

40A:11-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-5

(Recycling--allow sale of recyclables)

LAWS OF: 1989

CHAPTER: 92

Bill No: A464

Sponsor(s): Shinn

Date Introduced: Pre-filed

Committee: Assembly: Solid Waste Management

Senate: Energy & Environment

Amended during passage: ~~Yes~~ Assembly Committee Substitute enacted

Date of Passage: Assembly: November 21, 1988

Senate: May 4, 1989

Date of Approval: June 14, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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P.L.1989, CHAPTER 92, *approved June 14, 1989*  
Assembly Committee Substitute for  
1988 Assembly No. 464

1 AN ACT concerning recyclable materials, and amending  
P.L.1971, c.198 (C.40A:11-1 et seq.).

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

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

5. Exceptions. Any purchase, contract or agreement of the  
9 character described in section 4 of this act may be made,  
negotiated or awarded by the governing body without public  
11 advertising for bids and bidding therefor if

(1) The subject matter thereof consists of

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

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 in subsection (1)(a)(i) of this section, a brief notice of the award  
of such contract;

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

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

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

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

11 (f) The supplying of any product or the rendering of any  
service by a public utility, which is subject to the jurisdiction of  
13 the Board of Public Utilities, in accordance with tariffs and  
schedules of charges made, charged or exacted, filed with said  
15 board;

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

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

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

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

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

(l) Election expenses;

(m) Insurance, including the purchase of insurance coverage  
31 and consultant services, which exception shall be in accordance  
with the requirements for extraordinary unspecifiable services;

(n) The doing of any work by handicapped persons employed  
33 by a sheltered workshop;

(o) The provision of any service or the furnishing of materials  
35 including those of a commercial nature, attendant upon the  
operation of a restaurant by any nonprofit, duly incorporated,  
37 historical society at or on any historical preservation site;

(p) Homemaker--home health services performed by  
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1 voluntary, nonprofit agencies;

3 (q) The purchase of materials and services for a law library  
established pursuant to R.S.40:33-14, including books,  
5 periodicals, newspapers, documents, pamphlets, photographs,  
reproductions, microforms, pictorial or graphic works, copyright  
7 and patent materials, maps, charts, globes, sound recordings,  
slides, films, filmscripts, video and magnetic tapes, and other  
audiovisual, printed, or published material of a similar nature;  
9 necessary binding or rebinding of law library materials; and  
specialized library services;

11 (r) On-site inspections undertaken by private agencies  
pursuant to the "State Uniform Construction Code Act"  
13 (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations  
adopted pursuant thereto; or

15 (s) The marketing of recyclable materials recovered through  
a recycling program, or the marketing of any product  
17 intentionally produced or derived from solid waste received at a  
resource recovery facility or recovered through a resource  
19 recovery program, including, but not limited to, refuse-derived  
fuel, compost materials, methane gas, and other similar  
21 products.

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

(3) The contracting agent has advertised for bids pursuant to  
27 section 4 on two occasions and (a) has received no bids on both  
occasions in response to its advertisement, or (b) the governing  
29 body has rejected such bids on two occasions because the  
contracting agent has determined that they are not reasonable  
31 as to price, on the basis of cost estimates prepared for or by the  
contracting agent prior to the advertising therefor, or have not  
33 been independently arrived at in open competition, or (c) on one  
occasion no bids were received pursuant to (a) and on one  
35 occasion all bids were rejected pursuant to (b), in whatever  
sequence; any such contract or agreement may then be  
37 negotiated and may be awarded upon adoption of a resolution by  
a two-thirds affirmative vote of the authorized membership of  
39 the governing body authorizing such contract or agreement;

1 provided, however, that:

3 (i) A reasonable effort is first made by the contracting agent  
5 to determine that the same or equivalent materials or supplies,  
7 at a cost which is lower than the negotiated price, are not  
9 available from an agency or authority of the United States, the  
11 State of New Jersey or of the county in which the contracting  
13 unit is located, or any municipality in close proximity to the  
15 contracting unit;

17 (ii) The terms, conditions, restrictions and specifications set  
19 forth in the negotiated contract or agreement are not  
21 substantially different from those which were the subject of  
23 competitive bidding pursuant to section 4 of this act; and

