the certificate to lapse
29 by failing to renew the certificate, the individual shall be required to
30 apply to take the qualifying examination required pursuant to
31 subsection b. of this section and pay a fee as determined by the
32 director.
33 d. An individual who obtained a qualified purchasing agent
34 certificate prior to enactment of P.L. , c. (C.) (pending
35 before the Legislature as this bill) shall be exempt from taking the
36 State qualifying examination, but shall adhere to all requirements
37 for renewal pursuant to subsection c. of this section. If such a
38 qualified purchasing agent certificate expires due to the failure of
39 the holder to renew the certificate as prescribed in subsection c. of
40 this section, that individual shall be required to pass the qualifying
41 test as provided pursuant to subsection b. of this section in order to
42 be issued a new qualified purchasing agent certificate.
43 e. Those persons who have been performing the duties of a
44 purchasing agent for a municipality or county pursuant to P.L.1970,
45 c.198 (C.40A:11-1 et seq.), or school board pursuant to P.L.1977,
46 c.114 (C.18A:18A-1 et seq.) for at least three years, prior to the first
47 day of the sixth month following the promulgation of rules and
48 regulations to effectuate the purposes of P.L. , c. (C)

1 (pending before the Legislature as this bill), may take the State
2 qualifying examination, if not otherwise exempt under subsection d.
3 of this section, without the courses required in subsection b. of this
4 section.

5 f. (1) Each contracting unit shall appoint a qualified purchasing
6 agent within three years of the enactment of P.L. , c. (C.)
7 (pending before the Legislature as this bill).

8 (2) A contracting unit that has not appointed a qualified
9 purchasing agent within three years of the enactment of P.L. ,
10 c. (C.) (pending before the Legislature as this bill) may be
11 granted up to two additional years to meet this requirement, upon
12 certification to the director that the contracting unit has made a
13 good faith effort to appoint a purchasing agent. Such certification
14 shall include documentation of such good faith efforts.

15 (3) If in the office of purchasing agent a vacancy occurs in a
16 position formerly held by a qualified purchasing agent, the
17 governing body or chief executive officer, as appropriate to the
18 form of government, may appoint, for a period not to exceed one
19 year commencing from the date of the vacancy, a person who does
20 not possess a qualified purchasing agent certificate to serve as a
21 temporary purchasing agent. Any person so appointed may, with
22 the approval of the director, be reappointed as a temporary
23 purchasing agent for one additional year following the end of the
24 first temporary appointment. No contracting unit shall employ a
25 temporary purchasing agent for more than two consecutive years.

26 g. The director may revoke or suspend a qualified purchasing
27 agent certificate for dishonest practices or willful or intentional
28 failure, neglect, or refusal to comply with the laws relating to
29 procurement, or for other good cause. The governing body,
30 together with the chief executive officer of any contracting unit, or
31 a school board, may request a review by the director of the behavior
32 or practices of a person holding a qualified purchasing agent
33 certificate, except after a proper hearing before the director or the
34 director's designee following due notice. If the qualified
35 purchasing agent certificate held by a person serving as a
36 purchasing agent is revoked, that person shall be removed from his
37 or her position by the director, the position shall be declared vacant,
38 and the person shall not be eligible to hold that position or to make
39 application for recertification for a period of five years from the
40 date of revocation.

41 h. If a governing body fails or refuses to comply with the
42 provisions of this section and has received an order from the
43 director to do so, the members of the governing body who willfully
44 fail or refuse to comply shall each be subject to a personal penalty
45 of \$25 for each day after the date fixed for final action that the
46 failure or refusal to comply continues. The amount of penalty may
47 be recovered by the director in the name of the State as a personal

1 debt of the member of the governing body, and shall be paid, upon
2 receipt, to the State Treasurer.

3 i. The director may grant an exemption from the requirements of
4 this section to a contracting unit that demonstrates that the
5 purchasing activity of the contracting unit is minimal or would
6 otherwise not benefit from the appointment of a qualified
7 purchasing agent. Such an exemption shall be valid for five years
8 from the date of issuance, at which time the contracting unit must
9 reapply for an exemption or appoint a qualified purchasing agent.
10 Upon receipt of an application for an exemption pursuant to this
11 subsection, the director shall review the application and approve or
12 deny the request.

13 j. If a contracting unit has available funds for employee training
14 or education, the contracting unit shall make such funds available to
15 defray or reimburse in whole or in part the cost of courses taken by
16 an employee pursuant to paragraph (5) of subsection b. of this
17 section.

18 k. The director shall adopt and promulgate rules and regulations
19 to effectuate the purposes of this section.

20 (cf: P.L.1999, c.440, s.15)

21

22 4. This act shall take effect on the first day of the seventh month
23 next following enactment, but the Director of the Division of Local
24 Government Services in the Department of Community Affairs may
25 take such anticipatory action in advance thereof as shall be
26 necessary for the implementation of this act.

27

28

29

STATEMENT

30

31 This bill amends the "Local Public Contracts Law," P.L.1971,
32 c.198 (C.40A:11-1 et seq.), to redefine the purchasing agent as a
33 "qualified purchasing agent," and to enable the Director of the
34 Division of Local Government Services in the Department of
35 Community Affairs to promulgate rules and regulations to
36 determine the qualifications for a qualified purchasing agent. The
37 bill requires the governing body of every contracting unit to employ
38 at least one qualified purchasing agent in their contracting unit.
39 This does not necessarily require the hiring of a new employee;
40 rather, it mandates that one employee have the training, State
41 certification and authority to perform the duties of a qualified
42 purchasing agent. The bill permits the qualified purchasing agent to
43 award any contract that does not exceed \$25,000 or the threshold
44 amount adjusted by the Governor without publicly advertising for
45 bids. Finally, the bill requires a qualified purchasing agent to pass a
46 State-approved examination before being authorized to assume
47 these duties, except under certain circumstances.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1645

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2008

The Assembly Housing and Local Government Committee reports favorably Assembly Bill No. 1645 with committee amendments.

