

58:26-1 to 58:26-18

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:26-1 to 58:26-18; 40A:11-15 ("Water Supply Privatization")

LAWS OF: 1985 CHAPTER: 37

Bill No: S2314

Sponsor(s): Orechio

Date Introduced: October 18, 1984

Committee: Assembly: ///

Senate: Energy and Environment

Amended during passage: Yes Substituted for A2809 and A2813 (original A2809 and Assembly committee substitute for A2809/A2813--attached) Amendments denoted by asterisks.

Date of Passage: Assembly: Dec. 6, 1984

Senate: Nov. 29, 1984

Date of Approval: February 1, 1985

Following statements are attached if available:

Sponsor statement: Yes Also attached: Assembly amendments, adopted 12-6-84 (with statements)

Committee statement: Assembly No
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping, 5-85 Star Ledger, "Privatization enacted for water projects" ---attached.

DO NOT CIRCULATE

2-1-85

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 2314

STATE OF NEW JERSEY

INTRODUCED OCTOBER 18, 1984

By Senator ORECHIO

Referred to Committee on Energy and Environment

AN ACT concerning long-term contracts between local government units and private firms for the provision of water supply **facilities** and water **[quality treatment]* *supply** services, establishing a procedure for the negotiating, awarding, and review of these contracts, amending P. L. 1971, c. 198, and supplementing Title 58 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as
2 the "New Jersey Water Supply ****[and Water Quality Treat-**
3 **ment]**** Privatization Act."

1 2. (New section) The Legislature finds that the construction,
2 rehabilitation, operation, and maintenance of modern and efficient
3 ****[water supply and]**** water filtration ****[and treatment]****
4 facilities are essential to protecting and improving the State's water
5 quality; ****[that in addition to protecting and improving water**
6 **quality, adequate water supply and water filtration and treatment**
7 **facilities are essential to maintaining the public health, safety, and**
8 **welfare;]**** that many of the water filtration ****[and treatment]****
9 systems in New Jersey must be replaced or upgraded if an inexora-
10 ble decline in water quality is to be avoided during the coming de-
11 cades; that the citizens of this State, in recognition of the crucial
12 role the construction of new and the upgrading of existing water
13 supply facilities play in maintaining and augmenting the natural
14 water resources of the State, and with an understanding that the
15 cost of financing and constructing these systems is beyond the limit-
16 ed financial resource capabilities of local governments and authori-

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted November 19, 1984.

**—Assembly amendments adopted December 6, 1984.

17 ties and must be borne by the bonding authority of the State and
 18 repaid, in part, through a system of water supply user charges, ap-
 19 proved the enactment of the "Water Supply Bond Act of 1981"
 20 (P. L. 1981, c. 261); that the water filtration ****[and treatment]****
 21 needs of the State are so great that the limited funds allocated for
 22 ****[these purposes from this bond issue]**** ***this purpose from the*
 23 *"Water Supply Fund" established by that 1981 bond act*** are
 24 insufficient; that given this inadequate present level of State
 25 funding, alternative methods of financing the construction****[**,
 26 operation, and**]**** ***of new or the*** rehabilitation of ***antiquated*
 27 *or inadequate existing*** water filtration ****[and treatment]****
 28 systems must be developed and encouraged; that one alternative
 29 method of financing these necessary facilities available to local
 30 government units consist of contracting with private-sector firms
 31 for the financing, construction and operation of these systems; and
 32 that for some local government units, contracting for the provision
 33 of ***[potable water at adequate volume and pressure]*** **water*
 34 *supply services**, if done in such a way as to protect the interests
 35 of water users and to conform with environmentally sound water
 36 quality standards, will constitute an appropriate method of securing
 37 these needed water filtration ****[and treatment]**** systems.

38 The Legislature therefore determines that it is in the public
 39 interest to establish a comprehensive procedure designed to au-
 40 thorize local government units to contract with private firms for
 41 the **construction of water filtration ****[or treatment]**** systems*
 42 *and the** provision of water supply ***[and water filtration or**
 43 **treatment]**** services.

1 3. (New section) As used in this act:

2 a. "Contracting unit" means a county, **district water supply*
 3 *commission,** municipality, municipal or county utilities authority,
 4 municipal water district, joint meeting or any other political sub-
 5 division of the State authorized pursuant to law **to operate or*
 6 *maintain a public water supply system or** to construct, rehabili-
 6A *tate, operate, or maintain water supply facilities ***[and]**** *or*
 6B *otherwise** provide water for human consumption;

7 b. "Department" means the Department of Environmental Pro-
 8 tection;

9 c. "Division" means the Division of Local Government Services
 10 in the Department of Community Affairs;

11 d. "Vendor" means any person financially, technically, and ad-
 12 ministratively capable of financing, planning, designing, construct-
 13 ing, operating, or maintaining, or any combination thereof, a water
 14 filtration ****[or water treatment]**** system, ***[a]*** water supply

15 *~~system~~* *facilities**, or of providing water *~~filtration or~~
 16 ~~treatment of water~~* supply services to a local government unit
 17 under the terms of a contract awarded pursuant to the provisions
 17A of this act;

18 e. “Water filtration **~~or treatment~~** system” means any
 19 equipment, plants, structures, machinery, apparatus, or land, or
 20 any combination thereof, acquired, used, constructed, rehabilitated,
 21 or operated for the collection, impoundment, storage, improvement,
 22 filtration, or other treatment of drinking water for the purposes of
 23 purifying and enhancing water quality and insuring its potability
 24 prior to the distribution of the drinking water in the general public
 25 for human consumption, including plants and works, and other per-
 26 sonal property and appurtenances necessary for their use or op-
 27 eration;

28 f. “Water supply facilities” means and refers to the real prop-
 29 erty and the plants, structures, interconnections between existing
 30 water supply facilities, machinery and equipment and other prop-
 31 erty, real, personal and mixed, acquired, constructed or operated,
 32 or to be acquired, constructed or operated, in whole or in part by
 33 or on behalf of a political subdivision of the State or any agency
 34 thereof, for the purpose of augmenting the natural water resources
 35 of the State and making available an increased supply of water
 36 for all uses, or of conserving existing water resources, and any
 37 and all appurtenances necessary, useful or convenient for the col-
 38 lecting, impounding, storing, improving, treating, filtering, conserv-
 39 ing or transmitting of water, and for the preservation and pro-
 40 tection of these resources and facilities and providing for the
 41 conservation and development of future water supply resources;

42 g. “Water supply services” means services provided by a water
 43 supply facility.

1 4. (New section) The provisions of any other law, or rules and
 2 regulations adopted pursuant thereto to the contrary notwithstand-
 3 ing, any contracting unit may enter into a contract for a period
 4 not to exceed 40 years, with a vendor for the financing, designing,
 5 construction, operation, or maintenance, or any combination thereof,
 6 of a water supply facility, including a water filtration **~~or treat-~~
 7 ~~ment~~** system, or for water supply services, pursuant to the
 8 provisions of this act.

1 5. (New section) A contracting unit which intends to enter into
 2 a contract with a private vendor for the provision of water supply
 3 services pursuant to the provisions of this act shall notify, at least
 4 60 days prior to issuing a request for qualifications from interested
 5 vendors pursuant to section 6 of this act, the division, the depart-

6 ment, the Board of Public Utilities, and the Department of the
7 Public Advocate of its intention, and shall publish notice of its
8 intention in at least one newspaper of general circulation in the
9 jurisdiction which would be served under the terms of the proposed
10 contract.

1 6. (New section) Upon submitting the notices of intent pursuant
2 to section 5 of this act, a contracting unit may issue a request for
3 qualifications of vendors interested in entering into a contract with
4 the contracting unit for the provision of water supply services.
5 The request for qualifications shall include a general description
6 of the water supply services required by the contracting unit, the
7 minimum acceptable qualifications to be possessed by a vendor
8 proposing to enter into a contract for the provisions of these ser-
9 vices, and the date by which vendors must submit their qualifica-
10 tions. In addition to all other factors bearing on qualifications,
11 the contracting unit shall consider the reputation and experience
12 of the vendor, and may consider information which might result
13 in debarment or suspension of a vendor if the vendor has been
14 debarred or suspended by a State agency. The request for quali-
15 fications shall be published in at least one appropriate professional
16 or trade journal, and in at least one newspaper of general circu-
17 lation in the jurisdiction which would be served under the terms
18 of the proposed contract.

1 7. (New section) After reviewing the qualifications submitted by
2 vendors pursuant to section 6 of this act, a contracting unit shall
3 establish a list of all vendors responding to the request for qualifi-
4 cations, and shall designate the vendor or vendors which the con-
5 tracting unit as determined to be qualified to provide the water
6 supply services described in the request for qualifications. This
7 list shall include a statement setting forth the criteria applied by
8 the contracting unit in selecting qualified vendors, and shall be
9 published in the same publications in which the requests for quali-
10 fications were published pursuant to section 6 of this act.

1 8. (New section) Upon selecting the qualified vendors pursuant
2 to section 7 of this act, a contracting unit shall transmit a request
3 for proposals to the qualified vendors, which shall include a de-
4 tailed description of the water supply facility and services required,
5 the format and procedure to be followed in submitting proposals,
6 the specific information which the vendor must provide in the pro-
7 posal, a statement setting forth the relative importance of factors,
8 including cost, which the contracting unit will consider in evaluat-
9 ing a proposal submitted by a qualified vendor, and any other

10 information which the contracting unit deems appropriate. The
11 request for proposals shall include the date and time of day by
12 which, and the place at which, the proposals shall be submitted
13 to the contracting unit. The contracting unit may extend the dead-
14 line for submission of proposals, but this extension shall apply to
15 all qualified vendors, who shall be provided with simultaneous
16 written notification of this extension.

1 9. (New section) A contracting unit shall review proposals sub-
2 mitted by vendors pursuant to section 8 of this act in such a manner
3 as to avoid disclosure of the contents of any proposal to vendors
4 submitting competing proposals. If provided for in the request for
5 proposals, the contracting unit may conduct discussions with
6 qualified vendors who have submitted proposals for the purpose
7 of clarifying any information submitted in the proposal, or assur-
8 ing that the vendor fully understood and responded to the require-
9 ments set forth in the request for proposals. If, as a result of these
10 discussions, the contracting unit decides to revise the request for
11 proposals, it shall immediately notify in writing each qualified
12 vendor which has submitted a proposal of any such revision or
13 revisions to the request for proposals. In the event of any revision
14 to the requests for proposals, a qualified vendor shall be permitted
15 to submit revisions to its proposal.

1 10. (New section) After reviewing the proposals submitted by
2 qualified vendors pursuant to section 9 of this act, a contracting
3 unit shall designate in writing the selected vendor or vendors. This
4 designation shall include a list of the qualified vendors submitting
5 proposals, the basis on which the selected vendor or vendors was
6 chosen, and a finding that the proposal submitted by the selected
7 vendor or vendors constitutes the proposal most advantageous to
8 the jurisdiction to be served under the terms of the proposal, based
9 upon the evaluation factors included in the request for proposals.
10 This designation shall be published in at least one newspaper in
11 general circulation in the jurisdiction to be served under the terms
12 of the proposal.