25 (iii) Any minor amendment or modification of any of the  
27 terms, conditions, restrictions and specifications, which were  
the subject of competitive bidding pursuant to section 4 of this  
act, shall be stated in the resolution awarding such contract or  
agreement; provided further, however, that if on the second  
occasion the bids received are rejected as unreasonable as to  
price, the contracting agent shall notify each responsible bidder  
submitting bids on the second occasion of its intention to  
negotiate, and afford each such bidder a reasonable opportunity  
to negotiate, but the governing body shall not award such  
contract or agreement unless the negotiated price is lower than  
the lowest rejected bid price submitted on the second occasion  
by a responsible bidder, is the lowest negotiated price offered by  
any responsible supplier, and is a reasonable price for such work,  
materials, supplies or services.

Whenever a contracting unit shall determine that a bid was  
not arrived at independently in open competition pursuant to  
subsection (3) of this section it shall thereupon notify the county  
prosecutor of the county in which the contracting unit is located  
and the Attorney General of the facts upon which its  
determination is based, and when appropriate, it may institute  
appropriate proceedings in any State or federal court of  
competent jurisdiction for a violation of any State or federal  
antitrust law or laws relating to the unlawful restraint of trade.  
(cf: P.L.1987, c.102, s.32)

2. This act shall effect immediately.

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**ENVIRONMENT**

**Municipalities**

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**Permits the marketing of products derived from solid waste  
5 without public bidding.**

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**STATEMENT**

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As amended by section 32 of P.L. 1987, c. 102 (the "New Jersey, Statewide Mandatory Source Separation and Recycling Act,") section 5 of P.L. 1971, c. 198 (C. 40A:11-5) permits municipalities to contract for or negotiate the sale of recyclable materials recovered from local recycling programs without public bidding. This bill would clarify and expand this exemption from public bidding requirements to include the marketing of products derived from recyclable materials separated from solid waste received at a resource recovery facility or recovered through a resource recovery program. Examples of these products would include waste-derived fuel, compost material, and methane gas.

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**LOCAL GOVERNMENT AND FINANCE**

21

**Solid Waste**

23 **Permits the marketing of products derived from solid waste without public bidding.**

**ASSEMBLY SOLID WASTE MANAGEMENT COMMITTEE**

**STATEMENT TO**

**ASSEMBLY COMMITTEE SUBSTITUTE FOR**

**ASSEMBLY, No. 464**

**STATE OF NEW JERSEY**

**DATED: SEPTEMBER 28, 1988**

**The Assembly Solid Waste Management Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 464.**

**As amended by section 32 of P.L.1987, c.102 (the "New Jersey Statewide Mandatory Source Separation and Recycling Act,"), section 5 of the "Local Public Contracts Law" (P.L.1971, c.198; C.40A:11-5) permits municipalities to contract for or negotiate the sale of recyclable materials recovered from local recycling programs without public bidding. The Assembly Committee Substitute for Assembly Bill No. 464 would clarify and expand this exemption from public bidding requirements to include the marketing of products derived from recyclable materials separated from solid waste received at a resource recovery facility or recovered through a resource recovery program. Examples of these products would include waste-derived fuel, compost material, and methane gas.**



**SENATE ENERGY AND ENVIRONMENT COMMITTEE**

**STATEMENT TO**

**ASSEMBLY COMMITTEE SUBSTITUTE FOR**

**ASSEMBLY, No. 464**

**STATE OF NEW JERSEY**

**DATED: APRIL 27, 1989**

The Senate Energy and Environment Committee favorably reports the Assembly Committee Substitute for Assembly Bill No. 464.

Assembly Bill No. 464 ACS would clarify and expand the current exemption from public bidding requirements for recyclables to include the marketing of products derived from recyclable materials separated from solid waste received at a resource recovery facility or recovered through a resource recovery program. Examples of these products would include waste-derived fuel, compost material, and methane gas. As amended by section 32 of P.L. 1987, c. 102 (the "New Jersey Statewide Mandatory Source Separation and Recycling Act.") section 5 of P.L. 1971, c. 198 (C.40A:11-5) permits municipalities to contract for or negotiate the sale of recyclable materials recovered from local recycling programs without public bidding. This bill expands this exemption.