This bill, as amended by the committee, amends the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to redefine the purchasing agent as a "qualified purchasing agent," and to enable the Director of the Division of Local Government Services in the Department of Community Affairs to promulgate rules and regulations to determine the qualifications for a qualified purchasing agent. The bill requires the governing body of every contracting unit to employ at least one qualified purchasing agent in their contracting unit. This does not necessarily require the hiring of a new employee; rather, it mandates that one employee have the training, State certification and authority to perform the duties of a qualified purchasing agent. The bill permits the qualified purchasing agent to award any contract that does not exceed the statutory threshold amount without publicly advertising for bids. Finally, the bill requires a qualified purchasing agent to pass a State-approved examination before being authorized to assume these duties, except under certain circumstances.

Committee amendments

The committee amended the bill to remove references to the fact that the bidding threshold amounts as stated in the statute are subject to adjustment by the Governor. The references were misleading, as they portrayed the bill as somehow changing the bidding threshold amounts, which is not done under the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1645

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1645 (1R), with committee amendments.

The bill, as amended, professionalizes the purchasing functions in counties, municipalities, and other local units governed by the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) by requiring most units of local government to employ at least one qualified purchasing agent in their contracting unit. This does not necessarily require the hiring of a new employee; rather, it mandates that one employee have the training, State certification and authority to perform the duties of a qualified purchasing agent.

This requirement will commence within three years of the bill's enactment, unless that time frame is extended by the Director of the Division of Local Government Services. The bill empowers the director to extend the deadline: if (1) there are not a sufficient number of courses available, which courses are necessary in order for individuals to become certified as "qualified purchasing agents," or (2) in response to a contracting unit's request. Contracting units with annual budgets below \$2,500,000 and contracting units that can demonstrate that they engage in minimal purchasing activity, will be exempt from the requirement to retain a qualified purchasing agent.

The bill provides direction to the Director of the Division of Local Government Services for the establishment of criteria to certify individuals as "qualified purchasing agents." Criteria will include: United States citizenship, a high school diploma or equivalency, two years of post-high school education or two years of public procurement experience, successful completion of a series of courses in public procurement, and successful passage of a State qualifying exam. Individuals who are certified municipal finance officers, certified county finance officers, certified county purchasing officers, or who have been full time purchasing agents continuously for at least three years could sit for the exam without having to complete the courses otherwise required.

After passing the exam, and payment of a fee, the director will issue an individual a "qualified purchasing agent certificate." A

certificate will be good for three years and can be renewed if the holder fulfills continuing education requirements. The bill exempts current holders of qualified purchasing agent certificates from having to take the exam but requires them to adhere to the bill's renewal requirements. Certified school business administrators will be exempt from the course and exam requirements.

The bill empowers the director to discipline certificate holders who engage in dishonest practices or who do not properly abide by the procurement laws. It also authorizes penalties for local officials who fail to abide by the provisions of the bill.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The committee amended section 3 of the bill to incorporate numerous technical and clarifying amendments.

Amendments to subsection a. clarify that a governing body must designate an individual as its purchasing agent and that individual must be a qualified purchasing agent. Amendments to this subsection also clarify that contracting units are exempt from this requirement if they have annual budgets below \$2,500,000 or can demonstrate that they engage in minimal purchasing activity.

Amendments to subsection b. provide that the courses in public procurement should be offered during normal business hours and over the Internet.

Amendments adding a new subsection c. are technical amendments needed to incorporate a provision of law (P.L.2007, c.332, s.1) that was not incorporated into the bill at the time the bill was introduced.

Amendments adding paragraph (3) to subsection d. detail procedures for a certificate holder who has allowed a certificate to expire. This provision allows for renewal of the certificate if application is made within six months of the expiration date.

Amendments adding subsection (2) to subsection e. exempt certified school business administrators from the course and examination requirements.

Amendments to paragraph (1) of what has been amended to subsection g. authorize the director to extend the deadline for contracting units to retain a qualified purchasing agent in the event that a sufficient number of courses are not available to enable contracting units to comply with the bill's requirement.

Amendments to paragraph (2) of what has been amended to subsection g. provide that a contracting unit may temporarily fill a vacancy in the position of purchasing agent with someone who is not a qualified purchasing agent.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1645

with Senate Floor Amendments
(Proposed By Senator RICE)

ADOPTED: FEBRUARY 23, 2009

This amendment effectively delays applicability of the bill, which enhances the standards and requirements for appointment to the position of purchasing agent for certain local units of government, to individuals appointed as purchasing agents after the date that the bill is enacted. The amendment also recognizes individuals that have been recognized as qualified purchasing agents by the Department of Community Affairs under current regulations and allows those individuals to continue to exercise supplemental authority (the ability to award bids up to a higher bid threshold) without having to comply with the new requirements set forth in the bill. The amendment also specifies that a contracting unit will not be required to comply with the bill's new appointment requirements until the individual serving as the contracting unit's purchasing agent, on the date that the bill is enacted, is replaced or ceases to perform the duties of a purchasing agent.

SENATE, No. 770

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JANUARY 24, 2008

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Redefines role and qualifications of purchasing agent in "Local Public Contracts Law."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2008)

1 AN ACT concerning public contracts and amending P.L.1971, c.198.

2

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

5

6 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read
7 as follows:

8 2. As used herein the following words have the following
9 definitions, unless the context otherwise indicates:

10 (1) "Contracting unit" means:

11 (a) Any county; or

12 (b) Any municipality; or

13 (c) Any board, commission, committee, authority or agency,
14 which is not a State board, commission, committee, authority or
15 agency, and which has administrative jurisdiction over any district
16 other than a school district, project, or facility, included or
17 operating in whole or in part, within the territorial boundaries of
18 any county or municipality which exercises functions which are
19 appropriate for the exercise by one or more units of local
20 government, and which has statutory power to make purchases and
21 enter into contracts awarded by a contracting agent for the provision
22 or performance of goods or services.

23 The term shall not include a private firm that has entered into a
24 contract with a public entity for the provision of water supply
25 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Contracting unit" shall not include a private firm or public
27 authority that has entered into a contract with a public entity for the
28 provision of wastewater treatment services pursuant to P.L.1995,
29 c.216 (C.58:27-19 et al.).