1 11. (New section) Upon designating the selected vendor or
2 vendors pursuant to section 10 of this act, a contracting unit shall
3 negotiate with the selected vendor or vendors a proposed contract,
4 which shall include the accepted proposal and the provisions re-
5 quired pursuant to section 15 of this act. Upon negotiating a pro-
6 posed contract, the contracting unit shall make the proposed con-
7 tract available to the public at its main offices, and shall transmit a
8 copy of the proposed contract to the division, the department, the

9 Board of Public Utilities, and the Department of the Public Ad-
10 vocate.

1 12. (New section) a. A contracting unit shall conduct a public
2 hearing or hearings on the charges, rates, or fees, or the formula for
3 determining these charges, rates, or fees, and the other provisions
4 contained in a proposed contract negotiated pursuant to section 11
5 of this act. The contracting unit shall provide at least 90 days
6 public notice of this public hearing to the Department of the Public
7 Advocate, prospective consumers, and other interested parties.
8 This notice shall be published in at least one newspaper of general
9 circulation in the jurisdiction to be served under the terms of the
10 proposed contract. Within 45 days after giving notice of the public
11 hearing, the contracting unit shall hold a meeting with prospective
12 consumers and other interested parties to explain the terms and
13 conditions of the proposed contract, and to receive written ques-
14 tions which will be part of the record of the public hearing. At the
15 public hearing, the selected vendor or vendors shall be present, and
16 the contracting unit shall have the burden to answer the questions
17 received at the meeting, and to show that the proposed contract
18 complies with the provisions of section 15 of this act, and that it
19 constitutes the best means of securing the required water supply
20 services among available alternatives. The contracting unit shall
21 provide that a verbatim record be kept of the public hearing, and
22 that a written transcript of this record be printed and made avail-
23 able to the public within 30 days of the close of the public hearing.
24 After the public hearing the contracting unit and the vendor may
25 agree to make changes to the proposed contract, and shall transmit
26 the proposed contract, a copy of the printed transcript of the public
27 hearing, and a statement summarizing the major issues raised at
28 the public hearing and the response of the contracting unit to these
29 issues, to the division, the department, the Board of Public Utilities,
30 and the Department of the Public Advocate, and to all persons
31 who attended the public hearing.

32 b. If the Division of Rate Counsel in the Department of the Public
33 Advocate represents the public interest at a public hearing or
34 hearings conducted pursuant to this section, the Division of Rate
35 Counsel shall be entitled to assess the vendor for costs incurred in
36 this representation in the manner provided in section 20 of P. L.
37 1974, c. 27 (C. 52:27E-19). The basis of the assessment shall be
38 the prospective first year's revenue realized by the vendor from the
39 provision of the water supply services pursuant to the terms of
40 the proposed contract.

41 c. If a contract awarded pursuant to the provisions of this act is
 42 renegotiated, the contracting unit shall conduct a public hearing
 43 on the renegotiated contract pursuant to the provisions of this
 44 section.

1 13. (New section) a. The department, within 60 days of receipt
 2 of a proposed contract submitted to it by a contracting unit pur-
 3 suant to section 12 of this act, shall approve or conditionally
 4 approve the proposed contract. If the department approves the
 5 proposed contract, it shall accompany its approval with a written
 6 finding that the proposed contract will meet appropriate environ-
 7 mental and water quality standards, and that it is consistent with
 8 the State primary drinking water regulations or requirements for
 9 the jurisdiction to be served under the terms of the proposed con-
 10 tract pursuant to the "Safe Drinking Water Act," P. L. 1977, c. 224
 11 (C. 58:12A-1 et seq.). If the department conditionally approves
 12 a proposed contract, it shall state in writing the revisions which
 13 must be made to the proposed contract prior to receiving approval,
 14 and shall inform the contracting unit if the revisions to be made
 15 to the proposed contract warrant a public hearing. After revising
 16 the contract, the contracting unit may resubmit the proposed con-
 17 tract to the department for approval.

18 b. The division, within 60 days of receipt of a proposed contract
 19 transmitted to it by a contracting unit pursuant to section 12 of
 20 this act, shall approve or conditionally approve the proposed con-
 21 tract. If the division approves the proposed contract, it shall
 22 accompany its approval with a written finding that the proposed
 23 contract complies with the provisions of section 15 of this act, and
 24 that the proposed contract is compatible with the fiscal and financial
 25 capabilities of the contracting unit. If the division conditionally
 26 approves the proposed contract, it shall state in writing the revi-
 27 sions which must be made to the proposed contract prior to receiv-
 28 ing approval, and shall inform the contracting unit if the revisions
 29 to be made to the proposed contract warrant a public hearing.
 30 After revising the proposed contract, the contracting unit may
 31 resubmit the proposed contract to the division for approval.

32 c. ***[The]*** **If the contracting unit is subject to the jurisdiction*
 33 *of the** Board of Public Utilities, **the board** within 60 days of
 34 receipt of a proposed contract submitted to it by a contracting unit
 35 pursuant to section 12 of this act, shall approve or conditionally
 36 approve the proposed contract if the board finds the proposed con-
 37 tract to be in the public interest. If the Board of Public Utilities
 38 ***[disapproves]*** **conditionally approves** the proposed contract

39 because the contract is not in the public interest, the board shall
 40 notify the contracting unit in writing of the changes needed in the
 41 proposed contract in order for it to be in the public interest, and
 42 and shall inform the contracting unit if the revisions to be made
 43 warrant a public hearing. After revising the proposed contract,
 43A the contracting unit may resubmit the proposed contract to the
 43B board for approval.

44 In reviewing and approving the proposed contract, the Board
 45 of Public Utilities shall not determine a rate base for, or otherwise
 46 regulate the tariffs or return of, the proposed water supply facility
 47 or the provision of water supply services. The board shall not,
 48 thereafter, conduct any further review of the contract.

49 d. Notwithstanding the provisions of subsection c. of this sec-
 50 tion, all parties to any proposed contract may request the ***[board]***
 51 **Board of Public Utilities** to determine a rate base for the pro-
 52 posed water supply facility or the provision of water supply ser-
 53 vices, in which case the board may make that determination and
 54 the terms of any proposed contract so approved shall ***[remain]***
 55 **be** subject to the continuing jurisdiction of the board.

1 14. (New section) A contracting unit may award a contract
 2 negotiated pursuant to the provisions of this act to a vendor only
 3 after the department, the Board of Public Utilities, and the division
 4 have approved the proposed contract pursuant to section 13 of this
 5 act.

1 15. (New section) Any contract for the provision of water supply
 2 services negotiated and awarded to a vendor by a contracting unit
 3 pursuant to this act, or the "Local Public Contracts Law," P. L.
 4 1971, c. 198 (C. 40A:11-1 et seq.), shall include, but shall not be
 5 limited to, provisions concerning:

6 a. The allocation of the risks of financing and constructing a
 7 water supply facility including delays in completion of the construc-
 8 tion of the system, construction and financing cost overruns and
 9 increased costs resulting from change orders, construction changes
 10 required by revisions in applicable laws, rules, or regulations,
 11 failure of the system to achieve its required operating performance
 12 or efficiency, changes in tax benefits, and the need for equity contri-
 13 butions in addition to those provided for in the contract;

14 b. The allocation of the risks of operating and maintaining a
 15 water supply facility, including excessive or nonscheduled periods
 16 of inoperation or technical failure, excess labor and materials costs
 17 due to underestimation, changes in operating procedures required
 18 by revisions in applicable laws, rules, or regulations, changes in

19 the quantity or composition of water delivered for filtration or
 20 treatment, excessive operation or maintenance costs due to poor
 21 management, and increased costs of distribution of the water
 22 resulting from costs associated with filtration or treatment;

23 c. The allocation of the risks associated with circumstances or
 24 occurrences beyond the control of the parties to the contract;

25 d. The defaulting and termination of the contract;

26 e. The periodic preparation by the vendor of an operating per-
 27 formance report and an audited balance statement of the water
 28 supply facility, which shall be submitted to the contracting unit,
 29 the department and the division;

30 f. The intervals at which the contract shall be renegotiated;

31 g. The employment of current employees of the contracting unit
 32 whose positions or employment will be affected by the terms of the
 33 contract; and

34 h. The formulas to be used to determine the charges, rates, or
 35 fees to be charged for the water supply services, and the metho-
 36 dology or methodologies used to develop these formulas.

1 16. (New section) A contracting unit which has awarded a
 2 contract for the provision of water supply services to a vendor
 3 pursuant to this act or the "Local Public Contracts Law," P. L.
 4 1971, c. 198 (C. 40A:11-1 et seq.) may lease to the vendor, for a
 5 fair market price, the property to be used as a site for a water
 6 supply facility, the provisions of any other laws or rules and regu-
 7 lations adopted pursuant thereto to the contrary notwithstanding.

1 17. (New section) Any contracting unit which, prior to the
 2 effective date of this act, has issued a request for qualifications
 3 and a request for proposals from vendors for the provision of
 4 water supply services, or has initiated negotiations with a vendor
 5 for the provision of water supply services, may petition the
 6 department and the Board of Public Utilities for certification as
 7 being substantially and materially in compliance with the provisions
 8 of this act, and, upon receiving this certification, may award a
 9 contract for the provision of water supply services pursuant to the
 10 provisions of this act.

1 18. (New section) The department, the Board of Public Utilities,
 2 and the division may adopt, pursuant to the "Administrative
 3 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and
 4 regulations necessary to carry out their respective responsibilities
 5 under this act.

