

58:27-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:27-1 et al

"Wastewater Privatization Act"

LAWS OF: 1985

CHAPTER: 72

Bill No: S991

Sponsor(s): Dalton

Date Introduced: Pre-filed

Committee: Assembly: Energy and Natural Resources

Senate: Energy and Environment

Amended during passage: Yes Senate Committee Substitute (OCR) enacted. Amendments during passage denoted by asterisks.

Date of Passage: Assembly: Jan. 3, 1985  
Senate: Jun. 28, 1984

Date of Approval: March 11, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

Law, referred to in press release:

§2314, enacted as L.1985, c.37.

(over)

**DO NOT CIRCULATE**

974.90                    New Jersey. Legislature. Senate. Committee on Energy and  
S517                    Environment.  
1984                    Public hearing, held 4-26-84.  
                         Trenton, 1984.

See newspaper clipping (attached):

"Privatization for Water Treatment", 3-12-85, Star Ledger.

3-11-85

[OFFICIAL COPY REPRINT]  
 SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 991**

**STATE OF NEW JERSEY**

ADOPTED MAY 17, 1984

AN ACT concerning long term contracts between local government units and private firms for the provision of wastewater treatment 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 the  
 2 "New Jersey Wastewater Treatment Privatization Act."

1 2. (New section) The Legislature finds and declares that protect-  
 2 ing the ground and surface water of the State from pollution is  
 3 vital to the health and general welfare of the citizens of New  
 4 Jersey; that the construction, rehabilitation, operation, and  
 5 maintenance of modern and efficient sewer systems and wastewater  
 6 treatment plants are essential to protecting and improving the  
 7 State's water quality; that in addition to protecting and improving  
 8 water quality, adequate wastewater treatment systems are essential  
 9 to economic growth and development; that many of the wastewater  
 10 treatment systems in New Jersey must be replaced or upgraded if  
 11 an inexorable decline in water quality is to be avoided during the  
 12 coming decades; that the United States Congress, in recognition  
 13 of the crucial role wastewater treatment systems and plants play in  
 14 maintaining and improving water quality, and with an understand-  
 15 ing that the cost of financing and constructing these systems must  
 16 be borne by local governments and authorities with limited sources  
 17 of revenues, established in the "Clean Water Act" a program to  
 18 provide local governments with grants for constructing these  
 19 systems;

**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:

\*—Assembly committee amendments adopted November 19, 1984.

20 that during the last several years the amount of federal grant money  
21 available to states and local governments for assistance in con-  
22 structing and improving wastewater treatment systems has sharply  
23 diminished; that the current level of federal grant funding is in-  
24 adequate to meet the cost of upgrading the State's wastewater treat-  
25 ment capacity to comply with State water quality standards; that  
26 given this inadequate present level of federal grant funding, alter-  
27 native methods of financing the construction, operation, and im-  
28 provement of wastewater treatment systems must be developed and  
29 encouraged; that one alternative method of financing necessary  
30 wastewater treatment systems available to local government units  
31 consists of contracting with private-sector firms for the financing,  
32 construction and operation of these systems; and that for some local  
33 government units, contracting for the provision of wastewater  
34 treatment services, if done in such a way as to protect the interests  
35 of consumers and to conform with environmental standards, will  
36 constitute an appropriate method of securing these needed waste-  
37 water treatment systems.

38 The Legislature therefore determines that it is in the public  
39 interest to establish a comprehensive procedure designed to  
40 authorize local government units to contract with private firms for  
41 the provision of wastewater treatment services.

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

2 a. "Contracting unit" means a county, municipality, municipal  
3 or county sewerage or utility authority, municipal sewerage  
4 district, joint meeting or any other political subdivision of the  
5 State authorized pursuant to law to construct wastewater treat-  
6 ment systems or provide wastewater treatment services.

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  
12 administratively capable of financing, planning, designing, con-  
13 structing, operating, or maintaining, or any combination thereof, a  
14 wastewater treatment system, or of providing wastewater treat-  
15 ment services to a local government unit under the terms of a  
16 contract awarded pursuant to the provisions of this act.

17 e. "Wastewater" means residential, commercial, industrial, or  
18 agricultural liquid waste, sewerage, stormwater runoff, or any  
19 combination thereof, or other liquid residue discharged or collected  
20 into a sewer system or stormwater system, or any combination  
21 thereof.