30 "Contracting unit" shall not include a duly incorporated
31 nonprofit association that has entered into a contract with the
32 governing body of a city of the first class for the provision of water
33 supply services or wastewater treatment services pursuant to section
34 2 of P.L.2002, c.47 (C.40A:11-5.1).

35 (2) "Governing body" means:

36 (a) The governing body of the county, when the purchase is to
37 be made or the contract or agreement is to be entered into by, or in
38 behalf of, a county; or

39 (b) The governing body of the municipality, when the purchase
40 is to be made or the contract or agreement is to be entered into by,
41 or on behalf of, a municipality; or

42 (c) Any board, commission, committee, authority or agency of
43 the character described in subsection (1) (c) of this section.

44 (3) "Contracting agent" means the governing body of a
45 contracting unit, or its authorized designee, which has the power to

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 prepare the advertisements, to advertise for and receive bids and, as
2 permitted by this act, to make awards for the contracting unit in
3 connection with purchases, contracts or agreements.

4 (4) "Purchase" means a transaction, for a valuable consideration,
5 creating or acquiring an interest in goods, services and property,
6 except real property or any interest therein.

7 (5) (Deleted by amendment, P.L.1999, c.440.)

8 (6) "Professional services" means services rendered or
9 performed by a person authorized by law to practice a recognized
10 profession, whose practice is regulated by law, and the performance
11 of which services requires knowledge of an advanced type in a field
12 of learning acquired by a prolonged formal course of specialized
13 instruction and study as distinguished from general academic
14 instruction or apprenticeship and training. Professional services
15 may also mean services rendered in the provision or performance of
16 goods or services that are original and creative in character in a
17 recognized field of artistic endeavor.

18 (7) "Extraordinary unspecifiable services" means services which
19 are specialized and qualitative in nature requiring expertise,
20 extensive training and proven reputation in the field of endeavor.

21 (8) (Deleted by amendment, P.L.1999, c.440.)

22 (9) "Work" includes services and any other activity of a tangible
23 or intangible nature performed or assumed pursuant to a contract or
24 agreement with a contracting unit.

25 (10) "Homemaker--home health services" means at home
26 personal care and home management provided to an individual or
27 members of the individual's family who reside with the individual,
28 or both, necessitated by the individual's illness or incapacity.
29 "Homemaker--home health services" includes, but is not limited to,
30 the services of a trained homemaker.

31 (11) "Recyclable material" means those materials which would
32 otherwise become municipal solid waste, and which may be
33 collected, separated or processed and returned to the economic
34 mainstream in the form of raw materials or products.

35 (12) "Recycling" means any process by which materials which
36 would otherwise become solid waste are collected, separated or
37 processed and returned to the economic mainstream in the form of
38 raw materials or products.

39 (13) "Marketing" means the sale, disposition, assignment, or
40 placement of designated recyclable materials with, or the granting
41 of a concession to, a reseller, processor, materials recovery facility,
42 or end-user of recyclable material, in accordance with a district
43 solid waste management plan adopted pursuant to P.L.1970, c.39
44 (C.13:1E-1 et seq.) and shall not include the collection of such
45 recyclable material when collected through a system of routes by
46 local government unit employees or under a contract administered
47 by a local government unit.

48 (14) "Municipal solid waste" means, as appropriate to the

1 circumstances, all residential, commercial and institutional solid
2 waste generated within the boundaries of a municipality; or the
3 formal collection of such solid wastes or recyclable material in any
4 combination thereof when collected through a system of routes by
5 local government unit employees or under a contract administered
6 by a local government unit.

7 (15) "Distribution" (when used in relation to electricity) means
8 the process of conveying electricity from a contracting unit that is a
9 generator of electricity or a wholesale purchaser of electricity to
10 retail customers or other end users of electricity.

11 (16) "Transmission" (when used in relation to electricity) means
12 the conveyance of electricity from its point of generation to a
13 contracting unit that purchases it on a wholesale basis for resale.

14 (17) "Disposition" means the transportation, placement, reuse,
15 sale, donation, transfer or temporary storage of recyclable materials
16 for all possible uses except for disposal as municipal solid waste.

17 (18) "Cooperative marketing" means the joint marketing by two
18 or more contracting units of the source separated recyclable
19 materials designated in a district recycling plan required pursuant to
20 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written
21 cooperative agreement entered into by the participating contracting
22 units thereof.

23 (19) "Aggregate" means the sums expended or to be expended
24 for the provision or performance of any goods or services in
25 connection with the same immediate purpose or task, or the
26 furnishing of similar goods or services, during the same contract
27 year through a contract awarded by a contracting agent.

28 (20) "Bid threshold" means the dollar amount set in section 3 of
29 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
30 advertise for and receive sealed bids in accordance with procedures
31 set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

32 (21) "Contract" means any agreement, including but not limited
33 to a purchase order or a formal agreement, which is a legally
34 binding relationship enforceable by law, between a vendor who
35 agrees to provide or perform goods or services and a contracting
36 unit which agrees to compensate a vendor, as defined by and subject
37 to the terms and conditions of the agreement. A contract also may
38 include an arrangement whereby a vendor compensates a
39 contracting unit for the vendor's right to perform a service, such as,
40 but not limited to, operating a concession.

41 (22) "Contract year" means the period of 12 consecutive months
42 following the award of a contract.

43 (23) "Competitive contracting" means the method described in
44 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
45 4.5) of contracting for specialized goods and services in which
46 formal proposals are solicited from vendors; formal proposals are
47 evaluated by the purchasing agent or counsel or administrator; and
48 the governing body awards a contract to a vendor or vendors from

1 among the formal proposals received.

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

8 (25) “Library and educational goods and services” means
9 textbooks, copyrighted materials, student produced publications and
10 services incidental thereto, including but not limited to books,
11 periodicals, newspapers, documents, pamphlets, photographs,
12 reproductions, microfilms, pictorial or graphic works, musical
13 scores, maps, charts, globes, sound recordings, slides, films,
14 filmstrips, video and magnetic tapes, other printed or published
15 matter and audiovisual and other materials of a similar nature,
16 necessary binding or rebinding of library materials, and specialized
17 computer software used as a supplement or in lieu of textbooks or
18 reference material.

