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§1 - C.40A:12-17.1
§§2,12 -
C.40A:11-5.1
and 40A:11-5.2
§§3-6 - C.58:28-4
to 58:28-7

P.L. 2002, CHAPTER 47, *approved August 2, 2002*
Senate, No. 533 (*Third Reprint*)

1 AN ACT concerning the provision of water supply and wastewater
2 treatment services, and amending and supplementing parts of the
3 statutory law.

4

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

7

8 1. (New section) a. Notwithstanding the provisions of the "Local
9 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.) or
10 any other law, rule or regulation to the contrary, when the governing
11 body of a city of the first class shall determine by ordinance, with or
12 without competitive bidding, that it is in the public interest to contract
13 with a duly incorporated nonprofit association for the provision of
14 water supply services as defined in subsection (16) of section 15 of
15 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
16 treatment services as defined in subsection (19) of section 15 of
17 P.L.1971, c.198 (C.40A:11-15), the governing body is hereby
18 authorized to lease any real property, capital improvement or personal
19 property, or interests therein, or any part thereof, without compliance
20 with any other law governing disposal of lands by municipalities
21 except as provided pursuant to paragraph (1) of this subsection. Any
22 such lease may be made or given, with or without consideration, for
23 a period not to exceed 40 years and under any agreement and on any
24 terms and conditions which may be approved by the governing body
25 and which may be agreed to by the nonprofit association.

26 (1) (a) Any lands subject to the provisions of P.L.1988, c.163, as
27 amended by P.L.1990, c.19, that are leased or otherwise conveyed to
28 a duly incorporated nonprofit association pursuant to the provisions
29 of P.L. , c. (C.) (now before the Legislature as this bill) shall
30 continue to be subject to the provisions of P.L.1988, c.163, as
31 amended by P.L.1990, c.19.

32 (b) Upon leasing or otherwise controlling lands subject to the
33 provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, a duly
34 incorporated nonprofit association subject to the provisions of P.L. ,
35 c. (C.) (now before the Legislature as this bill) shall be subject to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted March 7, 2002.

² Assembly AEN committee amendments adopted May 13, 2002.

³ Assembly floor amendments adopted June 13, 2002.

1 the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, with
2 respect to those lands.

3 (c) The leasing of lands subject to the provisions of P.L.1988,
4 c.163, as amended by P.L.1990, c.19, by a city of the first class to a
5 duly incorporated nonprofit association pursuant to the provisions of
6 P.L. , c. (C.) (now before the Legislature as this bill) shall not
7 be considered a conveyance for the purposes of P.L.1988, c.163, as
8 amended by P.L.1990, c.19.

9 ²(d) Any lands that are leased or otherwise conveyed to a duly
10 incorporated nonprofit association pursuant to the provisions of
11 P.L. , c. (C.) (now before the Legislature as this bill) shall not
12 be developed for any purpose other than for the provision of water
13 supply services or wastewater treatment services as determined by the
14 Commissioner of Environmental Protection.²

15 (2) Nothing contained in this section abrogates, amends, modifies,
16 impairs or repeals the obligations previously assumed by a city of the
17 first class pursuant to the provisions of R.S.58:14-1 et seq., including
18 any contract or compact entered into thereby.

19 b. The authorization provided in this section shall be subject to the
20 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through
21 58:28-7)(now before the Legislature as this bill).

22 c. Notwithstanding any other provisions of this section to the
23 contrary, a duly incorporated nonprofit association that intends to
24 enter into a contract with the governing body of a city of the first class
25 for the provision of water supply services as defined in subsection (16)
26 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
27 of wastewater treatment services as defined in subsection (19) of
28 section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may
29 be, shall be subject to the provisions of the "Local Fiscal Affairs Law,"
30 N.J.S.40A:5-1 et seq., the "Local Authorities Fiscal Control Law,"
31 P.L.1983, c.313 (C.40A:5A-1 et seq.), the "Local Government Ethics
32 Law," P.L.1991, c.29 (C.40A:9-22.1 et seq.), and the "Open Public
33 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), inclusive, and shall
34 be considered a "local unit" pursuant to N.J.S.40A:5-2, an "authority"
35 pursuant to section 3 of P.L.1983, c.313 (C.40A:5A-3), a "local
36 government agency" pursuant to section 3 of P.L.1991, c.29
37 (C.40A:9-22.3), and a "public body" pursuant to section 3 of
38 P.L.1975, c.231 (C.10:4-8), respectively.

39 ¹d. Notwithstanding the provisions of any other law to the
40 contrary, any property that is leased or otherwise conveyed to a duly
41 incorporated nonprofit association pursuant to the provisions of
42 P.L. , c. (C.) (now before the Legislature as this bill) shall
43 not be subject to any exemption from taxation.¹

44 ²e. Nothing contained in this section or in any contract entered into
45 pursuant to sections 1 and 2 of P.L. , c. (C.) (now pending
46 before the Legislature as this bill) abrogates, amends, modifies, impairs

1 or repeals the obligations and responsibilities imposed on a city of the
2 first class or a duly incorporated nonprofit association by the
3 environmental laws of this State, including, but not limited to, the
4 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
5 the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.),
6 the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
7 seq.), and the "Water Supply and Wastewater Operators' Licensing
8 Act," P.L.1983, c.230 (C.58:11-64 et seq.).²

9
10 2. (New section) The Legislature finds and declares it to be in the
11 public interest and to be the public policy of the State to foster and
12 promote by all reasonable means the collection, storage and
13 distribution of an adequate supply of water for the inhabitants and
14 businesses of the counties and municipalities of this State and to foster
15 and promote the public health by providing for the collection and
16 treatment of sewerage through adequate sewerage facilities.

17 To further promote these interests, and notwithstanding the
18 provisions of any other law, rule or regulation to the contrary, the
19 governing body of a city of the first class may enter into a contract
20 with a duly incorporated nonprofit association for the provision of
21 water supply services as defined in subsection (16) of section 15 of
22 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
23 treatment services as defined in subsection (19) of section 15 of
24 P.L.1971, c.198 (C.40A:11-15), or both, as the case may be.

25 The governing body of a city of the first class that has entered into
26 a contract with a duly incorporated nonprofit association pursuant to
27 this section shall obtain the written opinion of bond counsel as to the
28 effect of the contract on the tax exempt status of existing and future
29 financing instruments executed by the parties given the terms of the
30 contract and the federal laws or regulations concerning this matter.

31 Any concession fee or monetary benefit paid by a duly incorporated
32 nonprofit association to the governing body of a city of the first class
33 shall be used for the purposes of reducing or off-setting property
34 taxes, reducing water supply services or wastewater treatment services
35 charges, rates or fees, one-time nonrecurring expenses or capital asset
36 expenditures related to water supply facilities or wastewater treatment
37 systems.

38 Upon executing such contract, the duly incorporated nonprofit
39 association shall be deemed to be providing essential governmental
40 functions on behalf of the city of the first class and, to the extent
41 permitted in the contract, shall exercise all powers and responsibilities
42 of the city of the first class related to the provision of water supply
43 services and wastewater treatment services now or hereinafter
44 provided under law.

45 The authorization provided in this section shall be subject to the
46 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through

1 58:28-7)(now before the Legislature as this bill).

2

3 3. (New section) As used in sections 3 through 6 of P.L. , c.
4 (C.58:28-4 through 58:28-7)(now before the Legislature as this bill):

5 "Board" means the Board of Public Utilities.

6 "Concession fee" means a payment from a duly incorporated
7 nonprofit association to the governing body of a city of the first class,
8 regardless of when it is received, that is exclusive of or exceeds any
9 contractually specified reimbursement of direct costs incurred by the
10 governing body.

11 "Contract" means a long-term written agreement wherein a duly
12 incorporated nonprofit association agrees to provide water supply
13 services or wastewater treatment services on behalf of the governing
14 body of a city of the first class and wherein the duly incorporated
15 nonprofit association agrees to provide, during the term of the
16 contract, capital expenditures on behalf of the governing body's water
17 supply facility as defined in subsection (16) of section 15 of P.L.1971,
18 c.198 (C.40A:11-15) or wastewater treatment system as defined in
19 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
20 both, as the case may be, which expenditures are set forth in the
21 contract.

22 "Department" means the Department of Environmental Protection.

23 "Director" means the Director of the Division of Local Government
24 Services in the Department of Community Affairs.

25 "Division" means the Division of Local Government Services in the
26 Department of Community Affairs.

27 "Proposal document" means the document prepared by or on behalf
28 of the governing body of a city of the first class describing the water
29 supply services or wastewater treatment services that the governing
30 body is considering having provided by a duly incorporated nonprofit
31 association pursuant to a contract.

32

33 4. (New section) a. The governing body of a city of the first class
34 shall publish notice of its intent to enter into a contract pursuant to
35 sections 1 and 2 of P.L. , c. (C.40A:12-17.1 and 40A:11-5.1)(now
36 before the Legislature as this bill) in at least one newspaper of general
37 circulation in the jurisdiction or service area that will receive water
38 supply services or wastewater treatment services under the terms of
39 the contract and one newspaper of broad regional circulation, at least
40 30 days prior to conducting the public hearing required under section
41 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this bill).

42 In addition, a governing body that intends to enter into a contract with
43 a duly incorporated nonprofit association for the provision of water
44 supply services or wastewater treatment services shall notify in writing
45 the board, department and division of its intent.

46 b. The public notice required under subsection a. of this section

1 shall describe the type of services desired and provide the name,
2 address and phone number of the person who can provide additional
3 information and a proposal document to an interested party.

4 c. The public entity shall set forth in writing the reasons for the
5 selection of the nonprofit association and shall make this document
6 available to the public along with the proposed contract upon request
7 and during the public hearing conducted pursuant to section 5 of
8 P.L. , c. (C.58:28-6)(now before the Legislature as this bill).

9 d. A contract entered into pursuant to sections 1 and 2 of P.L. ,
10 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
11 this bill) shall include provisions addressing the following:

12 (1) The charges, rates, fees or formulas to be used to determine the
13 charges, rates, or fees to be charged by the nonprofit association for
14 the water supply services or wastewater treatment services to be
15 provided.

16 (2) The allocation of the risks of financing and constructing
17 planned capital additions or upgrades to existing water supply facilities
18 or wastewater treatment systems.

19 (3) The allocation of the risks of operating and maintaining the
20 water supply facilities or wastewater treatment systems.

21 (4) The allocation of the risks associated with circumstances or
22 occurrences beyond the control of the parties to the contract.

23 (5) The defaulting and termination of the contract.

24 (6) The employment of current employees of the city of the first
25 class whose positions or employment will be affected by the terms of
26 the contract.

27 (7) The nonprofit association's authority and the extent, or the
28 procedures for the use, of that authority to initiate, negotiate and
29 finalize the terms for a bulk sale of surplus water. The contract shall
30 either grant the nonprofit association such authority or specifically
31 state that the nonprofit association is denied that authority. Nothing
32 in P.L. , c. (C.) (now before the Legislature as this bill) shall
33 be construed to authorize a city of the first class that enters into a
34 contract pursuant to sections 1 and 2 of P.L. , c. (C.40A:12-17.1
35 and 40A:11-5.1)(now before the Legislature as this bill) to provide for
36 the bulk sale, lease or transfer of water if the water being transferred,
37 leased or sold has been supplied to the city of the first class either by
38 the New Jersey Water Supply Authority or by the North Jersey District
39 Water Supply Commission, unless the authority pursuant to P.L.1981,
40 c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et
41 seq., as appropriate, has agreed to the bulk sale, lease or transfer.

42 (8) The requirements for the provision of a performance bond by
43 the nonprofit association, if so required by the governing body.

44 e. ²A contract entered into pursuant to sections 1 and 2 of P.L. ,
45 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
46 this bill) shall provide that any lands leased or otherwise conveyed to

1 the duly incorporated nonprofit association pursuant to the provisions
2 of P.L. , c. (C.) (now before the Legislature as this bill) shall
3 not be developed for any purpose other than for the provision of water
4 supply services or wastewater treatment services as determined by the
5 Commissioner of Environmental Protection.

6 f.² If a dispute over contract compliance, performance or
7 termination cannot be resolved by the parties to the contract pursuant
8 to the procedures set forth in the contract, either party to the contract
9 may file with the Superior Court which has appropriate jurisdiction a
10 request for an order either to terminate the contract based on the
11 reasons stated in the request or for an order for other appropriate
12 relief to the dispute. The court may take such action as it may deem
13 necessary to facilitate the expeditious resolution of the dispute and an
14 expeditious response to the request, including ordering the parties to
15 undertake a dispute resolution or mediation process. The court shall
16 use, as it deems necessary, the services of a financial expert in the area
17 of water supply service or wastewater treatment service contracts in
18 its analysis of the contract and the issues before it. Within 90 days
19 after the filing of a request, the court shall either grant the request or
20 deny the request. If the request is granted, the court shall order such
21 appropriate relief measures or remedies as it deems appropriate and
22 necessary.

23

24 5. (New section) a. The governing body of a city of the first class
25 that intends to enter into a contract with a duly incorporated nonprofit
26 association for the provision of water supply services as defined in
27 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
28 for the provision of wastewater treatment services as defined in
29 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
30 both, as the case may be, shall conduct a public hearing on the
31 proposed contract authorized pursuant to sections 1 and 2 of P.L. ,
32 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
33 this bill). The governing body shall also conduct a public hearing
34 pursuant to this section on revisions to a contract required by
35 subsection b. of section 6 of P.L. , c. (C.58:28-7)(now before the
36 Legislature as this bill) or on substantial amendments to a contract as
37 required by subsection g. of section 6 of P.L. , c. (C.58:28-7)(now
38 before the Legislature as this bill).

39 b. The governing body shall provide, at least 14 days prior to the
40 public hearing, (1) notice in writing to the board, department and the
41 division of its intent to enter into a contract with a duly incorporated
42 nonprofit association for the provision of water supply services or
43 wastewater treatment services, and (2) notice of the public hearing by
44 publication in at least one newspaper of general circulation in the
45 jurisdiction or service area of the governing body to be served under
46 the terms of the proposed contract. The publication shall include

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

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

29 d. The governing body shall produce a verbatim record of the
30 public hearing. The record of the public hearing shall be kept open for
31 a period of seven days following the conclusion of the hearing, during
32 which time interested parties may submit written statements to be
33 included in the hearing report. The governing body shall prepare a
34 written hearing report, which shall include a copy of the proposed
35 contract, the verbatim record of the public hearing, written statements
36 submitted by interested parties, a copy of the bond counsel's written
37 opinion required pursuant to section 2 of P.L. , c. (C.40A:11-
38 5.1)(now before the Legislature as this bill) and a statement prepared
39 by the governing body summarizing the major issues raised at the
40 public hearing and the governing body's specific responses to those
41 issues. The governing body shall make copies of the hearing report
42 available to interested parties, upon request, at a cost not to exceed
43 the actual cost of printing or copying.

