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LEGISLATIVE HISTORY CHECKLIST
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(Wastewater--contracts)

58:27-19

LAWS OF: 1995 CHAPTER: 216

BILL NO: S1888

SPONSOR(S): Bennett and others

DATE INTRODUCED: March 13, 1995

COMMITTEE: ASSEMBLY: ---

SENATE: Natural Resources; Budget

AMENDED DURING PASSAGE: Yes Senate committee substitute (1R) enacted

DATE OF PASSAGE: ASSEMBLY: June 26, 1995

SENATE: June 26, 1996

DATE OF APPROVAL: August 14, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes 5-8-95 & 6-22-95

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VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

P.L.1995, CHAPTER 216, approved August 14, 1995
Senate Committee Substitute (First Reprint) for
1995 Senate No. 1888

1 AN ACT concerning contracts between local government units
2 and private firms ¹or public authorities¹ for the provision of
3 wastewater treatment services, supplementing Title 58 of the
4 Revised Statutes, and amending P.L.1971, c.198.

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

8 1. (New section) Sections 1 through 9 of P.L. .
9 c. (C.) (now before the Legislature as this bill) shall be
10 known and may be cited as the "New Jersey Wastewater
11 Treatment Public-Private Contracting Act."

12 2. (New section) The Legislature finds and declares that
13 protecting the ground and surface water of the State from
14 pollution is vital to the health and general welfare of the citizens
15 of New Jersey; that the construction, rehabilitation, operation,
16 and maintenance of modern and efficient sewer systems and
17 wastewater treatment plants are essential to protecting and
18 improving the State's water quality; that in addition to
19 protecting and improving the State's water quality, adequate
20 wastewater treatment systems are essential to economic growth
21 and development; that many of the wastewater treatment
22 systems in New Jersey must be replaced or upgraded if an
23 inexcusable decline in water quality is to be avoided during the
24 coming decades; that the United States Congress in recognition
25 of the crucial role wastewater treatment systems and plants play
26 in maintaining and improving water quality, and with an
27 understanding that the cost of financing and constructing these
28 systems must be borne by local governments and authorities with
29 limited resources of revenues, established a program to provide
30 local governments with grants for constructing these systems;
31 that during the last several years the amount of federal grant
32 money available to states and local governments for assistance in
33 constructing and improving wastewater treatment systems has
34 sharply diminished; that the current level of federal grant funding
35 is inadequate to meet the cost of upgrading the State's
36 wastewater treatment capacity to comply with State water
37 quality standards; that given this inadequate present level of
38 federal grant funding, alternative methods of financing the
39 construction, operation, and improvement of wastewater
40 treatment systems must be developed and encouraged; that one
41 alternative method of financing necessary wastewater treatment
42 systems available to local governments consists of contracting

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:
Senate Bill committee amendments adopted June 22, 1995.

1 with private sector firms for the financing, construction and
2 operation of these systems; and that for some local government
3 units, contracting for the provision of wastewater treatment
4 services, if done in such a way as to protect the interests of
5 consumers and to conform with environmental standards, will
6 constitute an appropriate method of securing these needed
7 wastewater treatment systems.

8 The Legislature further finds that it is in the public interest
9 and the policy of the State to foster and promote by all
10 reasonable means the long-term operation and maintenance of
11 modern, efficient wastewater treatment systems designed to
12 protect and improve the State's water quality thereby ensuring
13 the health and general welfare of all inhabitants of the State;
14 that while the "New Jersey Wastewater Treatment Privatization
15 Act," P.L.1985, c.72 (C.58:27-1 et seq.), enabled local
16 government units to enter into long term contracts with
17 private-sector firms for the provision of wastewater treatment
18 services, the time consuming procedures and the regulatory
19 framework required therein has dissuaded private firms and local
20 government units from entering into long-term contractual
21 relationships as envisioned by this act; that there is a need for an
22 alternative statutory process which enables local government
23 units to enter with private firms ¹or public authorities¹ into
24 long-term contracts that protect the rights and interests of
25 residents of the local government unit, but allow the private
26 firms public authorities¹ to utilize their expertise, experience
27 and resources to enable the local government unit to comply with
28 existing and more stringent future requirements of the "Federal
29 Water Pollution Control Act," 33 U.S.C. §1251 et seq., the State
30 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et
31 seq.) and the "Safe Drinking Water Act," P.L.1977, c.224
32 (C.58:12A-1 et seq.).

33 The Legislature therefore determines that it is in the public
34 interest to establish a comprehensive procedure designed to
35 authorize local government units to enter into contracts with
36 private firms ¹or public authorities¹ for the financing, designing,
37 construction, improvement, operation, maintenance, or
38 administration, or any combination thereof, of wastewater
39 treatment systems or for the provision of wastewater treatment
40 services.

41 3. (New section) As used in sections 1 through 9 of P.L. .
42 c. (C.) (now before the Legislature as this bill):

43 "Concession fee" means a payment from a private firm ¹or a
44 public authority¹ to a public entity, regardless of when it is
45 received, that is exclusive of or exceeds any contractually
46 specified reimbursement of direct costs incurred by the public
47 entity;

48 "Contract" means a long-term written agreement wherein a
49 private firm ¹or a public authority¹ agrees to provide wastewater
50 treatment services for a public entity and wherein the private
51 firm ¹or public authority¹ agrees to provide, during the term of
52 the contract, capital expenditures on behalf of the public entity's
53 wastewater treatment system, which expenditures are set forth
54 in the contract;

1 "Department" means the New Jersey Department of
2 Environmental Protection;

3 "Division" means the Local Finance Board within the Division
4 of Local Government Services in the Department of Community
5 Affairs;

6 "Governing body" means the board of chosen freeholders in the
7 case of the county; the board of chosen freeholders and the
8 county executive, the county supervisor or the county manager,
9 as appropriate, in the case of a county organized pursuant to the
10 provisions of the "Optional County Charter Law," P.L.1972, c.154
11 (C.40:41A-1 et seq.); the commission, council, board or body, by
12 whatever name it may be known, having charge of the finances of
13 the municipality, in the case of a municipality; and the
14 decision-making body of an authority, joint meeting or
15 commission;

16 "Private firm" means any privately or publicly held company
17 qualified to do business in the State of New Jersey that is
18 financially, technically, and administratively capable of providing
19 wastewater treatment services to a public entity under the terms
20 of a contract entered into pursuant to P.L. , c. (C.) (now
21 before the Legislature as this bill);

22 "Proposal document" means the document prepared by or on
23 behalf of a public entity describing the wastewater treatment
24 services that the public entity is considering having provided by a
25 private firm ¹or a public authority¹ pursuant to a contract. The
26 proposal document shall include specific minimum qualifications
27 that a private firm ¹or a public authority¹ shall meet, as well as
28 the criteria that will be used by a public entity to evaluate a
29 proposal submitted by a private firm ¹or a public authority¹;

30 ¹"Public authority" means a municipal or county authority,
31 commission, municipal or county utility authority, sewerage
32 authority, or joint meeting, which is authorized by law to
33 construct, rehabilitate, operate or maintain a wastewater
34 treatment system or arrange for the provision of wastewater
35 treatment service;¹

36 "Public entity" means a county, a municipality, a municipal or
37 county authority or any commission or other political subdivision
38 of the State, or any two or more counties, municipalities,
39 municipal or county utilities authorities, sewerage authorities,
40 joint meetings, or any commission or other political subdivisions
41 of the State, acting jointly, that are authorized by law to
42 construct, rehabilitate, operate or maintain wastewater
43 treatment systems or arrange for the provision of wastewater
44 treatment services;

45 "Wastewater" means residential, commercial, industrial, or
46 agricultural liquid waste, sewage, septage, stormwater runoff, or
47 any combination thereof, or other liquid residue discharged or
48 collected into a sewer system or stormwater runoff system, or
49 directly into surface or ground waters, or any combination
50 thereof;

51 "Wastewater treatment services" means the financing,
52 designing, construction, improvement, operation, maintenance,
53 administration, or any combination thereof, of a wastewater
54 treatment system, which services are provided pursuant to

1 P.L. . c. (C.) (now before the Legislature as this bill);

2 "Wastewater treatment system" means any equipment, plants,
3 structures, machinery, apparatus, or land, or any combination
4 thereof, acquired, used, constructed or operated by, or on behalf
5 of, a public entity for the storage, collection, reduction,
6 recycling, processing, reclamation, disposal, separation, or other
7 treatment of wastewater or sewage sludge, or for the collection
8 or treatment, or both, of stormwater runoff and wastewater, or
9 for the final disposal of residues resulting from the treatment of
10 wastewater, including, but not limited to, pumping and
11 ventilating stations, treatment plants and works, connections,
12 outfall sewers, interceptors, trunk lines, stormwater runoff
13 collection systems, and other personal property and
14 appurtenances necessary for their use or operation.

15 4. (New section) Notwithstanding the provisions of any other
16 law, rule or regulation to the contrary, a public entity may enter
17 into a contract with a private firm ¹or a public authority¹
18 pursuant to P.L. . c. (C.) (now before the Legislature as
19 this bill) for the provision of wastewater treatment services.

20 5. (New section) a. A public entity shall publish notice of its
21 intent to enter into a contract pursuant to P.L. ,
22 c. (C.) (now before the Legislature as this bill) in at
23 least one newspaper of general circulation in the jurisdiction or
24 service area that will receive wastewater treatment services
25 under the terms of the contract and one newspaper of broad
26 regional circulation, at least 60 days prior to conducting the
27 public hearing required under section 6 of P.L. . c. (C.)
28 (now before the Legislature as this bill).

29 b. The public notice required under subsection a. of this
30 section shall describe the type of services desired and provide the
31 name, address and phone number of the person who can provide
32 additional information and a proposal document to an interested
33 party. The notice shall specify a deadline, which shall be not less
34 than 30 days from the date of the publication of the notice for
35 the submission of proposals by private firms ¹or public
36 authority¹ the public entity. The public entity may at any
37 time revise the proposal document and each private firm ¹or
38 public authority¹ that received a proposal document shall be
39 provided with the revised proposal document.

40 c. The public entity shall conduct a review of the proposals
41 submitted by private firms ¹and public authorities¹ to determine
42 which proposals meet the minimum qualifications and standards.
43 The review shall be conducted in a manner that avoids disclosure
44 of the contents of a proposal to any private firm ¹and public
45 authority¹ submitting a competing proposal. The public entity
46 may conduct discussions with a private firm ¹and public
47 authority¹ submitting a qualified proposal for the purpose of
48 clarifying the information submitted in the proposal. The public
49 entity may at any time revise its proposal document after the
50 review of the submitted proposals if it notifies simultaneously,
51 and in writing, each private firm ¹and public authority¹ that
52 submitted a proposal of the revision and provides a uniform time
53 within which a firm ¹and an authority¹ may submit a revised
54 proposal for review.

1 d. The public entity shall select one qualified proposal from
2 among those submitted. The public entity shall negotiate a
3 contract with the private firm ¹or public authority¹ that
4 submitted the selected proposal. If the public entity is unable to
5 negotiate a satisfactory contract with the selected private firm
6 ¹or public authority¹, it may select another qualified proposal
7 from among those submitted and proceed to negotiate a contract
8 with the private firm ¹or public authority¹ that submitted the
9 proposal. The public entity shall set forth, in writing, the reasons
10 for the selection of the qualified proposal submitted by the
11 private firm ¹or public authority¹ with which the public entity
12 has negotiated a proposed contract and shall make this document
13 available to the public along with the proposed contract, upon
14 request, and during the public hearing conducted pursuant to
15 section 6 of P.L. , c. (C.) (now before the Legislature as
16 this bill).

17 e. A contract entered into pursuant to P.L. , c. (C.)
18 (now before the Legislature as this bill) shall include provisions
19 addressing the following:

20 (1) The charges, rates, fees or formulas to be used to
21 determine the charges, rates, or fees to be charged by the public
22 entity for the wastewater treatment services to be provided;

23 (2) The allocation of the risks of financing and constructing
24 planned capital additions or upgrades to existing wastewater
25 treatment systems;

26 (3) The allocation of the risks of operating and maintaining the
27 wastewater treatment system;

28 (4) The allocation of the risks associated with circumstances
29 or occurrences beyond the control of the parties to the contract;

30 (5) The defaulting and termination of the contract;

31 (6) The employment of current employees of the public entity
32 whose positions or employment will be affected by the terms of
33 the contract; [and]

34 (7) The requirements for the provision of a performance bond
35 by the private firm ¹or public authority¹, if so required by the
36 public entity; and

37 ¹(8) The financial cost of compliance with all relevant permits.¹

38 A contract may contain any other terms and conditions that
39 have been negotiated by the public entity and the private firm
40 ¹or public authority¹.

41 f. If a dispute over contract compliance, performance or
42 termination cannot be resolved by the public entity and the
43 private firm ¹or public authority¹ pursuant to the procedures set
44 forth in the contract, either party to the contract may file with
45 the Superior Court which has appropriate jurisdiction a request
46 for an order either to terminate the contract based on the
47 reasons stated in the request or for an order for other appropriate
48 relief to the dispute. The court may take such action as it may
49 deem necessary to facilitate the expeditious resolution of the
50 dispute and an expeditious response to the request, including
51 ordering the parties to undertake a dispute resolution or
52 mediation process. The court shall use, as it deems necessary,
53 the services of a financial expert in the area of wastewater
54 treatment service contracts in its analysis of the contract and

1 the issues before it. Within 90 days after the filing of a request,
2 the court shall either grant the request or deny the request. If
3 the request is granted, the court shall order such appropriate
4 relief measures or remedies as it deems appropriate and
5 necessary.