19 (26) “Lowest price” means the least possible amount that meets
20 all requirements of the request of a contracting agent.

21 (27) “Lowest responsible bidder or vendor” means the bidder or
22 vendor: (a) whose response to a request for bids offers the lowest
23 price and is responsive; and (b) who is responsible.

24 (28) “Official newspaper” means any newspaper designated by
25 the contracting unit pursuant to R.S.35:1-1 et seq.

26 (29) “Purchase order” means a document issued by the
27 contracting agent authorizing a purchase transaction with a vendor
28 to provide or perform goods or services to the contracting unit,
29 which, when fulfilled in accordance with the terms and conditions
30 of a request of a contracting agent and other provisions and
31 procedures that may be established by the contracting unit, will
32 result in payment by the contracting unit.

33 (30) a. “Purchasing agent” means the individual duly assigned
34 the authority, responsibility, and accountability for the purchasing
35 activity of the contracting unit, and [who has such duties as are
36 defined by an authority appropriate to the form and structure of the
37 contracting unit, and] administration of the contracting unit’s
38 responsibilities, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

39 b. “Qualified Purchasing Agent” means a purchasing agent who
40 is the holder of a qualified purchasing agent certificate issued
41 pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).

42 (31) “Quotation” means the response to a formal or informal
43 request made by a contracting agent by a vendor for provision or
44 performance of goods or services, when the aggregate cost is less
45 than the bid threshold. Quotations may be in writing, or taken
46 verbally if a record is kept by the contracting agent.

47 (32) “Responsible” means able to complete the contract in
48 accordance with its requirements, including but not limited to

1 requirements pertaining to experience, moral integrity, operating
2 capacity, financial capacity, credit, and workforce, equipment, and
3 facilities availability.

4 (33) “Responsive” means conforming in all material respects to
5 the terms and conditions, specifications, legal requirements, and
6 other provisions of the request.

7 (34) “Public works” means building, altering, repairing,
8 improving or demolishing any public structure or facility
9 constructed or acquired by a contracting unit to house local
10 government functions or provide water, waste disposal, power,
11 transportation, and other public infrastructures.

12 (35) “Director” means the Director of the Division of Local
13 Government Services in the Department of Community Affairs.

14 (36) “Administrator” means a municipal administrator appointed
15 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
16 administrator, a municipal manager or a municipal administrator
17 appointed pursuant to the “Optional Municipal Charter Law,”
18 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager
19 appointed pursuant to “the municipal manager form of government
20 law,” R.S.40:79-1 et seq.; or the person holding responsibility for
21 the overall operations of an authority that falls under the “Local
22 Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et
23 seq.).

24 (37) “Concession” means the granting of a license or right to act
25 for or on behalf of the contracting unit, or to provide a service
26 requiring the approval or endorsement of the contracting unit, and
27 which may or may not involve a payment or exchange, or provision
28 of services by or to the contracting unit.

29 (38) “Index rate” means the rate of annual percentage increase,
30 rounded to the nearest half-percent, in the Implicit Price Deflator
31 for State and Local Government Purchases of Goods and Services,
32 computed and published quarterly by the United States Department
33 of Commerce, Bureau of Economic Analysis.

34 (39) “Proprietary” means goods or services of a specialized
35 nature, that may be made or marketed by a person or persons having
36 the exclusive right to make or sell them, when the need for such
37 goods or services has been certified in writing by the governing
38 body of the contracting unit to be necessary for the conduct of its
39 affairs.

40 (40) “Service or services” means the performance of work, or
41 the furnishing of labor, time, or effort, or any combination thereof,
42 not involving or connected to the delivery or ownership of a
43 specified end product or goods or a manufacturing process. Service
44 or services may also include an arrangement in which a vendor
45 compensates the contracting unit for the vendor’s right to operate a
46 concession.

47 (cf: P.L.2002, c.47, s.7)

1 2. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read
2 as follows:

3 3. a. When the cost or price of any contract awarded by the
4 contracting agent in the aggregate does not exceed in a contract year
5 the total sum of \$17,500 or the threshold amount adjusted by the
6 Governor pursuant to section c. of this section, the contract may be
7 awarded by a purchasing agent when so authorized by ordinance or
8 resolution, as appropriate to the contracting unit, of the governing
9 body of the contracting unit without public advertising for bids,
10 except that the governing body of any contracting unit may adopt an
11 ordinance or resolution to set a lower threshold for the receipt of
12 public bids or the solicitation of competitive quotations. **【If the**
13 **purchasing agent is qualified pursuant to subsection b. of section 9**
14 **of P.L.1971, c.198 (C.40A:11-9)】** In the case of a qualified
15 purchasing agent, the governing body of the contracting unit may
16 establish that the bid threshold may be up to \$25,000 or the
17 threshold amount adjusted by the Governor pursuant to section c. of
18 this section. Such authorization may be granted for each contract or
19 by a general delegation of the power to negotiate and award such
20 contracts pursuant to this section.

21 b. Any contract made pursuant to this section may be awarded
22 for a period of 24 consecutive months, except that contracts for
23 professional services pursuant to subparagraph (i) of paragraph (a)
24 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may
25 be awarded for a period not exceeding 12 consecutive months. The
26 Division of Local Government Services shall adopt and promulgate
27 rules and regulations concerning the methods of accounting for all
28 contracts that do not coincide with the contracting unit's fiscal year.

29 c. The Governor, in consultation with the Department of the
30 Treasury, shall, no later than March 1 of every fifth year beginning
31 in the fifth year after the year in which P.L.1999, c.440 takes effect,
32 adjust the threshold **【amount】** amounts and the higher threshold
33 **【amount】** amounts which the governing body is permitted to
34 establish, as set forth in subsection a. of this section, or the
35 threshold **【amount】** amounts resulting from any adjustment under
36 this subsection, in direct proportion to the rise or fall of the index
37 rate as that term is defined in section 2 of P.L.1971, c.198
38 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000.
39 The Governor shall, no later than June 1 of every fifth year, notify
40 each governing body of the adjustment. The adjustment shall
41 become effective on July 1 of the year in which it is made.