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

3 15. Duration of certain contracts. All purchases, contracts or

4 agreements for the performing of work or the furnishing of
5 materials, supplies or services shall be made for a period not to
6 exceed 12 consecutive months, except that contracts or agreements
7 may be entered into for longer periods of time as follows:

8 (1) Supplying of

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

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

14 (c) Thermal energy produced by a cogeneration facility, for
15 use for heating or air conditioning or both, for any term not
16 exceeding 20 years, when the contract is approved by the
17 Board of Public Utilities. For the purposes of this paragraph,
18 "cogeneration" means the simultaneous production in one
19 facility of electric power and other forms of useful energy
20 such as heating or process steam;

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

22 (3) The collection and disposal of garbage and refuse, for any
23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25
25 years, when such contract is in conformance with a solid waste
26 management plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1
27 et seq.), and with the approval of the Division of Local Government
28 Services and the Department of Environmental Protection;

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

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

32 (7) Leasing or servicing of automobiles, motor vehicles, machin-
33 ery and equipment of every nature and kind, for a period not to
34 exceed three years; provided, however, such contracts shall be
35 entered into only subject to and in accordance with the rules and
36 regulations promulgated by the Director of the Division of Local
37 Government Services of the Department of Community Affairs;

38 (8) The supplying of any product or the rendering of any ser-
39 vice by a telephone company which is subject to the jurisdiction of
40 the Board of Public Utilities for a term not exceeding five years;

41 (9) Any single project for the construction, reconstruction or
42 rehabilitation of any public building, structure or facility, or any
43 public works project, including the retention of the services of
44 any architect or engineer in connection therewith, for the length
45 of time authorized and necessary for the completion of the actual
46 construction;

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

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

53 (12) The performance of work or services or the furnishing of
54 materials or supplies for the purpose of conserving energy in build-
55 ings owned by, or operations conducted by, the contracting unit,
56 the entire price of which to be established as a percentage of the
57 resultant savings in energy costs, for a term not to exceed 10 years;
58 provided, however, that such contracts shall be entered into only
59 subject to and in accordance with rules and regulations promulgated
60 by the Department of Energy establishing a methodology for com-
61 puting energy cost savings;

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

65 (14) Leasing or servicing of electronic communications equip-
66 ment for a period not to exceed five years; provided, however, such
67 contract shall be entered into only subject to and in accordance
68 with the rules and regulations promulgated by the Director of the
69 Division of Local Government Services of the Department of Com-
70 munity Affairs;

71 (15) Leasing of motor vehicles, machinery and other equipment
72 primarily used to fight fires, for a term not to exceed seven years,
73 when the contract includes an option to purchase, subject to and in
74 accordance with rules and regulations promulgated by the Director
75 of the Division of Local Government Services of the Department
76 of Community Affairs[.] ;

77 (16) *The provision of water supply services or the designing,*
78 *financing, construction, operation, or maintenance, or any combina-*
79 *tion thereof, of a water supply facility, or any component part or*
80 *parts thereof, including a water filtration **[or treatment]** sys-*
81 *tem, for a period not to exceed 40 years, when the contract for these*
82 *services is approved by the Division of Local Government Services*
83 *in the Department of Community Affairs, the Board of Public Utili-*
84 *ties, and the Department of Environmental Protection pursuant to*
85 *P. L. 198 , c. (C.) (now pending before the Legis-*
86 *lature as **[Senate Bill No]** **the Assembly Committee Substi-*
87 *tute for Assembly Bill Nos. 2809 and 2813 of 1984**). For the*
88 *purposes of this paragraph, "water supply services" means any*
89 *service provided by a water supply facility; "water filtration **[or*

90 treatment^{***} system'' means any equipment, plants, structures,
 91 machinery, apparatus, or land, or any combination thereof, ac-
 92 quired, used, constructed, rehabilitated, or operated for the collec-
 93 tion, impoundment, storage, improvement, filtration, or other treat-
 94 ment of drinking water for the purposes of purifying and enhancing
 95 water quality and insuring its potability prior to the distribution of
 96 the drinking water to the general public for human consumption,
 97 including plants and works, and other personal property and appur-
 98 tenances necessary for their use or operation; and "water supply
 99 facility'' means and refers to the real property and the plants, struc-
 100 tures, interconnections between existing water supply facilities,
 101 machinery and equipment and other property, real, personal and
 102 mixed, acquired, constructed or operated, or to be acquired, con-
 103 structed or operated, in whole or in part by or on behalf of a political
 104 subdivision of the State or any agency thereof, for the purpose of
 105 augmenting the natural water resources of the State and making
 106 available an increased supply of water for all uses, or of conserving
 107 existing water resources, and any and all appurtenances necessary,
 108 useful or convenient for the collecting, impounding, storing, im-
 109 proving, treating, filtering, conserving or transmitting of water and
 110 for the preservation and protection of these resources and facilities
 110A and providing for the conservation and development of future
 110B water supply resources.

111 All multi-year leases and contracts entered into pursuant to this
 112 section 15, except contracts for the leasing or servicing of equip-
 113 ment supplied by a telephone company which is subject to the
 114 jurisdiction of the Board of Public Utilities, contracts for thermal
 115 energy authorized pursuant to [subsection] paragraph (1) above,
 116 construction contracts authorized pursuant to [subsection] para-
 117 graph (9) above, or contracts and agreements for the provision of
 118 work or the supplying of equipment to promote energy conservation
 119 authorized pursuant to [subsection] paragraph (12) above, or
 120 contracts for water supply services or for a water supply facility,
 121 or any component part or parts thereof, authorized pursuant to
 122 paragraph (16) above, shall contain a clause making them subject
 123 to the availability and appropriation annually of sufficient funds
 124 as may be required to meet the extended obligation, or contain an
 125 annual cancellation clause.

126 The Division of Local Government Services shall adopt and
 127 promulgate rules and regulations concerning the methods of ac-
 128 counting for all contracts that do not coincide with the fiscal year.

1 20. This act shall take effect immediately.

2. The local unit would then issue a request for qualifications from firms interested in contracting to provide the water supply services. The local unit would review all submitted qualifications, and would establish a list of qualified contractors based on criteria developed by the local unit, including the experience and reputation of the firm.

3. Upon establishing a list of qualified contractors, the local unit requests each qualified contractor to submit a specific proposal, and, upon review of the submitted proposals, the local unit shall negotiate a proposed contract with the contractor submitting the proposal which the local unit determines to be the most advantageous.

4. The local unit conducts a public hearing on the proposed contract. The contractor must be present at the meeting, and the Department of the Public Advocate is authorized to represent the public interest at the meeting and may assess the contractor for the costs incurred in this representation. The local unit shall provide that a transcript of the hearing be printed.

5. After the hearing, the local unit will transmit the proposed contract, a transcript of the public hearing, and a statement discussing the issues raised at the public hearing and the local unit's response to these issues to the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services. The department will review the proposed contract for its environmental content, the board will review the proposed contract to insure that it is in the public interest, and the division will review the contract to insure that it comports with the financial and fiscal capabilities of the local unit. Each agency will have 60 days to approve or conditionally approve the proposed contract.

6. A local unit may award the contract to the contractor only after receiving the approval of the department, the board and the division.

Because the contract will constitute the basis on which the cost of the waste supply service will be calculated, the bill provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the water supply facility.

2. The allocation of the risks of operating and maintaining a water supply facility.

3. The allocation of risks beyond the control of the local unit and the contractor.

4. The defaulting and termination of the contract.

5. The periodic preparation by the contractor of an operating performance report and audited balance statement.

6. The intervals at which the contract shall be renegotiated.

7. The employment of current employees of the local unit which would be affected under the terms of the contract.

8. The formulas to be used to determine the rates to be charged for the water supply services.

The bill also provides that if a local government unit has started to negotiate a contract for water supply services prior to this bill's effective date, or has issued a request for qualifications or proposals from interested contractors, it may petition the department and the board for certification as being substantially in compliance with this procedure set forth in this bill. If the department and the board so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

S2314 (1985)

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2809 and 2813

STATE OF NEW JERSEY

ADOPTED: NOVEMBER 19, 1984

By Assemblymen ADUBATO and FORTUNATO

AN ACT concerning long-term contracts between local government units and private firms for the provision of water supply facilities and water supply services, establishing a procedure for the negotiating, awarding, and review of these contracts, amending P. L. 1971, c. 198, and supplementing Title 58 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as
2 the "New Jersey Water Supply Privatization Act."

1 2. (New section) The Legislature finds that the construction,
2 rehabilitation, operation, and maintenance of modern and efficient
3 water filtration facilities are essential to protecting and improving
4 the State's water quality; that many of the water filtration systems
5 in New Jersey must be replaced or upgraded if an inexorable de-
6 cline in water quality is to be avoided during the coming decades;
7 that the citizens of this State, in recognition of the crucial role the
8 construction of new and the upgrading of existing water supply
9 facilities play in maintaining and augmenting the natural water
10 resources of the State, and with an understanding that the cost of
11 financing and constructing these systems is beyond the limited
12 financial resource capabilities of local governments and authorities
13 and must be borne by the bonding authority of the State and repaid,
14 in part, through a system of water supply user charges, approved
15 the enactment of the "Water Supply Bond Act of 1981" (P. L.
16 1981, c. 261); that the water filtration needs of the State are so
17 great that the limited funds allocated for this purpose from the

**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 printed in italics *thus* is new matter.

18 "Water Supply Fund" established by that 1981 bond act are in-
19 sufficient; that given this inadequate present level of State funding,
20 alternative methods of financing the construction of new or the
21 rehabilitation of antiquated or inadequate existing water filtration
22 systems must be developed and encouraged; that one alternative
23 method of financing these necessary facilities available to local
24 government units consists of contracting with private-sector firms
25 for the financing, construction and operation of these systems; and
26 that for some local government units, contracting for the provision
27 of water supply services, if done in such a way as to protect the
28 interests of water users and to conform with environmentally sound
29 water quality standards, will constitute an appropriate method of
30 securing these needed water filtration systems.

31 The Legislature therefore determines that it is in the public
32 interest to establish a comprehensive procedure designed to autho-
33 rize local government units to contract with private firms for the
34 construction of water filtration systems and the provision of water
35 supply services.

1 3. (New section) As used in this act:

2 a. "Contracting unit" means a county, district water supply
3 commission, municipality, municipal or county utilities authority,
4 municipal water district, joint meeting or any other political sub-
5 division of the State authorized pursuant to law to operate or main-
6 tain a public water supply system or to construct, rehabilitate,
7 operate, or maintain water supply facilities or otherwise provide
8 water for human consumption;

9 b. "Department" means the Department of Environmental Pro-
10 tection;

11 c. "Division" means the Division of Local Government Services
12 in the Department of Community Affairs:

13 d. "Vendor" means any person financially, technically, and ad-
14 ministratively capable of financing, planning, designing, construct-
15 ing, operating, or maintaining, or any combination thereof, a water
16 filtration system, water supply facilities, or of providing water
17 supply services to a local government unit under the terms of a
18 contract awarded pursuant to the provisions of this act;

19 e. "Water filtration system" means any equipment, plants,
20 structures, machinery, apparatus, or land, or any combination
21 thereof, acquired, used, constructed, rehabilitated, or operated for
22 the collection, impoundment, storage, improvement, filtration,
23 sludge handling, or other treatment of drinking water for the
24 purposes of purifying and enhancing water quality and insuring
25 its potability prior to the distribution of the drinking water to the

26 general public for human consumption, including plants and works,
 27 and other personal property and appurtenances necessary for
 28 their use or operation;

29 f. "Water supply facilities" means and refers to the real prop-
 30 erty and the plants, structures, interconnections between existing
 31 water supply facilities, machinery and equipment and other prop-
 32 erty, real, personal and mixed, acquired, constructed or operated,
 33 or to be acquired, constructed or operated, in whole or in part by
 34 or on behalf of a political subdivision of the State or any agency
 35 thereof, for the purpose of augmenting the natural water resources
 36 of the State and making available an increased supply of water
 37 for all uses, or of conserving existing water resources, and any and
 38 all appurtenances necessary, useful or convenient for the collecting,
 39 impounding, storing, improving, treating, filtering, conserving or
 40 transmitting of water, and for the preservation and protection of
 41 these resources and facilities and providing for the conservation
 42 and development of future water supply resources;

43 g. "Water supply services" means services provided by a water
 44 supply facility.

1 4. (New section) The provisions of any other law, or the rules
 2 and regulations adopted pursuant thereto to the contrary not-
 3 withstanding, any contracting unit may enter into a contract, for a
 4 period not to exceed 40 years, with a vendor for the financing,
 5 designing, construction, operation, or maintenance, or any com-
 6 bination thereof, of a water supply facility, including a water
 7 filtration system, or for water supply services, pursuant to the
 8 provisions of this act.