6 g. A public entity that has negotiated a contract with a
7 private firm ¹or a public authority¹ pursuant to P.L. . c.
8 (C.) (now before Legislature as this bill) shall obtain the
9 written opinion of bond counsel as to the effect of the contract
10 on the tax exempt status of existing and future financing
11 instruments executed by the public entity given the terms of the
12 contract and the federal laws or regulations concerning this
13 matter.

14 h. If a public entity entering into a contract pursuant to
15 P.L. , c. (C.) (now before Legislature as this bill) consists
16 of multiple municipalities, or is an authority subject to the
17 provisions of P.L.1983, c.313 (C.40A:5A-1 et seq.), a concession
18 fee paid by a private firm ¹or public authority¹ as a result of the
19 contract shall be paid directly to the municipality or
20 municipalities that created or constitute that public entity. Any
21 concession fee paid by a private firm ¹or a public authority¹ to a
22 public entity shall be used for the purpose of reducing or
23 offsetting property taxes ¹for¹ reducing wastewater treatment
24 services rates, ¹[as appropriate] one-time nonrecurring expenses
25 or capital asset expenditures; provided, however, nothing herein
26 shall preclude the public entity from using all or part of the
27 concession fees for the purpose of the public entity's
28 qualification for relief from the repayment of federal grant
29 awards associated with the wastewater treatment system as may
30 be required by federal law or regulation¹. Any disagreement as
31 to whether a payment constitutes a concession fee as that term is
32 defined pursuant to section 3 of this act shall be resolved by the
33 division.

34 6. (New section) a. A public entity that intends to enter into
35 a contract with a private firm ¹or public authority¹ for the
36 provision of wastewater treatment services pursuant to P.L. ,
37 c. (C.) (now before the Legislature as this bill) shall
38 conduct a public hearing on the proposed contract negotiated
39 pursuant to section 5 of P.L. , c. (C.) (now before the
40 Legislature as this bill). A public entity shall also conduct a
41 public hearing pursuant to this section on revisions to a contract
42 required by subsection b. of section 7 of P.L. , c. (C.)
43 (now before the Legislature as this bill) or on substantial
44 amendments to a contract as required by subsection f. of section
45 7 of P.L. , c. (C.) (now before the Legislature as this
46 bill).

47 b. The public entity shall provide, at least 14 days prior to the
48 public hearing, (1) notice in writing to the department and the
49 division of its intent to enter into a contract with a private firm
50 ¹or public authority¹ for the provision of wastewater treatment
51 services, and (2) notice of the public hearing by publication in at
52 least one newspaper of general circulation in the jurisdiction or
53 service area of the public entity to be served under the terms of
54 the proposed contract. The publication shall include notice of the

1 date, time and place of the public hearing, notice of the place at
2 which copies of the proposed contract will be available for public
3 inspection, and the times during which such inspection will be
4 permitted. The notice shall specifically state whether any
5 concession fee will be paid by a private firm ¹or public authority¹
6 to the public entity as a result of the contract for wastewater
7 treatment services, the monetary amount of the fee and the
8 potential impact of the fee on the charges, rates or fees which
9 will be paid for wastewater treatment services by users in the
10 jurisdiction or service area that will receive the wastewater
11 treatment services pursuant to the terms of the contract.

12 c. At the public hearing, the public entity shall explain the
13 terms and conditions of the proposed contract and shall answer
14 questions raised by prospective consumers and other interested
15 parties. The public entity shall explain during the hearing the
16 charges, rates or fees that will or may be charged by the public
17 entity for wastewater treatment services as a result of the
18 proposed contract. In addition, the entity shall explain any
19 concession fee to be paid by a private firm ¹or public authority¹
20 to the public entity as a result of the contract for wastewater
21 treatment services, the monetary amount of the fee and the
22 potential impact of the fee or benefit on the charges, rates or
23 fees which will be paid for wastewater treatment services by
24 users in the jurisdiction or service area that will receive the
25 wastewater treatment services pursuant to the terms of the
26 contract.

27 d. The public entity shall produce a verbatim record of the
28 public hearing. The record of the public hearing shall be kept
29 open for a period of seven days following the conclusion of the
30 hearing, during which time interested parties may submit written
31 statements to be included in the hearing report. The public
32 entity shall prepare a written hearing report, which shall include
33 a copy of the proposed contract, a copy of the statement setting
34 forth the public entity's reasons for the selection of the proposal
35 submitted by the private firm ¹or public authority¹ with which
36 the entity has negotiated a contract, the verbatim record of the
37 public hearing, written statements submitted by interested
38 parties, a copy of the bond counsel's written opinion required
39 pursuant to subsection g. of section 5 of P.L. , c. (C.)
40 (now before the Legislature as this bill) and a statement prepared
41 by the public entity summarizing the major issues raised at the
42 public hearing and the public entity's specific responses to those
43 issues. The public entity shall make copies of the hearing report
44 available to interested parties, upon request, at a cost not to
45 exceed the actual cost of printing or copying.

46 e. The governing body of a public entity that has negotiated
47 the proposed contract shall adopt an ordinance or a resolution, as
48 appropriate, or parallel ordinances or resolutions, as the case may
49 be, if there is more than one governing body involved, approving
50 the proposed contract. The ordinance or resolution may be
51 introduced at the first meeting of the governing body of the
52 public entity held after the public hearing on the proposed
53 contract, and shall acknowledge that the agreement requires
54 approval pursuant to the provisions of section 7 of P.L. .

1 c. (C.) (now before the Legislature as this bill).

2 f. Within 30 days after the close of a public hearing on a
3 proposed contract held pursuant to subsection a. of this section
4 and upon at least 10 days prior written notice, the public entity
5 shall submit an application for approval to the division and shall
6 submit the hearing report to the department for review pursuant
7 to the provisions of section 7 of P.L. , c. (C.) (now
8 before the Legislature as this bill). The division shall specify the
9 form of the application to be submitted.

10 7. (New section) a. Within 60 days of receipt of the
11 application, the division shall approve, or conditionally approve,
12 an application submitted by a public entity pursuant to subsection
13 f. of section 6 of P.L. , c. (C.) (now before the
14 Legislature as this bill). Within 60 days of receipt of the hearing
15 report, the department shall provide any comments on the
16 hearing report or on the technical capabilities of the private firm
17 or public authority¹ that it deems appropriate to the division
18 and the public entity. If the division fails to approve or
19 conditionally approves the application within 60 days after
20 receipt, the application shall be deemed approved, unless the
21 public entity has agreed to an extension of the period.

22 b. If the division conditionally approves the application, the
23 division shall state in writing the revision to the proposed
24 contract that is necessary in order for it to be approved. If the
25 division determines that the required revision is substantial, the
26 public entity shall hold a public hearing on the revision and
27 adhere to the provisions of section 6 of P.L. , c. (C.)
28 (now before the Legislature as this bill) in so doing. A substantial
29 revision shall be a change that results in an increase in the
30 charges, rates or fees of the private firm or public authority¹ or
31 that materially changes other terms and conditions of the
32 contract. The proposed revision to the contract shall be
33 submitted to the division and the department 15 days prior to the
34 date of the public hearing.

35 If the division determines that the required revision in the
36 conditional approval is not substantial, the public entity shall
37 submit the proposed revision to the contract to the division for
38 approval and to the department for review. The revision shall be
39 approved if found to be consistent with the conditions set forth in
40 the conditional approval, or disapproved with a written
41 explanation as to why the revision is not consistent, within 15
42 days after the next public meeting of the division.

43 c. In its review of a contract, the division shall apply the
44 following criteria in determining whether to approve the contract:

45 (1) The terms of the proposed contract do not materially
46 impair the ability of the public entity to punctually pay principal
47 and interest due on its outstanding indebtedness and to supply
48 other essential public improvements and services;

49 (2) A concession fee paid by a private firm or a public
50 authority¹ as a result of the contract is paid directly to the
51 municipality or municipalities that created or constitute the
52 public entity, and any concession fee paid by a private firm or a
53 public authority¹ to a public entity is used for the purpose of
54 reducing off-setting property taxes ^{1[or],¹ reducing}

1 wastewater treatment services rates, ¹[as appropriate] one-time
2 nonrecurring expenses or capital asset expenditures¹; and

3 (3) The contract contains the provisions required by subsection
4 e. of section 5 of P.L. , c. (C.) (now before the
5 Legislature as this bill).

6 The division shall also review and specifically approve any
7 contract provision pursuant to which a public entity will or may
8 execute a financing instrument for the purposes set forth in the
9 contract. ¹In addition, the division shall review any contract
10 between a public entity and public authority in which a
11 concession fee is paid by the public authority to determine if the
12 payment of the concession fee is in the best interest of the
13 parties to the contract.¹

14 d. The division may provide the public entity with any
15 non-binding comments or advice during or after the review of the
16 application as the division deems appropriate.

17 e. The division shall assess and the applicant shall pay a fee
18 equal to the cost incurred by the division for an analysis of an
19 application by an independent person who has expertise in the
20 area of wastewater treatment services if during the review of an
21 application the division determines that such an analysis is
22 required.

23 f. If the public entity and private firm ¹or public authority¹
24 would like to amend a contract after approval of an application
25 by the division, the public entity shall submit proposed
26 amendments to the division for approval and to the department
27 for review. At the next public meeting of the division after
28 receipt of proposed amendments, the division shall determine
29 whether the proposed amendments are substantial. If the
30 amendments are substantial in nature as determined by the
31 division, the public entity shall conduct a hearing pursuant to
32 section 6 of P.L. , c. (C.) (now before the Legislature as
33 this bill). Within 60 days of the receipt of proposed amendments
34 that are not determined to be substantial, or within 60 days of
35 the receipt of an application for approval of proposed
36 amendments that are determined to be substantial, the division
37 shall approve or conditionally approve the amendments in
38 accordance with the applicable procedures established for
39 approval of an original contract pursuant to section 7 of P.L. ,
40 c. (C.) (now before the Legislature as this bill).

41 8. (New section) In order to pay its part of the cost of the
42 wastewater treatment system, a public entity may issue bonds in
43 accordance with the "Local Bond Law," N.J.S.40.2-1 et seq. If
44 a public entity enters into a financing instrument the proceeds of
45 which are used by the private firm ¹or public authority¹ for a
46 capital expenditure for the benefit of a wastewater treatment
47 system, the expenditure of the funds provided by the public entity
48 shall be in compliance with applicable public contracting statutes.

49 9. (New section) A public entity may enter into a contract
50 with a private firm ¹or public authority¹ for the provision of
51 wastewater treatment services, the procurement for which
52 contract commenced prior to the effective date of P.L. , c.
53 (C.) (now before the Legislature as this bill), if the
54 procurement was initiated prior to the effective date of the enactment of the

1 act and the procurement otherwise complies with the provisions
2 of the act.

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

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

7 (1) "Contracting unit" means:

8 (a) Any county; or

9 (b) Any municipality; or

10 (c) Any board, commission, committee, authority or agency,

11 which is not a State board, commission, committee, authority or

12 agency, and which has administrative jurisdiction over any

13 district other than a school district, project, or facility, included

14 or operating in whole or in part, within the territorial boundaries

15 of any county or municipality which exercises functions which are

16 appropriate for the exercise by one or more units of local

17 government, and which has statutory power to make purchases

18 and enter into contracts or agreements for the performance of

19 any work or the furnishing or hiring of any materials or supplies

20 usually required, the cost or contract price of which is to be paid

21 with or out of public funds.

22 ¹The term shall not include a private firm that has entered into
23 a contract with a public entity for the provision of water supply
24 services pursuant to P.L.1995, c.101 (C. 58:26-19 et al.).¹

25 "Contracting unit" shall not include a private firm¹ or public
26 authority¹ that has entered into a contract with a public entity
27 for the provision of wastewater treatment services pursuant to
28 P.L. , c. (C.) (now before the Legislature as this bill).

29 (2) "Governing body" means:

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

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

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

38 (3) "Contracting agent" means the governing body of a
39 contracting unit, or any board, commission, committee, officer,
40 department, branch or agency which has the power to prepare the
41 advertisements, to advertise for and receive bids and, as
42 permitted by this act, to make awards for the contracting unit in
43 connection with purchases, contracts or agreements.

44 (4) "Purchase" is a transaction, for a valuable consideration,
45 creating or acquiring an interest in goods, services and property,
46 except real property or any interest therein.

47 (5) "Materials" includes goods and property subject to chapter
48 2 of Title 12A of the New Jersey Statutes, apparatus, or any
49 other tangible thing, except real property or any interest therein.

50 (6) "Professional services" means services rendered or
51 performed by a person authorized by law to practice a recognized
52 profession, whose practice is regulated by law, and the
53 performance of which services requires knowledge of an advanced
54 type in a field of knowledge acquired by a prolonged formal course

1 of specialized instruction and study as distinguished from general
2 academic instruction or apprenticeship and training. Professional
3 services may also mean services rendered in the performance of
4 work that is original and creative in character in a recognized
5 field of artistic endeavor.

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

10 (8) "Project" means any work, undertaking, program, activity,
11 development, redevelopment, construction or reconstruction of
12 any area or areas.

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

16 (10) "Homemaker--home health services" means at home
17 personal care and home management provided to an individual or
18 members of his family who reside with him, or both, necessitated
19 by the individual's illness or incapacity. "Homemaker--home
20 health services" includes, but is not limited to, the services of a
21 trained homemaker.

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

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

30 (13) "Marketing" means the marketing of designated
31 recyclable materials source separated in a municipality which
32 entails a marketing cost less than the cost of transporting the
33 recyclable materials to solid waste facilities and disposing of the
34 materials as municipal solid waste at the facility utilized by the
35 municipality.