42 (cf: P.L.1999, c.440, s.7)

43

44 3. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read
45 as follows:

46 9. a. The governing body of any contracting unit **【may】** shall
47 by ordinance, in the case of a municipality, by ordinance or
48 resolution, as the case may be, in the case of a county, or by

1 resolution in all other cases, establish the office of purchasing agent
2 **[, or a purchasing department or a purchasing board,]** with the
3 authority, responsibility, and accountability as its contracting agent,
4 for the purchasing activity for the contracting unit, to prepare public
5 advertising for bids and to receive bids for the provision or
6 performance of goods or services on behalf of the contracting unit
7 and to award contracts permitted pursuant to subsection a. of
8 section 3 of P.L.1971, c.198 (C.40A:11-3) in the name of the
9 contracting unit, and conduct any activities as may be necessary or
10 appropriate to the purchasing function of the contracting unit.
11 Except as provided pursuant to subsection i of this section, the
12 governing body of each contracting unit shall employ at least one
13 qualified purchasing agent. The position of purchasing agent, or
14 qualified purchasing agent, as the case may be, may be filled by a
15 part-time or full-time employee of the contracting unit, by contract
16 with an individual, or by an individual employed by another
17 contracting unit through an interlocal services agreement.

18 b. The Director of the Division of Local Government Services,
19 after consultation with the Commissioner of Education, shall
20 establish criteria to qualify individuals who have completed
21 appropriate training **[and possess such purchasing experience as**
22 **deemed necessary to exercise such supplemental authority as may**
23 **be set forth in subsection a. of section 3 of P.L.1971, c.198**
24 **(C.40A:11-3)], and, when determined to be necessary, have passed**
25 **a test certified and administered by the State pursuant to this**
26 **section.** These criteria also shall authorize county purchasing agents
27 certified pursuant to P.L.1981, c.380 (C.40A:9-30.1 et seq.) to
28 exercise such supplemental authority as may be set forth in
29 subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3). The
30 criteria established by the director shall include, but are not limited
31 to, the following:

- 32 (1) is a citizen of the United States;
- 33 (2) is of good moral character;
- 34 (3) is a high school graduate or equivalent;
- 35 (4) has two years of higher education, or two years of full time
36 governmental experience performing duties relative to those of
37 public procurement, or a combination of the above;
- 38 (5) has successfully received certificates indicating satisfactory
39 completion of a series of training courses in public procurement as
40 determined by the director and provided by either the Division of
41 Local Government Services, or, with the approval of the director,
42 by a county college or Rutgers, The State University of New Jersey,
43 under the supervision of instructors approved by the director;
- 44 (6) has submitted completed application forms, including proof
45 of education and experience, as set forth in subsection c. of this
46 section, accompanied by a fee in the amount of \$50 payable to the
47 State Treasurer, to the Director of the Division of Local
48 Government Services at least 30 days prior to the administration of

1 a State qualifying examination;

2 (7) has successfully passed a State qualifying examination. The
3 director shall hold examinations semi-annually or at such times as
4 the director may deem appropriate for certification of qualified
5 purchasing agents. An individual shall be eligible to take the State
6 qualifying examination for a qualified purchasing agent without
7 having taken the courses required pursuant to paragraph (5) of this
8 subsection if the individual has been certified by the division as a
9 certified municipal finance officer, a certified county finance
10 officer, or a certified county purchasing officer, or has been
11 certified by the Department of Education as a school board
12 administrator.

13 The director shall issue a qualified purchasing agent certificate to
14 an individual who passes the qualifying examination upon payment
15 to the director of a fee of \$50 which shall be payable to the State
16 Treasurer.

17 c. Renewal of the qualified purchasing agent certification shall
18 be required every three years, subject to the applicant's fulfillment
19 of continuing education requirements, the submission of an
20 application for renewal, and the payment of a renewal fee, all as
21 determined by the director. In the event that an individual holding a
22 qualified purchasing agent certificate allows the certificate to lapse
23 by failing to renew the certificate, the individual shall be required to
24 apply to take the qualifying examination required pursuant to
25 subsection b. of this section and pay a fee as determined by the
26 director.

27 d. An individual who obtained a qualified purchasing agent
28 certificate prior to enactment of P.L. , c. (C.) (pending
29 before the Legislature as this bill) shall be exempt from taking the
30 State qualifying examination, but shall adhere to all requirements
31 for renewal pursuant to subsection c. of this section. If such a
32 qualified purchasing agent certificate expires due to the failure of
33 the holder to renew the certificate as prescribed in subsection c. of
34 this section, that individual shall be required to pass the qualifying
35 test as provided pursuant to subsection b. of this section in order to
36 be issued a new qualified purchasing agent certificate.

37 e. Those persons who have been performing the duties of a
38 purchasing agent for a municipality or county pursuant to P.L.1970,
39 c.198 (C.40A:11-1 et seq.), or school board pursuant to P.L.1977,
40 c.114 (C.18A:18A-1 et seq.) for at least three years, prior to the first
41 day of the sixth month following the promulgation of rules and
42 regulations to effectuate the purposes of P.L. , c. (C.)
43 (pending before the Legislature as this bill), may take the State
44 qualifying examination, if not otherwise exempt under subsection d.
45 of this section, without the courses required in subsection b. of this
46 section.

47 f. (1) Each contracting unit shall appoint a qualified purchasing
48 agent within three years of the enactment of P.L. , c. (C.)

1 (pending before the Legislature as this bill).

2 (2) A contracting unit that has not appointed a qualified
3 purchasing agent within three years of the enactment of
4 P.L. , c. (C.) (pending before the Legislature as this bill) may
5 be granted up to two additional years to meet this requirement, upon
6 certification to the director that the contracting unit has made a
7 good faith effort to appoint a purchasing agent. Such certification
8 shall include documentation of such good faith efforts.