44 e. The governing body may adopt an ordinance as provided in
45 section 1 of P.L. , c. (C.40A:12-17.1)(now before the Legislature
46 as this bill) and may enter into a contract as provided in section 2 of

1 P.L. , c. (C.40A:11-5.1)(now before the Legislature as this bill).
2 The ordinance may be introduced at the first meeting of the governing
3 body held after the public hearing on the proposed contract, and shall
4 acknowledge that the contract requires approval pursuant to the
5 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
6 Legislature as this bill).

7 f. Within 30 days after the close of a public hearing on a proposed
8 contract held pursuant to subsection a. of this section and upon at least
9 seven days prior written notice, the governing body shall submit an
10 application for approval to the division and the board and shall submit
11 the hearing report to the department for review pursuant to the
12 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
13 Legislature as this bill). The division shall specify the form of the
14 application to be submitted.
15

16 6. (New section) a. Within 45 days of receipt of the application,
17 the board and division shall approve, or conditionally approve, an
18 application submitted by a governing body pursuant to subsection f. of
19 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this
20 bill). Within 25 days of receipt of the hearing report, the department
21 shall provide any comments on the hearing report that it deems
22 appropriate to the board, division and the governing body. If the
23 board or division fail to approve or conditionally approve the
24 application within 50 days after receipt, the application shall be
25 deemed approved, unless the governing body has agreed to an
26 extension of the period.

27 b. If either the board or the division conditionally approves the
28 application, the board or division shall state in writing the revision to
29 the proposed contract that is necessary in order for it to be approved.
30 If the board or division determines that the required revision is
31 substantial, the governing body shall hold a public hearing on the
32 revision and adhere to the provisions of section 5 of P.L. , c.
33 (C.58:28-6)(now before the Legislature as this bill) in so doing, except
34 that the required notice shall be published at least seven days prior to
35 the public hearing. A substantial revision shall be a change that results
36 in an increase in the charges, rates or fees which will be paid for water
37 supply services or wastewater treatment services by users in the
38 jurisdiction or service area that will receive the water supply services
39 or wastewater treatment services pursuant to the terms of the contract,
40 or that materially changes other terms and conditions of the contract.
41 The proposed revision to the contract shall be submitted to the board,
42 division and the department 15 days prior to the date of the public
43 hearing.

44 If the board or division determines that the required revision in the
45 conditional approval is not substantial, the governing body shall submit
46 the proposed revision to the contract to the board and the division for

1 approval and to the department for review. The revision shall be
2 approved if found to be consistent with the conditions set forth in the
3 conditional approval, or disapproved with a written explanation as to
4 why the revision is not consistent, within 15 days after the next public
5 meeting of the board or division.

6 c. In its review of a contract, the board shall apply the following
7 criteria in determining whether to approve the contract:

8 (1) The duly incorporated nonprofit association entering into the
9 contract has the technical and administrative experience to ensure
10 continuity of service over the term of the contract and that the
11 standards and requirements contained in the application documents
12 concerning the technical and administrative capacity of the nonprofit
13 association are necessary and sufficient to protect the public interest.

14 (2) The terms of the contract are not unreasonable. In determining
15 whether the terms of the contract are not unreasonable, the board shall
16 review the charge, rates or fees to be charged or assessed under the
17 contract to determine that they are reasonable to the city of the first
18 class, taking into consideration all of the obligations undertaken by the
19 nonprofit association and all the benefits obtained by the city of the
20 first class. In making this determination, the board shall not use the
21 traditional rate based rate of return methodology.

22 (3) The franchise customers of a public utility participating in a
23 contract are protected from the risks of the proposed contract and that
24 they are not subsidizing the contract. If the nonprofit association is
25 not a public utility, the board shall ensure that under the terms of the
26 proposed contract the users of water outside of the jurisdiction or
27 service area that will receive water supply services under the contract
28 are also protected from the risks of the contract and that water users
29 outside the jurisdiction or service area are not subsidizing the contract
30 through increased charges, rates or fees for the supply of water.

31 (4) The contract contains the provisions required by paragraphs
32 (1), (2) and (6) of subsection d. of section 4 of P.L. ,
33 c. (C.58:28-5)(now before the Legislature as this bill).

34 Upon approval of a contract as proposed or as revised in response
35 to a conditional approval, the jurisdiction of the board over the
36 contract shall terminate until or unless the contract is amended to
37 change the formula or other basis of determining charges, rates or fees
38 contained therein.

39 d. In its review of a contract, the division shall apply the following
40 criteria in determining whether to approve the contract:

41 (1) The terms of the proposed contract do not materially impair the
42 ability of the governing body to punctually pay principal and interest
43 due on its outstanding indebtedness and to supply other essential
44 public improvements and services;

45 (2) A concession fee paid by a duly incorporated nonprofit
46 association as a result of the contract is paid directly to the

1 municipality that created or constitutes the governing body, and any
2 concession fee paid by a duly incorporated nonprofit association to a
3 governing body is used for the purposes of reducing or off-setting
4 property taxes, reducing water supply services or wastewater
5 treatment services charges, rates or fees, one-time nonrecurring
6 expenses or capital asset expenditures related to water supply facilities
7 or wastewater treatment systems; and

8 (3) The contract contains the provisions required by paragraphs
9 (3), (4), (5), (7) and (8) of subsection d. of section 4 of P.L. , c.
10 (C.58:28-5)(now before the Legislature as this bill).

11 The division shall also review and specifically approve any contract
12 provision pursuant to which a governing body will or may execute a
13 financing instrument for the purposes set forth in the contract. In
14 addition, the division shall review any contract between the governing
15 body of a city of the first class and a duly incorporated nonprofit
16 association in which a concession fee is paid by the nonprofit
17 association to determine if the payment of the concession fee is in the
18 best interest of the parties to the contract.

19 e. The board or division may provide the governing body with any
20 non-binding comments or advice during or after the review of the
21 application as the board or division deems appropriate.

22 f. The board or division shall assess and the applicant shall pay a
23 fee equal to the cost incurred by the board or division for an analysis
24 of an application by an independent person who has expertise in the
25 areas of water supply services or wastewater treatment services if
26 during the review of an application the board or division determines
27 that such an analysis is required.

28 g. If the governing body of a city of the first class and the duly
29 incorporated nonprofit association would like to amend a contract
30 after approval of an application by the board and division, the
31 governing body shall submit proposed amendments to the board and
32 division for approval and to the department for review. At the next
33 public meeting of the board and of the division after receipt of
34 proposed amendments, the board and the division shall determine
35 whether the proposed amendments are substantial. If the amendments
36 are substantial in nature as determined by either the board or the
37 division, the governing body shall conduct a hearing pursuant to
38 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as
39 this bill). Within 45 days of the receipt of proposed amendments that
40 are not determined to be substantial, or within 45 days of the receipt
41 of an application for approval of proposed amendments that are
42 determined to be substantial, the board and division shall approve or
43 conditionally approve the amendments in accordance with the
44 applicable procedures established for approval of an original contract
45 pursuant to this section.

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

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

5 (1) "Contracting unit" means:

6 (a) Any county; or

7 (b) Any municipality; or

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

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

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

24 "Contracting unit" shall not include a duly incorporated nonprofit
25 association that has entered into a contract with the governing body
26 of a city of the first class for the provision of water supply services or
27 wastewater treatment services pursuant to section 2 of P.L. _____, c.
28 (C.40A:11-5.1)(pending in the Legislature as this bill).

29 (2) "Governing body" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (13) "Marketing" means the sale, disposition, assignment, or
33 placement of designated recyclable materials with, or the granting of
34 a concession to, a reseller, processor, materials recovery facility, or
35 end-user of recyclable material, in accordance with a district solid
36 waste management plan adopted pursuant to P.L.1970, c.39 (C.13:1E-
37 1 et seq.) and shall not include the collection of such recyclable
38 material when collected through a system of routes by local
39 government unit employees or under a contract administered by a local
40 government unit.

41 (14) "Municipal solid waste" means, as appropriate to the
42 circumstances, all residential, commercial and institutional solid waste
43 generated within the boundaries of a municipality; or the formal
44 collection of such solid wastes or recyclable material in any
45 combination thereof when collected through a system of routes by
46 local government unit employees or under a contract administered by

1 a local government unit.

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

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

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

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

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

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

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

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

37 (23) "Competitive contracting" means the method described in
38 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
39 4.5) of contracting for specialized goods and services in which formal
40 proposals are solicited from vendors; formal proposals are evaluated
41 by the purchasing agent or counsel or administrator; and the governing
42 body awards a contract to a vendor or vendors from among the formal
43 proposals received.

44 (24) "Goods and services" or "goods or services" means any work,
45 labor, commodities, equipment, materials, or supplies of any tangible
46 or intangible nature, except real property or any interest therein,

1 provided or performed through a contract awarded by a contracting
2 agent, including goods and property subject to N.J.S.12A:2-101 et
3 seq.

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

14 (26) "Lowest price" means the least possible amount that meets all
15 requirements of the request of a contracting agent.

16 (27) "Lowest responsible bidder or vendor" means the bidder or
17 vendor: (a) whose response to a request for bids offers the lowest
18 price and is responsive; and (b) who is responsible.

19 (28) "Official newspaper" means any newspaper designated by the
20 contracting unit pursuant to R.S.35:1-1 et seq.

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

28 (30) "Purchasing agent" means the individual duly assigned the
29 authority, responsibility, and accountability for the purchasing activity
30 of the contracting unit, and who has such duties as are defined by an
31 authority appropriate to the form and structure of the contracting unit,
32 and P.L.1971, c.198 (C.40A:11-1 et seq.).

33 (31) "Quotation" means the response to a formal or informal
34 request made by a contracting agent by a vendor for provision or
35 performance of goods or services, when the aggregate cost is less than
36 the bid threshold. Quotations may be in writing, or taken verbally if
37 a record is kept by the contracting agent.

38 (32) "Responsible" means able to complete the contract in
39 accordance with its requirements, including but not limited to
40 requirements pertaining to experience, moral integrity, operating
41 capacity, financial capacity, credit, and workforce, equipment, and
42 facilities availability.

43 (33) "Responsive" means conforming in all material respects to the
44 terms and conditions, specifications, legal requirements, and other
45 provisions of the request.

46 (34) "Public works" means building, altering, repairing, improving

1 or demolishing any public structure or facility constructed or acquired
2 by a contracting unit to house local government functions or provide
3 water, waste disposal, power, transportation, and other public
4 infrastructures.

5 (35) "Director" means the Director of the Division of Local
6 Government Services in the Department of Community Affairs.

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

16 (37) "Concession" means the granting of a license or right to act
17 for or on behalf of the contracting unit, or to provide a service
18 requiring the approval or endorsement of the contracting unit, and
19 which may or may not involve a payment or exchange, or provision of
20 services by or to the contracting unit.

21 (38) "Index rate" means the rate of annual percentage increase,
22 rounded to the nearest half-percent, in the Implicit Price Deflator for
23 State and Local Government Purchases of Goods and Services,
24 computed and published quarterly by the United States Department of
25 Commerce, Bureau of Economic Analysis.

26 (39) "Proprietary" means goods or services of a specialized nature,
27 that may be made or marketed by a person or persons having the
28 exclusive right to make or sell them, when the need for such goods or
29 services has been certified in writing by the governing body of the
30 contracting unit to be necessary for the conduct of its affairs.

31 (40) "Service or services" means the performance of work, or the
32 furnishing of labor, time, or effort, or any combination thereof, not
33 involving or connected to the delivery or ownership of a specified end
34 product or goods or a manufacturing process. Service or services may
35 also include an arrangement in which a vendor compensates the
36 contracting unit for the vendor's right to operate a concession.

37 (cf: P.L.1999, c.440, s.6)

38

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

41 5. Any contract the amount of which exceeds the bid threshold,
42 may be negotiated and awarded by the governing body without public
43 advertising for bids and bidding therefor and shall be awarded by
44 resolution of the governing body if:

45 (1) The subject matter thereof consists of:

46 (a) (i) Professional services. The governing body shall in each

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

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

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

22 (d) The furnishing of a tax map or maps for the contracting unit;

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

24 (f) The supplying of any product or the rendering of any service by
25 a public utility, which is subject to the jurisdiction of the Board of
26 Public Utilities or the Federal Energy Regulatory Commission or its
27 successor, in accordance with tariffs and schedules of charges made,
28 charged or exacted, filed with the board or commission;

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

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

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

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

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

41 (l) Those goods and services necessary or required to prepare and
42 conduct an election;

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

46 (n) The doing of any work by handicapped persons employed by a

- 1 sheltered workshop;
- 2 (o) The provision of any goods or services including those of a
3 commercial nature, attendant upon the operation of a restaurant by any
4 nonprofit, duly incorporated, historical society at or on any historical
5 preservation site;
- 6 (p) (Deleted by amendment, P.L.1999, c.440.)
- 7 (q) Library and educational goods and services;
- 8 (r) On-site inspections undertaken by private agencies pursuant to
9 the "State Uniform Construction Code Act," P.L.1975, c.217
10 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 11 (s) The marketing of recyclable materials recovered through a
12 recycling program, or the marketing of any product intentionally
13 produced or derived from solid waste received at a resource recovery
14 facility or recovered through a resource recovery program, including,
15 but not limited to, refuse-derived fuel, compost materials, methane
16 gas, and other similar products;
- 17 (t) (Deleted by amendment, P.L.1999, c.440.)
- 18 (u) Contracting unit towing and storage contracts, provided that
19 all such contracts shall be pursuant to reasonable non-exclusionary and
20 non-discriminatory terms and conditions, which may include the
21 provision of such services on a rotating basis, at the rates and charges
22 set by the municipality pursuant to section 1 of P.L.1979, c.101
23 (C.40:48-2.49). All contracting unit towing and storage contracts for
24 services to be provided at rates and charges other than those
25 established pursuant to the terms of this paragraph shall only be
26 awarded to the lowest responsible bidder in accordance with the
27 provisions of the "Local Public Contracts Law" and without regard for
28 the value of the contract therefor;
- 29 (v) The purchase of steam or electricity from, or the rendering of
30 services directly related to the purchase of such steam or electricity
31 from a qualifying small power production facility or a qualifying
32 cogeneration facility as defined pursuant to 16 U.S.C.796;
- 33 (w) The purchase of electricity or administrative or dispatching
34 services directly related to the transmission of such purchased
35 electricity by a contracting unit engaged in the generation of
36 electricity;
- 37 (x) The printing of municipal ordinances or other services
38 necessarily incurred in connection with the revision and codification
39 of municipal ordinances;
- 40 (y) An agreement for the purchase of an equitable interest in a
41 water supply facility or for the provision of water supply services
42 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
43 an agreement entered into pursuant to P.L.1989, c.109
44 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
45 later than six months after the effective date of P.L.1993, c.381;
- 46 (z) A contract for the provision of water supply services entered