36 (14) "Municipal solid waste" means all residential, commercial
37 and institutional solid waste generated within the boundaries of a
38 municipality.

39 (15) "Distribution" (when used in relation to electricity) means
40 the process of conveying electricity from a contracting unit who
41 is a generator of electricity or a wholesale purchaser of
42 electricity to retail customers or other end users of electricity.

43 (16) "Transmission" (when used in relation to electricity)
44 means the conveyance of electricity from its point of generation
45 to a contracting unit who purchases it on a wholesale basis for
46 resale.

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

51 ¹(18.) "Cooperative marketing" means the joint marketing by
52 two or more contracting units within the same county, or
53 adjacent or proximate counties, of the source separated
54 recyclable materials designated in a district recycling plan

1 required pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13)
2 pursuant to a written cooperative agreement entered into by the
3 participating contracting units thereof.¹

4 (cf: P.L.1995, c.103, s.3)

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

7 5. Exceptions. Any purchase, contract or agreement of the
8 character described in section 4 of P.L.1971, c.198 (C.40A:11-4)
9 may be made, negotiated or awarded by the governing body
10 without public advertising for bids and bidding therefor if:

11 (1) The subject matter thereof consists of:

12 (a) (i) Professional services. The governing body shall in each
13 instance state supporting reasons for its action in the resolution
14 awarding each contract and shall forthwith cause to be printed
15 once, in a newspaper authorized by law to publish its legal
16 advertisements, a brief notice stating the nature, duration,
17 service and amount of the contract, and that the resolution and
18 contract are on file and available for public inspection in the
19 office of the clerk of the county or municipality, or, in the case
20 of a contracting unit created by more than one county or
21 municipality, of the counties or municipalities creating such
22 contracting unit; or (ii) Extraordinary unspecifiable services.
23 The application of this exception shall be construed narrowly in
24 favor of open competitive bidding, where possible, and the
25 Division of Local Government Services is authorized to adopt and
26 promulgate rules and regulations limiting the use of this
27 exception in accordance with the intention herein expressed. The
28 governing body shall in each instance state supporting reasons for
29 its action in the resolution awarding each contract and shall
30 forthwith cause to be printed, in the manner set forth in
31 subsection (1) (a) (i) of this section, a brief notice of the award of
32 such contract;

33 (b) The doing of any work by employees of the contracting unit;

34 (c) The printing of legal briefs, records and appendices to be
35 used in any legal proceeding in which the contracting party may
36 be a party;

37 (d) The furnishing of a tax map or maps for the contracting
38 party;

39 (e) The purchase of perishable foods as a subsistence supply;

40 (f) The supplying of any product or the rendering of any
41 service by a public utility, which is subject to the jurisdiction of
42 the Board of [Regulatory Commissioners] Public Utilities or the
43 [U.S.] Federal Energy Regulatory Commission or its successor, in
44 accordance with tariffs and schedules of charges made, charged
45 or exacted, filed with the board or commission;

46 (g) The acquisition, subject to prior approval of the Attorney
47 General, of special equipment for confidential investigation;

48 (h) The printing of bonds and documents necessary to the
49 issuance and sale thereof by a contracting unit;

50 (i) Equipment repair service if in the nature of an
51 extraordinary unspecifiable service and necessary parts furnished
52 in connection with such service, which acquisition shall be in
53 accordance with the requirements for extraordinary unspecifiable
54 services;

- 1 (j) The publishing of legal notices in newspapers as required by
2 law;
- 3 (k) The acquisition of artifacts or other items of unique
4 intrinsic, artistic or historical character;
- 5 (l) Election expenses;
- 6 (m) Insurance, including the purchase of insurance coverage
7 and consultant services, which exception shall be in accordance
8 with the requirements for extraordinary unspecifiable services;
- 9 (n) The doing of any work by handicapped persons employed by
10 a sheltered workshop;
- 11 (o) The provision of any service or the furnishing of materials
12 including those of a commercial nature, attendant upon the
13 operation of a restaurant by any nonprofit, duly incorporated,
14 historical society at or on any historical preservation site;
- 15 (p) Homemaker--home health services performed by
16 voluntary, nonprofit agencies;
- 17 (q) The purchase of materials and services for a law library
18 established pursuant to R.S.40:33-14, including books, periodicals,
19 newspapers, documents, pamphlets, photographs, reproductions,
20 microforms, pictorial or graphic works, copyright and patent
21 materials, maps, charts, globes, sound recordings, slides, films,
22 filmscripts, video and magnetic tapes, and other audiovisual,
23 printed, or published material of a similar nature; necessary
24 binding or rebinding of law library materials; and specialized
25 library services;
- 26 (r) On-site inspections undertaken by private agencies
27 pursuant to the "State Uniform Construction Code Act,"
28 P.L.1975, c.217 (C.52:27D-119 et seq.) and the regulations
29 adopted pursuant thereto;
- 30 (s) The marketing of recyclable materials recovered through a
31 recycling program, or the marketing of any product intentionally
32 produced or derived from solid waste received at a resource
33 recovery facility or recovered through a resource recovery
34 program, including, but not limited to, refuse-derived fuel,
35 compost materials, methane gas, and other similar products;
- 36 (t) Emergency medical services provided by a hospital to the
37 residents of a municipality or county, provided that: (a) such
38 exception be allowed only after the governing body determines
39 that the emergency services are available only from one provider;
40 and (b) if the contract is awarded without advertising for bids or
41 bidding the governing body shall in each instance state supporting
42 reasons for its action in a resolution awarding the contract and
43 cause to be printed once in a newspaper authorized by law to
44 publish its legal advertisements a brief notice stating the nature,
45 duration, service, and amount of the contract; and (c) the
46 contract shall be kept on file for public inspection in the office of
47 the clerk of the municipality;
- 48 (u) Contracting unit towing and storage contracts, provided
49 that all such contracts shall be pursuant to reasonable
50 non-exclusionary and non-discriminatory terms and conditions,
51 which may include the provision of such services on a rotating
52 basis, at the rates and charges set by the municipality pursuant to
53 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit
54 towing and storage contracts for services to be provided at rates

1 and charges other than those established pursuant to the terms of
2 this paragraph shall only be awarded to the lowest responsible
3 bidder in accordance with the provision of the "Local Public
4 Contracts Law" and without regard for the value of the contract
5 therefor. Each of the aforementioned means of contracting shall
6 be subject to any regulations adopted by the Commissioner of
7 Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

8 (v) The purchase of steam or electricity from, or the rendering
9 of services directly related to the purchase of such steam or
10 electricity from a qualifying small power production facility or a
11 qualifying cogeneration facility as defined pursuant to 16
12 U.S.C. §796;

13 (w) The purchase of electricity or administrative or
14 dispatching services directly related to the transmission of such
15 purchased electricity by a contracting unit engaged in the
16 generation of electricity;

17 (x) The printing of municipal ordinances or other services
18 necessarily incurred in connection with the revision and
19 codification of municipal ordinances; [or]

20 (y) An agreement for the purchase of an equitable interest in a
21 water supply facility or for the provision of water supply services
22 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2),
23 or an agreement entered into pursuant to P.L.1989, c.109
24 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into
25 no later than six months after the effective date of [this act]
26 P.L.1993, c.381: ¹[or]¹

27 (z) ¹A contract for the provision of water supply services
28 entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

29 (aa) The cooperative marketing of recyclable materials
30 recovered through a recycling program; or

31 (bb)¹ A contract for the provision of wastewater treatment
32 services entered into pursuant to P.L. c. (C.) (now before
33 the Legislature as this bill).

34 (2) It is to be made or entered into with the United States of
35 America, the State of New Jersey, county or municipality or any
36 board, body, officer, agency or authority thereof and any other
37 state or subdivision thereof.

38 (3) The contracting agent has advertised for bids pursuant to
39 section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and

40 (a) has received no bids on both occasions in response to its
41 advertisement, or (b) the governing body has rejected such bids
42 on two occasions because the contracting agent has determined
43 that they are not reasonable as to price, on the basis of cost
44 estimates prepared for or by the contracting agent prior to the
45 advertising therefor, or have not been independently arrived at in
46 open competition, or (c) on one occasion no bids were received
47 pursuant to (a) and on one occasion all bids were rejected
48 pursuant to (b), in whatever sequence; any such contract or
49 agreement may then be negotiated and may be awarded upon
50 adoption of a resolution by a two-thirds affirmative vote of the
51 authorized membership of the governing body authorizing such
52 contract or agreement; provided, however, that:

53 (i) A reasonable effort is first made by the contracting agent
54 to determine that the same or equivalent materials or supplies, at

1 a cost which is lower than the negotiated price, are not available
2 from an agency or authority of the United States, the State of
3 New Jersey or of the county in which the contracting unit is
4 located, or any municipality in close proximity to the contracting
5 unit;

6 (ii) The terms, conditions, restrictions and specifications set
7 forth in the negotiated contract or agreement are not
8 substantially different from those which were the subject of
9 competitive bidding pursuant to section 4 of [this act] of
10 P.L.1971, c.198 (C.40A:11-4); and

11 (iii) Any minor amendment or modification of any of the
12 terms, conditions, restrictions and specifications, which were the
13 subject of competitive bidding pursuant to section 4 of P.L.1971,
14 c.198 (C.40A:11-4), shall be stated in the resolution awarding
15 such contract or agreement; provided further, however, that if on
16 the second occasion the bids received are rejected as
17 unreasonable as to price, the contracting agent shall notify each
18 responsible bidder submitting bids on the second occasion of its
19 intention to negotiate, and afford each bidder a reasonable
20 opportunity to negotiate, but the governing body shall not award
21 such contract or agreement unless the negotiated price is lower
22 than the lowest rejected bid price submitted on the second
23 occasion. * responsible bidder, is the lowest negotiated price
24 offered by any responsible supplier, and is a reasonable price for
25 such work, materials, supplies or services.

26 Whenever a contracting unit shall determine that a bid was not
27 arrived at independently in open competition pursuant to
28 subsection (3) of this section it shall thereupon notify the county
29 prosecutor of the county in which the contracting unit is located
30 and the Attorney General of the facts upon which its
31 determination is based, and when appropriate, it may institute
32 appropriate proceedings in any State or federal court of
33 competent jurisdiction for a violation of any State or federal
34 antitrust law or laws relating to the unlawful restraint of trade.
35 (cf: P.L.1995, c.103, s.4)

36 12. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
37 read as follows:

38 15. All purchases, contracts or agreements for the performing
39 of work or the furnishing of materials, supplies or services shall
40 be made for a period not to exceed 12 consecutive months,
41 except that contracts or agreements may be entered into for
42 longer periods of time as follows:

43 (1) Supplying of:

44 (a) Fuel for heating purposes, for any term not exceeding in
45 the aggregate, two years;

46 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles
47 or equipment for any term not exceeding in the aggregate, two
48 years;

49 (c) Thermal energy produced by a cogeneration facility, for
50 use for heating or air conditioning or both, for any term not
51 exceeding 40 years, when the contract is approved by the Board
52 of Public Utilities. For the purposes of this paragraph,
53 "cogeneration" means the simultaneous production in one facility
54 of electric power and other forms of useful energy such as

- 1 heating or process steam;
- 2 (2) (Deleted by amendment, P.L.1977, c.53.)
- 3 (3) The collection and disposal of municipal solid waste, the
- 4 collection and disposition of recyclable material, or the disposal
- 5 of sewage sludge, for any term not exceeding in the aggregate,
- 6 five years;
- 7 (4) The collection and recycling of methane gas from a
- 8 sanitary landfill facility, for any term not exceeding 25 years,
- 9 when such contract is in conformance with a district solid waste
- 10 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1
- 11 et seq.), and with the approval of the Division of Local
- 12 Government Services in the Department of Community Affairs
- 13 and the Department of Environmental Protection. The
- 14 contracting unit shall award the contract to the highest
- 15 responsible bidder, notwithstanding that the contract price may
- 16 be in excess of the amount of any necessarily related
- 17 administrative expenses; except that if the contract requires the
- 18 contracting unit to expend funds only, the contracting unit shall
- 19 award the contract to the lowest responsible bidder. The
- 20 approval by the Division of Local Government Services of public
- 21 bidding requirements shall not be required for those contracts
- 22 exempted therefrom pursuant to section 5 of P.L.1971, c.198
- 23 (C.13A:11-5);
- 24 (5) Data processing service, for any term of not more than
- 25 three years;
- 26 (6) Insurance, for any term of not more than three years;
- 27 (7) Leasing or servicing of automobiles, motor vehicles,
- 28 machinery and equipment of every nature and kind, for a period
- 29 not to exceed three years; provided, however, such contracts
- 30 shall be entered into only subject to and in accordance with the
- 31 rules and regulations promulgated by the Director of the Division
- 32 of Local Government Services of the Department of Community
- 33 Affairs;
- 34 (8) The supplying of any product or the rendering of any
- 35 service by a telephone company which is subject to the
- 36 jurisdiction of the Board of Public Utilities for a term not
- 37 exceeding five years;
- 38 (9) Any single project for the construction, reconstruction or
- 39 rehabilitation of any public building, structure or facility, or any
- 40 public works project, including the retention of the services of
- 41 any architect or engineer in connection therewith, for the length
- 42 of time authorized and necessary for the completion of the actual
- 43 construction;
- 44 (10) The providing of food services for any term not exceeding
- 45 three years;
- 46 (11) On-site inspections undertaken by private agencies
- 47 pursuant to the "State Uniform Construction Code Act,"
- 48 P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more
- 49 than three years;
- 50 (12) The performance of work or services or the furnishing of
- 51 materials or supplies for the purpose of conserving energy in
- 52 buildings owned by, or operations conducted by, the contracting
- 53 unit, the entire price of which to be established as a percentage
- 54 of the resultant savings in energy costs, for a term not to exceed