9 (3) If in the office of purchasing agent a vacancy occurs in a
10 position formerly held by a qualified purchasing agent, the
11 governing body or chief executive officer, as appropriate to the
12 form of government, may appoint, for a period not to exceed one
13 year commencing from the date of the vacancy, a person who does
14 not possess a qualified purchasing agent certificate to serve as a
15 temporary purchasing agent. Any person so appointed may, with
16 the approval of the director, be reappointed as a temporary
17 purchasing agent for one additional year following the end of the
18 first temporary appointment. No contracting unit shall employ a
19 temporary purchasing agent for more than two consecutive years.

20 g. The director may revoke or suspend a qualified purchasing
21 agent certificate for dishonest practices or willful or intentional
22 failure, neglect, or refusal to comply with the laws relating to
23 procurement, or for other good cause. The governing body,
24 together with the chief executive officer of any contracting unit, or
25 a school board, may request a review by the director of the behavior
26 or practices of a person holding a qualified purchasing agent
27 certificate, except after a proper hearing before the director or the
28 director's designee following due notice. If the qualified
29 purchasing agent certificate held by a person serving as a
30 purchasing agent is revoked, that person shall be removed from his
31 or her position by the director, the position shall be declared vacant,
32 and the person shall not be eligible to hold that position or to make
33 application for recertification for a period of five years from the
34 date of revocation.

35 h. If a governing body fails or refuses to comply with the
36 provisions of this section and has received an order from the
37 director to do so, the members of the governing body who willfully
38 fail or refuse to comply shall each be subject to a personal penalty
39 of \$25 for each day after the date fixed for final action that the
40 failure or refusal to comply continues. The amount of penalty may
41 be recovered by the director in the name of the State as a personal
42 debt of the member of the governing body, and shall be paid, upon
43 receipt, to the State Treasurer.

44 i. The director may grant an exemption from the requirements of
45 this section to a contracting unit that demonstrates that the
46 purchasing activity of the contracting unit is minimal or would
47 otherwise not benefit from the appointment of a qualified
48 purchasing agent. Such an exemption shall be valid for five years

1 from the date of issuance, at which time the contracting unit must
2 reapply for an exemption or appoint a qualified purchasing agent.
3 Upon receipt of an application for an exemption pursuant to this
4 subsection, the director shall review the application and approve or
5 deny the request.

6 j. If a contracting unit has available funds for employee training
7 or education, the contracting unit shall make such funds available to
8 defray or reimburse in whole or in part the cost of courses taken by
9 an employee pursuant to paragraph (5) of subsection b. of this
10 section.

11 k. The director shall adopt and promulgate rules and regulations
12 to effectuate the purposes of this section.

13 (cf: P.L.1999, c.440, s.15)

14

15 4. This act shall take effect on the first day of the seventh month
16 next following enactment, but the Director of the Division of Local
17 Government Services in the Department of Community Affairs may
18 take such anticipatory action in advance thereof as shall be
19 necessary for the implementation of this act.

20

21

22

STATEMENT

23

24 This bill amends the "Local Public Contracts Law," P.L.1971,
25 c.198 (C.40A:11-1 et seq.), to redefine the purchasing agent as a
26 "qualified purchasing agent," and to enable the Director of the
27 Division of Local Government Services in the Department of
28 Community Affairs to promulgate rules and regulations to
29 determine the qualifications for a qualified purchasing agent. The
30 bill requires the governing body of every contracting unit to employ
31 at least one qualified purchasing agent in their contracting unit.
32 This does not necessarily require the hiring of a new employee;
33 rather, it mandates that one employee have the training, State
34 certification and authority to perform the duties of a qualified
35 purchasing agent. The bill permits the qualified purchasing agent to
36 award any contract that does not exceed \$25,000 or the threshold
37 amount adjusted by the Governor without publicly advertising for
38 bids. Finally, the bill requires a qualified purchasing agent to pass a
39 State-approved examination before being authorized to assume
40 these duties, except under certain circumstances.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 770

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 6, 2008

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 770.

This bill, as amended by the committee, would professionalize the purchasing functions in counties, municipalities, and other local units governed by the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) by requiring most units of local government to retain the services of a "qualified purchasing agent." This requirement would commence within three years of the bill's enactment, unless that time frame is extended by the Director of the Division of Local Government Services. The bill empowers the director to extend the deadline: if there are not a sufficient number of courses available, which courses are necessary in order for individuals to become certified as "qualified purchasing agents," or in response to a contracting unit's request. Contracting units with annual budgets below \$2,500,000 and contracting units that can demonstrate that they engage in minimal purchasing activity, would be exempt from the requirement to retain a qualified purchasing agent.

The bill, as amended by the committee, would provide direction to the Director of the Division of Local Government Services for the establishment of criteria to certify individuals as "qualified purchasing agents." Criteria would include: United States citizenship, a high school diploma or equivalency, two years of post-high school education or two years of public procurement experience, successful completion of a series of courses in public procurement, and successful passage of a State qualifying exam. Individuals who are certified municipal finance officers, certified county finance officers, certified county purchasing officers, or who have been full time purchasing agents continuously for at least three years could sit for the exam without having to complete the courses otherwise required.

After passing the exam, and payment of a fee, the director would issue an individual a "qualified purchasing agent certificate." A certificate would be good for three years and could be renewed if the holder fulfills continuing education requirements. The bill exempts current holders of qualified purchasing agent certificates from having to take the exam but requires them to adhere to renewal requirements.

Certified school business administrators would be exempt from the course and exam requirements.

The bill empowers the director to discipline certificate holders who engage in dishonest practices or who do not properly abide by the procurement laws. It also contains provisions authorizing penalties for local officials who fail to abide with the provisions of the bill.

The committee amended section 1 of the bill in order to incorporate a provision of law (P.L.2006, c.46, s.11) that was not incorporated into the bill at the time it was introduced.

The committee amended section 2 of the bill in order to clarify that the bid threshold can be increased by a contracting unit if it appoints a qualified purchasing agent. – These amendments are largely technical and clarifying in nature.

The committee amended section 3 of the bill in order to incorporate numerous technical and clarifying amendments. Amendments to subsection a. clarify that a governing body must designate an individual as its purchasing agent and that individual must be a qualified purchasing agent. Amendments to this subsection also clarify that contracting units are exempt from this requirement if they have annual budgets below \$2,500,000 or can demonstrate that they engage in minimal purchasing activity.