1 5. (New section) A contracting unit which intends to enter into
 2 a contract with a private vendor for the provision of water supply
 3 services pursuant to the provisions of this act shall notify, at least
 4 60 days prior to issuing a request for qualifications from interested
 5 vendors pursuant to section 6 of this act, the division, the depart-
 6 ment, the Board of Public Utilities, and the Department of the
 7 Public Advocate of its intention, and shall publish notice of its
 8 intention in at least one newspaper of general circulation in the
 9 jurisdiction which would be served under the terms of the proposed
 10 contract.

1 6. (New section) Upon submitting the notices of intent pursuant
 2 to section 5 of this act, a contracting unit may issue a request for
 3 qualifications of vendors interested in entering into a contract with
 4 the contracting unit for the provision of water supply services.
 5 The request for qualifications shall include a general description
 6 of the water supply services required by the contracting unit, the

7 minimum acceptable qualifications to be possessed by a vendor
8 proposing to enter into a contract for the provisions of these
9 services, and the date by which vendors must submit their quali-
10 fications. In addition to all other factors bearing on qualifications,
11 the contracting unit shall consider the reputation and experience
12 of the vendor, and may consider information which might result
13 in debarment or suspension of a vendor if the vendor has been
14 debarred or suspended by a State agency. The request for quali-
15 fications shall be published in at least one appropriate professional
16 or trade journal, and in at least one newspaper of general circu-
17 lation in the jurisdiction which would be served under the terms
18 of the proposed contract.

1 7. (New section) After reviewing the qualifications submitted by
2 vendors pursuant to section 6 of this act, a contracting unit shall
3 establish a list of all vendors responding to the request for quali-
4 fications, and shall designate the vendor or vendors which the
5 contracting unit has determined to be qualified to provide the water
6 supply services described in the request for qualifications. This list
7 shall include a statement setting forth the criteria applied by the
8 contracting unit in selecting qualified vendors, and shall be pub-
9 lished in the same publications in which the requests for quali-
10 fications were published pursuant to section 6 of this act.

1 8. (New section) Upon selecting the qualified vendors pursuant
2 to section 7 of this act, a contracting unit shall transmit a request
3 for proposals to the qualified vendors, which shall include a de-
4 tailed description of the water supply facility and services required,
5 the format and procedure to be followed in submitting proposals,
6 the specific information which the vendor must provide in the
7 proposal, a statement setting forth the relative importance of
8 factors, including cost, which the contracting unit will consider
9 in evaluating a proposal submitted by a qualified vendor, and any
10 other information which the contracting unit deems appropriate.
11 The request for proposals shall include the date and time of day
12 by which, and the place at which, the proposals shall be submitted
13 to the contracting unit. The contracting unit may extend the dead-
14 line for submission of proposals, but this extension shall apply to
15 all qualified vendors, who shall be provided with simultaneous
16 written notification of this extension.

1 9. (New section) A contracting unit shall review proposals sub-
2 mitted by vendors pursuant to section 8 of this act in such a manner
3 as to avoid disclosure of the contents of any proposal to vendors
4 submitting competing proposals. If provided for in the request for
5 proposals, the contracting unit may conduct discussions with

6 qualified vendors who have submitted proposals for the purpose
7 of clarifying any information submitted in the proposal, or assur-
8 ing that the vendor fully understood and responded to the require-
9 ments set forth in the request for proposals. If, as a result of these
10 discussions, the contracting unit decides to revise the request for
11 proposals, it shall immediately notify in writing each qualified
12 vendor which has submitted a proposal of any such revision or
13 revisions to the request for proposals. In the event of any revision
14 in the requests for proposals, a qualified vendor shall be permitted
15 to submit revisions to its proposal.

1 10. (New section) After reviewing the proposals submitted by
2 qualified vendors pursuant to section 9 of this act, a contracting unit
3 shall designate in writing the selected vendor or vendors. This
4 designation shall include a list of the qualified vendors submitting
5 proposals, the basis on which the selected vendor or vendors was
6 chosen, and a finding that the proposal submitted by the selected
7 vendor or vendors constitutes the proposal most advantageous to
8 the jurisdiction to be served under the terms of the proposal based
9 upon the evaluation factors included in the request for proposals.
10 This designation shall be published in at least one newspaper in
11 general circulation in the jurisdiction to be served under the terms
12 of the proposal.

1 11. (New section) Upon designating the selected vendor or
2 vendors pursuant to section 10 of this act, a contracting unit shall
3 negotiate with the selected vendor or vendors a proposed contract,
4 which shall include the accepted proposal and the provisions re-
5 quired pursuant to section 15 of this act. Upon negotiating a pro-
6 posed contract, the contracting unit shall make the proposed con-
7 tract available to the public at its main offices, and shall transmit a
8 copy of the proposed contract to the division, the department, the
9 Board of Public Utilities, and the Department of the Public
10 Advocate.

1 12. (New section) a. A contracting unit shall conduct a public
2 hearing or hearings on the charges, rates, or fees, or the formula for
3 determining these charges, rates, or fees, and the other provisions
4 contained in a proposed contract negotiated pursuant to section 11
5 of this act. The contracting unit shall provide at least 90 days
6 public notice of this public hearing to the Department of the Public
7 Advocate, prospective consumers, and other interested parties.
8 This notice shall be published in at least one newspaper of general
9 circulation in the jurisdiction to be served under the terms of the
10 proposed contract. Within 45 days after giving notice of the public
11 hearing, the contracting unit shall hold a meeting with prospective

12 consumers and other interested parties to explain the terms and
13 conditions of the proposed contract, and to receive written ques-
14 tions which will be part of the record of the public hearing. At the
15 public hearing, the selected vendor or vendors shall be present, and
16 the contracting unit shall have the burden to answer the questions
17 received at the meeting, and to show that the proposed contract
18 complies with the provisions of section 15 of this act, and that it
19 constitutes the best means of securing the required water supply
20 services among available alternatives. The contracting unit shall
21 provide that a verbatim record be kept of the public hearing, and
22 that a written transcript of this record be printed and made avail-
23 able to the public within 30 days of the close of the public hearing.
24 After the public hearing the contracting unit and the vendor may
25 agree to make changes to the proposed contract, and shall transmit
26 the proposed contract, a copy of the printed transcript of the public
27 hearing, and a statement summarizing the major issues raised at
28 the public hearing and the response of the contracting unit to these
29 issues, to the division, the department, the Board of Public Utili-
30 ties, and the Department of the Public Advocate, and to all persons
31 who attended the public hearing.

32 b. If the Division of Rate Counsel in the Department of the Public
33 Advocate represents the public interest at a public hearing or
34 hearings conducted pursuant to this section, the Division of Rate
35 Counsel shall be entitled to assess the vendor for costs incurred in
36 this representation in the manner provided in section 20 of P. L.
37 1974, c. 27 (C. 52:27E-19). The basis of the assessment shall be
38 the prospective first year's revenue realized by the vendor from the
39 provision of the water supply services pursuant to the terms of
40 the proposed contract.

41 c. If a contract awarded pursuant to the provisions of this act is
42 renegotiated, the contracting unit shall conduct a public hearing
43 on the renegotiated contract pursuant to the provisions of this
44 section.

1 13. (New section) a. The department, within 60 days of receipt
2 of a proposed contract submitted to it by a contracting unit pur-
3 suant to section 12 of this act, shall approve or conditionally
4 approve the proposed contract. If the department approves the
5 proposed contract, it shall accompany its approval with a written
6 finding that the proposed contract will meet appropriate environ-
7 mental and water quality standards, and that it is consistent with
8 the State primary drinking water regulations or requirements for
9 the jurisdiction to be served under the terms of the proposed con-
10 tract pursuant to the "Safe Drinking Water Act," P. L. 1977,

11 c. 224 (C. 58:12A-1 et seq.). If the department conditionally
12 approves a proposed contract, it shall state in writing the revisions
13 which must be made to the proposed contract prior to receiving
14 approval, and shall inform the contracting unit if the revisions to
15 be made to the proposed contract warrant a public hearing. After
16 revising the contract, the contracting unit may resubmit the pro-
17 posed contract to the department for approval.

18 b. The division, within 60 days of receipt of a proposed contract
19 transmitted to it by a contracting unit pursuant to section 12 of
20 this act, shall approve or conditionally approve the proposed con-
21 tract. If the division approves the proposed contract, it shall
22 accompany its approval with a written finding that the proposed
23 contract complies with the provisions of section 15 of this act, and
24 that the proposed contract is compatible with the fiscal and financial
25 capabilities of the contracting unit. If the division conditionally
26 approves the proposed contract, it shall state in writing the revi-
27 sions which must be made to the proposed contract prior to receiv-
28 ing approval, and shall inform the contracting unit if the revisions
29 to be made to the proposed contract warrant a public hearing.
30 After revising the proposed contract, the contracting unit may
31 resubmit the proposed contract to the division for approval.

32 c. If the contracting unit is subject to the jurisdiction of the
33 Board of Public Utilities, the board, within 60 days of receipt of a
34 proposed contract submitted to it by a contracting unit pursuant
35 to section 12 of this act, shall approve or conditionally approve
36 the proposed contract if the board finds the proposed contract to
37 be in the public interest. If the board conditionally approves the
38 proposed contract because the contract is not in the public interest,
39 the board shall notify the contracting unit in writing of the changes
40 needed in the proposed contract in order for it to be in the public
41 interest, and shall inform the contracting unit if the revisions to
42 be made warrant a public hearing. After revising the proposed
43 contract, the contracting unit may resubmit the proposed contract
44 to the board for approval.

45 In reviewing and approving the proposed contract, the Board
46 of Public Utilities shall not determine a rate base for, or otherwise
47 regulate the tariffs or return of, the proposed water supply facility
48 or the provision of water supply services. The board shall not,
49 thereafter, conduct any further review of the contract.

50 d. Notwithstanding the provisions of subsection c. of this section,
51 all parties to any proposed contract may request the Board of
52 Public Utilities to determine a rate base for the proposed water
53 supply facility or the provision of water supply services, in which
54 case the board may make that determination and the terms of any

55 proposed contract so approved shall be subject to the continuing
56 jurisdiction of the board.

1 14. (New section) A contracting unit may awards a contract
2 negotiated pursuant to the provisions of this act to a vendor only
3 after the department, the Board of Public Utilities, and the division
4 have approved the proposed contract pursuant to section 13 of
5 this act.