- 1 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 2 (aa) The cooperative marketing of recyclable materials recovered
- 3 through a recycling program;
- 4 (bb) A contract for the provision of wastewater treatment services
- 5 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 6 (cc) Expenses for travel and conferences;
- 7 (dd) The provision or performance of goods or services for the
- 8 support or maintenance of proprietary computer hardware and
- 9 software, except that this provision shall not be utilized to acquire or
- 10 upgrade non-proprietary hardware or to acquire or update non-
- 11 proprietary software;
- 12 (ee) The management or operation of an airport owned by the
- 13 contracting unit pursuant to R.S.40:8-1 et seq;
- 14 (ff) Purchases of goods and services at rates set by the Universal
- 15 Service Fund administered by the Federal Communications
- 16 Commission;
- 17 (gg) A contract for the provision of water supply services or
- 18 wastewater treatment services entered into pursuant to section 2 of
- 19 P.L. , c. (C.40A:11-5.1)(pending in the Legislature as this bill),
- 20 or the designing, financing, construction, operation, or maintenance,
- 21 or any combination thereof, of a water supply facility as defined in
- 22 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a
- 23 wastewater treatment system as defined in subsection (19) of section
- 24 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts
- 25 thereof, including a water filtration system as defined in subsection
- 26 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15).
- 27 (2) It is to be made or entered into with the United States of
- 28 America, the State of New Jersey, county or municipality or any
- 29 board, body, officer, agency or authority thereof or any other state or
- 30 subdivision thereof.
- 31 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
- 32 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
- 33 received on both occasions in response to the advertisement, or (b)
- 34 the governing body has rejected such bids on two occasions because
- 35 it has determined that they are not reasonable as to price, on the basis
- 36 of cost estimates prepared for or by the contracting agent prior to the
- 37 advertising therefor, or have not been independently arrived at in open
- 38 competition, or (c) on one occasion no bids were received pursuant
- 39 to (a) and on one occasion all bids were rejected pursuant to (b), in
- 40 whatever sequence; any such contract may then be negotiated and may
- 41 be awarded upon adoption of a resolution by a two-thirds affirmative
- 42 vote of the authorized membership of the governing body authorizing
- 43 such contract; provided, however, that:
- 44 (i) A reasonable effort is first made by the contracting agent to
- 45 determine that the same or equivalent goods or services, at a cost
- 46 which is lower than the negotiated price, are not available from an

1 agency or authority of the United States, the State of New Jersey or
2 of the county in which the contracting unit is located, or any
3 municipality in close proximity to the contracting unit;

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

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

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

30 (4) The contracting unit has solicited and received at least three
31 quotations on materials, supplies or equipment for which a State
32 contract has been issued pursuant to section 12 of P.L.1971, c.198
33 (C.40A:11-12), and the lowest responsible quotation is at least 10%
34 less than the price the contracting unit would be charged for the
35 identical materials, supplies or equipment, in the same quantities,
36 under the State contract. Any such contract entered into pursuant to
37 this subsection may be awarded only upon adoption of a resolution by
38 the affirmative vote of two-thirds of the full membership of the
39 governing body of the contracting unit at a meeting thereof
40 authorizing such a contract. A copy of the purchase order relating to
41 any such contract, the requisition for purchase order, if applicable, and
42 documentation identifying the price of the materials, supplies or
43 equipment under the State contract and the State contract number
44 shall be filed with the director within five working days of the award
45 of any such contract by the contracting unit. The director shall notify
46 the contracting unit of receipt of the material and shall make the

1 material available to the State Treasurer. The contracting unit shall
2 make available to the director upon request any other documents
3 relating to the solicitation and award of the contract, including, but not
4 limited to, quotations, requests for quotations, and resolutions. The
5 director periodically shall review material submitted by contracting
6 units to determine the impact of such contracts on local contracting
7 and shall consult with the State Treasurer on the impact of such
8 contracts on the State procurement process. The director may, after
9 consultation with the State Treasurer, adopt rules in accordance with
10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.) to limit the use of this subsection, after considering the impact of
12 contracts awarded under this subsection on State and local
13 contracting, or after considering the extent to which the award of
14 contracts pursuant to this subsection is consistent with and in
15 furtherance of the purposes of the public contracting laws.

16 (5) Notwithstanding any provision of law, rule or regulation to the
17 contrary, the subject matter consists of the combined collection and
18 marketing, or the cooperative combined collection and marketing of
19 recycled material recovered through a recycling program, or any
20 product intentionally produced or derived from solid waste received
21 at a resource recovery facility or recovered through a resource
22 recovery program including, but not limited to, refuse-derived fuel,
23 compost materials, methane gas, and other similar products, provided
24 that in lieu of engaging in such public advertising for bids and the
25 bidding therefor, the contracting unit shall, prior to commencing the
26 procurement process, submit for approval to the Director of the
27 Division of Local Government Services, a written detailed description
28 of the process to be followed in securing said services. Within 30 days
29 after receipt of the written description the director shall, if the director
30 finds that the process provides for fair competition and integrity in the
31 negotiation process, approve, in writing, the description submitted by
32 the contracting unit. If the director finds that the process does not
33 provide for fair competition and integrity in the negotiation process,
34 the director shall advise the contracting unit of the deficiencies that
35 must be remedied. If the director fails to respond in writing to the
36 contracting unit within 30 days, the procurement process as described
37 shall be deemed approved. As used in this section, "collection" means
38 the physical removal of recyclable materials from curbside or any other
39 location selected by the contracting unit.

40 (cf: P.L.1999, c.440, s.9)

41

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

44 15. All contracts for the provision or performance of goods or
45 services shall be awarded for a period not to exceed 24 consecutive
46 months, except that contracts for professional services pursuant to

1 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
2 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
3 exceed 12 consecutive months. Contracts may be awarded for longer
4 periods of time as follows:

5 (1) Supplying of:

6 (a) (Deleted by amendment, P.L.1996, c.113.)

7 (b) (Deleted by amendment, P.L.1996, c.113.)

8 (c) Thermal energy produced by a cogeneration facility, for use for
9 heating or air conditioning or both, for any term not exceeding
10 40 years, when the contract is approved by the Board of Public
11 Utilities. For the purposes of this paragraph, "cogeneration" means the
12 simultaneous production in one facility of electric power and other
13 forms of useful energy such as heating or process steam;

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

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

18 (4) The collection and recycling of methane gas from a sanitary
19 landfill facility, for any term not exceeding 25 years, when such
20 contract is in conformance with a district solid waste management plan
21 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
22 approval of the Division of Local Government Services in the
23 Department of Community Affairs and the Department of
24 Environmental Protection. The contracting unit shall award the
25 contract to the highest responsible bidder, notwithstanding that the
26 contract price may be in excess of the amount of any necessarily
27 related administrative expenses; except that if the contract requires the
28 contracting unit to expend funds only, the contracting unit shall award
29 the contract to the lowest responsible bidder. The approval by the
30 Division of Local Government Services of public bidding requirements
31 shall not be required for those contracts exempted therefrom pursuant
32 to section 5 of P.L.1971, c.198 (C.40A:11-5);

33 (5) Data processing service, for any term of not more than seven
34 years;

35 (6) Insurance, including the purchase of insurance coverages,
36 insurance consulting or administrative services, claims administration
37 services and including participation in a joint self-insurance fund, risk
38 management program or related services provided by a contracting
39 unit insurance group, or participation in an insurance fund established
40 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
41 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
42 term of not more than three years;

43 (7) Leasing or servicing of automobiles, motor vehicles, machinery
44 and equipment of every nature and kind, for a period not to exceed
45 five years; provided, however, such contracts shall be awarded only
46 subject to and in accordance with the rules and regulations

- 1 promulgated by the Director of the Division of Local Government
2 Services of the Department of Community Affairs;
- 3 (8) The supplying of any product or the rendering of any service
4 by a company providing voice, data, transmission or switching services
5 for a term not exceeding five years;
- 6 (9) Any single project for the construction, reconstruction or
7 rehabilitation of any public building, structure or facility, or any public
8 works project, including the retention of the services of any architect
9 or engineer in connection therewith, for the length of time authorized
10 and necessary for the completion of the actual construction;
- 11 (10) The providing of food services for any term not exceeding
12 three years;
- 13 (11) On-site inspections and plan review services undertaken by
14 private agencies pursuant to the "State Uniform Construction Code
15 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
16 more than three years;
- 17 (12) The provision or performance of goods or services for the
18 purpose of conserving energy in buildings owned by, or operations
19 conducted by, the contracting unit, the entire price of which to be
20 established as a percentage of the resultant savings in energy costs, for
21 a term not to exceed 15 years; provided, however, that such contracts
22 shall be entered into only subject to and in accordance with guidelines
23 promulgated by the Board of Public Utilities establishing a
24 methodology for computing energy cost savings;
- 25 (13) (Deleted by amendment, P.L.1999, c.440.)
- 26 (14) (Deleted by amendment, P.L.1999, c.440.)
- 27 (15) Leasing of motor vehicles, machinery and other equipment
28 primarily used to fight fires, for a term not to exceed ten years, when
29 the contract includes an option to purchase, subject to and in
30 accordance with rules and regulations promulgated by the Director of
31 the Division of Local Government Services of the Department of
32 Community Affairs;
- 33 (16) The provision of water supply services or the designing,
34 financing, construction, operation, or maintenance, or any combination
35 thereof, of a water supply facility, or any component part or parts
36 thereof, including a water filtration system, for a period not to exceed
37 40 years, when the contract for these services is approved by the
38 Division of Local Government Services in the Department of
39 Community Affairs, the Board of Public Utilities, and the Department
40 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
41 al.), except that no such approvals shall be required for those contracts
42 otherwise exempted pursuant to subsection (30), (31), (34) [or], (35)
43 or (43) of this section. For the purposes of this subsection, "water
44 supply services" means any service provided by a water supply facility;
45 "water filtration system" means any equipment, plants, structures,
46 machinery, apparatus, or land, or any combination thereof, acquired,

1 used, constructed, rehabilitated, or operated for the collection,
2 impoundment, storage, improvement, filtration, or other treatment of
3 drinking water for the purposes of purifying and enhancing water
4 quality and insuring its potability prior to the distribution of the
5 drinking water to the general public for human consumption, including
6 plants and works, and other personal property and appurtenances
7 necessary for their use or operation; and "water supply facility" means
8 and refers to the real property and the plants, structures,
9 interconnections between existing water supply facilities, machinery
10 and equipment and other property, real, personal and mixed, acquired,
11 constructed or operated, or to be acquired, constructed or operated,
12 in whole or in part by or on behalf of a political subdivision of the
13 State or any agency thereof, for the purpose of augmenting the natural
14 water resources of the State and making available an increased supply
15 of water for all uses, or of conserving existing water resources, and
16 any and all appurtenances necessary, useful or convenient for the
17 collecting, impounding, storing, improving, treating, filtering,
18 conserving or transmitting of water and for the preservation and
19 protection of these resources and facilities and providing for the
20 conservation and development of future water supply resources;

21 (17) The provision of resource recovery services by a qualified
22 vendor, the disposal of the solid waste delivered for disposal which
23 cannot be processed by a resource recovery facility or the residual ash
24 generated at a resource recovery facility, including hazardous waste
25 and recovered metals and other materials for reuse, or the design,
26 financing, construction, operation or maintenance of a resource
27 recovery facility for a period not to exceed 40 years when the contract
28 is approved by the Division of Local Government Services in the
29 Department of Community Affairs, and the Department of
30 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
31 al.); and when the resource recovery facility is in conformance with a
32 district solid waste management plan approved pursuant to P.L.1970,
33 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
34 "resource recovery facility" means a solid waste facility constructed
35 and operated for the incineration of solid waste for energy production
36 and the recovery of metals and other materials for reuse; or a
37 mechanized composting facility, or any other facility constructed or
38 operated for the collection, separation, recycling, and recovery of
39 metals, glass, paper, and other materials for reuse or for energy
40 production; and "residual ash" means the bottom ash, fly ash, or any
41 combination thereof, resulting from the combustion of solid waste at
42 a resource recovery facility;

43 (18) The sale of electricity or thermal energy, or both, produced by
44 a resource recovery facility for a period not to exceed 40 years when
45 the contract is approved by the Board of Public Utilities, and when the
46 resource recovery facility is in conformance with a district solid waste

1 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
2 seq.). For the purposes of this subsection, "resource recovery facility"
3 means a solid waste facility constructed and operated for the
4 incineration of solid waste for energy production and the recovery of
5 metals and other materials for reuse; or a mechanized composting
6 facility, or any other facility constructed or operated for the collection,
7 separation, recycling, and recovery of metals, glass, paper, and other
8 materials for reuse or for energy production;

9 (19) The provision of wastewater treatment services or the
10 designing, financing, construction, operation, or maintenance, or any
11 combination thereof, of a wastewater treatment system, or any
12 component part or parts thereof, for a period not to exceed 40 years,
13 when the contract for these services is approved by the Division of
14 Local Government Services in the Department of Community Affairs
15 and the Department of Environmental Protection pursuant to
16 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals shall
17 be required for those contracts otherwise exempted pursuant to
18 subsection (36) or (43) of this section. For the purposes of this
19 subsection, "wastewater treatment services" means any services
20 provided by a wastewater treatment system, and "wastewater
21 treatment system" means equipment, plants, structures, machinery,
22 apparatus, or land, or any combination thereof, acquired, used,
23 constructed, or operated for the storage, collection, reduction,
24 recycling, reclamation, disposal, separation, or other treatment of
25 wastewater or sewage sludge, or for the final disposal of residues
26 resulting from the treatment of wastewater, including, but not limited
27 to, pumping and ventilating stations, facilities, plants and works,
28 connections, outfall sewers, interceptors, trunk lines, and other
29 personal property and appurtenances necessary for their operation;