1 10 years; provided, however, that such contracts shall be entered
2 into only subject to and in accordance with rules and regulations
3 promulgated by the Department of Environmental Protection
4 establishing a methodology for computing energy cost savings;

5 (13) The performance of work or services or the furnishing of
6 materials or supplies for the purpose of elevator maintenance for
7 any term not exceeding three years;

8 (14) Leasing or servicing of electronic communications
9 equipment for a period not to exceed five years; provided,
10 however, such contract shall be entered into only subject to and
11 in accordance with the rules and regulations promulgated by the
12 Director of the Division of Local Government Services of the
13 Department of Community Affairs;

14 (15) Leasing of motor vehicles, machinery and other equipment
15 primarily used to fight fires, for a term not to exceed seven
16 years, when the contract includes an option to purchase, subject
17 to and in accordance with rules and regulations promulgated by
18 the Director of the Division of Local Government Services of the
19 Department of Community Affairs;

20 (16) The provision of water supply services or the designing,
21 financing, construction, operation, or maintenance, or any
22 combination thereof, of a water supply facility, or any component
23 part or parts thereof, including a water filtration system, for a
24 period not to exceed 40 years, when the contract for these
25 services is approved by the Division of Local Government
26 Services in the Department of Community Affairs, the Board of
27 Public Utilities, and the Department of Environmental Protection
28 pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those
29 contracts otherwise exempted pursuant to [subsection]
30 subsections (30) ¹(or), ¹(31) ¹, (34) or (35)¹ of this section. For
31 the purposes of this subsection, "water supply services" means
32 any service provided by a water supply facility; "water filtration
33 system" means any equipment, plants, structures, machinery,
34 apparatus, or land, or any combination thereof, acquired, used,
35 constructed, rehabilitated, or operated for the collection,
36 impoundment, storage, improvement, filtration, or other
37 treatment of drinking water for the purposes of purifying and
38 enhancing water quality and insuring its potability prior to the
39 distribution of the drinking water to the general public for human
40 consumption, including plants and works, and other personal
41 property and appurtenances necessary for their use or operation;
42 and "water supply facility" means and refers to the real property
43 and the plants, structures, interconnections between existing
44 water supply facilities, machinery and equipment and other
45 property, real, personal and mixed, acquired, constructed or
46 operated, or to be acquired, constructed or operated, in whole or
47 in part by or on behalf of a political subdivision of the State or
48 any agency thereof, for the purpose of augmenting the natural
49 water resources of the State and making available an increased
50 supply of water for all uses, or of conserving existing water
51 resources, and any and all appurtenances necessary, useful or
52 convenient for the collecting, impounding, storing, improving,
53 treating, filtering, conserving or transmitting of water and for
54 the preservation and protection of these resources and facilities

1 and providing for the conservation and development of future
2 water supply resources;

3 (17) The provision of solid waste disposal services by a
4 resource recovery facility, the furnishing of products of a
5 resource recovery facility, the disposal of the solid waste
6 delivered for disposal which cannot be processed by a resource
7 recovery facility or the waste products resulting from the
8 operation of a resource recovery facility, including hazardous
9 waste and recovered metals and other materials for reuse, or the
10 design, financing, construction, operation or maintenance of a
11 resource recovery facility for a period not to exceed 40 years
12 when the contract is approved by the Division of Local
13 Government Services in the Department of Community Affairs [,
14 the Board of Public Utilities,] and the Department of
15 Environmental Protection; and when the resource recovery
16 facility is in conformance with a district solid waste management
17 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For
18 the purposes of this subsection, "resource recovery facility"
19 means a solid waste facility constructed and operated for the
20 incineration of solid waste for energy production and the
21 recovery of metals and other materials for reuse; or a
22 mechanized composting facility, or any other solid waste facility
23 constructed or operated for the collection, separation, recycling,
24 and recovery of metals, glass, paper, and other materials for
25 reuse or for energy production;

26 (18) The sale of electricity or thermal energy, or both,
27 produced by a resource recovery facility for a period not to
28 exceed 40 years when the contract is approved by the Board of
29 Public Utilities, and when the resource recovery facility is in
30 conformance with a district solid waste management plan
31 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the
32 purposes of this subsection, "resource recovery facility" means a
33 solid waste facility constructed and operated for the incineration
34 of solid waste for energy production and the recovery of metals
35 and other materials for reuse; or a mechanized composting
36 facility, or any other solid waste facility constructed or operated
37 for the collection, separation, recycling, and recovery of metals,
38 glass, paper, and other materials for reuse or for energy
39 production;

40 (19) The provision of wastewater treatment services or the
41 designing, financing, construction, operation, or maintenance, or
42 any combination thereof, of a wastewater treatment system, or
43 any component part or parts thereof, for a period not to exceed
44 40 years, when the contract for these services is approved by the
45 Division of Local Government Services in the Department of
46 Community Affairs and the Department of Environmental
47 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.) , except
48 for those contracts otherwise exempted pursuant to subsection
49 1[(34)] (36)¹ of this section. For the purposes of this subsection,
50 "wastewater treatment services" means any services provided by
51 a wastewater treatment system, and "wastewater treatment
52 system" means equipment, plants, structures, machinery,
53 apparatus, or land, or any combination thereof, acquired, used,
54 constructed, or operated for the storage, collection, reduction,

1 recycling, reclamation, disposal, separation, or other treatment
2 of wastewater or sewage sludge, or for the final disposal of
3 residues resulting from the treatment of wastewater, including,
4 but not limited to, pumping and ventilating stations, facilities,
5 plants and works, connections, outfall sewers, interceptors, trunk
6 lines, and other personal property and appurtenances necessary
7 for their operation;

8 (20) The supplying of materials or services for the purpose of
9 lighting public streets, for a term not to exceed five years,
10 provided that the rates, fares, tariffs or charges for the supplying
11 of electricity for that purpose are approved by the Board of
12 Public Utilities;

13 (21) In the case of a contracting unit which is a county or
14 municipality, the provision of emergency medical services by a
15 hospital to residents of a municipality or county as appropriate
16 for a term not to exceed five years;

17 (22) Towing and storage contracts, awarded pursuant to
18 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
19 (C.40A:11-5) for any term not exceeding three years;

20 (23) Fuel for the purpose of generating electricity for a term
21 not to exceed eight years;

22 (24) The purchase of electricity or administrative or
23 dispatching services related to the transmission of such
24 electricity, from a public utility company subject to the
25 jurisdiction of the Board of Public Utilities, a similar regulatory
26 body of another state, or a federal regulatory agency, or from a
27 qualifying small power producing facility or qualifying
28 cogeneration facility, as defined by 16 U.S.C.§796, by a
29 contracting unit engaged in the generation of electricity for
30 retail sale, as of the date of [this amendatory act] P.L.1991,
31 c.407, for a term not to exceed 40 years;

32 (25) Basic life support services, for a period not to exceed five
33 years. For the purposes of this subsection, "basic life support"
34 means a basic level of prehospital care, which includes but need
35 not be limited to patient stabilization, airway clearance,
36 cardiopulmonary resuscitation, hemorrhage control, initial wound
37 care and fracture stabilization;

38 (26) Claims administration services, for any term not to
39 exceed three years;

40 (27) The provision of transportation services to elderly,
41 disabled or indigent persons for any term of not more than three
42 years. For the purposes of this subsection, "elderly persons"
43 means persons who are 60 years of age or older. "Disabled
44 persons" means persons of any age who, by reason of illness,
45 injury, age, congenital malfunction, or other permanent or
46 temporary incapacity or disability, are unable, without special
47 facilities or special planning or design to utilize mass
48 transportation facilities and services as effectively as persons
49 who are not so affected. "Indigent persons" means persons of any
50 age whose income does not exceed 100 percent of the poverty
51 level, adjusted for family size, established and adjusted under
52 section 673(2) of subtitle B, the "Community Services Block
53 Grant Act," Pub.L.97-35 (11 U.S.C. §9902 (2));

54 (28) The supplying of liquid oxygen or other chemicals, for a

1 term not to exceed five years, when the contract includes the
2 installation of tanks or other storage facilities by the supplier, on
3 or near the premises of the contracting unit;

4 (29) The performance of patient care services by contracted
5 medical staff at county hospitals, correction facilities and long
6 term care facilities, for any term of not more than three years;

7 (30) The acquisition of an equitable interest in a water supply
8 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
9 an agreement entered into pursuant to the "County and Municipal
10 Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is
11 entered into [no more than six months after the effective date of
12 this amendatory act, P.L.1994, c.71] later than January 7, 1995 ,
13 for any term of not more than 40 years;

14 (31) The provision of water supply services or the financing,
15 construction, operation or maintenance or any combination
16 thereof, of a water supply facility or any component part or parts
17 thereof, by a partnership or copartnership established pursuant to
18 a contract authorized under section 2 of P.L.1993, c.381
19 (C.58:28-2) , for a period not to exceed 40 years; [and]

20 (32) Laundry service and the rental, supply and cleaning of
21 uniforms for any term of not more than three years; [and]

22 (33) The supplying of any product or the rendering of any
23 service, including consulting services, by a cemetery management
24 company for the maintenance and preservation of a municipal
25 cemetery operating pursuant to the "New Jersey Cemetery Act,"
26 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years; ¹[and]¹

27 (34) ¹A contract between a public entity and a private firm
28 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision
29 of water supply services may be entered into for any term which,
30 when all optional extension periods are added, may not exceed 40
31 years;

32 (35) An agreement for the purchase of a supply of water from
33 a public utility company subject to the jurisdiction of the Board of
34 Public Utilities in accordance with tariffs and schedules of
35 charges made, charged or exacted or contracts filed with the
36 Board of Public Utilities, for any term of not more than 40 years;
37 and

38 (36)¹ A contract between a public entity and a private firm
39 ¹or public authority¹ pursuant to P.L....., c.... (C.) (now
40 before the Legislature as this bill) for the provision of
41 wastewater treatment services may be entered into for any term
42 of not more than 40 years, including all optional extension periods.

43 All multiyear leases and contracts entered into pursuant to this
44 section, except contracts for the leasing or servicing of
45 equipment supplied by a telephone company which is subject to
46 the jurisdiction of the Board of Public Utilities, contracts
47 involving the supplying of electricity for the purpose of lighting
48 public streets and contracts for thermal energy authorized
49 pursuant to subsection (1) above, construction contracts
50 authorized pursuant to subsection (9) above, contracts and
51 agreements for the provision of work or the supplying of
52 equipment to promote energy conservation authorized pursuant to
53 subsection (12) above. contracts for water supply services or for a
54 water supply facility, or any component part or parts thereof

1 authorized pursuant to [subsection] subsections (16) , ¹[(30)] 34,¹
2 or ¹[(31)] 35¹ above, contracts for resource recovery services or
3 a resource recovery facility authorized pursuant to subsection
4 (17) above, contracts for the sale of energy produced by a
5 resource recovery facility authorized pursuant to subsection (18)
6 above, contracts for wastewater treatment services or for a
7 wastewater treatment system or any component part or parts
8 thereof authorized pursuant to [subsection] subsections (19) or
9 ¹[(34)] 36¹ above, and contracts for the purchase of electricity or
10 administrative or dispatching services related to the transmission
11 of such electricity authorized pursuant to subsection (24) above,
12 shall contain a clause making them subject to the availability and
13 appropriation annually of sufficient funds as may be required to
14 meet the extended obligation, or contain an annual cancellation
15 clause.

16 The Division of Local Government Services shall adopt and
17 promulgate rules and regulations concerning the methods of
18 accounting for all contracts that do not coincide with the fiscal
19 year.

20 (cf: P.L.1995, c.101, s.13)

21 13. This act shall take effect immediately.

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"New Jersey Wastewater Treatment Public-Private Contracting
Act."

SENATE, No. 1888

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Senators BENNETT, KENNY, Ewing, McGreevey and Littell

1 AN ACT concerning contracts between local government units
2 and private firms for the provision of wastewater treatment
3 services, supplementing Title 58 of the Revised Statutes, and
4 amending P.L.1971, c.198.

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

8 1. (New section) Sections 1 through 8 of P.L. ,
9 c. (C.) (now pending before the Legislature as this bill) shall
10 be known and may be cited as the "New Jersey Wastewater
11 Treatment Public-Private Contracting Act."

12 2. (New section) The Legislature finds and declares that
13 protecting the ground and surface water of the State from
14 pollution is vital to the health and general welfare of the citizens
15 of New Jersey; that the construction, rehabilitation, operation,
16 and maintenance of modern and efficient sewer systems and
17 wastewater treatment plants are essential to protecting and
18 improving the State's water quality; that in addition to
19 protecting and improving the State's water quality, adequate
20 wastewater treatment systems are essential to economic growth
21 and development; that many of the wastewater treatment
22 systems in New Jersey must be replaced or upgraded if an
23 inexorable decline in water quality is to be avoided during the
24 coming decades; that the United States Congress in recognition
25 of the crucial role wastewater treatment systems and plants play
26 in maintaining and improving water quality, and with an
27 understanding that the cost of financing and constructing these
28 systems must be borne by local governments and authorities with
29 limited sources of revenues, established the "Clean Water Act," a
30 program to provide local governments with grants for
31 constructing these systems; that during the last several years the
32 amount of federal grant money available to states and local
33 governments for assistance in constructing and improving
34 wastewater treatment systems has sharply diminished; that the
35 current level of federal grant funding is inadequate to meet the
36 cost of upgrading the State's wastewater treatment capacity to
37 comply with State water quality standards; that given this
38 inadequate present level of federal grant funding, alternative
39 methods of financing the construction, operation, and
40 improvement of wastewater treatment systems must be
41 developed and encouraged; that one alternative method of
42 financing necessary wastewater treatment systems available 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 local governments consists of contracting with private sector
2 firms for the financing, construction and operation of these
3 systems; and that for some local government units, contracting
4 for the provision of wastewater treatment services, if done in
5 such a way as to protect the interests of consumers and to
6 conform with environmental standards, will constitute an
7 appropriate method of securing these needed wastewater
8 treatment systems.