22 f. "Wastewater treatment system" means any equipment, plants,  
23 structures, machinery, apparatus, or land, or any combination  
24 thereof, acquired, used, constructed or operated for the storage,  
25 collection, reduction, recycling, reclamation, disposal, separation,  
26 or other treatment of wastewater or sewer sludge, or for the final  
27 disposal of residues resulting from the treatment of wastewater,  
28 including, but not limited to, pumping and ventilating stations,  
29 facilities, plants and works, connections, outfall sewers, inter-  
30 ceptors, trunk lines, and other personal property and appurtenances  
31 necessary for their use or operation.

32 g. "Wastewater treatment services" means services provided by  
33 a wastewater treatment system.

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 with a vendor for  
4 the financing, designing, construction, operation, or maintenance,  
5 or any combination thereof, of a wastewater treatment system, or  
6 for wastewater treatment services, pursuant to the provisions of  
7 this act.

1 5. (New section) A contracting unit which intends to enter into a  
2 contract with a private vendor for the provision of wastewater  
3 treatment services pursuant to the provisions of this act shall  
4 notify, at least 60 days prior to issuing a request for qualifications  
5 from interested vendors pursuant to section 6 of this act, the divi-  
6 sion, the department, and the Department of the Public Advocate  
7 of its intention, and shall publish notice of its intention in at least  
8 one newspaper of general circulation in the jurisdiction which  
9 would be served under the terms of the proposed 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 wastewater treatment  
5 services. The request for qualifications shall include a general  
6 description of the wastewater treatment services required by the  
7 contracting unit, the minimum acceptable qualifications to be  
8 possessed by a vendor proposing to enter into a contract for the  
9 provisions of these services, and the date by which vendors must  
10 submit their qualifications. In addition to all other factors bearing  
11 on qualifications, the contracting unit shall consider the reputation  
12 and experience of the vendor, and may consider information which  
13 might result in debarment or suspension of a vendor from State  
14 contracting and may disqualify a vendor if the vendor has been  
15 debarred or suspended by a State agency. The request for qualifica-

16 tions shall be published in at least one appropriate professional or  
17 trade journal, and in at least one newspaper of general circulation  
18 in the jurisdiction which would be served under the terms of the  
19 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 qualifica-  
4 tions, and shall designate the vendor or vendors which the con-  
5 tracting unit has determined to be qualified to provide the waste-  
6 water treatment services described in the request for qualifica-  
7 tions. This list shall include a statement setting forth the criteria  
8 applied by the contracting unit in selecting qualified vendors, and  
9 shall be published in the same publications in which the requests for  
10 qualifications 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 wastewater treatment system and services  
5 required, the format and procedure to be followed in submitting  
6 proposals, the specific information which the vendor must provide  
7 in the proposal, a statement setting forth the relative importance  
8 of 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, and  
9 the Department of the Public 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 wastewater  
20 treatment services among available alternatives. The contracting

21 unit shall provide that a verbatim record be kept of the public  
 22 hearing, and that a written transcript of this record be printed  
 23 and made available to the public within \***[30]**\* \*45\* days of the  
 24 close of the public hearing. *\*Written testimony received no more  
 25 than 15 days after the public hearing shall be included in the written  
 26 transcript.\** After the public hearing the contracting unit and the  
 27 vendor may agree to make changes to the proposed contract, and  
 28 *\*the contracting unit\** shall transmit the proposed contract, a copy  
 29 of the printed transcript of the public hearing, and a statement  
 30 summarizing the major issues raised at the public hearing and the  
 31 response of the contracting unit to these issues, to the division, the  
 31A department, and the Department of the Public Advocate, and **[to**  
 31B all persons who attended the public hearing**]** *\*shall make copies  
 31C available to any other person upon request\*.*

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 wastewater treatment services pursuant to the  
 40 terms of 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, **[an]** *\*and\** that it is con-  
 8 sistent with the areawide and facility water quality management  
 9 plans adopted for the jurisdiction to be served under the terms of  
 10 the proposed contract pursuant to the "Water Quality Planning  
 11 Act," P. L. 1977, c. 75 (C. 58:11A-1 et seq.). If the department  
 12 conditionally approves a proposed contract, it shall state in writing  
 13 the revisions which **[must]** *\*shall\** be made to the proposed  
 14 contract prior to receiving approval, and shall inform the contract-  
 15 ing **[units]** *\*unit\** if the revisions to be made to the proposed  
 16 contract warrant a public hearing. **[After revising the contract,**



17 the contracting unit may resubmit the proposed contract to the  
17A 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】\* *shall* be made to the proposed contract  
28 prior to receiving approval, and shall inform the contracting unit  
29 if the revisions to be made to the proposed contract warrant a public  
30 hearing. \*【After revising the proposed contract, the contracting  
31 unit may resubmit the proposed contract to the division for  
32 approval.】\*