1 15. (New section) Any contract for the provision of water supply
2 services negotiated and awarded to a vendor by a contracting unit
3 pursuant to this act, or the "Local Public Contracts Law," P. L.
4 1971, c. 198 (C. 40A:11-1 et seq.), shall include, but shall not be
5 limited to, provisions concerning:

6 a. The allocation of the risks of financing and constructing a
7 water supply facility including delays in completion of the construc-
8 tion of the system, construction and financing cost overruns and
9 increased costs resulting from change orders, construction changes
10 required by revisions in applicable laws, rules, or regulations,
11 failure of the system to achieve its required operating performance
12 or efficiency, changes in tax benefits, and the need for equity con-
13 tributions in addition to those provided for in the contract;

14 b. The allocation of the risks of operating and maintaining a
15 water supply facility, including excessive or nonscheduled periods
16 of inoperation or technical failure, excess labor and materials costs
17 due to underestimation, changes in operating procedures required
18 by revisions in applicable laws, rules, or regulations, changes in the
19 quantity or composition of water delivered for filtration or treat-
20 ment, excessive operation or maintenance costs due to poor manage-
21 ment, and increased costs of distribution of the water resulting
22 from costs associated with filtration or treatment;

23 c. The allocation of the risks associated with circumstances or
24 occurrences beyond the control of the parties to the contract;

25 d. The defaulting and termination of the contract;

26 e. The periodic preparation by the vendor of an operating per-
27 formance report and an audited balance statement of the water
28 supply facility, which shall be submitted to the contracting unit, the
29 department and the division;

30 f. The intervals at which the contract shall be renegotiated;

31 g. The employment of current employees of the contracting unit
32 whose positions or employment will be affected by the terms of the
33 contract; and

34 h. The formulas to be used to determine the charges, rates, or
35 fees to be charged for the water supply services, and the method-
36 ology or methodologies used to develop these formulas.

1 16. (New section) A contracting unit which has awarded a
 2 contract for the provision of water supply services to a vendor
 3 pursuant to this act or the "Local Public Contracts Law," P. L.
 4 1971, c. 198 (C. 40A:11-1 et seq.) may lease to the vendor, for a
 5 fair market price, the property to be used as a site for a water
 6 supply facility, the provisions of any other laws or rules and
 7 regulations adopted pursuant thereto to the contrary notwith-
 8 standing.

1 17. (New section) Any contracting unit which, prior to the effec-
 2 tive date of this act, has issued a request for qualifications and a
 3 request for proposals from vendors for the provision of water
 4 supply services, or has initiated negotiations with a vendor for the
 5 provision of water supply services, may petition the department
 6 and the Board of Public Utilities for certification as being sub-
 7 stantially and materially in compliance with the provisions of this
 8 act, and, upon receiving this certification, may award a contract
 9 for the provision of water supply services pursuant to the pro-
 10 visions of this act.

1 18. (New section) The department, the Board of Public Utilities,
 2 and the division may adopt, pursuant to the "Administrative Pro-
 3 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and
 4 regulations necessary to carry out their respective responsibilities
 5 under this act.

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

3 15. Duration of certain contracts. All purchases, contracts or
 4 agreements for the performing of work or the furnishing of ma-
 5 terials, supplies or services shall be made for a period not to exceed
 6 12 consecutive months, except that contracts or agreements may be
 7 entered into for longer periods of time as follows:

8 (1) Supplying of

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

11 (b) Fuel or oil for use of airplanes, automobiles, motor
 12 vehicles or equipment for any term not exceeding in the aggre-
 13 gate, two years;

14 (c) Thermal energy produced by a cogeneration facility, for
 15 use for heating or air conditioning or both, for any term not
 16 exceeding 20 years, when the contract is approved by the
 17 Board of Public Utilities. For the purposes of this paragraph,
 18 "cogeneration" means the simultaneous production in one
 19 facility of electric power and other forms of useful energy
 20 such as heating or process steam;

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

22 (3) The collection and disposal of garbage and refuse, for any
23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25
25 years, when such contract is in conformance with a solid waste
26 management plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1
27 et seq.), and with the approval of the Division of Local Government
28 Services and the Department of Environmental Protection;

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

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

32 (7) Leasing or servicing of automobiles, motor vehicles, ma-
33 chinery and equipment of every nature and kind, for a period not to
34 exceed three years; provided, however, such contracts shall be
35 entered into only subject to and in accordance with the rules and
36 regulations promulgated by the Director of the Division of Local
37 Government Services of the Department of Community Affairs;

38 (8) The supplying of any product or the rendering of any ser-
39 vice by a telephone company which is subject to the jurisdiction of
40 the Board of Public Utilities for a term not exceeding five years;

41 (9) Any single project for the construction, reconstruction or
42 rehabilitation of any public building, structure or facility, or any
43 public works project, including the retention of the services of
44 any architect or engineer in connection therewith, for the length
45 of time authorized and necessary for the completion of the actual
46 construction;

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

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

53 (12) The performance of work or services or the furnishing of
54 materials or supplies for the purpose of conserving energy in build-
55 ings owned by, or operations conducted by, the contracting unit,
56 the entire price of which to be established as a percentage of the
57 resultant savings in energy costs, for a term not to exceed 10 years;
58 provided, however, that such contracts shall be entered into only
59 subject to and in accordance with rules and regulations promulgated
60 by the Department of Energy establishing a methodology for com-
61 puting energy cost savings;

62 (13) The performance of work or services or the furnishing of

63 materials or supplies for the purpose of elevator maintenance for
64 any term not exceeding three years;

65 (14) Leasing or servicing of electronic communications equip-
66 ment for a period not to exceed five years; provided, however, such
67 contract shall be entered into only subject to and in accordance
68 with the rules and regulations promulgated by the Director of the
69 Division of Local Government Services of the Department of Com-
70 munity Affairs;

71 (15) Leasing of motor vehicles, machinery and other equipment
72 primarily used to fight fires, for a term not to exceed seven years,
73 when the contract includes an option to purchase, subject to and in
74 accordance with rules and regulations promulgated by the Director
75 of the Division of Local Government Services of the Department of
76 Community Affairs[.];

77 (16) *The provision of water supply services or the designing,*
78 *financing, construction, operation, or maintenance, or any combina-*
79 *tion thereof, of a water supply facility, or any component part or*
80 *parts thereof, including a water filtration system, for a period not*
81 *to exceed 40 years, when the contract for these services is approved*
82 *by the Division of Local Government Services in the Department of*
83 *Community Affairs, the Board of Public Utilities, and the Depart-*
84 *ment of Environmental Protection pursuant to P. L. 198 . . . , c. . . .*
85 *(C.) (now pending before the Legislature as the Assem-*
86 *bly Committee Substitute for Assembly Bill Nos. 2809 and 2813 of*
87 *1984). For the purposes of this paragraph, "water supply services"*
88 *means any service provided by a water supply facility; "water*
89 *filtration system" means any equipment, plants, structures, ma-*
90 *chinery, apparatus, or land, or any combination thereof, acquired,*
91 *used, constructed, rehabilitated, or operated for the collection, im-*
92 *poundment, storage, improvement, filtration, or other treatment of*
93 *drinking water for the purposes of purifying and enhancing water*
94 *quality and insuring its potability prior to the distribution of the*
95 *drinking water to the general public for human consumption, in-*
96 *cluding plants and works, and other personal property and appur-*
97 *tenances necessary for their use or operation; and "water supply*
98 *facility" means and refers to the real property and the plants,*
99 *structures, interconnections between existing water supply facil-*
100 *ities, machinery and equipment and other property, real, personal*
101 *and mixed, acquired, constructed or operated, or to be acquired,*
102 *constructed or operated, in whole or in part by or on behalf of a*
103 *political subdivision of the State or any agency thereof, for the*
104 *purpose of augmenting the natural water resources of the State*

105 *and making available an increased supply of water for all uses, or*
 106 *of conserving existing water resources, and any and all appur-*
 107 *tenances necessary, useful or convenient for the collecting, im-*
 108 *pounding, storing, improving, treating, filtering, conserving or*
 109 *transmitting of water, and for the preservation and protection of*
 110 *these resources and facilities and providing for the conservation*
 111 *and development of future water supply resources.*

112 All multi-year leases and contracts entered into pursuant to this
 113 section 15, except contracts for the leasing or servicing of equip-
 114 ment supplied by a telephone company which is subject to the
 115 jurisdiction of the Board of Public Utilities, contracts for thermal
 116 energy authorized pursuant to **[subsection]** *paragraph* (1) above,
 117 construction contracts authorized pursuant to **[subsection]** *para-*
 118 *graph* (9) above, **[or]** contracts and agreements for the provision
 119 of work or the supplying of equipment to promote energy conserva-
 120 tion authorized pursuant to **[subsection]** *paragraph* (12) above, *or*
 121 *contracts for water supply services or for a water supply facility or*
 122 *any component part or parts thereof authorized pursuant to para-*
 123 *graph* (16) above, shall contain a clause making them subject to the
 124 availability and appropriation annually of sufficient funds as may
 125 be required to meet the extended obligation, or contain an annual
 126 cancellation clause.

127 The Division of Local Government Services shall adopt and
 128 promulgate rules and regulations concerning the methods of ac-
 129 counting for all contracts that do not coincide with the fiscal year.

1 20. This act shall take effect immediately.

STATEMENT

This bill establishes a procedure allowing local government units to enter into long-term service contracts (up to 40 years) with private firms for the designing, financing, construction, operation, or maintenance of water supply facilities. This procedure would constitute an alternative to any procedure now available.

Under the procedure set forth in this bill, a local government unit would negotiate and award a contract to a private firm for water supply services in the following manner:

1. Upon deciding to enter into such a contract, the local unit would file a notice of intent with the Department of Environmental Protection, the Board of Public Utilities, the Division of Local Government Services in the Department of Community Affairs, and the Department of the Public Advocate. This notice would also be published in a local newspaper.

2. The local unit would then issue a request for qualifications from firms interested in contracting to provide the water supply services. The local unit would review all submitted qualifications, and would establish a list of qualified contractors based on criteria developed by the local unit, including the experience and reputation of the firm.

3. Upon establishing a list of qualified contractors, the local unit requests each qualified contractor to submit a specific proposal, and, upon review of the submitted proposals, the local unit shall negotiate a proposed contract with the contractor submitting the proposal which the local unit determines to be the most advantageous.

4. The local unit conducts a public hearing on the proposed contract. The contractor must be present at the meeting, and the Department of the Public Advocate is authorized to represent the public interest at the meeting and may assess the contractor for the costs incurred in this representation. The local unit shall provide that a transcript of the hearing be printed.

5. After the hearing, the local unit will transmit the proposed contract, a transcript of the public hearing, and a statement discussing the issues raised at the public hearing and the local unit's response to these issues to the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services. The department will review the proposed contract for its environmental content, the board will review the proposed contract to insure that it is in the public interest, and the division will review the contract to insure that it comports with the financial and fiscal capabilities of the local unit. Each agency will have 60 days to approve or conditionally approve the proposed contract.

6. A local unit may award the contract to the contractor only after receiving the approval of the department, the board and the division.

Because the contract will constitute the basis on which the cost of the water supply service will be calculated, the bill provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the water supply facility.