9 The Legislature further finds that it is in the public interest
10 and the policy of the State to foster and promote by all
11 reasonable means the long-term operation and maintenance of
12 modern, efficient wastewater treatment systems designed to
13 protect and improve the State's water quality thereby ensuring
14 the health and general welfare of all inhabitants of the State;
15 that while the "New Jersey Wastewater Treatment Privatization
16 Act," P.L.1985, c.72 (C.58:27-1 et seq.), enabled local
17 government units to enter into long term contracts with
18 private-sector firms for the provision of wastewater treatment
19 services, the time consuming procedures and the regulatory
20 framework required therein has dissuaded private firms and local
21 government units from entering into long-term contractual
22 relationships as envisioned by this act; that there is a need for an
23 alternative statutory process which enables local government
24 units to enter with private firms into long-term contracts that
25 protect the rights and interests of residents of the local
26 government unit, but allow the private firms to utilize their
27 expertise, experience and resources to enable the local
28 government unit to comply with existing and more stringent
29 future requirements of the federal Clean Water Act, 33
30 U.S.C. §1251 et seq., the "Water Pollution Control Act,"
31 P.L.1977, c.74 (C.58:10A-1 et seq.) and the "Safe Drinking Water
32 Act," P.L.1977, c.224 (C.58:12A-1 et seq.).

33 The Legislature therefore determines that it is in the public
34 interest to establish a comprehensive procedure designed to
35 authorize local government units to enter into contracts with
36 private firms for the financing, designing, construction,
37 improvement, operation, maintenance, or administration, or any
38 combination thereof, of wastewater treatment systems or for the
39 provision of wastewater treatment services.

40 3. (New section) As used in sections 1 through 8 of P.L. .
41 c. (C.) (now pending before the Legislature as this bill):

42 "Department" means the New Jersey Department of
43 Environmental Protection.

44 "Division" means the Local Finance Board within the Division
45 of Local Government Services in the Department of Community
46 Affairs.

47 "Governing body" means the board of chosen freeholders in the
48 case of the county; the board of chosen freeholders and the
49 county executive, the county supervisor or the county manager,
50 as appropriate, in the case of a county organized pursuant to the
51 provisions of the "Optional County Charter Law," P.L.1972, c.154
52 (C.40:41A-1 et seq.); the commission, council, board or body, by
53 whatever name it may be known, having charge of the finances of
54 the municipality, in the case of a municipality; and the

1 decision-making body of an authority, joint meeting or
2 commission.

3 "Contract" means a long-term written agreement wherein a
4 private firm agrees to provide wastewater treatment services for
5 a public entity and wherein the private firm agrees to provide,
6 during the term of the contract, capital expenditures on behalf of
7 the public entity's wastewater treatment system, which
8 expenditures are set forth in the contract.

9 "Private firm" means any privately or publicly held company
10 qualified to do business in the State of New Jersey that is
11 financially, technically, and administratively capable of providing
12 wastewater treatment services to a public entity under the terms
13 of a contract entered into pursuant to P.L. , c. (C.) (now
14 pending before the Legislature as this bill).

15 "Proposal document" means the document prepared by or on
16 behalf of a public entity describing the wastewater treatment
17 services that the public entity is considering having provided by a
18 private firm pursuant to a contract. The proposal document shall
19 include specific minimum qualifications that a private firm shall
20 meet, as well as the criteria that will be used by a public entity
21 to evaluate a proposal submitted by a private firm.

22 "Public entity" means a county, a municipality, a municipal or
23 county authority or any commission or other political subdivision
24 of the State, or any two or more counties, municipalities,
25 municipal or county utilities authorities, sewerage authorities,
26 joint meetings, or any commission or other political subdivisions
27 of the State, acting jointly, that are authorized by law to
28 construct, rehabilitate, operate or maintain wastewater
29 treatment systems or arrange for the provision of wastewater
30 treatment services.

31 "Wastewater" means residential, commercial, industrial, or
32 agricultural liquid waste, sewage, septage, stormwater runoff, or
33 any combination thereof, or other liquid residue discharged or
34 collected into a sewer system or stormwater runoff system, or
35 directly into surface or ground waters, or any combination
36 thereof.

37 "Wastewater treatment system" means any equipment, plants,
38 structures, machinery, apparatus, or land, or any combination
39 thereof, acquired, used, constructed or operated by, or on behalf
40 of, a public entity for the storage, collection, reduction,
41 recycling, processing, reclamation, disposal, separation, or other
42 treatment of wastewater or sewage sludge, or for the collection
43 or treatment, or both, of stormwater runoff and wastewater, or
44 for the final disposal of residues resulting from the treatment of
45 wastewater, including, but not limited to, pumping and
46 ventilating stations, treatment plants and works, connections,
47 outfall sewers, interceptors, trunk lines, stormwater runoff
48 collection systems, and other personal property and
49 appurtenances necessary for their use or operation.

50 "Wastewater treatment services" means the financing,
51 designing, construction, improvement, operation, maintenance,
52 administration, or any combination thereof, of a wastewater
53 treatment system, which services are provided pursuant to
54 P.L. , c. (C.) (now pending before the Legislature as this
55 bill).

- 1 4. (New section) Notwithstanding the provisions of any other
2 law, rule or regulation to the contrary, a public entity may enter
3 into a contract with a private firm pursuant to P.L. .
4 c. (C.) (now pending before the Legislature as this bill) for
5 the provision of wastewater treatment services.
- 6 5. (New section) a. A public entity shall publish notice of its
7 intent to enter into a contract pursuant to P.L. .
8 c. (C.) (now pending before the Legislature as this bill)
9 in at least one newspaper of general circulation in the jurisdiction
10 or service area that will receive wastewater treatment services
11 under the terms of the contract and one newspaper of broad
12 regional circulation, at least 60 days prior to conducting the
13 public hearing required under section 6 of P.L. . c. (C.)
14 (now pending before the Legislature as this bill). In addition, a
15 public entity that intends to enter into a contract with a private
16 firm for the provision of wastewater treatment services shall
17 notify the department and the division, in writing, of its intent.
- 18 b. The public notice required under subsection a. of this
19 section shall describe the type of services desired and provide the
20 name, address and phone number of the person who can provide
21 additional information and a proposal document to an interested
22 party. The notice shall specify a deadline, which shall be not less
23 than 30 days from the date of the publication of the notice for
24 the submission of proposals by private firms to the public entity.
25 The public entity may at any time revise the proposal document
26 and each private firm that received a proposal document shall be
27 provided with the revised proposal document.
- 28 c. The public entity shall conduct a review of the proposals
29 submitted by private firms to determine which proposals meet
30 the minimum qualifications and standards. The review shall be
31 conducted in a manner that avoids disclosure of the contents of a
32 proposal to any private firm submitting a competing proposal.
33 The public entity may conduct discussions with a private firm
34 submitting a qualified proposal for the purpose of clarifying the
35 information submitted in the proposal. The public entity may at
36 any time revise its proposal document after the review of the
37 submitted proposals if it notifies simultaneously, and in writing,
38 each private firm that submitted a proposal of the revision and
39 provides a uniform time within which a firm may submit a revised
40 proposal for review.
- 41 d. A public entity shall select one qualified proposal from
42 among those submitted. The public entity shall negotiate a
43 contract with the private firm that submitted the selected
44 proposal. If the public entity is unable to negotiate a satisfactory
45 contract with the selected private firm, it may select another
46 qualified proposal from among those submitted and proceed to
47 negotiate a contract with the private firm that submitted the
48 proposal. The public entity shall set forth, in writing, the reasons
49 for the selection of the qualified proposal submitted by the
50 private firm with which the public entity has negotiated a
51 proposed contract and shall make this document available to the
52 public along with the proposed contract, upon request, and during
53 the public hearing conducted pursuant to section 6 of P.L. ,
54 c. (C.) (now pending before the Legislature as this bill).

- 1 e. A contract entered into pursuant to P.L. . c. (C.)
2 (now pending before the Legislature as this bill) shall include
3 provisions addressing the following:
- 4 (1) The charges, rates, fees or formulas to be used to
5 determine the charges, rates, or fees to be charged by the public
6 entity for the wastewater treatment services to be provided;
 - 7 (2) The allocation of the risks of financing and constructing
8 planned capital additions or upgrades to existing wastewater
9 treatment systems;
 - 10 (3) The allocation of the risks of operating and maintaining the
11 wastewater treatment system;
 - 12 (4) The allocation of the risks associated with circumstances
13 or occurrences beyond the control of the parties to the contract;
 - 14 (5) The defaulting and termination of the contract;
 - 15 (6) The employment of current employees of the public entity
16 whose positions or employment will be affected by the terms of
17 the contract; and
 - 18 (7) The requirements for the provision of a performance bond
19 by the private firm, if so required by the public entity.
- 20 A contract may contain any other terms and conditions that
21 have been negotiated by the public entity and the private firm.
- 22 f. If a dispute over contract compliance, performance or
23 termination cannot be resolved by the public entity and the
24 private firm pursuant to the procedures set forth in the contract,
25 either party to the contract may file with the Superior Court
26 which has appropriate jurisdiction a request for an order either to
27 terminate the contract based on the reasons stated in the request
28 or for an order for other appropriate relief to the dispute. The
29 court may take such action as it may deem necessary to
30 facilitate the expeditious resolution of the dispute and an
31 expeditious response to the request, including ordering the parties
32 to undertake a dispute resolution or mediation process. The court
33 shall use, as it deems necessary, the services of a financial expert
34 in the area of wastewater treatment service contracts in its
35 analysis of the contract and the issues before it. Within 90 days
36 after the filing of a request, the court shall either grant the
37 request or deny the request. If the request is granted, the court
38 shall order such appropriate relief measures or remedies as it
39 deems appropriate and necessary.
- 40 g. A public entity that has negotiated a contract with a
41 private firm pursuant to P.L. . c. (C.) (now pending
42 before Legislature as this bill) shall obtain the written opinion of
43 bond counsel as to the effect of the contract on the tax exempt
44 status of existing and future financing instruments executed by
45 the public entity given the terms of the contract and the federal
46 laws or regulations concerning this matter.
- 47 h. If a public entity entering into a contract consists of
48 multiple municipalities, a concession fee or other monetary
49 benefit paid by a private firm as a result of the contract shall be
50 paid directly to the municipalities constituting that public
51 entity. Any concession fee or other monetary benefit paid by a
52 private firm to a public entity shall be used for the purpose of
53 reducing or off-setting property taxes.
- 54 6. (New section) a. A public entity that intends to enter into

1 a contract with a private firm for the provision of wastewater
2 treatment services pursuant to P.L. . c. (C.) (now
3 pending before the Legislature as this bill) shall conduct a public
4 hearing on the proposed contract negotiated pursuant to section 5
5 of P.L. . c. (C.) (now pending before the Legislature as
6 this bill). A public entity shall also conduct a public hearing
7 pursuant to this section on revisions to a contract required by
8 subsection b. of section 7 of P.L. . c. (C.) (now pending
9 before the Legislature as this bill) or on substantial amendments
10 to a contract as required by subsection f. of section 7 of P.L. ,
11 c. (C.) (now pending before the Legislature as this bill).

12 b. The public entity shall provide at least 14 days prior notice
13 of the public hearing by publication in at least one newspaper of
14 general circulation in the jurisdiction or service area of the
15 public entity to be served under the terms of the proposed
16 contract. The publication shall include notice of the date, time
17 and place of the public hearing, notice of the place at which
18 copies of the proposed contract will be available for public
19 inspection, and the times during which such inspection will be
20 permitted. The notice shall specifically state whether any
21 concession fee or other monetary benefit will be paid by a private
22 firm to the public entity as a result of the contract for
23 wastewater treatment services, the monetary amount of the fee
24 or benefit and the potential impact of the fee or benefit on the
25 charges, rates or fees which will be paid for wastewater
26 treatment services by users in the jurisdiction or service area
27 that will receive the wastewater treatment services pursuant to
28 the terms of the contract.

29 c. At the public hearing, the public entity shall explain the
30 terms and conditions of the proposed contract and shall answer
31 questions raised by prospective consumers and other interested
32 parties. The public entity shall explain during the hearing the
33 charges, rates or fees that will or may be charged by the public
34 entity for wastewater treatment services as a result of the
35 proposed contract. In addition, the entity shall explain any
36 concession fee or other monetary benefit to be paid by a private
37 firm to the public entity as a result of the contract for
38 wastewater treatment services, the monetary amount of the fee
39 or benefit and the potential impact of the fee or benefit on the
40 charges, rates or fees which will be paid for wastewater
41 treatment services by users in the jurisdiction or service area
42 that will receive the wastewater treatment services pursuant to
43 the terms of the contract.