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

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

6 a. The allocation of the risks of financing and constructing a  
7 wastewater treatment system, including delays in completion of  
8 the construction of the system, construction and financing cost  
9 overruns and increased costs resulting from change orders, con-  
10 struction changes required by revisions in applicable laws, rules, or  
11 regulations, failure of the system to achieve its required operating  
12 performance 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 wastewater treatment system, including excessive or nonscheduled  
17 periods of inoperation or technical failure, excess labor and ma-  
18 terials costs due to underestimation, changes in operating pro-  
19 cedures required by revisions in applicable laws, rules, or regula-  
20 tions, changes in the quantity or composition of wastewater deliv-  
21 ered for treatment, excessive operation or maintenance costs due  
22 to poor management, and increased costs of disposal of the residue  
23 resulting from wastewater 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 waste-  
29 water treatment system, which shall be submitted to the contracting  
30 unit, 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 wastewater treatment services, and the  
37 methodology 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 wastewater treatment 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 waste-  
6 water treatment system, the provisions of any other laws or rules  
7 and 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 wastewater  
4 treatment services, or has initiated negotiations with a vendor for  
5 the provision of wastewater treatment services, may petition the  
6 department for certification as being substantially and materially  
7 in compliance with the provisions of this act, and, upon receiving  
8 this certification, may award a contract for the provision of waste-  
9 water treatment services pursuant to the provisions of this act.

1 18. (New section) The department and the division may adopt,  
2 pursuant to the "Administrative Procedure Act," P. L. 1968, c.  
3 410 (C. 52:14B-1 et seq.), rules and regulations necessary to carry  
4 out their respective responsibilities 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 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, ma-  
33 chinery and equipment of every nature and kind, for a period not  
34 to 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 service  
39 by a telephone company which is subject to the jurisdiction of the  
40 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 any  
44 architect or engineer in connection therewith, for the length of time  
45 authorized and necessary for the completion of the actual construction;  
46
- 47 (10) The providing of food services for any term not exceeding  
48 three years;
- 49 (11) On-site inspections undertaken by private agencies pursuant  
50 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, the  
56 entire price of which to be established as a percentage of the resul-  
57 tant 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  
75A of Community Affairs[.];

76 (16) *The provision of wastewater treatment services or the*  
77 *designing, financing, construction, operation, or maintenance, or*  
78 *any combination thereof, on a wastewater treatment system, or any*  
79 *component part or parts thereof, for a period not to exceed 40*  
80 *years, when the contract for these services is approved by the Divi-*  
81 *sion of Local Government Services in the Department of Com-*  
82 *munity Affairs and the Department of Environmental Protection*  
83 *pursuant to P. L. 198 , c. (C. ) (now pending before the*  
84 *Legislature as Senate Committee Substitute for Senate Bill No.*  
85 *991 of 1984). For the purposes of this paragraph, "wastewater*  
86 *treatment services" means any service provided by a wastewater*  
87 *treatment system, and "wastewater treatment system" means equip-*  
88 *ment, plants, structures, machinery, apparatus, or land, or any*  
89 *combination thereof, acquired, used, constructed, or operated for*  
90 *the storage, collection, reduction, recycling, reclamation, disposal,*  
91 *separation, or other treatment of wastewater or sewer sludge, or*  
92 *for the final disposal of residues resulting from the treatment of*

93 *wastewater, including, but not limited to, pumping and ventilating*  
94 *stations, facilities, plants and works, connections, outfall sewers,*  
95 *interceptors, trunk lines, and other personal property and appur-*  
96 *tenances necessary for their operation.*

97 All multi-year leases and contracts entered into pursuant to this  
98 section 15, except contracts for the leasing or servicing of equip-  
99 ment supplied by a telephone company which is subject to the  
100 jurisdiction of the Board of Public Utilities, contracts for thermal  
101 energy authorized pursuant to **【subsection】** *paragraph* (1) above,  
102 construction contracts authorized pursuant to **【subsection】** *para-*  
103 *graph* (9) above, **【or】** contracts and agreements for the provision  
104 of work or the supplying of equipment to promote energy conserva-  
105 tion authorized pursuant to **【subsection】** *paragraph* (12) above,  
106 *or contracts for wastewater treatment services or for a wastewater*  
107 *treatment system or any component part or parts thereof au-*  
108 *thorized pursuant to paragraph (16) above,* shall contain a clause  
109 making them subject to the availability and appropriation annually  
110 of sufficient funds as may be required to meet the extended obliga-  
111 tion, or contain an annual cancellation clause.