30 (20) The supplying of goods or services for the purpose of lighting
31 public streets, for a term not to exceed five years;

32 (21) The provision of emergency medical services for a term not
33 to exceed five years;

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

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

39 (24) The purchase of electricity or administrative or dispatching
40 services related to the transmission of such electricity, from a public
41 utility company subject to the jurisdiction of the Board of Public
42 Utilities, a similar regulatory body of another state, or a federal
43 regulatory agency, or from a qualifying small power producing facility
44 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
45 a contracting unit engaged in the generation of electricity for retail
46 sale, as of May 24,1991, for a term not to exceed 40 years;

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

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

8 (27) The provision of transportation services to elderly, disabled
9 or indigent persons for any term of not more than three years. For the
10 purposes of this subsection, "elderly persons" means persons who are
11 60 years of age or older. "Disabled persons" means persons of any age
12 who, by reason of illness, injury, age, congenital malfunction, or other
13 permanent or temporary incapacity or disability, are unable, without
14 special facilities or special planning or design to utilize mass
15 transportation facilities and services as effectively as persons who are
16 not so affected. "Indigent persons" means persons of any age whose
17 income does not exceed 100 percent of the poverty level, adjusted for
18 family size, established and adjusted under section 673(2) of subtitle
19 B, the "Community Services Block Grant Act," Pub.L.97-35
20 (42 U.S.C.s.9902 (2));

21 (28) The supplying of liquid oxygen or other chemicals, for a term
22 not to exceed five years, when the contract includes the installation of
23 tanks or other storage facilities by the supplier, on or near the
24 premises of the contracting unit;

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

28 (30) The acquisition of an equitable interest in a water supply
29 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
30 contract entered into pursuant to the "County and Municipal Water
31 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no
32 later than January 7, 1995, for any term of not more than forty years;

33 (31) The provision of water supply services or the financing,
34 construction, operation or maintenance or any combination thereof, of
35 a water supply facility or any component part or parts thereof, by a
36 partnership or copartnership established pursuant to a contract
37 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
38 period not to exceed 40 years;

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

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

46 (34) A contract between a public entity and a private firm pursuant

1 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water
2 supply services may be entered into for any term which, when all
3 optional extension periods are added, may not exceed 40 years;

4 (35) A contract for the purchase of a supply of water from a public
5 utility company subject to the jurisdiction of the Board of Public
6 Utilities in accordance with tariffs and schedules of charges made,
7 charged or exacted or contracts filed with the Board of Public
8 Utilities, for any term of not more than 40 years;

9 (36) A contract between a public entity and a private firm or public
10 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the
11 provision of wastewater treatment services may be entered into for any
12 term of not more than 40 years, including all optional extension
13 periods;

14 (37) The operation and management of a facility under a license
15 issued or permit approved by the Department of Environmental
16 Protection, including a wastewater treatment system or a water supply
17 or distribution facility, as the case may be, for any term of not more
18 than ten years. For the purposes of this subsection, "wastewater
19 treatment system" refers to facilities operated or maintained for the
20 storage, collection, reduction, disposal, or other treatment of
21 wastewater or sewage sludge, remediation of groundwater
22 contamination, stormwater runoff, or the final disposal of residues
23 resulting from the treatment of wastewater; and "water supply or
24 distribution facility" refers to facilities operated or maintained for
25 augmenting the natural water resources of the State, increasing the
26 supply of water, conserving existing water resources, or distributing
27 water to users;

28 (38) Municipal solid waste collection from facilities owned by a
29 contracting unit, for any term of not more than three years;

30 (39) Fuel for heating purposes, for any term of not more than
31 three years;

32 (40) Fuel or oil for use in motor vehicles for any term of not more
33 than three years;

34 (41) Plowing and removal of snow and ice for any term of not
35 more than three years;

36 (42) Purchases made under a contract awarded by the Director of
37 the Division of Purchase and Property in the Department of the
38 Treasury for use by counties, municipalities or other contracting units
39 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term
40 not to exceed the term of that contract;

41 (43) A contract between the governing body of a city of the first
42 class and a duly incorporated nonprofit association for the provision
43 of water supply services as defined in subsection (16) of this section,
44 or wastewater treatment services as defined in subsection (19) of this
45 section, may be entered into for a period not to exceed 40 years.

46 Any contract for services other than professional services, the

1 statutory length of which contract is for three years or less, may
2 include provisions for no more than one two-year, or two one-year,
3 extensions, subject to the following limitations: a. The contract shall
4 be awarded by resolution of the governing body upon a finding by the
5 governing body that the services are being performed in an effective
6 and efficient manner; b. No such contract shall be extended so that it
7 runs for more than a total of five consecutive years; c. Any price
8 change included as part of an extension shall be based upon the price
9 of the original contract as cumulatively adjusted pursuant to any
10 previous adjustment or extension and shall not exceed the change in
11 the index rate for the 12 months preceding the most recent quarterly
12 calculation available at the time the contract is renewed; and d. The
13 terms and conditions of the contract remain substantially the same.

14 All multiyear leases and contracts entered into pursuant to this
15 section, including any two-year or one-year extensions, except
16 contracts involving the supplying of electricity for the purpose of
17 lighting public streets and contracts for thermal energy authorized
18 pursuant to subsection (1) above, construction contracts authorized
19 pursuant to subsection (9) above, contracts for the provision or
20 performance of goods or services or the supplying of equipment to
21 promote energy conservation authorized pursuant to subsection (12)
22 above, contracts for water supply services or for a water supply
23 facility, or any component part or parts thereof authorized pursuant to
24 subsection (16), (30), (31), (34), (35) ~~or~~, (37) or (43) above,
25 contracts for resource recovery services or a resource recovery facility
26 authorized pursuant to subsection (17) above, contracts for the sale of
27 energy produced by a resource recovery facility authorized pursuant
28 to subsection (18) above, contracts for wastewater treatment services
29 or for a wastewater treatment system or any component part or parts
30 thereof authorized pursuant to subsection (19), (36) ~~or~~, (37) or (43)
31 above, and contracts for the purchase of electricity or administrative
32 or dispatching services related to the transmission of such electricity
33 authorized pursuant to subsection (24) above, shall contain a clause
34 making them subject to the availability and appropriation annually of
35 sufficient funds as may be required to meet the extended obligation, or
36 contain an annual cancellation clause.

37 The Division of Local Government Services in the Department of
38 Community Affairs shall adopt and promulgate rules and regulations
39 concerning the methods of accounting for all contracts that do not
40 coincide with the fiscal year.

41 All contracts shall cease to have effect at the end of the contracted
42 period and shall not be extended by any mechanism or provision,
43 unless in conformance with the "Local Public Contracts Law,"
44 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be
45 extended by mutual agreement of the parties to the contract when a
46 contracting unit has commenced rebidding prior to the time the

1 contract expires or when the awarding of a contract is pending at the
2 time the contract expires.

3 (cf: P.L.1999, c.440, s.23)

4

5 10. R.S.48:2-13 is amended to read as follows:

6 48:2-13. a. The board shall have general supervision and
7 regulation of and jurisdiction and control over all public utilities as
8 defined in this section and their property, property rights, equipment,
9 facilities and franchises so far as may be necessary for the purpose of
10 carrying out the provisions of this Title.

11 The term "public utility" shall include every individual,
12 copartnership, association, corporation or joint stock company, their
13 lessees, trustees or receivers appointed by any court whatsoever, their
14 successors, heirs or assigns, that now or hereafter may own, operate,
15 manage or control within this State any railroad, street railway,
16 traction railway, autobus, charter bus operation, special bus operation,
17 canal, express, subway, pipeline, gas, electricity distribution, water,
18 oil, sewer, solid waste collection, solid waste disposal, telephone or
19 telegraph system, plant or equipment for public use, under privileges
20 granted or hereafter to be granted by this State or by any political
21 subdivision thereof.

22 b. Nothing contained in this Title shall extend the powers of the
23 board to include any supervision and regulation of, or jurisdiction and
24 control over any vehicles engaged in ridesharing arrangements with a
25 maximum carrying capacity of not more than 15 passengers, including
26 the driver, where the transportation of passengers is incidental to the
27 purpose of the driver or any vehicles engaged in the transportation of
28 passengers for hire in the manner and form commonly called taxicab
29 service unless such service becomes or is held out to be regular service
30 between stated termini; hotel buses used exclusively for the
31 transportation of hotel patrons to or from local railroad or other
32 common carrier stations, including local airports, or bus employed
33 solely for transporting school children and teachers, to and from
34 school, or any autobus with a carrying capacity of not more than 10
35 passengers now or hereafter operated under municipal consent upon
36 a route established wholly within the limits of a single municipality or
37 with a carrying capacity of not more than 20 passengers operated
38 under municipal consent upon a route established wholly within the
39 limits of not more than four contiguous municipalities within any
40 county of the fifth or sixth class, which route in either case does not
41 in whole or in part parallel upon the same street the line of any street
42 railway or traction railway or any other autobus route.

43 c. Except as provided in section 7 of P.L.1995, c.101
44 (C.58:26-25), the board shall have no regulatory authority over the
45 parties to a contract negotiated between a public entity and a private
46 firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection

1 with the performance of their respective obligations thereunder.
2 Nothing contained in this title shall extend the powers of the board to
3 include any supervision and regulation of, or jurisdiction and control
4 over, any public-private contract for the provision of water supply
5 services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

6 d. Unless otherwise specifically provided pursuant to P.L.1999,
7 c.23 (C.48:3-49 et al.), all services necessary for the transmission and
8 distribution of electricity and gas, including but not limited to safety,
9 reliability, metering, meter reading and billing, shall remain the
10 jurisdiction of the Board of Public Utilities. The board shall also
11 maintain the necessary jurisdiction with regard to the production of
12 electricity and gas to assure the reliability of electricity and gas supply
13 to retail customers in the State as prescribed by the board or any other
14 federal or multi-jurisdictional agency responsible for reliability and
15 capacity in the State.

16 e. Notwithstanding the provisions of subsection a. of this section,
17 the board shall have the authority to classify as regulated the sale of
18 any thermal energy service by a cogenerator or district heating system,
19 for the purpose of providing heating or cooling to a residential
20 dwelling if, after notice and hearing, it determines that the customer
21 does not have sufficient space on its property to install an alternative
22 source of equivalent thermal energy, there is no contract governing the
23 provision of thermal energy service for the relevant period of time, and
24 that sufficient competition is no longer present, based upon
25 consideration of such factors as: ease of market entry; presence of
26 other competitors; and the availability of like or substitute services in
27 the relevant geographic area. Upon such a classification, the board
28 may determine such rates for the thermal energy service for the
29 purpose of providing heating or cooling to a residential dwelling as it
30 finds to be consistent with the prevailing cost of alternative sources of
31 thermal energy in similar situations. The board, however, shall
32 continue to monitor the thermal energy service to such residential
33 dwellings and, whenever the board finds that the thermal energy
34 service has again become sufficiently competitive pursuant to the
35 criteria listed above, the board shall cease to regulate the sale or
36 production of the service. The board shall not have the authority to
37 regulate the sale or production of steam or any other form of thermal
38 energy, including hot and chilled water, to non-residential customers.

39 f. Nothing contained in this Title shall extend the powers of the
40 board to include supervision and regulation of, or jurisdiction and
41 control over, an entity engaged in the provision or use of sewage
42 effluent for the purpose of providing a cooling medium to an end user
43 or end users on a single site, which provision results in the
44 conservation of potable water which would otherwise have been used
45 for such purposes.

46 g. Except as provided herein, the board shall have no regulatory
47 authority over the parties to a contract entered into between the

1 governing body of a city of the first class and a duly incorporated
2 nonprofit association in connection with the performance of their
3 respective obligations thereunder when the governing body of a city
4 of the first class shall determine by ordinance that it is in the public
5 interest to contract with that duly incorporated nonprofit association
6 for the provision of water supply services as defined in subsection (16)
7 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
8 of wastewater treatment services as defined in subsection (19) of
9 section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
10 financing, construction, operation, or maintenance, or any combination
11 thereof, of a water supply facility as defined in subsection (16) of
12 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
13 treatment system as defined in subsection (19) of section 15 of
14 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
15 thereof, including a water filtration system as defined in subsection
16 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval
17 of the contract pursuant to the provisions of section 6 of P.L. , c.
18 (C.58:28-7)(now before the Legislature as this bill).

19 Notwithstanding any other provision of P.L. , c. (now before the
20 Legislature as this bill) whenever the governing body of a city of the
21 first class enters into a contract with a duly incorporated nonprofit
22 association for the provision of water supply services as defined in
23 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
24 the designing, financing, construction, operation, or maintenance, or
25 any combination thereof, of a water supply facility as defined in
26 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and
27 that governing body operates water supply facilities as authorized
28 pursuant to the provisions of N.J.S.40A:31-4, which supply water to
29 customers within another local unit, the nonprofit association or
30 governing body shall be subject to the jurisdiction, rate regulation and
31 control of the Board of Public Utilities as provided in
32 N.J.S.40A:31-23, to the extent the nonprofit association or governing
33 body supplies water to customers within that other local unit.

34 (cf: P.L.1999, c.23, s.52)

35

36 11. N.J.S.40A:31-23 is amended to read as follows:

37 40A:31-23 a. Nothing contained in this act shall in any way impair
38 the obligations previously assumed by any other public or private
39 agency for the provision of water supply services and facilities to the
40 citizens and industries of this State, or for any other purpose
41 authorized by any law repealed by N.J.S.40A:31-24.

42 b. In the event a municipal utilities authority has been established
43 in a local unit pursuant to the provisions of the "municipal and county
44 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), no
45 local unit or units shall establish any facility within the territory of that
46 local unit which is competitive with any water supply facility operated
47 by that authority.

1 c. No water supply services shall be provided in accordance with
2 this act to users in another local unit without the prior approval of the
3 governing body of that other local unit.