44 d. The public entity shall produce a verbatim record of the
45 public hearing. The record of the public hearing shall be kept
46 open for a period of seven days following the conclusion of the
47 hearing, during which time interested parties may submit written
48 statements to be included in the hearing report. The public
49 entity shall prepare a written hearing report, which shall include
50 a copy of the proposed contract, a copy of the statement setting
51 forth the public entity's reasons for the selection of the proposal
52 submitted by the private firm with which the entity has
53 negotiated a contract, the verbatim record of the public hearing,
54 written statements submitted by interested parties, a copy of the

1 bond counsel's written opinion required pursuant to subsection g.
2 of section 5 of P.L. . c. (C.) (now pending before the
3 Legislature as this bill) and a statement prepared by the public
4 entity summarizing the major issues raised at the public hearing
5 and the public entity's specific responses to those issues. The
6 public entity shall make copies of the hearing report available to
7 interested parties, upon request, at a cost not to exceed the
8 actual cost of printing or copying.

9 e. The governing body of a public entity that has negotiated
10 the proposed contract shall adopt an ordinance or a resolution, as
11 appropriate, or parallel ordinances or resolutions, as the case may
12 be, if there is more than one governing body involved, approving
13 the proposed contract. The ordinance or resolution may be
14 introduced at the first meeting of the governing body of the
15 public entity held after the public hearing on the proposed
16 contract, and shall acknowledge that the agreement requires
17 approval pursuant to the provisions of section 7 of P.L. .
18 c. (C.) (now pending before the Legislature as this bill).

19 f. Within 30 days after the close of a public hearing on a
20 proposed contract held pursuant to subsection a. of this section
21 and upon at least 10 days prior written notice, the public entity
22 shall submit an application for approval to the division and shall
23 submit the hearing report to the department for review pursuant
24 to the provisions of section 7 of P.L. . c. (C.) (now
25 pending before the Legislature as this bill). The division shall
26 specify the form of the application to be submitted.

27 7. (New section) a. Within 60 days of receipt of the
28 application, the division shall approve, or conditionally approve,
29 an application submitted by a public entity pursuant to subsection
30 f. of section 6 of P.L. . c. (C.) (now pending before the
31 Legislature as this bill). Within 60 days of receipt of the hearing
32 report, the department shall provide any comments on the
33 hearing report it deems appropriate to the division and the public
34 entity. If the division fails to approve or conditionally approves
35 the application within 60 days after receipt, the application shall
36 be deemed approved, unless the public entity has agreed to an
37 extension of the period.

38 b. If the division conditionally approves the application, the
39 division shall state in writing the revision to the proposed
40 contract that is necessary in order for it to be approved. If the
41 division determines that the required revision is substantial, the
42 public entity shall hold a public hearing on the revision and
43 adhere to the provisions of section 6 of P.L. . c. (C.)
44 (now pending before the Legislature as this bill) in so doing. A
45 substantial revision shall be a change that results in an increase
46 in the charges, rates or fees of the private firm or that
47 materially changes other terms and conditions of the contract.
48 The proposed revision to the contract shall be submitted to the
49 division and the department 15 days prior to the date of the
50 public hearing.

51 If the division determines that the required revision in the
52 conditional approval is not substantial, the public entity shall
53 submit the proposed revision to the contract to the division for
54 approval and to the department for review. The revision shall be

- 1 approved if found to be consistent with the conditions set forth in
2 the conditional approval, or disapproved with a written
3 explanation as to why the revision is not consistent, within 15
4 days after the next public meeting of the division.
- 5 c. In its review of a contract, the division shall apply the
6 following criteria in determining whether to approve the contract:
- 7 (1) The terms of the proposed contract do not materially
8 impair the ability of the public entity to punctually pay principal
9 and interest due on its outstanding indebtedness and to supply
10 other essential public improvements and services;
- 11 (2) A concession fee or other monetary benefit paid by a
12 private firm as a result of the contract is paid directly to the
13 municipalities constituting that public entity, if a public entity
14 consisting of multiple municipalities has entered into a contract.
15 Any concession fee or other monetary benefit paid by a private
16 firm to a public entity is used for the purpose of reducing or
17 off-setting property taxes; and
- 18 (3) The contract contains the provisions required by paragraphs
19 (3), (4), (5) and (7) of subsection e. of section 5 of P.L. .
20 c. (C.) (now pending before the Legislature as this bill).
- 21 The division shall also review and specifically approve any
22 contract provision pursuant to which a public entity will or may
23 execute a financing instrument for the purposes set forth in the
24 contract.
- 25 d. The division may provide the public entity with any
26 non-binding comments or advice during or after the review of the
27 application as the division deems appropriate.
- 28 e. The division shall assess and the applicant shall pay a fee
29 equal to the cost incurred by the division for an analysis of an
30 application by an independent person who has expertise in the
31 area of wastewater treatment services if during the review of an
32 application the division determines that such an analysis is
33 required and a person with the required expertise is not readily
34 available from within any executive department of the State
35 government.
- 36 f. If the public entity and private firm would like to amend a
37 contract after approval of an application by the division, the
38 public entity shall submit proposed amendments to the division
39 for approval and to the department for review. At the next
40 public meeting of the division after receipt of proposed
41 amendments, the division shall determine whether the proposed
42 amendments are substantial. If the amendments are substantial
43 in nature as determined by the division, the public entity shall
44 conduct a hearing pursuant to section 6 of P.L. . c. (C.)
45 (now pending before the Legislature as this bill). Within 60 days
46 of the receipt of proposed amendments that are not determined
47 to be substantial, or within 60 days of the receipt of an
48 application for approval of proposed amendments that are
49 determined to be substantial, the division shall approve or
50 conditionally approve the amendments in accordance with the
51 applicable procedures established for approval of an original
52 contract pursuant to section 7 of P.L. . c. (C.) (now
53 pending before the Legislature as this bill).
- 54 8. (New section) In order to pay its part of the cost of the

1 wastewater treatment system. a public entity may issue bonds in
2 accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. If
3 a public entity enters into a financing instrument the proceeds of
4 which are used by the private firm for a capital expenditure for
5 the benefit of a wastewater treatment system, the expenditure of
6 the funds provided by the public entity shall be in compliance
7 with applicable public contracting statutes.

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

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

12 (1) "Contracting unit" means:

13 (a) Any county; or

14 (b) Any municipality; or

15 (c) Any board, commission, committee, authority or agency,
16 which is not a State board, commission, committee, authority or
17 agency, and which has administrative jurisdiction over any
18 district other than a school district, project, or facility, included
19 or operating in whole or in part, within the territorial boundaries
20 of any county or municipality which exercises functions which are
21 appropriate for the exercise by one or more units of local
22 government, and which has statutory power to make purchases
23 and enter into contracts or agreements for the performance of
24 any work or the furnishing or hiring of any materials or supplies
25 usually required, the cost or contract price of which is to be paid
26 with or out of public funds.

27 The term shall not include a private firm that has entered into
28 a contract with a public entity for the provision of wastewater
29 treatment services pursuant to P.L. , c. (C.) (now
30 pending before the Legislature as this bill).

31 (2) "Governing body" means:

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

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

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

40 (3) "Contracting agent" means the governing body of a
41 contracting unit, or any board, commission, committee, officer,
42 department, branch or agency which has the power to prepare the
43 advertisements, to advertise for and receive bids and, as
44 permitted by this act, to make awards for the contracting unit in
45 connection with purchases, contracts or agreements.

46 (4) "Purchase" is a transaction, for a valuable consideration,
47 creating or acquiring an interest in goods, services and property,
48 except real property or any interest therein.

49 (5) "Materials" includes goods and property subject to chapter
50 2 of Title 12A of the New Jersey Statutes, apparatus, or any
51 other tangible thing, except real property or any interest therein.

52 (6) "Professional services" means services rendered or
53 performed by a person authorized by law to practice a recognized
54 profession, whose practice is regulated by law, and the

1 performance of which services requires knowledge of an advanced
2 type in a field of learning acquired by a prolonged formal course
3 of specialized instruction and study as distinguished from general
4 academic instruction or apprenticeship and training. Professional
5 services may also mean services rendered in the performance of
6 work that is original and creative in character in a recognized
7 field of artistic endeavor.

8 (7) "Extraordinary unspecifiable services" means services
9 which are specialized and qualitative in nature requiring
10 expertise, extensive training and proven reputation in the field of
11 endeavor.

12 (8) "Project" means any work, undertaking, program, activity,
13 development, redevelopment, construction or reconstruction of
14 any area or areas.

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

18 (10) "Homemaker--home health services" means at home
19 personal care and home management provided to an individual or
20 members of his family who reside with him, or both, necessitated
21 by the individual's illness or incapacity. "Homemaker--home
22 health services" includes, but is not limited to, the services of a
23 trained homemaker.

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

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

32 (13) "Marketing" means the marketing of designated
33 recyclable materials source separated in a municipality which
34 entails a marketing cost less than the cost of transporting the
35 recyclable materials to solid waste facilities and disposing of the
36 materials as municipal solid waste at the facility utilized by the
37 municipality.

38 (14) "Municipal solid waste" means all residential, commercial
39 and institutional solid waste generated within the boundaries of a
40 municipality.

41 (15) "Distribution" (when used in relation to electricity) means
42 the process of conveying electricity from a contracting unit who
43 is a generator of electricity or a wholesale purchaser of
44 electricity to retail customers or other end users of electricity.

45 (16) "Transmission" (when used in relation to electricity)
46 means the conveyance of electricity from its point of generation
47 to a contracting unit who purchases it on a wholesale basis for
48 resale.

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

53 (cf: P.L.1992, c.98, s.1)

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

1 5. Exceptions. Any purchase, contract or agreement of the
2 character described in section 4 of P.L.1971, c.198 (C.40A:11-4)
3 may be made, negotiated or awarded by the governing body
4 without public advertising for bids and bidding therefor if:

5 (1) The subject matter thereof consists of:

6 (a) (i) Professional services. The governing body shall in each
7 instance state supporting reasons for its action in the resolution
8 awarding each contract and shall forthwith cause to be printed
9 once, in a newspaper authorized by law to publish its legal
10 advertisements, a brief notice stating the nature, duration,
11 service and amount of the contract, and that the resolution and
12 contract are on file and available for public inspection in the
13 office of the clerk of the county or municipality, or, in the case
14 of a contracting unit created by more than one county or
15 municipality, of the counties or municipalities creating such
16 contracting unit; or (ii) Extraordinary unspecifiable services.
17 The application of this exception shall be construed narrowly in
18 favor of open competitive bidding, where possible, and the
19 Division of Local Government Services is authorized to adopt and
20 promulgate rules and regulations limiting the use of this
21 exception in accordance with the intention herein expressed. The
22 governing body shall in each instance state supporting reasons for
23 its action in the resolution awarding each contract and shall
24 forthwith cause to be printed, in the manner set forth in
25 subsection (1) (a) (i) of this section, a brief notice of the award of
26 such contract;

27 (b) The doing of any work by employees of the contracting unit;

28 (c) The printing of legal briefs, records and appendices to be
29 used in any legal proceeding in which the contracting party may
30 be a party;

31 (d) The furnishing of a tax map or maps for the contracting
32 party;

33 (e) The purchase of perishable foods as a subsistence supply;

34 (f) The supplying of any product or the rendering of any
35 service by a public utility, which is subject to the jurisdiction of
36 the Board of [Regulatory Commissioners] Public Utilities or the
37 U.S. Federal Energy Regulatory Commission or its successor, in
38 accordance with tariffs and schedules of charges made, charged
39 or exacted, filed with the board or commission;

40 (g) The acquisition, subject to prior approval of the Attorney
41 General, of special equipment for confidential investigation;

42 (h) The printing of bonds and documents necessary to the
43 issuance and sale thereof by a contracting unit;

44 (i) Equipment repair service if in the nature of an
45 extraordinary unspecifiable service and necessary parts furnished
46 in connection with such service, which exception shall be in
47 accordance with the requirements for extraordinary unspecifiable
48 services;

49 (j) The publishing of legal notices in newspapers as required by
50 law;

51 (k) The acquisition of artifacts or other items of unique
52 intrinsic, artistic or historical character;

53 (l) Election expenses;

54 (m) Insurance, including the purchase of insurance coverage

- 1 and consultant services, which exception shall be in accordance
2 with the requirements for extraordinary unspecifiable services;
- 3 (n) The doing of any work by handicapped persons employed by
4 a sheltered workshop;
- 5 (o) The provision of any service or the furnishing of materials
6 including those of a commercial nature, attendant upon the
7 operation of a restaurant by any nonprofit, duly incorporated,
8 historical society at or on any historical preservation site;
- 9 (p) Homemaker--home health services performed by
10 voluntary, nonprofit agencies;
- 11 (q) The purchase of materials and services for a law library
12 established pursuant to R.S.40:33-14, including books, periodicals,
13 newspapers, documents, pamphlets, photographs, reproductions,
14 microforms, pictorial or graphic works, copyright and patent
15 materials, maps, charts, globes, sound recordings, slides, films,
16 filmstrips, video and magnetic tapes, and other audiovisual,
17 printed, or published material of a similar nature; necessary
18 binding or rebinding of law library materials; and specialized
19 library services;
- 20 (r) On-site inspections undertaken by private agencies
21 pursuant to the "State Uniform Construction Code Act,"
22 P.L.1975, c.217 (C.52:27D-119 et seq.) and the regulations
23 adopted pursuant thereto;
- 24 (s) The marketing of recyclable materials recovered through a
25 recycling program, or the marketing of any product intentionally
26 produced or derived from solid waste received at a resource
27 recovery facility or recovered through a resource recovery
28 program, including, but not limited to, refuse-derived fuel,
29 compost materials, methane gas, and other similar products;
- 30 (t) Emergency medical services provided by a hospital to the
31 residents of a municipality or county, provided that: (a) such
32 exception be allowed only after the governing body determines
33 that the emergency services are available only from one provider;
34 and (b) if the contract is awarded without advertising for bids or
35 bidding the governing body shall in each instance state supporting
36 reasons for its action in a resolution awarding the contract and
37 cause to be printed once in a newspaper authorized by law to
38 publish its legal advertisements a brief notice stating the nature,
39 duration, service, and amount of the contract; and (c) the
40 contract shall be kept on file for public inspection in the office of
41 the clerk of the municipality;
- 42 (u) Contracting unit towing and storage contracts, provided
43 that all such contracts shall be pursuant to reasonable
44 non-exclusionary and non-discriminatory terms and conditions,
45 which may include the provision of such services on a rotating
46 basis, at the rates and charges set by the municipality pursuant to
47 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit
48 towing and storage contracts for services to be provided at rates
49 and charges other than those established pursuant to the terms of
50 this paragraph shall only be awarded to the lowest responsible
51 bidder in accordance with the provision of the "Local Public
52 Contracts Law" and without regard for the value of the contract
53 therefor. Each of the aforementioned means of contracting shall
54 be subject to any regulations adopted by the Commissioner of