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

1 20. This act shall take effect immediately.

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110 to subsection (12) above, or contracts for a wastewater treatment  
 111 system or any component or components thereof or for the pro-  
 112 viding of wastewater treatment services authorized pursuant to  
 113 subsection (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 **[no]** not coincide with the fiscal  
 120 year.

1 6. This act shall take effect immediately.

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#### STATEMENT

In order to meet the goals of the federal "Clean Water Act," Pub.L. 92-500 (33 U.S.C. §1251 et seq.) and the State "Water Pollution Control Act," P. L. 1977, c. 74 (C. 58:10A-1 et seq.) to improve the quality of the waters of the State and to prevent further degradation, while allowing environmentally sound development, it is necessary to provide for additional and upgraded wastewater treatment systems. The greatest part of the funding for these systems has, in the past, been obtained through federal construction grants. Reductions in the construction grant program necessitate finding innovative methods for funding the required pollution control systems.

This bill would encourage private sector investment in the construction, ownership or operation, or both, of wastewater treatment facilities as an alternative to the traditional public sector financing of these services. Accordingly, the bill provides for an optional method of procurement and rate setting which would remove any institutional impediments preventing units of local government from implementing wastewater treatment projects which may be either privately or publicly owned, while maintaining strict financial and programmatic scrutiny by agencies of State Government.

5991 (1985)

ASSEMBLY ENERGY AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 991**

with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: NOVEMBER 19, 1984

Senate Committee Substitute for Senate Bill No. 991 establishes a procedure allowing local government units to enter into long term contracts (up to 40 years) with private firms for the designing, financing, construction, operation, or maintenance of wastewater treatment systems. 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 wastewater treatment 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 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 wastewater treatment 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 cost 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 and the Division of Local Government Services. The department will review the proposed contract for its environmental content, 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 and the division.

Because the contract will constitute the basis on which the cost of the wastewater treatment service will be calculated, S-991 SCS provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the wastewater treatment system.
2. The allocation of the risks of operating and maintaining a wastewater treatment system.
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 wastewater treatment services.

S-991 SCS also provides that if a local government unit has started to negotiate a contract for wastewater treatment 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 for certification as being substantially in compliance with this procedure set forth in this bill. If the department so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

As amended by the Assembly Energy and Natural Resources Committee, written testimony received no more than 15 days after the public hearing shall be included in the written transcript.

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SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 991**

**STATE OF NEW JERSEY**

DATED: MAY 17, 1984

Senate Committee Substitute for Senate Bill No. 991 establishes a procedure allowing local government units to enter into long term contracts (up to 40 years) with private firms for the designing, financing, construction, operation, or maintenance of wastewater treatment systems. 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 wastewater treatment 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 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 wastewater treatment 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 and the Division of Local Government Services. The department will review the proposed contract for its environmental content, 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 and the division.

Because the contract will constitute the basis on which the cost of the wastewater treatment service will be calculated, S-991 SCS provides that the contract shall include provisions concerning:

1. The allocation of the risks of financing and constructing the wastewater treatment system.
2. The allocation of the risks of operating and maintaining a wastewater treatment system.
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 wastewater treatment services.

S-991 SCS also provides that if a local government unit has started to negotiate a contract for wastewater treatment 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 for certification as being substantially in compliance with this procedure set forth in this bill. If the department so certifies a local unit, the local unit may award the contract pursuant to the provisions of this bill.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: CARL GOLDEN  
609-292-8956

TRENTON, N.J. 08625

Release: MON., MARCH 11, 1985

Governor Thomas H. Kean today signed legislation to authorize local governments to enter into long-term contracts with private firms for the design, construction, operation or maintenance of wastewater treatment facilities.

The legislation, S-991, was sponsored by Senator Daniel Dalton, D-Camden, and is effective immediately.

The legislation is similar to that already signed by the Governor to permit local governments to enter into the same type of contracts for water supply projects and resource recovery programs.

"The need for upgraded wastewater treatment facilities is both urgent and of long standing," Kean said, "particularly in light of the mandate that New Jersey comply with water treatment levels set by the Federal government by 1988."

"It is also clearly recognized that adequate government funding is not available and that the so-called privatization concept as embodied in this bill is the best path to follow if New Jersey is to meet the Federal standards," the Governor said.

"This legislation provides a method to enable communities facing regulatory deadlines with respect to wastewater treatment to obtain the necessary funding and comply with the legally mandated standards," Kean said.

The legislation permits local governments to enter into contracts not to exceed 40 years for wastewater treatment projects.

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