Amendments to subsection b. of section 3 provide that the courses in public procurement should be offered during normal business hours and over the Internet.

Amendments adding a new subsection c. to section 3 of the bill are technical amendments needed to incorporate a provision of law (P.L.2007, c.332, s.1) that was not incorporated into the bill at the time the bill was introduced.

Amendments to subsection d. (3) detail procedures for a certificate holder who has allowed a certificate to expire. This provision allows for renewal of the certificate if application is made within six months of the expiration date.

Amendments to subsection e. (2) exempt certified school business administrators from the course and examination requirements.

Amendments to subsection g. (1) authorize the director to extend the deadline for contracting units to retain a qualified purchasing agent in the event that a sufficient number of courses are not available to enable contracting units to comply with the bill's requirement.

Amendments to subsection g. (2) provide that a contracting unit may temporarily fill a vacancy in the position of purchasing agent with someone who is not a qualified purchasing agent.

STATEMENT TO

[First Reprint]

SENATE, No. 770

with Senate Floor Amendments
(Proposed By Senator RICE)

ADOPTED: JUNE 12, 2008

These amendments make technical changes to the bill in order to make the bill identical to its Assembly counterpart, A1645 (2R).

STATEMENT TO
[Second Reprint]
SENATE, No. 770

with Senate Floor Amendments
(Proposed By Senator RICE)

ADOPTED: FEBRUARY 23, 2009

This amendment effectively delays applicability of the bill, which enhances the standards and requirements for appointment to the position of purchasing agent for certain local units of government, to individuals appointed as purchasing agents after the date that the bill is enacted. The amendment also recognizes individuals that have been recognized as qualified purchasing agents by the Department of Community Affairs under current regulations and allows those individuals to continue to exercise supplemental authority (the ability to award bids up to a higher bid threshold) without having to comply with the new requirements set forth in the bill. The amendment also specifies that a contracting unit will not be required to comply with the bill's new appointment requirements until the individual serving as the contracting unit's purchasing agent, on the date that the bill is enacted, is replaced or ceases to perform the duties of a purchasing agent.

ASSEMBLY BILL NO. 1645
(Third Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1645 (Third Reprint) with my recommendations for reconsideration.

This bill would amend and supplement the current New Jersey statutes, including the Local Public Contracts Law, that govern the role and qualifications of local purchasing agents. I support the concept of this bill, which is intended to professionalize the purchasing functions undertaken by counties, municipalities, and other affected local units. I am concerned, however, that the bill as currently drafted does not adequately address the substantive issues raised throughout the legislative process by the Division of Local Government Services in the Department of Community Affairs, the entity charged with implementing the provisions of the bill, as well as some of the legitimate concerns identified by the New Jersey State League of Municipalities and the dozens of individual local units that passed resolutions expressing opposition to this bill. I believe that the amendments recommended below appropriately accommodate the most significant of these concerns while, at the same time, promoting the laudable goals of the legislation.

Accordingly, I herewith return Assembly Bill No. 1645 (Third Reprint) and recommend that it be amended as follows:

Page 5, Section 1, Line 36: Delete "a."

Page 5, Section 1, Lines 40-41: After "and]" delete "administration of the contracting unit's responsibilities" and insert "who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit"

- Page 5, Section 1, Line 41: After "seq.)" insert "and who possesses a qualified purchasing agent certificate"
- Page 5, Section 1, Lines 42-44: Delete subsection (b) in its entirety.
- Page 7, Section 1, Line 3: Before "(cf: P.L.2002, c. 47, sec. 7)" insert new definition as follows: "(41) 'Qualified purchasing agent certificate' means a certificate granted by the director pursuant to section 9 of P.L. 1971, c. 198 (C.40A:11-9)."
- Page 7, Section 2, Line 11: After "agent" insert "or other employee so designated by the governing body"
- Page 7, Section 2, Lines 12-13: Delete "of the governing body of the contracting unit"
- Page 7, Section 2, Lines 18-19: After "(C.40A:11-9)]" delete "In the case of a qualified purchasing agent" and insert "If a purchasing agent has been appointed"
- Page 7, Section 2, Line 22: After "section]" insert "or the threshold amount adjusted by the Governor pursuant to subsection c. of this section"
- Page 7, Section 2, Lines 36-40: After "amount" delete "and the higher threshold amount which the governing body is permitted to establish, as set forth in subsection a. of this section, or the threshold amounts resulting from any adjustment under this section"
- Page 8, Section 3, Line 3: After "a." delete "(1)"
- Page 8, Section 3, Line 3: Delete "every" and insert "any"
- Page 8, Section 3, Line 4: Delete "shall" and insert "may"
- Page 8, Section 3, Line 21: After "agent]" insert "as its contracting agent"
- Page 8, Section 3, Lines 21-22: Delete "as the governing body of the contracting unit may authorize"

- Page 8, Section 3, Line 24: Delete "be a qualified purchasing agent" and insert "possess a qualified purchasing agent certificate pursuant to this section"
- Page 8, Section 3, Lines 32-34: Delete subsection (2) in its entirety.
- Page 8, Section 3, Line 41: After "(C.40A:11-3)]" insert "and possess such purchasing experience as deemed necessary"
- Page 8, Section 3, Lines 41-43: Delete "exercise such supplementary authority set forth in subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) and section 1 of P.L.1977, c.114 (C.18A:18A-3)" and insert "serve as purchasing agent"
- Page 8, Section 3, Line 44: After "necessary" insert "by the director"
- Page 9, Section 3, Lines 1-4: Delete "These criteria also shall authorize county purchasing agents certified pursuant to P.L.1981, c.380 (C.40A-9-30.1 et seq.) to exercise such supplemental authority as may be set forth in subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3)."
- Page 9, Section 3, Line 10: After "has" insert "at least"
- Page 9, Section 3, Line 10: Delete "or" and insert "and"
- Page 9, Section 3, Line 12: delete ", or a combination of the above" and insert "; provided, however, that additional years of experience may be substituted for years of higher education, on a one to one basis"
- Page 9, Section 3, Lines 19-22: Delete "The criteria for the courses shall include, to the extent practicable and feasible, that these courses be made available during normal business hours of the normal work week and over the Internet."
- Page 9, Section 3, Line 26: Delete "\$50" and insert "\$150"