4 d. (1) Subject to the terms of any agreement entered into by
5 participating local units or between a supplying and receiving local
6 unit or units and the provisions of this act, a local unit or local units
7 owning and operating water supply facilities in accordance with the
8 provisions of N.J.S.40A:31-4, which supply water to more than 1,000
9 billed customers within another local unit, shall be subject to the
10 jurisdiction, regulation and control of the Board of Public Utilities in
11 accordance with the provisions of Title 48 of the Revised Statutes.
12 The provisions of this subsection shall not apply [where] whenever
13 water is supplied to customers in another local unit at bulk rates.

14 (2) Notwithstanding any provision of this subsection to the
15 contrary, whenever the governing body of a city of the first class
16 enters into a contract with a duly incorporated nonprofit association
17 for the provision of water supply services as defined in subsection (16)
18 of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
19 financing, construction, operation, or maintenance, or any combination
20 thereof, of a water supply facility as defined in subsection (16) of
21 section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body
22 operates water supply facilities as authorized pursuant to the
23 provisions of N.J.S.40A:31-4, which supply water to customers within
24 another local unit, the nonprofit association or governing body shall
25 be subject to the jurisdiction, rate regulation and control of the Board
26 of Public Utilities to the extent the nonprofit association or governing
27 body supplies water to customers within that other local unit. The
28 provisions of this paragraph shall apply whenever water is supplied to
29 customers in another local unit at bulk rates.

30 (cf: N.J.S.40A:31-23)

31
32 ³12. (New section) Notwithstanding the provisions of P.L. , c.
33 (C.) (now before the Legislature as this bill) to the contrary, any
34 expenditure of funds by a duly incorporated nonprofit association that
35 has entered into a contract with the governing body of a city of the
36 first class pursuant to sections 1 and 2 of P.L. , c. (C.40A:12-17.1
37 and 40A:11-5.1) (now before the Legislature as this bill) for any capital
38 improvements to, or construction of, water supply facilities or
39 wastewater treatment systems shall be subject to the provisions of the
40 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11 -1 et seq.)
41 whenever the funds have been derived from the proceeds of
42 obligations or other available public moneys of any public entity
43 including, but not limited to, debt issued by the New Jersey
44 Environmental Infrastructure Trust established pursuant to P.L.1985,
45 c.334 (C.58:11B-1 et seq.), as amended and supplemented by
46 P.L.1997, c.224, or a city of the first class.³

1 ³[12.] 13.³ This act shall take effect immediately.

2

3

4

5

6 Authorizes cities of the first class to contract with nonprofit
7 organizations for the provision of water supply and wastewater
8 treatment services.

SENATE, No. 533

STATE OF NEW JERSEY
210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:
Senator SHARPE JAMES
District 29 (Essex and Union)

SYNOPSIS

Authorizes cities of the first class to contract with nonprofit organizations for the provision of water supply and wastewater treatment services.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S533 JAMES

2

1 AN ACT concerning the provision of water supply and wastewater
2 treatment services, and amending and supplementing parts of the
3 statutory law.

4

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

7

8 1. (New section) a. Notwithstanding the provisions of the "Local
9 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.) or
10 any other law, rule or regulation to the contrary, when the governing
11 body of a city of the first class shall determine by ordinance, with or
12 without competitive bidding, that it is in the public interest to contract
13 with a duly incorporated nonprofit association for the provision of
14 water supply services as defined in subsection (16) of section 15 of
15 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
16 treatment services as defined in subsection (19) of section 15 of
17 P.L.1971, c.198 (C.40A:11-15), the governing body is hereby
18 authorized to lease any real property, capital improvement or personal
19 property, or interests therein, or any part thereof, without compliance
20 with any other law governing disposal of lands by municipalities
21 except as provided pursuant to paragraph (1) of this subsection. Any
22 such lease may be made or given, with or without consideration, for
23 a period not to exceed 40 years and under any agreement and on any
24 terms and conditions which may be approved by the governing body
25 and which may be agreed to by the nonprofit association.

26 (1) (a) Any lands subject to the provisions of P.L.1988, c.163, as
27 amended by P.L.1990, c.19, that are leased or otherwise conveyed to
28 a duly incorporated nonprofit association pursuant to the provisions
29 of P.L. , c. (C.) (now before the Legislature as this bill) shall
30 continue to be subject to the provisions of P.L.1988, c.163, as
31 amended by P.L.1990, c.19.

32 (b) Upon leasing or otherwise controlling lands subject to the
33 provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, a duly
34 incorporated nonprofit association subject to the provisions of P.L. ,
35 c. (C.) (now before the Legislature as this bill) shall be subject to
36 the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, with
37 respect to those lands.

38 (c) The leasing of lands subject to the provisions of P.L.1988,
39 c.163, as amended by P.L.1990, c.19, by a city of the first class to a
40 duly incorporated nonprofit association pursuant to the provisions of
41 P.L. , c. (C.) (now before the Legislature as this bill) shall not
42 be considered a conveyance for the purposes of P.L.1988, c.163, as
43 amended by P.L.1990, c.19.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) Nothing contained in this section abrogates, amends, modifies,
2 impairs or repeals the obligations previously assumed by a city of the
3 first class pursuant to the provisions of R.S.58:14-1 et seq., including
4 any contract or compact entered into thereby.

5 b. The authorization provided in this section shall be subject to the
6 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through
7 58:28-7)(now before the Legislature as this bill).

8 c. Notwithstanding any other provisions of this section to the
9 contrary, a duly incorporated nonprofit association that intends to
10 enter into a contract with the governing body of a city of the first class
11 for the provision of water supply services as defined in subsection (16)
12 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
13 of wastewater treatment services as defined in subsection (19) of
14 section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may
15 be, shall be subject to the provisions of the "Local Fiscal Affairs Law,"
16 N.J.S.40A:5-1 et seq., the "Local Authorities Fiscal Control Law,"
17 P.L.1983, c.313 (C.40A:5A-1 et seq.), the "Local Government Ethics
18 Law," P.L.1991, c.29 (C.40A:9-22.1 et seq.), and the "Open Public
19 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), inclusive, and shall
20 be considered a "local unit" pursuant to N.J.S.40A:5-2, an "authority"
21 pursuant to section 3 of P.L.1983, c.313 (C.40A:5A-3), a "local
22 government agency" pursuant to section 3 of P.L.1991, c.29
23 (C.40A:9-22.3), and a "public body" pursuant to section 3 of
24 P.L.1975, c.231 (C.10:4-8), respectively.

25
26 2. (New section) The Legislature finds and declares it to be in the
27 public interest and to be the public policy of the State to foster and
28 promote by all reasonable means the collection, storage and
29 distribution of an adequate supply of water for the inhabitants and
30 businesses of the counties and municipalities of this State and to foster
31 and promote the public health by providing for the collection and
32 treatment of sewerage through adequate sewerage facilities.

33 To further promote these interests, and notwithstanding the
34 provisions of any other law, rule or regulation to the contrary, the
35 governing body of a city of the first class may enter into a contract
36 with a duly incorporated nonprofit association for the provision of
37 water supply services as defined in subsection (16) of section 15 of
38 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
39 treatment services as defined in subsection (19) of section 15 of
40 P.L.1971, c.198 (C.40A:11-15), or both, as the case may be.

41 The governing body of a city of the first class that has entered into
42 a contract with a duly incorporated nonprofit association pursuant to
43 this section shall obtain the written opinion of bond counsel as to the
44 effect of the contract on the tax exempt status of existing and future
45 financing instruments executed by the parties given the terms of the
46 contract and the federal laws or regulations concerning this matter.

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1 Any concession fee or monetary benefit paid by a duly incorporated
2 nonprofit association to the governing body of a city of the first class
3 shall be used for the purposes of reducing or off-setting property
4 taxes, reducing water supply services or wastewater treatment services
5 charges, rates or fees, one-time nonrecurring expenses or capital asset
6 expenditures related to water supply facilities or wastewater treatment
7 systems.

8 Upon executing such contract, the duly incorporated nonprofit
9 association shall be deemed to be providing essential governmental
10 functions on behalf of the city of the first class and, to the extent
11 permitted in the contract, shall exercise all powers and responsibilities
12 of the city of the first class related to the provision of water supply
13 services and wastewater treatment services now or hereinafter
14 provided under law.

15 The authorization provided in this section shall be subject to the
16 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through
17 58:28-7)(now before the Legislature as this bill).

18

19 3. (New section) As used in sections 3 through 6 of P.L. , c.
20 (C.58:28-4 through 58:28-7)(now before the Legislature as this bill):

21 "Board" means the Board of Public Utilities.

22 "Concession fee" means a payment from a duly incorporated
23 nonprofit association to the governing body of a city of the first class,
24 regardless of when it is received, that is exclusive of or exceeds any
25 contractually specified reimbursement of direct costs incurred by the
26 governing body.

27 "Contract" means a long-term written agreement wherein a duly
28 incorporated nonprofit association agrees to provide water supply
29 services or wastewater treatment services on behalf of the governing
30 body of a city of the first class and wherein the duly incorporated
31 nonprofit association agrees to provide, during the term of the
32 contract, capital expenditures on behalf of the governing body's water
33 supply facility as defined in subsection (16) of section 15 of P.L.1971,
34 c.198 (C.40A:11-15) or wastewater treatment system as defined in
35 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
36 both, as the case may be, which expenditures are set forth in the
37 contract.

38 "Department" means the Department of Environmental Protection.

39 "Director" means the Director of the Division of Local Government
40 Services in the Department of Community Affairs.

41 "Division" means the Division of Local Government Services in the
42 Department of Community Affairs.

43 "Proposal document" means the document prepared by or on behalf
44 of the governing body of a city of the first class describing the water
45 supply services or wastewater treatment services that the governing
46 body is considering having provided by a duly incorporated nonprofit

1 association pursuant to a contract.

2

3 4. (New section) a. The governing body of a city of the first class
4 shall publish notice of its intent to enter into a contract pursuant to
5 sections 1 and 2 of P.L. , c. (C.40A:12-17.1 and 40A:11-5.1)(now
6 before the Legislature as this bill) in at least one newspaper of general
7 circulation in the jurisdiction or service area that will receive water
8 supply services or wastewater treatment services under the terms of
9 the contract and one newspaper of broad regional circulation, at least
10 30 days prior to conducting the public hearing required under section
11 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this bill).
12 In addition, a governing body that intends to enter into a contract with
13 a duly incorporated nonprofit association for the provision of water
14 supply services or wastewater treatment services shall notify in writing
15 the board, department and division of its intent.

16 b. The public notice required under subsection a. of this section
17 shall describe the type of services desired and provide the name,
18 address and phone number of the person who can provide additional
19 information and a proposal document to an interested party.

20 c. The public entity shall set forth in writing the reasons for the
21 selection of the nonprofit association and shall make this document
22 available to the public along with the proposed contract upon request
23 and during the public hearing conducted pursuant to section 5 of
24 P.L. , c. (C.58:28-6)(now before the Legislature as this bill).

25 d. A contract entered into pursuant to sections 1 and 2 of P.L. ,
26 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
27 this bill) shall include provisions addressing the following:

28 (1) The charges, rates, fees or formulas to be used to determine the
29 charges, rates, or fees to be charged by the nonprofit association for
30 the water supply services or wastewater treatment services to be
31 provided.

32 (2) The allocation of the risks of financing and constructing
33 planned capital additions or upgrades to existing water supply facilities
34 or wastewater treatment systems.

35 (3) The allocation of the risks of operating and maintaining the
36 water supply facilities or wastewater treatment systems.

37 (4) The allocation of the risks associated with circumstances or
38 occurrences beyond the control of the parties to the contract.

39 (5) The defaulting and termination of the contract.

40 (6) The employment of current employees of the city of the first
41 class whose positions or employment will be affected by the terms of
42 the contract.

43 (7) The nonprofit association's authority and the extent, or the
44 procedures for the use, of that authority to initiate, negotiate and
45 finalize the terms for a bulk sale of surplus water. The contract shall
46 either grant the nonprofit association such authority or specifically

1 state that the nonprofit association is denied that authority. Nothing
2 in P.L. , c. (C.)(now before the Legislature as this bill) shall
3 be construed to authorize a city of the first class that enters into a
4 contract pursuant to sections 1 and 2 of P.L. , c. (C.40A:12-17.1
5 and 40A:11-5.1)(now before the Legislature as this bill) to provide for
6 the bulk sale, lease or transfer of water if the water being transferred,
7 leased or sold has been supplied to the city of the first class either by
8 the New Jersey Water Supply Authority or by the North Jersey District
9 Water Supply Commission, unless the authority pursuant to P.L.1981,
10 c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et
11 seq., as appropriate, has agreed to the bulk sale, lease or transfer.

12 (8) The requirements for the provision of a performance bond by
13 the nonprofit association, if so required by the governing body.

14 e. If a dispute over contract compliance, performance or
15 termination cannot be resolved by the parties to the contract pursuant
16 to the procedures set forth in the contract, either party to the contract
17 may file with the Superior Court which has appropriate jurisdiction a
18 request for an order either to terminate the contract based on the
19 reasons stated in the request or for an order for other appropriate
20 relief to the dispute. The court may take such action as it may deem
21 necessary to facilitate the expeditious resolution of the dispute and an
22 expeditious response to the request, including ordering the parties to
23 undertake a dispute resolution or mediation process. The court shall
24 use, as it deems necessary, the services of a financial expert in the area
25 of water supply service or wastewater treatment service contracts in
26 its analysis of the contract and the issues before it. Within 90 days
27 after the filing of a request, the court shall either grant the request or
28 deny the request. If the request is granted, the court shall order such
29 appropriate relief measures or remedies as it deems appropriate and
30 necessary.

31

32 5. (New section) a. The governing body of a city of the first class
33 that intends to enter into a contract with a duly incorporated nonprofit
34 association for the provision of water supply services as defined in
35 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
36 for the provision of wastewater treatment services as defined in
37 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
38 both, as the case may be, shall conduct a public hearing on the
39 proposed contract authorized pursuant to sections 1 and 2 of P.L. ,
40 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
41 this bill). The governing body shall also conduct a public hearing
42 pursuant to this section on revisions to a contract required by
43 subsection b. of section 6 of P.L. , c. (C.58:28-7)(now before the
44 Legislature as this bill) or on substantial amendments to a contract as
45 required by subsection g. of section 6 of P.L. , c. (C.58:28-7)(now
46 before the Legislature as this bill).