2. The allocation of the risks of operating and maintaining a water supply facility.

3. The allocation of risks beyond the control of the local unit and the contractor.

4. The defaulting and termination of the contract.

5. The periodic preparation by the contractor of an operating performance report and audited balance statement.

6. The intervals at which the contract shall be renegotiated.

7. The employment of current employees of the local unit which would be affected under the terms of the contract.

8. The formulas to be used to determine the rates to be charged for the water supply services.

The bill also provides that if a local government unit has started to negotiate a contract for water supply services prior to this bill's effective date, or has issued a request for qualifications or proposals from interested contractors, it may petition the department and the board for certification as being substantially in compliance with this procedure set forth in this bill. If the department and the board so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

ASSEMBLY, No. 2809

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 19, 1984

By Assemblyman S. ADUBATO

AN ACT concerning long-term contracts between local government units and private firms for the provision of water supply facilities and water supply services, establishing a procedure for the negotiating, awarding, and review of these contracts, amending P. L. 1971, c. 198, and supplementing Title 58 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as
2 the "New Jersey Water Supply Privatization Act."

1 2. (New section) The Legislature finds that the construction,
2 rehabilitation, operation, and maintenance of modern and efficient
3 water filtration facilities are essential to protecting and improving
4 the State's water quality; that many of the water filtration systems
5 in New Jersey must be replaced or upgraded if an inexorable de-
6 cline in water quality is to be avoided during the coming decades;
7 that the citizens of this State, in recognition of the crucial role the
8 construction of new and the upgrading of existing water supply
9 facilities play in maintaining and augmenting the natural water
10 resources of the State, and with an understanding that the cost of
11 financing and constructing these systems is beyond the limited
12 financial resource capabilities of local governments and authorities
13 and must be borne by the bonding authority of the State and repaid,
14 in part, through a system of water supply user charges, approved
15 the enactment of the "Water Supply Bond Act of 1981" (P. L.
16 1981, c. 261); that the water filtration needs of the State are so
17 great that the limited funds allocated for this purpose from the

**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 printed in italics thus is new matter.

18 “Water Supply Fund” established by the 1981 bond issue are
 19 insufficient; that given this inadequate present level of State fund-
 20 ing, alternative methods of financing the construction of new or
 21 the rehabilitation of antiquated or inadequate existing water fil-
 22 tration systems must be developed and encouraged; that one alter-
 23 native method of financing these necessary facilities available to
 24 local government units consists of contracting with private-sector
 25 firms for the financing, construction and operation of these systems;
 26 and that for some local government units, contracting for the pro-
 27 vision of water supply services, if done in such a way as to protect
 28 the interests of water users and to conform with environmentally
 29 sound water quality standards, will constitute an appropriate
 30 method of securing these needed water filtration systems.

31 The Legislature therefore determines that it is in the public
 32 interest to establish a comprehensive procedure designed to au-
 33 thorize local government units to contract with private firms for
 34 the construction of water filtration systems and the provision of
 35 water supply services.

1 3. (New section) As used in this act:

2 a. “Contracting unit” means a county, district water supply
 3 commission, municipality, municipal or county utilities authority,
 4 municipal water district, joint meeting or any other political sub-
 5 division of the State authorized pursuant to law to operate or
 6 maintain a pure water supply system or to construct, rehabilitate,
 7 operate, or maintain water supply facilities or otherwise provide
 8 water for human consumption;

9 b. “Department” means the Department of Environmental Pro-
 10 tection;

11 c. “Division” means the Division of Local Government Services
 12 in the Department of Community Affairs;

13 d. “Vendor” means any person financially, technically, and ad-
 14 ministratively capable of financing, planning, designing, construct-
 15 ing, operating, or maintaining, or any combination thereof, a water
 16 filtration system, water supply facilities, or of providing water
 17 supply services to a local government unit under the terms of a
 18 contract awarded pursuant to the provisions of this act;

19 e. “Water filtration system” means any equipment, plants, struc-
 20 tures, machinery, apparatus, or land, or any combination thereof,
 21 acquired, used, constructed, rehabilitated, or operated for the col-
 22 lection, impoundment, storage, improvement, filtration, or other
 23 treatment of drinking water for the purposes of purifying and
 24 enhancing water quality and insuring its potability prior to the

25 distribution of the drinking water to the general public for human
 26 consumption, including plants and works, and other personal prop-
 27 erty and appurtenances necessary for their use or operation;

28 f. "Water supply facilities" means and refers to the real prop-
 29 erty and the plants, structures, interconnections between existing
 30 water supply facilities, machinery and equipment and other prop-
 31 erty, real, personal and mixed, acquired, constructed or operated,
 32 or to be acquired, constructed or operated, in whole or in part by
 33 or on behalf of a political subdivision of the State or any agency
 34 thereof, for the purpose of augmenting the natural water resources
 35 of the State and making available an increased supply of water
 36 for all uses, or of conserving existing water resources, and any
 37 and all appurtenances necessary, useful or convenient for the col-
 38 lecting, impounding, storing, improving, treating, filtering, conserv-
 39 ing or transmitting of water, and for the preservation and pro-
 40 tection of these resources and facilities and providing for the
 41 conservation and development of future water supply resources.

42 g. "Water supply services" means services provided by a water
 43 supply facility.

1 4. (New section) The provisions of any other law, or rules and
 2 regulations adopted pursuant thereto to the contrary notwithstand-
 3 ing, any contracting unit may enter into a contract, for a period
 4 not to exceed 40 years, with a vendor for the financing, designing,
 5 construction, operation, or maintenance, or any combination thereof,
 6 of a water supply facility, including a water filtration system, or
 7 for water supply services, pursuant to the provisions of this act.

1 5. (New section) A contracting unit which intends to enter into
 2 a contract with a private vendor for the provision of water supply
 3 services pursuant to the provisions of this act shall notify, at least
 4 60 days prior to issuing a request for qualifications from interested
 6 vendors pursuant to section 6 of this act, the division, the depart-
 7 ment, the Board of Public Utilities, and the Department of the
 8 Public Advocate of its intention, and shall publish notice of its
 9 intention in at least one newspaper of general circulation in the
 10 jurisdiction which would be served under the terms of the proposed
 11 contract.

1 6. (New section) Upon submitting the notices of intent pursuant
 2 to section 5 of this act, a contracting unit may issue a request for
 3 qualifications of vendors interested in entering into a contract with
 4 the contracting unit for the provision of water supply services.
 5 The request for qualifications shall include a general description
 6 of the water supply services required by the contracting unit, the

7 minimum acceptable qualifications to be possessed by a vendor
8 proposing to enter into a contract for the provisions of these ser-
9 vices, and the date by which vendors must submit their qualifica-
10 tions. In addition to all other factors bearing on qualifications, the
11 contracting unit shall consider the reputation and experience of
12 the vendor, and may consider information which might result in
13 debarment or suspension of a vendor if the vendor has been de-
14 barred or suspended by a State agency. The request for qualifica-
15 tions shall be published in at least one appropriate professional
16 or trade journal, and in at least one newspaper of general circu-
17 lation in the jurisdiction which would be served under the terms
18 of the proposed contract.

1 7. (New section) After reviewing the qualifications submitted by
2 vendors pursuant to section 6 of this act, a contracting unit shall
3 establish a list of all vendors responding to the request for qualifi-
4 cations, and shall designate the vendor or vendors which the con-
5 tracting unit has determined to be qualified to provide the water
6 supply services described in the request for qualifications. This
7 list shall include a statement setting forth the criteria applied by
8 the contracting unit in selecting qualified vendors, and shall be
9 published in the same publications in which the requests for quali-
10 fications were published pursuant to section 6 of this act.

1 8. (New section) Upon selecting the qualified vendors pursuant
2 to section 7 of this act, a contracting unit shall transmit a request
3 for proposals to the qualified vendors, which shall include a de-
4 tailed description of the water supply facility and services required,
5 the format and procedure to be followed in submitting proposals,
6 the specific information which the vendor must provide in the pro-
7 posal, a statement setting forth the relative importance of factors,
8 including cost, which the contracting unit will consider in evaluat-
9 ing a proposal submitted by a qualified vendor, and any other in-
10 formation which the contracting unit deems appropriate. The re-
11 quest for proposals shall include the date and time of day by
12 which, and the place at which, the proposals shall be submitted to
13 the contracting unit. The contracting unit may extend the deadline
14 for submission of proposals, but this extension shall apply to all
15 qualified vendors, who shall be provided with simultaneous written
16 notification of this extension.

1 9. (New section) A contracting unit shall review proposals sub-
2 mitted by vendors pursuant to section 8 of this act in such a manner
3 as to avoid disclosure of the contents of any proposal to vendors
4 submitting competing proposals. If provided for in the request

5 for proposals, the contracting unit may conduct discussions with
6 qualified vendors who have submitted proposals for the purpose
7 of clarifying any information submitted in the proposal, or assur-
8 ing that the vendor fully understood and responded to the require-
9 ments set forth in the request for proposals. If, as a result of these
10 discussions, the contracting unit decides to revise the request for
11 proposals, it shall immediately notify in writing each qualified
12 vendor which has submitted a proposal of any such revision or
13 revisions to the request for proposals. In the event of any revision
14 in the requests for proposals, a qualified vendor shall be permitted
15 to submit revisions to its proposal.

1 10. (New section) After reviewing the proposals submitted by
2 qualified vendors pursuant to section 9 of this act, a contracting unit
3 shall designate in writing the selected vendor or vendors. This
4 designation shall include a list of the qualified vendors submitting
5 proposals, the basis on which the selected vendor or vendors was
6 chosen, and a finding that the proposal submitted by the selected
7 vendor or vendors constitutes the proposal most advantageous to
8 the jurisdiction to be served under the terms of the proposal, based
9 upon the evaluation factors included in the request for proposals.
10 This designation shall be published in at least one newspaper in
11 general circulation in the jurisdiction to be served under the terms
12 of the proposal.

1 11. (New section) Upon designating the selected vendor or
2 vendors pursuant to section 10 of this act, a contracting unit shall
3 negotiate with the selected vendor or vendors a proposed contract,
4 which shall include the accepted proposal and the provisions re-
5 quired pursuant to section 15 of this act. Upon negotiating a pro-
6 posed contract, the contracting unit shall make the proposed con-
7 tract available to the public at its main offices, and shall transmit a
8 copy of the proposed contract to the division, the department, the
9 Board of Public Utilities, and the Department of the Public Ad-
10 vocate.

1 12. (New section) a. A contracting unit shall conduct a public
2 hearing or hearings on the charges, rates, or fees, or the formula for
3 determining these charges, rates, or fees, and the other provisions
4 contained in a proposed contract negotiated pursuant to section 11
5 of this act. The contracting unit shall provide at least 90 days
6 public notice of this public hearing to the Department of the Public
7 Advocate, prospective consumers, and other interested parties.
8 This notice shall be published in at least one newspaper of general
9 circulation in the jurisdiction to be served under the terms of the

10 proposed contract. Within 45 days after giving notice of the public
11 hearing, the contracting unit shall hold a meeting with prospective
12 consumers and other interested parties to explain the terms and
13 conditions of the proposed contract, and to receive written ques-
14 tions which will be part of the record of the public hearing. At the
15 public hearing, the selected vendor or vendors shall be present, and
16 the contracting unit shall have the burden to answer the questions
17 received at the meeting, and to show that the proposed contract
18 complies with the provisions of section 15 of this act, and that it
19 constitutes the best means of securing the required water supply
20 services among available alternatives. The contracting unit shall
21 provide that a verbatim record be kept of the public hearing, and
22 that a written transcript of this record be printed and made avail-
23 able to the public within 30 days of the close of the public hearing.
24 After the public hearing the contracting unit and the vendor may
25 agree to make changes in the proposed contract, and shall transmit
26 the proposed contract, a copy of the printed transcript of the public
27 hearing, and a statement summarizing the major issues raised at
28 the public hearing and the response of the contracting unit to these
29 issues, to the division, the department, the Board of Public Utili-
30 ties, and the Department of the Public Advocate, and to all persons
31 who attended the public hearing.