- Page 9, Section 3, Line 28: Delete "qualifying"
- Page 9, Section 3, Line 29: Delete "qualifying" and after "examination" insert "for a qualified purchasing agent certificate"
- Page 9, Section 3, Lines 31-32: Delete "for certification of qualified purchasing agents"
- Page 9, Section 3, Line 33: Delete "qualifying"
- Page 9, Section 3, Line 41: Delete "qualifying"
- Page 9, Section 3, Line 42: Delete "\$50" and insert "\$25"
- Page 10, Section 3, Line 23: After "director" insert ", except that when an individual applies within six months of the expiration of the certificate, the application may be made in the same manner as renewal"
- Page 10, Section 3, Lines 24-30: Delete paragraph (3) in its entirety
- Page 11, Section 3, Lines 4-5: Delete "or who have been performing on a full time basis public procurement duties"
- Page 11, Section 3, Line 11: After "bill)," insert "and did not possess a qualified purchasing agent certificate at that time,"
- Page 11, Section 3, Lines 15-32: Delete subsections (1) and (2) in their entirety
- Page 11, Section 3, Line 33: Delete "(3)"
- Page 11, Section 3, Line 35: Delete "qualified purchasing agent as the"
- Page 11, Section 3, Line 37: Delete "and"
- Page 12, Section 3, Line 19: Delete "contracting" and insert "purchasing"
- Page 12, Section 3, Line 20: Delete "contracting" and insert "purchasing"
- Page 12, Section 3, Line 23 through Page 13, Section 3, Line 7: Delete subsections (i), (j), and (k) in their entirety and re-letter subsection (l) as subsection (i)
- Page 13, Section 3, Line 8: Delete "shall" and insert "may"
- Page 13, Section 3, Line 8: Delete "section" and insert "act"

Page 13, Section 3, Line 9:

After "[section] act." insert "Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, any such regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 365 days and may thereafter be amended, adopted or readopted by the director in accordance with the requirements of P.L.1968, c.410. In order to better manage the workload of implementing the provisions of this act, the director may establish a transition process for administering an examination for individuals serving as purchasing agents on the effective date of this act, issuing and renewing qualified purchasing agent certificates to eligible individuals, prescribing a schedule by which such certificates will be issued and renewed, and such other matters as the director determines to be necessary to the implementation of this act."

Page 13, Section 4, Lines 12-13:

Delete "Notwithstanding any provision of law to the contrary, an" and insert "An"

Page 13, Section 4, Line 14:

After "unit" insert "and does not possess a qualified purchasing agent certificate"

Page 13, Section 4, Lines 16-20:

Delete "authorized to serve as the purchasing agent for that contracting unit after the effective date of P.L. , c. (pending before the Legislature as this bill) although the individual has not satisfied the new criteria for certification or renewal established by P.L. , c. (pending before the Legislature as this bill)" and insert "referred to as the purchasing agent, but the bid threshold for that contracting unit shall be set at \$17,500 until such time as that individual obtains a qualified purchasing agent certificate. A contracting unit exercising this authority shall file a letter to this effect with the director"

Page 13, Section 4, Lines 21-47: Delete subsections (b) and (c) in their entirety.

Page 14, Section 5, Line 1:

Insert new section as follows:
 "5. Section 1 of P.L.1971, c.413 (C. 40A:9-140.1) is amended to read as follows: 1. As used in this act: a. "Director" means the Director of the Division of Local Government Services. b. "Municipal finance officer" means a municipal director of finance, assistant director of finance, fiscal officer, municipal comptroller, assistant comptroller, municipal treasurer, assistant municipal treasurer or deputy treasurer who is not a member of the governing body of a municipality. c. "Local unit" means a municipality or a utility owned by a single municipality or owned jointly by one or more municipalities, which together do not comprise a county. d. "Chief financial officer" means the official appointed pursuant to section 5 of P.L.1988, c.110 (C.40A:9-140.10) to be responsible for the proper financial administration of the municipality under the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.); the "Local Bond Law," (N.J.S.40A:2-1 et seq.); the "Local Budget Law," (N.J.S.40A:4-1 et seq.); the "Local Fiscal Affairs Law," (N.J.S.40A:5-1 et seq.); and the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) in those municipalities that have not appointed a purchasing agent pursuant to that law; and such other statutes, and such rules and regulations promulgated by the Director of the Division of Local Government Services, the Local Finance Board, or any other State agency, as may pertain to the financial administration of the municipality.

Page 14, Section 5, Line 2:

Insert new section as follows:
 "6. Section 1 of P.L.1977, c.114 (C. 18A:18A-3) is amended to read as follows: a. When the cost or price of any contract

awarded by the purchasing agent in the aggregate does not exceed in a contract year the total sum of \$17,500, the contract may be awarded by a purchasing agent when so authorized by resolution of the board of education without public advertising for bids and bidding therefore, except that the board of education may adopt a resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If the purchasing agent [is] possesses a qualified purchasing agent certificate pursuant to subsection b. of section 9 of P.L.1971, c. 198 (C.40A:11-9), the board of education may establish that the bid threshold may be up to \$25,000. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section. b. Commencing in the fifth year after the year in which P.L.1999, c. 440 takes effect, and every five years thereafter, the Governor, in consultation with the Department of Treasury, shall adjust [the threshold amount and] the higher threshold amount which the board of education is permitted to establish as set forth in subsection a. of this section or the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the index rate as that term is defined in N.J.S.18A:18A-2, and shall round the adjustment to the nearest \$1,000. The Governor shall notify all local school districts of the adjustment no later than June 1 of every fifth year. The adjustment shall become effective on July 1 of the year in which it is made. Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 may be awarded for a period not exceeding 12 consecutive months."

Page 14, Section 5, Line 1:

Renumber section 5 as section 7.

Page 14, Section 5, Line 2:

Delete "seventh" and insert
"thirteenth"

Respectfully,

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ William J. Castner, Jr.

Chief Counsel to the Governor