1 b. The governing body shall provide, at least 14 days prior to the
2 public hearing, (1) notice in writing to the board, department and the
3 division of its intent to enter into a contract with a duly incorporated
4 nonprofit association for the provision of water supply services or
5 wastewater treatment services, and (2) notice of the public hearing by
6 publication in at least one newspaper of general circulation in the
7 jurisdiction or service area of the governing body to be served under
8 the terms of the proposed contract. The publication shall include
9 notice of the date, time and place of the public hearing, notice of the
10 place at which copies of the proposed contract will be available for
11 public inspection, and the times during which such inspection will be
12 permitted. The notice shall specifically state whether any concession
13 fee will be paid by the duly incorporated nonprofit association to the
14 governing body as a result of the contract for water supply services or
15 wastewater treatment services, the monetary amount of the concession
16 fee and the potential impact of the concession fee on the charges, rates
17 or fees which will be paid for water supply services or wastewater
18 treatment services by users in the jurisdiction or service area that will
19 receive the water supply services or wastewater treatment services
20 pursuant to the terms of the contract.

21 c. At the public hearing, the governing body shall explain the terms
22 and conditions of the proposed contract and shall answer questions
23 raised by prospective consumers and other interested parties. The
24 governing body shall explain during the hearing the charges, rates or
25 fees that will or may be charged to users in the jurisdiction or service
26 area for water supply services or wastewater treatment services as a
27 result of the proposed contract. In addition, the governing body shall
28 explain any concession fee to be paid by a duly incorporated nonprofit
29 association to the governing body as a result of the contract for water
30 supply services or wastewater treatment services, the monetary
31 amount of the concession fee and the potential impact of the
32 concession fee or benefit on the charges, rates or fees which will be
33 paid for water supply services or wastewater treatment services by
34 users in the jurisdiction or service area that will receive the water
35 supply services or wastewater treatment services pursuant to the terms
36 of the contract.

37 d. The governing body shall produce a verbatim record of the
38 public hearing. The record of the public hearing shall be kept open for
39 a period of seven days following the conclusion of the hearing, during
40 which time interested parties may submit written statements to be
41 included in the hearing report. The governing body shall prepare a
42 written hearing report, which shall include a copy of the proposed
43 contract, the verbatim record of the public hearing, written statements
44 submitted by interested parties, a copy of the bond counsel's written
45 opinion required pursuant to section 2 of P.L. , c. (C.40A:11-
46 5.1)(now before the Legislature as this bill) and a statement prepared

1 by the governing body summarizing the major issues raised at the
2 public hearing and the governing body's specific responses to those
3 issues. The governing body shall make copies of the hearing report
4 available to interested parties, upon request, at a cost not to exceed
5 the actual cost of printing or copying.

6 e. The governing body may adopt an ordinance as provided in
7 section 1 of P.L. , c. (C.40A:12-17.1)(now before the Legislature
8 as this bill) and may enter into a contract as provided in section 2 of
9 P.L. , c. (C.40A:11-5.1)(now before the Legislature as this bill).
10 The ordinance may be introduced at the first meeting of the governing
11 body held after the public hearing on the proposed contract, and shall
12 acknowledge that the contract requires approval pursuant to the
13 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
14 Legislature as this bill).

15 f. Within 30 days after the close of a public hearing on a proposed
16 contract held pursuant to subsection a. of this section and upon at least
17 seven days prior written notice, the governing body shall submit an
18 application for approval to the division and the board and shall submit
19 the hearing report to the department for review pursuant to the
20 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
21 Legislature as this bill). The division shall specify the form of the
22 application to be submitted.

23

24 6. (New section) a. Within 45 days of receipt of the application,
25 the board and division shall approve, or conditionally approve, an
26 application submitted by a governing body pursuant to subsection f. of
27 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this
28 bill). Within 25 days of receipt of the hearing report, the department
29 shall provide any comments on the hearing report that it deems
30 appropriate to the board, division and the governing body. If the
31 board or division fail to approve or conditionally approve the
32 application within 50 days after receipt, the application shall be
33 deemed approved, unless the governing body has agreed to an
34 extension of the period.

35 b. If either the board or the division conditionally approves the
36 application, the board or division shall state in writing the revision to
37 the proposed contract that is necessary in order for it to be approved.
38 If the board or division determines that the required revision is
39 substantial, the governing body shall hold a public hearing on the
40 revision and adhere to the provisions of section 5 of P.L. , c.
41 (C.58:28-6)(now before the Legislature as this bill) in so doing, except
42 that the required notice shall be published at least seven days prior to
43 the public hearing. A substantial revision shall be a change that results
44 in an increase in the charges, rates or fees which will be paid for water
45 supply services or wastewater treatment services by users in the
46 jurisdiction or service area that will receive the water supply services

1 or wastewater treatment services pursuant to the terms of the contract,
2 or that materially changes other terms and conditions of the contract.
3 The proposed revision to the contract shall be submitted to the board,
4 division and the department 15 days prior to the date of the public
5 hearing.

6 If the board or division determines that the required revision in the
7 conditional approval is not substantial, the governing body shall submit
8 the proposed revision to the contract to the board and the division for
9 approval and to the department for review. The revision shall be
10 approved if found to be consistent with the conditions set forth in the
11 conditional approval, or disapproved with a written explanation as to
12 why the revision is not consistent, within 15 days after the next public
13 meeting of the board or division.

14 c. In its review of a contract, the board shall apply the following
15 criteria in determining whether to approve the contract:

16 (1) The duly incorporated nonprofit association entering into the
17 contract has the technical and administrative experience to ensure
18 continuity of service over the term of the contract and that the
19 standards and requirements contained in the application documents
20 concerning the technical and administrative capacity of the nonprofit
21 association are necessary and sufficient to protect the public interest.

22 (2) The terms of the contract are not unreasonable. In determining
23 whether the terms of the contract are not unreasonable, the board shall
24 review the charge, rates or fees to be charged or assessed under the
25 contract to determine that they are reasonable to the city of the first
26 class, taking into consideration all of the obligations undertaken by the
27 nonprofit association and all the benefits obtained by the city of the
28 first class. In making this determination, the board shall not use the
29 traditional rate based rate of return methodology.

30 (3) The franchise customers of a public utility participating in a
31 contract are protected from the risks of the proposed contract and that
32 they are not subsidizing the contract. If the nonprofit association is
33 not a public utility, the board shall ensure that under the terms of the
34 proposed contract the users of water outside of the jurisdiction or
35 service area that will receive water supply services under the contract
36 are also protected from the risks of the contract and that water users
37 outside the jurisdiction or service area are not subsidizing the contract
38 through increased charges, rates or fees for the supply of water.

39 (4) The contract contains the provisions required by paragraphs
40 (1), (2) and (6) of subsection d. of section 4 of P.L. , c.
41 (C.58:28-5)(now before the Legislature as this bill).

42 Upon approval of a contract as proposed or as revised in response
43 to a conditional approval, the jurisdiction of the board over the
44 contract shall terminate until or unless the contract is amended to
45 change the formula or other basis of determining charges, rates or fees
46 contained therein.

1 d. In its review of a contract, the division shall apply the following
2 criteria in determining whether to approve the contract:

3 (1) The terms of the proposed contract do not materially impair the
4 ability of the governing body to punctually pay principal and interest
5 due on its outstanding indebtedness and to supply other essential
6 public improvements and services;

7 (2) A concession fee paid by a duly incorporated nonprofit
8 association as a result of the contract is paid directly to the
9 municipality that created or constitutes the governing body, and any
10 concession fee paid by a duly incorporated nonprofit association to a
11 governing body is used for the purposes of reducing or off-setting
12 property taxes, reducing water supply services or wastewater
13 treatment services charges, rates or fees, one-time nonrecurring
14 expenses or capital asset expenditures related to water supply facilities
15 or wastewater treatment systems; and

16 (3) The contract contains the provisions required by paragraphs
17 (3), (4), (5), (7) and (8) of subsection d. of section 4 of P.L. , c.
18 (C.58:28-5)(now before the Legislature as this bill).

19 The division shall also review and specifically approve any contract
20 provision pursuant to which a governing body will or may execute a
21 financing instrument for the purposes set forth in the contract. In
22 addition, the division shall review any contract between the governing
23 body of a city of the first class and a duly incorporated nonprofit
24 association in which a concession fee is paid by the nonprofit
25 association to determine if the payment of the concession fee is in the
26 best interest of the parties to the contract.

27 e. The board or division may provide the governing body with any
28 non-binding comments or advice during or after the review of the
29 application as the board or division deems appropriate.

30 f. The board or division shall assess and the applicant shall pay a
31 fee equal to the cost incurred by the board or division for an analysis
32 of an application by an independent person who has expertise in the
33 areas of water supply services or wastewater treatment services if
34 during the review of an application the board or division determines
35 that such an analysis is required.

36 g. If the governing body of a city of the first class and the duly
37 incorporated nonprofit association would like to amend a contract
38 after approval of an application by the board and division, the
39 governing body shall submit proposed amendments to the board and
40 division for approval and to the department for review. At the next
41 public meeting of the board and of the division after receipt of
42 proposed amendments, the board and the division shall determine
43 whether the proposed amendments are substantial. If the amendments
44 are substantial in nature as determined by either the board or the
45 division, the governing body shall conduct a hearing pursuant to
46 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as

1 this bill). Within 45 days of the receipt of proposed amendments that
2 are not determined to be substantial, or within 45 days of the receipt
3 of an application for approval of proposed amendments that are
4 determined to be substantial, the board and division shall approve or
5 conditionally approve the amendments in accordance with the
6 applicable procedures established for approval of an original contract
7 pursuant to this section.

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

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

13 (1) "Contracting unit" means:

14 (a) Any county; or

15 (b) Any municipality; or

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

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

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

32 "Contracting unit" shall not include a duly incorporated nonprofit
33 association that has entered into a contract with the governing body
34 of a city of the first class for the provision of water supply services or
35 wastewater treatment services pursuant to section 2 of P.L.2001, c.
36 (C.40A:11-5.1)(pending in the Legislature as this bill).

37 (2) "Governing body" means:

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

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

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

46 (3) "Contracting agent" means the governing body of a contracting

1 unit, or its authorized designee, which has the power to prepare the
2 advertisements, to advertise for and receive bids and, as permitted by
3 this act, to make awards for the contracting unit in connection with
4 purchases, contracts or agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (32) "Responsible" means able to complete the contract in

1 accordance with its requirements, including but not limited to
2 requirements pertaining to experience, moral integrity, operating
3 capacity, financial capacity, credit, and workforce, equipment, and
4 facilities availability.

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

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

13 (35) "Director" means the Director of the Division of Local
14 Government Services in the Department of Community Affairs.

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

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

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

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

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

45 (cf: P.L.1999, c.440, s.6)

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

3 5. Any contract the amount of which exceeds the bid threshold,
4 may be negotiated and awarded by the governing body without public
5 advertising for bids and bidding therefor and shall be awarded by
6 resolution of the governing body if:

7 (1) The subject matter thereof consists of:

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

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

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

30 (d) The furnishing of a tax map or maps for the contracting unit;

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

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

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

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

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

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

- 1 (k) The acquisition of artifacts or other items of unique intrinsic,
2 artistic or historical character;
- 3 (l) Those goods and services necessary or required to prepare and
4 conduct an election;
- 5 (m) Insurance, including the purchase of insurance coverage and
6 consultant services, which exception shall be in accordance with the
7 requirements for extraordinary unspecifiable services;
- 8 (n) The doing of any work by handicapped persons employed by a
9 sheltered workshop;
- 10 (o) The provision of any goods or services including those of a
11 commercial nature, attendant upon the operation of a restaurant by any
12 nonprofit, duly incorporated, historical society at or on any historical
13 preservation site;
- 14 (p) (Deleted by amendment, P.L.1999, c.440.)
- 15 (q) Library and educational goods and services;
- 16 (r) On-site inspections undertaken by private agencies pursuant to
17 the "State Uniform Construction Code Act," P.L.1975, c.217
18 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 19 (s) The marketing of recyclable materials recovered through a
20 recycling program, or the marketing of any product intentionally
21 produced or derived from solid waste received at a resource recovery
22 facility or recovered through a resource recovery program, including,
23 but not limited to, refuse-derived fuel, compost materials, methane
24 gas, and other similar products;
- 25 (t) (Deleted by amendment, P.L.1999, c.440.)
- 26 (u) Contracting unit towing and storage contracts, provided that
27 all such contracts shall be pursuant to reasonable non-exclusionary and
28 non-discriminatory terms and conditions, which may include the
29 provision of such services on a rotating basis, at the rates and charges
30 set by the municipality pursuant to section 1 of P.L.1979, c.101
31 (C.40:48-2.49). All contracting unit towing and storage contracts for
32 services to be provided at rates and charges other than those
33 established pursuant to the terms of this paragraph shall only be
34 awarded to the lowest responsible bidder in accordance with the
35 provisions of the "Local Public Contracts Law" and without regard for
36 the value of the contract therefor;
- 37 (v) The purchase of steam or electricity from, or the rendering of
38 services directly related to the purchase of such steam or electricity
39 from a qualifying small power production facility or a qualifying
40 cogeneration facility as defined pursuant to 16 U.S.C.796;
- 41 (w) The purchase of electricity or administrative or dispatching
42 services directly related to the transmission of such purchased
43 electricity by a contracting unit engaged in the generation of
44 electricity;
- 45 (x) The printing of municipal ordinances or other services
46 necessarily incurred in connection with the revision and codification

- 1 of municipal ordinances;
- 2 (y) An agreement for the purchase of an equitable interest in a
3 water supply facility or for the provision of water supply services
4 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
5 an agreement entered into pursuant to P.L.1989, c.109
6 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
7 later than six months after the effective date of P.L.1993, c.381;
- 8 (z) A contract for the provision of water supply services entered
9 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 10 (aa) The cooperative marketing of recyclable materials recovered
11 through a recycling program;
- 12 (bb) A contract for the provision of wastewater treatment services
13 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 14 (cc) Expenses for travel and conferences;
- 15 (dd) The provision or performance of goods or services for the
16 support or maintenance of proprietary computer hardware and
17 software, except that this provision shall not be utilized to acquire or
18 upgrade non-proprietary hardware or to acquire or update non-
19 proprietary software;
- 20 (ee) The management or operation of an airport owned by the
21 contracting unit pursuant to R.S.40:8-1 et seq;
- 22 (ff) Purchases of goods and services at rates set by the Universal
23 Service Fund administered by the Federal Communications
24 Commission;
- 25 (gg) A contract for the provision of water supply services or
26 wastewater treatment services entered into pursuant to section 2 of
27 P.L.2001, c. (C.40A:11-5.1)(pending in the Legislature as this bill),
28 or the designing, financing, construction, operation, or maintenance,
29 or any combination thereof, of a water supply facility as defined in
30 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a
31 wastewater treatment system as defined in subsection (19) of section
32 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts
33 thereof, including a water filtration system as defined in subsection
34 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15).
- 35 (2) It is to be made or entered into with the United States of
36 America, the State of New Jersey, county or municipality or any
37 board, body, officer, agency or authority thereof or any other state or
38 subdivision thereof.
- 39 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
40 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
41 received on both occasions in response to the advertisement, or (b)
42 the governing body has rejected such bids on two occasions because
43 it has determined that they are not reasonable as to price, on the basis
44 of cost estimates prepared for or by the contracting agent prior to the
45 advertising therefor, or have not been independently arrived at in open
46 competition, or (c) on one occasion no bids were received pursuant