32 b. If the Division of Rate Counsel in the Department of the Public
33 Advocate represents the public interest at a public hearing or
34 hearings conducted pursuant to this section, the Division of Rate
35 Counsel shall be entitled to assess the vendor for costs incurred in
36 this representation in the manner provided in section 20 of P. L.
37 1974, c. 27 (C. 52:27E-19). The basis of the assessment shall be
38 the prospective first year's revenue realized by the vendor from the
39 provision of the water supply services pursuant to the terms of
40 the proposed contract.

41 c. If a contract awarded pursuant to the provisions of this act is
42 renegotiated, the contracting unit shall conduct a public hearing
43 on the renegotiated contract pursuant to the provisions of this
44 section.

1 13. (New section) a. The department, within 60 days of receipt
2 of a proposed contract submitted to it by a contracting unit pur-
3 suant to section 12 of this act, shall approve or conditionally
4 approve the proposed contract. If the department approves the
5 proposed contract, it shall accompany its approval with a written
6 finding that the proposed contract will meet appropriate environ-
7 mental and water quality standards, and that it is consistent with

8 the State primary drinking water regulations or requirements for
9 the jurisdiction to be served under the terms of the proposed con-
10 tract pursuant to the "Safe Drinking Water Act," P. L. 1977, c. 224
11 (C. 58:12A-1 et seq.). If the department conditionally approves
12 a proposed contract, it shall state in writing the revisions which
13 must be made to the proposed contract prior to receiving approval,
14 and shall inform the contracting unit if the revisions to be made
15 to the proposed contract warrant a public hearing. After revising
16 the contract, the contracting unit may resubmit the proposed con-
17 tract to the department for approval.

18 b. The division, within 60 days of receipt of a proposed contract
19 transmitted to it by a contracting unit pursuant to section 12 of
20 this act, shall approve or conditionally approve the proposed con-
21 tract. If the division approves the proposed contract, it shall
22 accompany its approval with a written finding that the proposed
23 contract complies with the provisions of section 15 of this act, and
24 that the proposed contract is compatible with the fiscal and financial
25 capabilities of the contracting unit. If the division conditionally
26 approves the proposed contract, it shall state in writing the revi-
27 sions which must be made to the proposed contract prior to receiv-
28 ing approval, and shall inform the contracting unit if the revisions
29 to be made to the proposed contract warrant at public hearing.
30 After revising the proposed contract, the contracting unit may
31-32 resubmit the proposed contract to the division for approval.

33 c. The Board of Public Utilities, within 60 days of receipt of
34 a proposed contract submitted to it by a contracting unit pursuant
35 to section 12 of this act, shall approve or conditionally approve
36 the proposed contract if the board finds the proposed contract
37 to be in the public interest. If the Board of Public Utilities dis-
38 approves the proposed contract because the contract is not in the
39 public interest, the board shall notify the contracting unit in writ-
40 ing of the changes needed in the proposed contract in order for
41 it to be in the public interest, and shall inform the contracting unit
42 if the revisions to be made warrant a public hearing. After re-
43 vising the proposed contract, the contracting unit may resubmit
44 the proposed contract to the board for approval.

45 In reviewing and approving the proposed contract, the Board
46 of Public Utilities shall not determine a rate base for, or otherwise
47 regulate the tariffs or return of, the proposed water supply facility
48 or the provision of water supply services. The board shall not,
49 thereafter, conduct any further review of the contract.

50 d. Notwithstanding the provisions of subsection c. of this sec-
 51 tion, all parties to any proposed contract may request the board
 52 to determine a rate base for the proposed water supply facility
 53 or the provision of water supply services, in which case the board
 54 may make that determination and the terms of any proposed con-
 55 tract so approved shall remain subject to the continuing jurisdic-
 56 tion of the board.

1 14. (New section) A contracting unit may award a contract
 2 negotiated pursuant to the provisions of this act to a vendor only
 3 after the department, the Board of Public Utilities, and the division
 4 have approved the proposed contract pursuant to section 13 of
 5 this act.

1 15. (New section) Any contract for the provision of water sup-
 2 ply services negotiated and awarded to a vendor by a contracting
 3 unit pursuant to this act, or the "Local Public Contract Law," P. L.
 4 1971, c. 198 (C. 40A:11-1 et seq.), shall include, but shall not be
 5 limited to, provisions concerning:

6 a. The allocation of the risks of financing and constructing a
 7 water supply facility including delays in completion of the con-
 8 struction of the system, construction and financing cost overruns
 9 and increased costs resulting from change orders, construction
 10 changes required by revisions in applicable laws, rules, or regula-
 11 tions, failure of the system to achieve its required operating per-
 12 formance or efficiency, changes in tax benefits, and the need for
 13 equity contributions in addition to those provided for in the con-
 14 tract;

15 b. The allocation of the risks of operating and maintaining a
 16 water supply facility, including excessive or nonscheduled periods
 17 of inoperation or technical failure, excess labor and materials costs
 18 due to underestimation, changes in operating procedures required
 19 by revision in applicable laws, rules, or regulations, changes in the
 20 quantity or composition of water delivered for filtration or treat-
 21 ment, excessive operation or maintenance costs due to poor man-
 22 agement, and increased costs of distribution of the water resulting
 23 from costs associated with filtration or treatment;

24 c. The allocation of the risks associated with circumstances or
 25 occurrences beyond the control of the parties to the contract;

26 d. The defaulting and termination of the contract;

27 e. The periodic preparation by the vendor of an operating per-
 28 formance report and an audited balance statement of the water
 29 supply facility, which shall be submitted to the contracting unit,
 30 the department and the division;

31 f. The intervals at which the contract shall be renegotiated;
 32 g. The employment of current employees of the contracting unit
 33 whose positions or employment will be affected by the terms of the
 34 contract; and

35 (h) The formulas to be used to determine the charges, rates, or
 36 fees to be charged for the water supply services, and the methodol-
 37 ogy or methodologies used to develop these formulas.

1 16. (New section) A contracting unit which has awarded a con-
 2 tract for the provision of water supply services to a vendor pur-
 3 suant to this act or the "Local Public Contracts Law," P. L. 1971,
 4 c. 198 (C. 40A:11-1 et seq.) may lease to the vendor, for a fair
 5 market price, the property to be used as a site for a water supply
 6 facility, the provisions of any other laws or rules and regulations
 7 adopted pursuant thereto to the contrary notwithstanding.

1 17. (New section) Any contracting unit which, prior to the ef-
 2 fective date of this act, has issued a request for qualifications and
 3 a request for proposals from vendors for the provision of water
 4 supply services, or has initiated negotiations with a vendor for the
 5 provision of water supply services, may petition the department
 6 and the Board of Public Utilities for certification as being sub-
 7 stantially and materially in compliance with the provisions of this
 8 act, and, upon receiving this certification, may award a contract
 9 for the provision of water supply services pursuant to the provi-
 10 sions of this act.

1 18. (New section) The department, the Board of Public Utilities,
 2 and the division may adopt, pursuant to the "Administrative Pro-
 3 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and
 4 regulations necessary to carry out their respective responsibilities
 5 under this act.

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

3 15. Duration of certain contracts. All purchases, contracts or
 4 agreements for the performing of work or the furnishing of ma-
 5 terials, supplies or services shall be made for a period not to exceed
 6 12 consecutive months, except that contracts or agreements may
 7 be entered into for longer periods of time as follows:

- 8 (1) Supplying of
 9 (a) Fuel for heating purposes, for any term not exceeding
 10 in the aggregate, two years;
 11 (b) Fuel or oil for use of airplanes, automobiles, motor
 12 vehicles or equipment for any term not exceeding in the aggre-
 13 gate, two years;

- 14 (c) Thermal energy produced by a cogeneration facility, for
 15 use for heating or air conditioning or both, for any term not
 16 exceeding 20 years, when the contract is approved by the
 17 Board of Public Utilities. For the purposes of this paragraph,
 18 "cogeneration" means the simultaneous production in one
 19 facility of electric power and other forms of useful energy
 20 such as heating or process steam;
- 21 (2) (Deleted by amendment; P. L. 1977, c. 53.)
- 21A (3) The collection and disposal of garbage and refuse, for any
 21B term not exceeding in the aggregate, five years;
- 21C (4) The recycling of solid waste, for any term not exceeding 25
 21D years, when such contract is in conformance with a solid waste
 21E management plan approved pursuant to P. L. 1970, c. 39
 21F (C. 13:1E-1 et seq.), and with the approval of the Division of
 21G Local Government Services and the Department of Environmental
 21H Protection;
- 21I (5) Data processing service, for any term of not more than three
 21J years;
- 22 (6) Insurance, for any term of not more than three years;
- 23 (7) Leasing or servicing of automobiles, motor vehicles, ma-
 24 chinery and equipment of every nature and kind, for a period not
 25 to exceed three years; provided, however, such contracts shall be
 26 entered into only subject to and in accordance with the rules and
 27 regulations promulgated by the Director of the Division of Local
 28 Government Services of the Department of Community Affairs;
- 29 (8) The supplying of any product or the rendering of any ser-
 30 vice by a telephone company which is subject to the jurisdiction of
 31 the Board of Public Utilities for a term not exceeding five years;
- 32 (9) Any single project for the construction, reconstruction or
 33 rehabilitation of any public building, structure or facility, or any
 34 public works project, including the retention of the services of
 35 any architect or engineer in connection therewith, for the length
 36 of time authorized and necessary for the completion of the actual
 37 construction;
- 38 (10) The providing of food services for any term not exceeding
 39 three years;
- 40 (11) On-site inspections undertaken by private agencies pur-
 41 suant to the "State Uniform Construction Code Act" (P. L. 1975,
 42 c. 217; C. 52:27D-119 et seq.) for any term of not more than three
 43 years;
- 44 (12) The performance of work or services or the furnishing of
 45 materials or supplies for the purpose of conserving energy in build-

46 ings owned by, or operations conducted by, the contracting unit,
 47 the entire price of which to be established as a percentage of the
 48 resultant savings in energy costs, for a term not to exceed 10 years;
 49 provided, however, that such contracts shall be entered into only
 50 subject to and in accordance with rules and regulations promulgated
 51 by the Department of Energy establishing a methodology for com-
 52 puting energy cost savings;

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

56 (14) Leasing or servicing of electronic communications equip-
 57 ment for a period not to exceed five years; provided, however, such
 58 contract shall be entered into only subject to and in accordance
 59 with the rules and regulations promulgated by the Director of the
 60 Division of Local Government Services of the Department of Com-
 61 munity Affairs;