- 1 Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);
- 2 (v) The purchase of steam or electricity from, or the rendering
3 of services directly related to the purchase of such steam or
4 electricity from a qualifying small power production facility or a
5 qualifying cogeneration facility as defined pursuant to 16
6 U.S.C. §796;
- 7 (w) The purchase of electricity or administrative or
8 dispatching services directly related to the transmission of such
9 purchased electricity by a contracting unit engaged in the
10 generation of electricity;
- 11 (x) The printing of municipal ordinances or other services
12 necessarily incurred in connection with the revision and
13 codification of municipal ordinances; [or]
- 14 (y) An agreement for the purchase of an equitable interest in a
15 water supply facility or for the provision of water supply services
16 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2),
17 or an agreement entered into pursuant to P.L.1989, c.109
18 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into
19 no later than six months after the effective date of [this act]
20 P.L.1993, c.381; or
- 21 (z) A contract for the provision of wastewater treatment
22 services entered into pursuant to P.L. c. (C.) (now
23 pending before the Legislature as this bill).
- 24 (2) It is to be made or entered into with the United States of
25 America, the State of New Jersey, county or municipality or any
26 board, body, officer, agency or authority thereof and any other
27 state or subdivision thereof.
- 28 (3) The contracting agent has advertised for bids pursuant to
29 section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and
30 (a) has received no bids on both occasions in response to its
31 advertisement, or (b) the governing body has rejected such bids
32 on two occasions because the contracting agent has determined
33 that they are not reasonable as to price, on the basis of cost
34 estimates prepared for or by the contracting agent prior to the
35 advertising therefor, or have not been independently arrived at in
36 open competition, or (c) on one occasion no bids were received
37 pursuant to (a) and on one occasion all bids were rejected
38 pursuant to (b), in whatever sequence; any such contract or
39 agreement may then be negotiated and may be awarded upon
40 adoption of a resolution by a two-thirds affirmative vote of the
41 authorized membership of the governing body authorizing such
42 contract or agreement; provided, however, that:
- 43 (i) A reasonable effort is first made by the contracting agent
44 to determine that the same or equivalent materials or supplies, at
45 a cost which is lower than the negotiated price, are not available
46 from an agency or authority of the United States, the State of
47 New Jersey or of the county in which the contracting unit is
48 located, or any municipality in close proximity to the contracting
49 unit;
- 50 (ii) The terms, conditions, restrictions and specifications set
51 forth in the negotiated contract or agreement are not
52 substantially different from those which were the subject of
53 competitive bidding pursuant to section 4 of [this act] of
54 P.L.1971, c.198 (C.40A:11-4); and

1 (iii) Any minor amendment or modification of any of the
2 terms, conditions, restrictions and specifications, which were the
3 subject of competitive bidding pursuant to section 4 of P.L.1971,
4 c.198 (C.40A:11-4), shall be stated in the resolution awarding
5 such contract or agreement; provided further, however, that if on
6 the second occasion the bids received are rejected as
7 unreasonable as to price, the contracting agent shall notify each
8 responsible bidder submitting bids on the second occasion of its
9 intention to negotiate, and afford each bidder a reasonable
10 opportunity to negotiate, but the governing body shall not award
11 such contract or agreement unless the negotiated price is lower
12 than the lowest rejected bid price submitted on the second
13 occasion by a responsible bidder, is the lowest negotiated price
14 offered by any responsible supplier, and is a reasonable price for
15 such work, materials, supplies or services.

16 Whenever a contracting unit shall determine that a bid was not
17 arrived at independently in open competition pursuant to
18 subsection (3) of this section it shall thereupon notify the county
19 prosecutor of the county in which the contracting unit is located
20 and the Attorney General of the facts upon which its
21 determination is based, and when appropriate, it may institute
22 appropriate proceedings in any State or federal court of
23 competent jurisdiction for a violation of any State or federal
24 antitrust law or laws relating to the unlawful restraint of trade.

25 (cf: P.L.1993, c.381, s.4)

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

28 15. All purchases, contracts or agreements for the performing
29 of work or the furnishing of materials, supplies or services shall
30 be made for a period not to exceed 12 consecutive months,
31 except that contracts or agreements may be entered into for
32 longer periods of time as follows:

33 (1) Supplying of:

34 (a) Fuel for heating purposes, for any term not exceeding in
35 the aggregate, two years;

36 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles
37 or equipment for any term not exceeding in the aggregate, two
38 years;

39 (c) Thermal energy produced by a cogeneration facility, for
40 use for heating or air conditioning or both, for any term not
41 exceeding 40 years, when the contract is approved by the Board
42 of [Regulatory commissioners] Public Utilities . For the purposes
43 of this paragraph, "cogeneration" means the simultaneous
44 production in one facility of electric power and other forms of
45 useful energy such as heating or process steam;

46 (2) (Deleted by amendment, P.L.1977. c.53.)

47 (3) The collection and disposal of municipal solid waste, the
48 collection and disposition of recyclable material, or the disposal
49 of sewage sludge, for any term not exceeding in the aggregate,
50 five years;

51 (4) The collection and recycling of methane gas from a
52 sanitary landfill facility, for any term not exceeding 25 years,
53 when such contract is in conformance with a solid waste
54 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1

1 et seq.), and with the approval of the Division of Local
2 Government Services in the Department of Community Affairs
3 and the Department of Environmental Protection. The
4 contracting unit shall award the contract to the highest
5 responsible bidder, notwithstanding that the contract price may
6 be in excess of the amount of any necessarily related
7 administrative expenses; except that if the contract requires the
8 contracting unit to expend funds only, the contracting unit shall
9 award the contract to the lowest responsible bidder. The
10 approval by the Division of Local Government Services of public
11 bidding requirements shall not be required for those contracts
12 exempted therefrom pursuant to section 5 of P.L.1971, c.198
13 (C.40A:11-5);

14 (5) Data processing service, for any term of not more than
15 three years;

16 (6) Insurance, for any term of not more than three years;

17 (7) Leasing or servicing of automobiles, motor vehicles,
18 machinery and equipment of every nature and kind, for a period
19 not to exceed three years; provided, however, such contracts
20 shall be entered into only subject to and in accordance with the
21 rules and regulations promulgated by the Director of the Division
22 of Local Government Services of the Department of Community
23 Affairs;

24 (8) The supplying of any product or the rendering of any
25 service by a telephone company which is subject to the
26 jurisdiction of the Board of [Regulatory Commissioners] Public
27 Utilities for a term not exceeding five years;

28 (9) Any single project for the construction, reconstruction or
29 rehabilitation of any public building, structure or facility, or any
30 public works project, including the retention of the services of
31 any architect or engineer in connection therewith, for the length
32 of time authorized and necessary for the completion of the actual
33 construction;

34 (10) The providing of food services for any term not exceeding
35 three years;

36 (11) On-site inspections undertaken by private agencies
37 pursuant to the "State Uniform Construction Code Act,"
38 P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more
39 than three years;

40 (12) The performance of work or services or the furnishing of
41 materials or supplies for the purpose of conserving energy in
42 buildings owned by, or operations conducted by, the contracting
43 unit, the entire price of which to be established as a percentage
44 of the resultant savings in energy costs, for a term not to exceed
45 10 years; provided, however, that such contracts shall be entered
46 into only subject to and in accordance with rules and regulations
47 promulgated by the Department of Environmental Protection
48 establishing a methodology for computing energy cost savings;

49 (13) The performance of work or services or the furnishing of
50 materials or supplies for the purpose of elevator maintenance for
51 any term not exceeding three years;

52 (14) Leasing or servicing of electronic communications
53 equipment for a period not to exceed five years; provided,
54 however, such contract shall be entered into only subject to and

1 in accordance with the rules and regulations promulgated by the
2 Director of the Division of Local Government Services of the
3 Department of Community Affairs;

4 (15) Leasing of motor vehicles, machinery and other equipment
5 primarily used to fight fires, for a term not to exceed seven
6 years, when the contract includes an option to purchase, subject
7 to and in accordance with rules and regulations promulgated by
8 the Director of the Division of Local Government Services of the
9 Department of Community Affairs;

10 (16) The provision of water supply services or the designing,
11 financing, construction, operation, or maintenance, or any
12 combination thereof, of a water supply facility, or any component
13 part or parts thereof, including a water filtration system, for a
14 period not to exceed 40 years, when the contract for these
15 services is approved by the Division of Local Government
16 Services in the Department of Community Affairs, the Board of
17 [Regulatory Commissioners] Public Utilities, and the Department
18 of Environmental Protection pursuant to P.L.1985, c.37
19 (C.58:26-1 et al.), except for those contracts otherwise exempted
20 pursuant to [subsection] subsections (30) or (31) of this section.
21 For the purposes of this subsection, "water supply services"
22 means any service provided by a water supply facility; "water
23 filtration system" means any equipment, plants, structures,
24 machinery, apparatus, or land, or any combination thereof,
25 acquired, used, constructed, rehabilitated, or operated for the
26 collection, impoundment, storage, improvement, filtration, or
27 other treatment of drinking water for the purposes of purifying
28 and enhancing water quality and insuring its potability prior to
29 the distribution of the drinking water to the general public for
30 human consumption, including plants and works, and other
31 personal property and appurtenances necessary for their use or
32 operation; and "water supply facility" means and refers to the
33 real property and the plants, structures, interconnections
34 between existing water supply facilities, machinery and
35 equipment and other property, real, personal and mixed, acquired,
36 constructed or operated, or to be acquired, constructed or
37 operated, in whole or in part by or on behalf of a political
38 subdivision of the State or any agency thereof, for the purpose of
39 augmenting the natural water resources of the State and making
40 available an increased supply of water for all uses, or of
41 conserving existing water resources, and any and all
42 appurtenances necessary, useful or convenient for the collecting,
43 impounding, storing, improving, treating, filtering, conserving or
44 transmitting of water and for the preservation and protection of
45 these resources and facilities and providing for the conservation
46 and development of future water supply resources;

47 (17) The provision of solid waste disposal services by a
48 resource recovery facility, the furnishing of products of a
49 resource recovery facility, the disposal of the solid waste
50 delivered for disposal which cannot be processed by a resource
51 recovery facility or the waste products resulting from the
52 operation of a resource recovery facility, including hazardous
53 waste and recovered metals and other materials for reuse, or the
54 design, financing, construction, operation or maintenance of a

1 resource recovery facility for a period not to exceed 40 years
2 when the contract is approved by the Division of Local
3 Government Services in the Department of Community Affairs[,
4 the Board of Regulatory Commissioners.] and the Department of
5 Environmental Protection; and when the resource recovery
6 facility is in conformance with a district solid waste management
7 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For
8 the purposes of this subsection, "resource recovery facility"
9 means a solid waste facility constructed and operated for the
10 incineration of solid waste for energy production and the
11 recovery of metals and other materials for reuse; or a
12 mechanized composting facility, or any other [solid waste]
13 facility constructed or operated for the collection, separation,
14 recycling, and recovery of metals, glass, paper, and other
15 materials for reuse or for energy production;

16 (18) The sale of electricity or thermal energy, or both,
17 produced by a resource recovery facility for a period not to
18 exceed 40 years when the contract is approved by the Board of
19 [Regulatory Commissioners] Public Utilities, and when the
20 resource recovery facility is in conformance with a district solid
21 waste management plan approved pursuant to P.L.1970, c.39
22 (C.13:1E-1 et seq.). For the purposes of this subsection,
23 "resource recovery facility" means a solid waste facility
24 constructed and operated for the incineration of solid waste for
25 energy production and the recovery of metals and other materials
26 for reuse; or a mechanized composting facility, or any other
27 [solid waste] facility constructed or operated for the collection,
28 separation, recycling, and recovery of metals, glass, paper, and
29 other materials for reuse or for energy production;

30 (19) The provision of wastewater treatment services or the
31 designing, financing, construction, operation, or maintenance, or
32 any combination thereof, of a wastewater treatment system, or
33 any component part or parts thereof, for a period not to exceed
34 40 years, when the contract for these services is approved by the
35 Division of Local Government Services in the Department of
36 Community Affairs and the Department of Environmental
37 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except
38 for those contracts otherwise exempted pursuant to subsection
39 (33) of this section. For the purposes of this subsection,
40 "wastewater treatment services" means any services provided by
41 a wastewater treatment system, and "wastewater treatment
42 system" means equipment, plants, structures, machinery,
43 apparatus, or land, or any combination thereof, acquired, used,
44 constructed, or operated for the storage, collection, reduction,
45 recycling, reclamation, disposal, separation, or other treatment
46 of wastewater or sewage sludge, or for the final disposal of
47 residues resulting from the treatment of wastewater, including,
48 but not limited to, pumping and ventilating stations, facilities,
49 plants and works, connections, outfall sewers, interceptors, trunk
50 lines, and other personal property and appurtenances necessary
51 for their operation;