1 to (a) and on one occasion all bids were rejected pursuant to (b), in
2 whatever sequence; any such contract may then be negotiated and may
3 be awarded upon adoption of a resolution by a two-thirds affirmative
4 vote of the authorized membership of the governing body authorizing
5 such contract; provided, however, that:

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

12 (ii) The terms, conditions, restrictions and specifications set forth
13 in the negotiated contract are not substantially different from those
14 which were the subject of competitive bidding pursuant to section 4 of
15 P.L.1971, c.198 (C.40A:11-4); and

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

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

38 (4) The contracting unit has solicited and received at least three
39 quotations on materials, supplies or equipment for which a State
40 contract has been issued pursuant to section 12 of P.L.1971, c.198
41 (C.40A:11-12), and the lowest responsible quotation is at least 10%
42 less than the price the contracting unit would be charged for the
43 identical materials, supplies or equipment, in the same quantities,
44 under the State contract. Any such contract entered into pursuant to
45 this subsection may be awarded only upon adoption of a resolution by
46 the affirmative vote of two-thirds of the full membership of the

1 governing body of the contracting unit at a meeting thereof
2 authorizing such a contract. A copy of the purchase order relating to
3 any such contract, the requisition for purchase order, if applicable, and
4 documentation identifying the price of the materials, supplies or
5 equipment under the State contract and the State contract number
6 shall be filed with the director within five working days of the award
7 of any such contract by the contracting unit. The director shall notify
8 the contracting unit of receipt of the material and shall make the
9 material available to the State Treasurer. The contracting unit shall
10 make available to the director upon request any other documents
11 relating to the solicitation and award of the contract, including, but not
12 limited to, quotations, requests for quotations, and resolutions. The
13 director periodically shall review material submitted by contracting
14 units to determine the impact of such contracts on local contracting
15 and shall consult with the State Treasurer on the impact of such
16 contracts on the State procurement process. The director may, after
17 consultation with the State Treasurer, adopt rules in accordance with
18 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.) to limit the use of this subsection, after considering the impact of
20 contracts awarded under this subsection on State and local
21 contracting, or after considering the extent to which the award of
22 contracts pursuant to this subsection is consistent with and in
23 furtherance of the purposes of the public contracting laws.

24 (5) Notwithstanding any provision of law, rule or regulation to the
25 contrary, the subject matter consists of the combined collection and
26 marketing, or the cooperative combined collection and marketing of
27 recycled material recovered through a recycling program, or any
28 product intentionally produced or derived from solid waste received
29 at a resource recovery facility or recovered through a resource
30 recovery program including, but not limited to, refuse-derived fuel,
31 compost materials, methane gas, and other similar products, provided
32 that in lieu of engaging in such public advertising for bids and the
33 bidding therefor, the contracting unit shall, prior to commencing the
34 procurement process, submit for approval to the Director of the
35 Division of Local Government Services, a written detailed description
36 of the process to be followed in securing said services. Within 30 days
37 after receipt of the written description the director shall, if the director
38 finds that the process provides for fair competition and integrity in the
39 negotiation process, approve, in writing, the description submitted by
40 the contracting unit. If the director finds that the process does not
41 provide for fair competition and integrity in the negotiation process,
42 the director shall advise the contracting unit of the deficiencies that
43 must be remedied. If the director fails to respond in writing to the
44 contracting unit within 30 days, the procurement process as described
45 shall be deemed approved. As used in this section, "collection" means
46 the physical removal of recyclable materials from curbside or any other

1 location selected by the contracting unit.

2 (cf: P.L.1999, c.440, s.9)

3

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

6 15. All contracts for the provision or performance of goods or
7 services shall be awarded for a period not to exceed 24 consecutive
8 months, except that contracts for professional services pursuant to
9 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
10 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
11 exceed 12 consecutive months. Contracts may be awarded for longer
12 periods of time as follows:

13 (1) Supplying of:

14 (a) (Deleted by amendment, P.L.1996, c.113.)

15 (b) (Deleted by amendment, P.L.1996, c.113.)

16 (c) Thermal energy produced by a cogeneration facility, for use for
17 heating or air conditioning or both, for any term not exceeding
18 40 years, when the contract is approved by the Board of Public
19 Utilities. For the purposes of this paragraph, "cogeneration" means the
20 simultaneous production in one facility of electric power and other
21 forms of useful energy such as heating or process steam;

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

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

26 (4) The collection and recycling of methane gas from a sanitary
27 landfill facility, for any term not exceeding 25 years, when such
28 contract is in conformance with a district solid waste management plan
29 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
30 approval of the Division of Local Government Services in the
31 Department of Community Affairs and the Department of
32 Environmental Protection. The contracting unit shall award the
33 contract to the highest responsible bidder, notwithstanding that the
34 contract price may be in excess of the amount of any necessarily
35 related administrative expenses; except that if the contract requires the
36 contracting unit to expend funds only, the contracting unit shall award
37 the contract to the lowest responsible bidder. The approval by the
38 Division of Local Government Services of public bidding requirements
39 shall not be required for those contracts exempted therefrom pursuant
40 to section 5 of P.L.1971, c.198 (C.40A:11-5);

41 (5) Data processing service, for any term of not more than seven
42 years;

43 (6) Insurance, including the purchase of insurance coverages,
44 insurance consulting or administrative services, claims administration
45 services and including participation in a joint self-insurance fund, risk
46 management program or related services provided by a contracting

1 unit insurance group, or participation in an insurance fund established
2 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
3 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
4 term of not more than three years;

5 (7) Leasing or servicing of automobiles, motor vehicles, machinery
6 and equipment of every nature and kind, for a period not to exceed
7 five years; provided, however, such contracts shall be awarded only
8 subject to and in accordance with the rules and regulations
9 promulgated by the Director of the Division of Local Government
10 Services of the Department of Community Affairs;

11 (8) The supplying of any product or the rendering of any service
12 by a company providing voice, data, transmission or switching services
13 for a term not exceeding five years;

14 (9) Any single project for the construction, reconstruction or
15 rehabilitation of any public building, structure or facility, or any public
16 works project, including the retention of the services of any architect
17 or engineer in connection therewith, for the length of time authorized
18 and necessary for the completion of the actual construction;

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

21 (11) On-site inspections and plan review services undertaken by
22 private agencies pursuant to the "State Uniform Construction Code
23 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
24 more than three years;

25 (12) The provision or performance of goods or services for the
26 purpose of conserving energy in buildings owned by, or operations
27 conducted by, the contracting unit, the entire price of which to be
28 established as a percentage of the resultant savings in energy costs, for
29 a term not to exceed 15 years; provided, however, that such contracts
30 shall be entered into only subject to and in accordance with guidelines
31 promulgated by the Board of Public Utilities establishing a
32 methodology for computing energy cost savings;

33 (13) (Deleted by amendment, P.L.1999, c.440.)

34 (14) (Deleted by amendment, P.L.1999, c.440.)

35 (15) Leasing of motor vehicles, machinery and other equipment
36 primarily used to fight fires, for a term not to exceed ten years, when
37 the contract includes an option to purchase, subject to and in
38 accordance with rules and regulations promulgated by the Director of
39 the Division of Local Government Services of the Department of
40 Community Affairs;

41 (16) The provision of water supply services or the designing,
42 financing, construction, operation, or maintenance, or any combination
43 thereof, of a water supply facility, or any component part or parts
44 thereof, including a water filtration system, for a period not to exceed
45 40 years, when the contract for these services is approved by the
46 Division of Local Government Services in the Department of

1 Community Affairs, the Board of Public Utilities, and the Department
2 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
3 al.), except that no such approvals shall be required for those contracts
4 otherwise exempted pursuant to subsection (30), (31), (34) [or], (35)
5 or (43) of this section. For the purposes of this subsection, "water
6 supply services" means any service provided by a water supply facility;
7 "water filtration system" means any equipment, plants, structures,
8 machinery, apparatus, or land, or any combination thereof, acquired,
9 used, constructed, rehabilitated, or operated for the collection,
10 impoundment, storage, improvement, filtration, or other treatment of
11 drinking water for the purposes of purifying and enhancing water
12 quality and insuring its potability prior to the distribution of the
13 drinking water to the general public for human consumption, including
14 plants and works, and other personal property and appurtenances
15 necessary for their use or operation; and "water supply facility" means
16 and refers to the real property and the plants, structures,
17 interconnections between existing water supply facilities, machinery
18 and equipment and other property, real, personal and mixed, acquired,
19 constructed or operated, or to be acquired, constructed or operated,
20 in whole or in part by or on behalf of a political subdivision of the
21 State or any agency thereof, for the purpose of augmenting the natural
22 water resources of the State and making available an increased supply
23 of water for all uses, or of conserving existing water resources, and
24 any and all appurtenances necessary, useful or convenient for the
25 collecting, impounding, storing, improving, treating, filtering,
26 conserving or transmitting of water and for the preservation and
27 protection of these resources and facilities and providing for the
28 conservation and development of future water supply resources;

29 (17) The provision of resource recovery services by a qualified
30 vendor, the disposal of the solid waste delivered for disposal which
31 cannot be processed by a resource recovery facility or the residual ash
32 generated at a resource recovery facility, including hazardous waste
33 and recovered metals and other materials for reuse, or the design,
34 financing, construction, operation or maintenance of a resource
35 recovery facility for a period not to exceed 40 years when the contract
36 is approved by the Division of Local Government Services in the
37 Department of Community Affairs, and the Department of
38 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
39 al.); and when the resource recovery facility is in conformance with a
40 district solid waste management plan approved pursuant to P.L.1970,
41 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
42 "resource recovery facility" means a solid waste facility constructed
43 and operated for the incineration of solid waste for energy production
44 and the recovery of metals and other materials for reuse; or a
45 mechanized composting facility, or any other facility constructed or
46 operated for the collection, separation, recycling, and recovery of

1 metals, glass, paper, and other materials for reuse or for energy
2 production; and "residual ash" means the bottom ash, fly ash, or any
3 combination thereof, resulting from the combustion of solid waste at
4 a resource recovery facility;

5 (18) The sale of electricity or thermal energy, or both, produced by
6 a resource recovery facility for a period not to exceed 40 years when
7 the contract is approved by the Board of Public Utilities, and when the
8 resource recovery facility is in conformance with a district solid waste
9 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
10 seq.). For the purposes of this subsection, "resource recovery facility"
11 means a solid waste facility constructed and operated for the
12 incineration of solid waste for energy production and the recovery of
13 metals and other materials for reuse; or a mechanized composting
14 facility, or any other facility constructed or operated for the collection,
15 separation, recycling, and recovery of metals, glass, paper, and other
16 materials for reuse or for energy production;

17 (19) The provision of wastewater treatment services or the
18 designing, financing, construction, operation, or maintenance, or any
19 combination thereof, of a wastewater treatment system, or any
20 component part or parts thereof, for a period not to exceed 40 years,
21 when the contract for these services is approved by the Division of
22 Local Government Services in the Department of Community Affairs
23 and the Department of Environmental Protection pursuant to
24 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals shall
25 be required for those contracts otherwise exempted pursuant to
26 subsection (36) or (43) of this section. For the purposes of this
27 subsection, "wastewater treatment services" means any services
28 provided by a wastewater treatment system, and "wastewater
29 treatment system" means equipment, plants, structures, machinery,
30 apparatus, or land, or any combination thereof, acquired, used,
31 constructed, or operated for the storage, collection, reduction,
32 recycling, reclamation, disposal, separation, or other treatment of
33 wastewater or sewage sludge, or for the final disposal of residues
34 resulting from the treatment of wastewater, including, but not limited
35 to, pumping and ventilating stations, facilities, plants and works,
36 connections, outfall sewers, interceptors, trunk lines, and other
37 personal property and appurtenances necessary for their operation;

38 (20) The supplying of goods or services for the purpose of lighting
39 public streets, for a term not to exceed five years;

40 (21) The provision of emergency medical services for a term not
41 to exceed five years;

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

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

1 (24) The purchase of electricity or administrative or dispatching
2 services related to the transmission of such electricity, from a public
3 utility company subject to the jurisdiction of the Board of Public
4 Utilities, a similar regulatory body of another state, or a federal
5 regulatory agency, or from a qualifying small power producing facility
6 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
7 a contracting unit engaged in the generation of electricity for retail
8 sale, as of May 24,1991, for a term not to exceed 40 years;

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

15 (26) (Deleted by amendment, P.L.1999, c.440.)