62 (15) Leasing of motor vehicles, machinery and other equipment
 63 primarily used to fight fires, for a term not to exceed seven years,
 64 when the contract includes an option to purchase, subject to and in
 65 accordance with rules and regulations promulgated by the Director
 66 of the Division of Local Government Services of the Department
 67 of Community Affairs[.];

68 (16) *The provision of water supply services or the designing,*
 69 *financing, construction, operation, or maintenance, or any combina-*
 70 *tion thereof, of a water supply facility, or any component part or*
 71 *parts thereof, including a water filtration system, for a period not*
 72 *to exceed 40 years, when the contract for these services is approved*
 73 *by the Division of Local Government Services in the Department*
 74 *of Community Affairs, the Board of Public Utilities, and the De-*
 75 *partment of Environmental Protection pursuant to P. L. 198... ,*
 76 *c. (C.) (now pending before the Legislature as*
 77 *Assembly Bill No. 2809 of 1984). For the purposes of this para-*
 78 *graph, "water supply services" means any service provided by a*
 79 *water supply facility; "Water filtration system" means any equip-*
 80 *ment, plants, structures, machinery, apparatus, or land, or any*
 81 *combination thereof, acquired, used, constructed, rehabilitated, or*
 82 *operated for the collection, impoundment, storage, improvement,*
 83 *filtration, or other treatment of drinking water for the purposes of*
 84 *purifying and enhancing water quality and insuring its potability*
 85 *prior to the distribution of the drinking water to the general public*
 86 *for human consumption, including plants and works, and other*
 87 *personal property and appurtenances necessary for their use or*

88 operation; and "water supply facility" means and refers to the real
 89 property and the plants, structures, interconnections between exist-
 90 ing water supply facilities, machinery and equipment and other
 91 property, real, personal and mixed, acquired, constructed or op-
 92 erated, or to be acquired, constructed or operated, in whole or in
 93 part by or on behalf of a political subdivision of the State or any
 94 agency thereof, for the purpose of augmenting the natural water
 95 resources of the State and making available an increased supply
 96 of water for all uses, or of conserving existing water resources,
 97 and any and all appurtenances necessary, useful or convenient for
 98 the collecting, impounding, storing, improving, treating, filtering,
 99 conserving or transmitting of water, and for the preservation and
 100 protection of these resources and facilities and providing for the
 101 conservation and development of future water supply resources.

102 All multi-year leases and contracts entered into pursuant to this
 103 section 15, except contracts for the leasing or servicing of equip-
 104 ment supplied by a telephone company which is subject to the
 105 jurisdiction of the Board of Public Utilities, contracts for thermal
 106 energy authorized pursuant to [subsection] paragraph (1) above,
 107 construction contracts authorized pursuant to [subsection] para-
 108 graph (9) above, [or] contracts and agreements for the provision
 109 of work or the supplying of equipment to promote energy conserva-
 110 tion authorized pursuant to [subsection] paragraph (12) above, or
 111 contracts for water supply services or for a water supply facility
 112 or any component part or parts thereof authorized pursuant to
 113 paragraph (16) above, shall contain a clause making them subject
 114 to the availability and appropriation annually of sufficient funds
 115 as may be required to meet the extended obligation, or contain an
 116 annual cancellation clause.

117 The Division of Local Government Services shall adopt and
 118 promulgate rules and regulations concerning the methods of ac-
 119 counting for all contracts that do not coincide with the fiscal year.

1 20. This act shall take effect immediately.

STATEMENT

This bill establishes a procedure allowing local government units to enter into long-term service contracts (up to 40 years) with private firms for the designing, financing, construction, operation, or maintenance of water supply facilities. This procedure would constitute an alternative to any procedure now available.

Under the procedure set forth in this bill, a local government unit would negotiate and award a contract to a private firm for water supply services in the following manner:

1. Upon deciding to enter into such a contract, the local unit would file a notice of intent with the Department of Environmental Protection, the Board of Public Utilities, the Division of Local Government Services in the Department of Community Affairs, and the Department of the Public Advocate. This notice would also be published in a local newspaper.

2. The local unit would then issue a request for qualifications from firms interested in contracting to provide the water supply services. The local unit would review all submitted qualifications, and would establish a list of qualified contractors based on criteria developed by the local unit, including the experience and reputation of the firm.

3. Upon establishing a list of qualified contractors, the local unit requests each qualified contractor to submit a specific proposal, and, upon review of the submitted proposals, the local unit shall negotiate a proposed contract with the contractor submitting the proposal which the local unit determines to be the most advantageous.

4. The local unit conducts a public hearing on the proposed contract. The contractor must be present at the meeting, and the Department of the Public Advocate is authorized to represent the public interest at the meeting and may assess the contractor for the costs incurred in this representation. The local unit shall provide that a transcript of the hearing be printed.

5. After the hearing, the local unit will transmit the proposed contract, a transcript of the public hearing, and a statement discussing the issues raised at the public hearing and the local unit's response to these issues to the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services. The department will review the proposed contract for its environmental content, the board will review the proposed contract to insure that it is in the public interest, and the division will review the contract to insure that it comports with the financial and fiscal capabilities of the local unit. Each agency will have 60 days to approve or conditionally approve the proposed contract.

6. A local unit may award the contract to the contractor only after receiving the approval of the department, the board and the division.

Because the contract will constitute the basis on which the cost of the water supply service will be calculated, the bill provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the water supply facility.

2. The allocation of the risks of operating and maintaining a water supply facility.

3. The allocation of risks beyond the control of the local unit and the contractor.

4. The defaulting and termination of the contract.

5. The periodic preparation by the contractor of an operating performance report and audited balance statement.

6. The intervals at which the contract shall be renegotiated.

7. The employment of current employees of the local unit which would be affected under the terms of the contract.

8. The formulas to be used to determine the rates to be charged for the water supply services.

The bill also provides that if a local government unit has started to negotiate a contract for water supply services prior to this bill's effective date, or has issued a request for qualifications or proposals from interested contractors, it may petition the department and the board for certification as being substantially in compliance with this procedure set forth in this bill. If the department and the board so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2314

STATE OF NEW JERSEY

DATED: NOVEMBER 16, 1984

This bill establishes a procedure allowing local government units to enter into long-term service contracts (up to 40 years) with private firms for the designing, financing, construction, operation, or maintenance of water supply facilities, including a water filtration or treatment system, or for water supply services. This procedure would constitute an alternative to any procedure now available.

Under the procedure set forth in this bill, a local government unit would negotiate and award a contract to a private firm for water supply services in the following manner:

1. Upon deciding to enter into such a contract, the local unit would file a notice of intent with the Department of Environmental Protection, the Board of Public Utilities, the Division of Local Government Services in the Department of Community Affairs, and the Department of the Public Advocate. This notice would also be published in a local newspaper.

2. The local unit would then issue a request for qualifications from firms interested in contracting to provide the water supply services. The local unit would review all submitted qualifications, and would establish a list of qualified contractors based on criteria developed by the local unit, including the experience and reputation of the firm.

3. Upon establishing a list of qualified contractors, the local unit requests each qualified contractor to submit a specific proposal, and, upon review of the submitted proposals, the local unit shall negotiate a proposed contract with the contractor submitting the proposal which the local unit determines to be the most advantageous.

4. The local unit conducts a public hearing on the proposed contract. The contractor must be present at the meeting, and the Department of the Public Advocate is authorized to represent the public interest at the meeting and may assess the contractor for the costs incurred in this representation. The local unit shall provide that a transcript of the hearing be printed.

5. After the hearing, the local unit will transmit the proposed contract, a transcript of the public hearing, and a statement discussing the issues raised at the public hearing and the local unit's response to these issues to the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services. The department will review the proposed contract for its environmental content, the board will review the proposed contract to insure that it is in the public interest, and the division will review the contract to insure that it comports with the financial and fiscal capabilities of the local unit. Each agency will have 60 days to approve or conditionally approve the proposed contract.

6. A local unit may award the contract to the contractor only after receiving the approval of the department, the board and the division.

Because the contract will constitute the basis on which the cost of the water supply service will be calculated, the bill provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the water supply facility.
2. The allocation of the risks of operating and maintaining a water supply facility.
3. The allocation of risks beyond the control of the local unit and the contractor.
4. The defaulting and termination of the contract.
5. The periodic preparation by the contractor of an operating performance report and audited balance statement.
6. The intervals at which the contract shall be renegotiated.
7. The employment of current employees of the local unit which would be affected under the terms of the contract.
8. The formulas to be used to determine the rates to be charged for the water supply services.

The bill also provides that if a local government unit has started to negotiate a contract for water supply services prior to this bill's effective date, or has issued a request for qualifications or proposals from interested vendors, it may petition the department and the board for certification as being substantially in compliance with this procedure set forth in this bill. If the department and the board so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

The committee amended the bill to provide that the Board of Public Utilities would review a long term contract entered into by a local unit for water supply services only if the local unit is already under the board's jurisdiction. In addition, the committee made technical amendments to the bill.

- 2 - Assembly Amendments

to

Senate Bill No. 2314 (OCR)

(Typed copy of Senate Committee amendments)
Proposed by Assemblyman Buddy Fortunato
(12/6/84)

Amend:

Page	Sec.	Line
11	19	86
11	19	88

Omit "Senate Bill No." ~~of 1984~~ insert "the
 Assembly Committee Substitute for Assembly
 Bill Nos. 2809 and 2813 of 1984"

~~After "filtration"~~ omit "or treatment"

STATEMENT

These amendments would make purely technical changes to the bill.

9774.901
661-



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: CARL GOLDEN
609-292-8956

185 W. State Street
Trenton, N. J.

TRENTON, N.J. 08625

Release: MONDAY, FEB. 4, 1985

Governor Thomas H. Kean today signed legislation establishing a method under which local government units may contract with private firms for the construction of water filtration systems and the provision of water supply services.

The legislation, S-2314, was sponsored by Senate President Carmen Orechio, D-Essex, and is known as the "New Jersey Water Supply Privatization Act."

"The legislation recognizes that there exists an inadequate level of public funding for either the construction of new water filtration systems or for the rehabilitation of inadequate systems," Kean said. "It recognizes, also, that many water supply systems in New Jersey --- particularly in older and more urbanized areas --- are in desperate need of replacement or rehabilitation."

"The alternative financing method established in the bill," Kean said, "Is a major step toward easing the problem of too few dollars and too many worthwhile projects competing for those dollars."

"Unfortunately, because of an inadequate level of funding, many projects have been delayed year after year, thus making the problem that much worse," he said. "In most cases, municipalities do not possess the resources necessary to undertake water supply projects and, if they are unable to take advantage of State funds, badly needed repairs and rehabilitative measures are delayed."

- more -

S-2314 SIGNED
PAGE TWO
FEBRUARY 4, 1985

The legislation establishes a procedure for local governing bodies to follow to contract with private firms for water projects, including a provision that contracts for water supply services may not exceed 40 years.

It provides, also, that contracts between a governing body and a private firm are subject to the approval of the Department of Environmental Protection as well as the Board of Public Utilities.

The Governor pointed out that the Federal Clean Water Act requires all municipalities to comply with mandated water treatment levels by 1988, thus making the upgrading of facilities throughout the State even more imperative.

#