52 (20) The supplying of materials or services for the purpose of
53 lighting public streets, for a term not to exceed five years,
54 provided that the rates, fares, tariffs or charges for the supplying

- 1 of electricity for that purpose are approved by the Board of
2 [Regulatory Commissioners] Public Utilities;
- 3 (21) In the case of a contracting unit which is a county or
4 municipality, the provision of emergency medical services by a
5 hospital to residents of a municipality or county as appropriate
6 for a term not to exceed five years;
- 7 (22) Towing and storage contracts, awarded pursuant to
8 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
9 (C.40A:11-5) for any term not exceeding three years;
- 10 (23) Fuel for the purpose of generating electricity for a term
11 not to exceed eight years;
- 12 (24) The purchase of electricity or administrative or
13 dispatching services related to the transmission of such
14 electricity, from a public utility company subject to the
15 jurisdiction of the Board of [Regulatory Commissioners] Public
16 Utilities, a similar regulatory body of another state, or a federal
17 regulatory agency, or from a qualifying small power producing
18 facility or qualifying cogeneration facility, as defined by 16
19 U.S.C.§796, by a contracting unit engaged in the generation of
20 electricity for retail sale, as of the date of [this amendatory act]
21 P.L.1991, c.407, for a term not to exceed 40 years;
- 22 (25) Basic life support services, for a period not to exceed five
23 years. For the purposes of this subsection, "basic life support"
24 means a basic level of prehospital care, which includes but need
25 not be limited to patient stabilization, airway clearance,
26 cardiopulmonary resuscitation, hemorrhage control, initial wound
27 care and fracture stabilization;
- 28 (26) Claims administration services, for any term not to
29 exceed three years;
- 30 (27) The provision of transportation services to elderly,
31 disabled or indigent persons for any term of not more than three
32 years. For the purposes of this subsection, "elderly persons"
33 means persons who are 60 years of age or older. "Disabled
34 persons" means persons of any age who, by reason of illness,
35 injury, age, congenital malfunction, or other permanent or
36 temporary incapacity or disability, are unable, without special
37 facilities or special planning or design to utilize mass
38 transportation facilities and services as effectively as persons
39 who are not so affected. "Indigent persons" means persons of any
40 age whose income does not exceed 100 percent of the poverty
41 level, adjusted for family size, established and adjusted under
42 section 673(2) of subtitle B, the "Community Services Block
43 Grant Act," Pub.L.97-35 (42 U.S.C.§9902 (2));
- 44 (28) The supplying of liquid oxygen or other chemicals, for a
45 term not to exceed five years, when the contract includes the
46 installation of tanks or other storage facilities by the supplier, on
47 or near the premises of the contracting unit;
- 48 (29) The performance of patient care services by contracted
49 medical staff at county hospitals, correction facilities and long
50 term care facilities, for any term of not more than three years;
- 51 (30) The acquisition of an equitable interest in a water supply
52 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
53 an agreement entered into pursuant to the "County and Municipal
54 Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is

1 entered into no [more than six months after the effective date of
2 this amendatory act, P.L.1994, c.71] later than January 7, 1995,
3 for any term of not more than forty years;

4 (31) The provision of water supply services or the financing,
5 construction, operation or maintenance or any combination
6 thereof, of a water supply facility or any component part or parts
7 thereof, by a partnership or copartnership established pursuant to
8 a contract authorized under section 2 of P.L.1993, c.381
9 (C.58:28-2), for a period not to exceed 40 years; [and]

10 (32) Laundry service and the rental, supply and cleaning of
11 uniforms for any term of not more than three years; and

12 (33) A contract between a public entity and a private firm
13 pursuant to P.L. . c. (C.) (now pending before the
14 Legislature as this bill) for the provision of wastewater treatment
15 services may be entered into for any term which, when all
16 optional extension periods are added, may not exceed 40 years.

17 All multiyear leases and contracts entered into pursuant to this
18 section, except contracts for the leasing or servicing of
19 equipment supplied by a telephone company which is subject to
20 the jurisdiction of the Board of [Regulatory Commissioners]
21 Public Utilities, contracts involving the supplying of electricity
22 for the purpose of lighting public streets and contracts for
23 thermal energy authorized pursuant to subsection (1) above,
24 construction contracts authorized pursuant to subsection (9)
25 above, contracts and agreements for the provision of work or the
26 supplying of equipment to promote energy conservation
27 authorized pursuant to subsection (12) above, contracts for water
28 supply services or for a water supply facility, or any component
29 part or parts thereof authorized pursuant to [subsection]
30 subsections (16), (30) or (31) above, contracts for resource
31 recovery services or a resource recovery facility authorized
32 pursuant to subsection (17) above, contracts for the sale of
33 energy produced by a resource recovery facility authorized
34 pursuant to subsection (18) above, contracts for wastewater
35 treatment services or for a wastewater treatment system or any
36 component part or parts thereof authorized pursuant to
37 [subsection] subsections (19) or (33) above, and contracts for the
38 purchase of electricity or administrative or dispatching services
39 related to the transmission of such electricity authorized
40 pursuant to subsection (24) above, shall contain a clause making
41 them subject to the availability and appropriation annually of
42 sufficient funds as may be required to meet the extended
43 obligation, or contain an annual cancellation clause.

44 The Division of Local Government Services shall adopt and
45 promulgate rules and regulations concerning the methods of
46 accounting for all contracts that do not coincide with the fiscal
47 year.

48 (cf: P.L.1995, c.3, s.1)

49 12. This act shall take effect immediately.

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52 *SPONSORS'* STATEMENT

53

54 This bill would authorize various public entities to enter into

1 contracts with private firms for the provision of wastewater
2 treatment services. "Wastewater treatment services" are defined
3 as the financing, designing, construction, improvement,
4 operation, maintenance, administration, or any combination
5 thereof, of a wastewater treatment system.

6 A private firm may be any publicly or privately held company
7 qualified to do business in the State and capable of financing,
8 planning, designing, constructing, improving, operating or
9 maintaining a wastewater treatment system. The contract would
10 be a long-term agreement wherein a private firm agrees to
11 provide wastewater treatment services for a public entity and
12 wherein the private firm agrees to provide, during the term of
13 the contract, capital expenditures on behalf of the public entity's
14 wastewater treatment system, which expenditures are set forth
15 in the contract.

16 The bill details the procedures the public entity must follow for
17 the public notice of its intent to enter into a contract with a
18 private firm; the review of proposals received from private firms;
19 the negotiation of the contract and its terms; and the public
20 hearing the public entity must hold to explain the terms of the
21 proposed contract and answer questions raised by members of the
22 public.

23 The Local Finance Board of the Division of Local Government
24 Services in the Department of Community Affairs and the
25 Department of Environmental Protection must review the
26 proposed contract. The Local Finance Board of the Division of
27 Local Government Services, under prescribed criteria, must
28 approve the agreement before it is executed.

29 In order to pay its part of the cost of a wastewater treatment
30 system being constructed or upgraded under the terms of a
31 contract, a public entity may issue bonds in accordance with the
32 "Local Bond Law," N.J.S.40A:2-1 et seq. and the expenditure of
33 such bond funds would have to be in compliance with applicable
34 public contracting statutes.

35 The bill requires public notice if concession fees or other
36 monetary benefits are paid by a private firm to a public entity
37 under the terms of a contract negotiated under the bill, and
38 provides that these fees or benefits are to be used to reduce or
39 off-set property taxes.

40 The bill also provides for an expedited court proceeding in the
41 event of a contract compliance, performance or termination
42 dispute.

43 This bill is intended to provide an alternative to the "New
44 Jersey Wastewater Treatment Privatization Act," P.L.1985, c.72
45 (C.58:27-1 et seq.), which has not been utilized by any public
46 entity.

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51 "New Jersey Wastewater Treatment Public-Private Contracting
52 Act."

SENATE NATURAL RESOURCES, TRADE AND
ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1888

STATE OF NEW JERSEY

DATED: MAY 8, 1995

The Senate Natural Resources, Trade and Economic Development Committee favorably reports a Senate committee substitute for Senate Bill No. 1888.

The Senate committee substitute would authorize various public entities to enter into contracts with private firms for the provision of wastewater treatment services. "Wastewater treatment services" is defined as the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a wastewater treatment system.

A private firm may be any publicly or privately held company qualified to do business in the State and capable of financing, planning, designing, constructing, improving, operating or maintaining a wastewater treatment system. The contract would be a long-term agreement wherein a private firm agrees to provide wastewater treatment services for a public entity and wherein the private firm agrees to provide, during the term of the contract, capital expenditures on behalf of the public entity's wastewater treatment system, which expenditures are set forth in the contract.

The substitute details the procedures the public entity must follow for the public notice of its intent to enter into a contract with a private firm; the review of proposals received from private firms; the negotiation of the contract and its terms; and the public hearing the public entity must hold to explain the terms of the proposed contract and answer questions raised by members of the public.

The Local Finance Board of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection must review the proposed contract. The Local Finance Board of the Division of Local Government Services, under prescribed criteria, must approve the agreement before it is executed.

In order to pay its part of the cost of a wastewater treatment system being constructed or upgraded under the terms of a contract, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. and the expenditure of such bond funds would have to be in compliance with applicable public contracting statutes.

The substitute requires public notice if concession fees are paid by a private firm to a public entity under the terms of a contract negotiated under the substitute, and provides that these fees are to be used to reduce or off-set property taxes or wastewater treatment services rates, as appropriate.

The substitute also provides for an expedited court proceeding in the event of a contract compliance, performance or termination dispute.

This substitute is intended to provide an alternative to the "New Jersey Wastewater Treatment Privatization Act," P.L.1985, c.72 (C.58:27-1 et seq.), which has not been utilized by any public entity.

The substitute contains a new section 9 that validates a contract procurement commenced by a public entity prior to the effective date of the act, if the procurement was initiated in anticipation of the enactment of the act and otherwise complies with the act. The substitute also specifies that the written notice to the DEP and the Division of Local Government Services of a public entity's intent to enter into a contract shall be provided at least 14 days prior to the required public hearing.

The substitute also makes several technical changes to S-1888 to clarify the intent of the sponsor. These changes primarily update section 12 of the substitute to reflect an amendment to section 15 of P.L.1971, c.198 (C.40A:11-15) that took effect after S-1888 was introduced.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1888

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 1995

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1888 (SCS), with committee amendments.

Senate Bill No. 1888 (SCS), as amended, would authorize various public entities to enter into contracts with private firms or public authorities for the provision of wastewater treatment services. "Wastewater treatment services" is defined as the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a wastewater treatment system.

A private firm may be any publicly or privately held company qualified to do business in the State and capable of financing, planning, designing, constructing, improving, operating or maintaining a wastewater treatment system. A public authority may be any municipal or county authority, commission, municipal or county utility authority, sewerage authority, or joint meeting, which is authorized by law to construct, rehabilitate, operate or maintain a wastewater treatment system or arrange for the provision of wastewater treatment service.

The contract would be a long-term agreement wherein a private firm or public authority agrees to provide wastewater treatment services for a public entity and wherein the private firm or public authority agrees to provide, during the term of the contract, capital expenditures on behalf of the public entity's wastewater treatment system, which expenditures are set forth in the contract.

The bill details the procedures the public entity must follow for the public notice of its intent to enter into a contract with a private firm or public authority; the review of proposals received from private firms or public authorities; the negotiation of the contract and its terms; and the public hearing the public entity must hold to explain the terms of the proposed contract and answer questions raised by members of the public.

The Local Finance Board of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection must review the proposed contract. The Local Finance Board of the Division of Local Government Services, under prescribed criteria, must approve the agreement before it is executed.

In order to pay its part of the cost of a wastewater treatment system being constructed or upgraded under the terms of a contract, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. and the expenditure of such bond funds would have to be in compliance with applicable public contracting statutes.

The bill requires public notice if concession fees are paid by a private firm or public authority to a public entity under the terms

of a contract negotiated under the bill, and provides that these fees are to be used to reduce or off-set property taxes, wastewater treatment services rates, one-time non reoccurring expenses or capital asset expenditures.

The bill also provides for an expedited court proceeding in the event of a contract compliance, performance or termination dispute.

This bill is intended to provide an alternative to the "New Jersey Wastewater Treatment Privatization Act," P.L.1985, c.72 (C.58:27-1 et seq.), which has not been utilized by any public entity.

As amended and reported, this bill is identical to Assembly Bill No. 2601 ACS of 1995 (Bagger/Warsh) as amended and reported by the Assembly Appropriations Committee on June 22, 1995.

COMMITTEE AMENDMENTS

The committee amended the bill, with the approval of the sponsor, to:

- * Authorize public entities to enter into contracts with public authorities, as well as private firms, for the provision of wastewater treatment services.

- * To permit public authorities to pay concession fees.

- * To permit the use of concession fees for one-time nonrecurring expenses or capital asset expenditures, in addition to property tax relief or reduction of wastewater treatment rates.

- * To clarify a public entities use of concession fees for certain federal law or regulation purposes.

- * Require the Local Finance Board to additionally scrutinize a contract in which a public authority pays a concession fee to a public entity.

In addition, the committee amended the amendatory sections of the bill to update them to current law as recently revised by P.L.1995, c.101 and P.L.1995, c.103.

FISCAL IMPACT

This bill does not have an impact on State revenues and expenditures.