16 (27) The provision of transportation services to elderly, disabled
17 or indigent persons for any term of not more than three years. For the
18 purposes of this subsection, "elderly persons" means persons who are
19 60 years of age or older. "Disabled persons" means persons of any age
20 who, by reason of illness, injury, age, congenital malfunction, or other
21 permanent or temporary incapacity or disability, are unable, without
22 special facilities or special planning or design to utilize mass
23 transportation facilities and services as effectively as persons who are
24 not so affected. "Indigent persons" means persons of any age whose
25 income does not exceed 100 percent of the poverty level, adjusted for
26 family size, established and adjusted under section 673(2) of subtitle
27 B, the "Community Services Block Grant Act," Pub.L.97-35
28 (42 U.S.C.s.9902 (2));

29 (28) The supplying of liquid oxygen or other chemicals, for a term
30 not to exceed five years, when the contract includes the installation of
31 tanks or other storage facilities by the supplier, on or near the
32 premises of the contracting unit;

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

36 (30) The acquisition of an equitable interest in a water supply
37 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
38 contract entered into pursuant to the "County and Municipal Water
39 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no
40 later than January 7, 1995, for any term of not more than forty years;

41 (31) The provision of water supply services or the financing,
42 construction, operation or maintenance or any combination thereof, of
43 a water supply facility or any component part or parts thereof, by a
44 partnership or copartnership established pursuant to a contract
45 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
46 period not to exceed 40 years;

- 1 (32) Laundry service and the rental, supply and cleaning of
2 uniforms for any term of not more than three years;
- 3 (33) The supplying of any product or the rendering of any service,
4 including consulting services, by a cemetery management company for
5 the maintenance and preservation of a municipal cemetery operating
6 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for
7 a term not exceeding 15 years;
- 8 (34) A contract between a public entity and a private firm pursuant
9 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water
10 supply services may be entered into for any term which, when all
11 optional extension periods are added, may not exceed 40 years;
- 12 (35) A contract for the purchase of a supply of water from a public
13 utility company subject to the jurisdiction of the Board of Public
14 Utilities in accordance with tariffs and schedules of charges made,
15 charged or exacted or contracts filed with the Board of Public
16 Utilities, for any term of not more than 40 years;
- 17 (36) A contract between a public entity and a private firm or public
18 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the
19 provision of wastewater treatment services may be entered into for any
20 term of not more than 40 years, including all optional extension
21 periods;
- 22 (37) The operation and management of a facility under a license
23 issued or permit approved by the Department of Environmental
24 Protection, including a wastewater treatment system or a water supply
25 or distribution facility, as the case may be, for any term of not more
26 than ten years. For the purposes of this subsection, "wastewater
27 treatment system" refers to facilities operated or maintained for the
28 storage, collection, reduction, disposal, or other treatment of
29 wastewater or sewage sludge, remediation of groundwater
30 contamination, stormwater runoff, or the final disposal of residues
31 resulting from the treatment of wastewater; and "water supply or
32 distribution facility" refers to facilities operated or maintained for
33 augmenting the natural water resources of the State, increasing the
34 supply of water, conserving existing water resources, or distributing
35 water to users;
- 36 (38) Municipal solid waste collection from facilities owned by a
37 contracting unit, for any term of not more than three years;
- 38 (39) Fuel for heating purposes, for any term of not more than
39 three years;
- 40 (40) Fuel or oil for use in motor vehicles for any term of not more
41 than three years;
- 42 (41) Plowing and removal of snow and ice for any term of not
43 more than three years;
- 44 (42) Purchases made under a contract awarded by the Director of
45 the Division of Purchase and Property in the Department of the
46 Treasury for use by counties, municipalities or other contracting units

1 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term
2 not to exceed the term of that contract;

3 (43) A contract between the governing body of a city of the first
4 class and a duly incorporated nonprofit association for the provision
5 of water supply services as defined in subsection (16) of this section,
6 or wastewater treatment services as defined in subsection (19) of this
7 section, may be entered into for a period not to exceed 40 years.

8 Any contract for services other than professional services, the
9 statutory length of which contract is for three years or less, may
10 include provisions for no more than one two-year, or two one-year,
11 extensions, subject to the following limitations: a. The contract shall
12 be awarded by resolution of the governing body upon a finding by the
13 governing body that the services are being performed in an effective
14 and efficient manner; b. No such contract shall be extended so that it
15 runs for more than a total of five consecutive years; c. Any price
16 change included as part of an extension shall be based upon the price
17 of the original contract as cumulatively adjusted pursuant to any
18 previous adjustment or extension and shall not exceed the change in
19 the index rate for the 12 months preceding the most recent quarterly
20 calculation available at the time the contract is renewed; and d. The
21 terms and conditions of the contract remain substantially the same.

22 All multiyear leases and contracts entered into pursuant to this
23 section, including any two-year or one-year extensions, except
24 contracts involving the supplying of electricity for the purpose of
25 lighting public streets and contracts for thermal energy authorized
26 pursuant to subsection (1) above, construction contracts authorized
27 pursuant to subsection (9) above, contracts for the provision or
28 performance of goods or services or the supplying of equipment to
29 promote energy conservation authorized pursuant to subsection (12)
30 above, contracts for water supply services or for a water supply
31 facility, or any component part or parts thereof authorized pursuant to
32 subsection (16), (30), (31), (34), (35) ~~or~~, (37) or (43) above,
33 contracts for resource recovery services or a resource recovery facility
34 authorized pursuant to subsection (17) above, contracts for the sale of
35 energy produced by a resource recovery facility authorized pursuant
36 to subsection (18) above, contracts for wastewater treatment services
37 or for a wastewater treatment system or any component part or parts
38 thereof authorized pursuant to subsection (19), (36) ~~or~~, (37) or (43)
39 above, and contracts for the purchase of electricity or administrative
40 or dispatching services related to the transmission of such electricity
41 authorized pursuant to subsection (24) above, shall contain a clause
42 making them subject to the availability and appropriation annually of
43 sufficient funds as may be required to meet the extended obligation, or
44 contain an annual cancellation clause.

45 The Division of Local Government Services in the Department of
46 Community Affairs shall adopt and promulgate rules and regulations

1 concerning the methods of accounting for all contracts that do not
2 coincide with the fiscal year.

3 All contracts shall cease to have effect at the end of the contracted
4 period and shall not be extended by any mechanism or provision,
5 unless in conformance with the "Local Public Contracts Law,"
6 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be
7 extended by mutual agreement of the parties to the contract when a
8 contracting unit has commenced rebidding prior to the time the
9 contract expires or when the awarding of a contract is pending at the
10 time the contract expires.

11 (cf: P.L.1999, c.440, s.23)

12

13 10. R.S.48:2-13 is amended to read as follows:

14 48:2-13. a. The board shall have general supervision and
15 regulation of and jurisdiction and control over all public utilities as
16 defined in this section and their property, property rights, equipment,
17 facilities and franchises so far as may be necessary for the purpose of
18 carrying out the provisions of this Title.

19 The term "public utility" shall include every individual,
20 copartnership, association, corporation or joint stock company, their
21 lessees, trustees or receivers appointed by any court whatsoever, their
22 successors, heirs or assigns, that now or hereafter may own, operate,
23 manage or control within this State any railroad, street railway,
24 traction railway, autobus, charter bus operation, special bus operation,
25 canal, express, subway, pipeline, gas, electricity distribution, water,
26 oil, sewer, solid waste collection, solid waste disposal, telephone or
27 telegraph system, plant or equipment for public use, under privileges
28 granted or hereafter to be granted by this State or by any political
29 subdivision thereof.

30 b. Nothing contained in this Title shall extend the powers of the
31 board to include any supervision and regulation of, or jurisdiction and
32 control over any vehicles engaged in ridesharing arrangements with a
33 maximum carrying capacity of not more than 15 passengers, including
34 the driver, where the transportation of passengers is incidental to the
35 purpose of the driver or any vehicles engaged in the transportation of
36 passengers for hire in the manner and form commonly called taxicab
37 service unless such service becomes or is held out to be regular service
38 between stated termini; hotel buses used exclusively for the
39 transportation of hotel patrons to or from local railroad or other
40 common carrier stations, including local airports, or bus employed
41 solely for transporting school children and teachers, to and from
42 school, or any autobus with a carrying capacity of not more than 10
43 passengers now or hereafter operated under municipal consent upon
44 a route established wholly within the limits of a single municipality or
45 with a carrying capacity of not more than 20 passengers operated
46 under municipal consent upon a route established wholly within the

1 limits of not more than four contiguous municipalities within any
2 county of the fifth or sixth class, which route in either case does not
3 in whole or in part parallel upon the same street the line of any street
4 railway or traction railway or any other autobus route.

5 c. Except as provided in section 7 of P.L.1995, c.101
6 (C.58:26-25), the board shall have no regulatory authority over the
7 parties to a contract negotiated between a public entity and a private
8 firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection
9 with the performance of their respective obligations thereunder.
10 Nothing contained in this title shall extend the powers of the board to
11 include any supervision and regulation of, or jurisdiction and control
12 over, any public-private contract for the provision of water supply
13 services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

14 d. Unless otherwise specifically provided pursuant to P.L.1999,
15 c.23 (C.48:3-49 et al.), all services necessary for the transmission and
16 distribution of electricity and gas, including but not limited to safety,
17 reliability, metering, meter reading and billing, shall remain the
18 jurisdiction of the Board of Public Utilities. The board shall also
19 maintain the necessary jurisdiction with regard to the production of
20 electricity and gas to assure the reliability of electricity and gas supply
21 to retail customers in the State as prescribed by the board or any other
22 federal or multi-jurisdictional agency responsible for reliability and
23 capacity in the State.

24 e. Notwithstanding the provisions of subsection a. of this section,
25 the board shall have the authority to classify as regulated the sale of
26 any thermal energy service by a cogenerator or district heating system,
27 for the purpose of providing heating or cooling to a residential
28 dwelling if, after notice and hearing, it determines that the customer
29 does not have sufficient space on its property to install an alternative
30 source of equivalent thermal energy, there is no contract governing the
31 provision of thermal energy service for the relevant period of time, and
32 that sufficient competition is no longer present, based upon
33 consideration of such factors as: ease of market entry; presence of
34 other competitors; and the availability of like or substitute services in
35 the relevant geographic area. Upon such a classification, the board
36 may determine such rates for the thermal energy service for the
37 purpose of providing heating or cooling to a residential dwelling as it
38 finds to be consistent with the prevailing cost of alternative sources of
39 thermal energy in similar situations. The board, however, shall
40 continue to monitor the thermal energy service to such residential
41 dwellings and, whenever the board finds that the thermal energy
42 service has again become sufficiently competitive pursuant to the
43 criteria listed above, the board shall cease to regulate the sale or
44 production of the service. The board shall not have the authority to
45 regulate the sale or production of steam or any other form of thermal
46 energy, including hot and chilled water, to non-residential customers.

1 f. Nothing contained in this Title shall extend the powers of the
2 board to include supervision and regulation of, or jurisdiction and
3 control over, an entity engaged in the provision or use of sewage
4 effluent for the purpose of providing a cooling medium to an end user
5 or end users on a single site, which provision results in the
6 conservation of potable water which would otherwise have been used
7 for such purposes.

8 g. Except as provided herein, the board shall have no regulatory
9 authority over the parties to a contract entered into between the
10 governing body of a city of the first class and a duly incorporated
11 nonprofit association in connection with the performance of their
12 respective obligations thereunder when the governing body of a city
13 of the first class shall determine by ordinance that it is in the public
14 interest to contract with that duly incorporated nonprofit association
15 for the provision of water supply services as defined in subsection (16)
16 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
17 of wastewater treatment services as defined in subsection (19) of
18 section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
19 financing, construction, operation, or maintenance, or any combination
20 thereof, of a water supply facility as defined in subsection (16) of
21 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
22 treatment system as defined in subsection (19) of section 15 of
23 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
24 thereof, including a water filtration system as defined in subsection
25 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval
26 of the contract pursuant to the provisions of section 6 of P.L. , c.
27 (C.58:28-7)(now before the Legislature as this bill).

28 Notwithstanding any other provision of P.L. , c. (now before the
29 Legislature as this bill) whenever the governing body of a city of the
30 first class enters into a contract with a duly incorporated nonprofit
31 association for the provision of water supply services as defined in
32 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
33 the designing, financing, construction, operation, or maintenance, or
34 any combination thereof, of a water supply facility as defined in
35 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and
36 that governing body operates water supply facilities as authorized
37 pursuant to the provisions of N.J.S.40A:31-4, which supply water to
38 customers within another local unit, the nonprofit association or
39 governing body shall be subject to the jurisdiction, rate regulation and
40 control of the Board of Public Utilities as provided in
41 N.J.S.40A:31-23, to the extent the nonprofit association or governing
42 body supplies water to customers within that other local unit.

43 (cf: P.L.1999, c.23, s.52)

44
45 11. N.J.S.40A:31-23 is amended to read as follows:

46 40A:31-23 a. Nothing contained in this act shall in any way impair

1 the obligations previously assumed by any other public or private
2 agency for the provision of water supply services and facilities to the
3 citizens and industries of this State, or for any other purpose
4 authorized by any law repealed by N.J.S.40A:31-24.

5 b. In the event a municipal utilities authority has been established
6 in a local unit pursuant to the provisions of the "municipal and county
7 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), no
8 local unit or units shall establish any facility within the territory of that
9 local unit which is competitive with any water supply facility operated
10 by that authority.

11 c. No water supply services shall be provided in accordance with
12 this act to users in another local unit without the prior approval of the
13 governing body of that other local unit.

14 d. (1) Subject to the terms of any agreement entered into by
15 participating local units or between a supplying and receiving local
16 unit or units and the provisions of this act, a local unit or local units
17 owning and operating water supply facilities in accordance with the
18 provisions of N.J.S.40A:31-4, which supply water to more than 1,000
19 billed customers within another local unit, shall be subject to the
20 jurisdiction, regulation and control of the Board of Public Utilities in
21 accordance with the provisions of Title 48 of the Revised Statutes.
22 The provisions of this subsection shall not apply [where] whenever
23 water is supplied to customers in another local unit at bulk rates.

24 (2) Notwithstanding any provision of this subsection to the
25 contrary, whenever the governing body of a city of the first class
26 enters into a contract with a duly incorporated nonprofit association
27 for the provision of water supply services as defined in subsection (16)
28 of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
29 financing, construction, operation, or maintenance, or any combination
30 thereof, of a water supply facility as defined in subsection (16) of
31 section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body
32 operates water supply facilities as authorized pursuant to the
33 provisions of N.J.S.40A:31-4, which supply water to customers within
34 another local unit, the nonprofit association or governing body shall
35 be subject to the jurisdiction, rate regulation and control of the Board
36 of Public Utilities to the extent the nonprofit association or governing
37 body supplies water to customers within that other local unit. The
38 provisions of this paragraph shall apply whenever water is supplied to
39 customers in another local unit at bulk rates.

40 (cf: N.J.S.40A:31-23)

41
42 12. This act shall take effect immediately.

STATEMENT

1
2
3 This bill authorizes the governing body of a city of the first class to
4 contract with a duly incorporated nonprofit association for the
5 provision of water supply services as defined in subsection (16) of
6 section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment
7 services as defined in subsection (19) of section 15 of P.L.1971, c.198
8 (C.40A:11-15) for a period not to exceed 40 years.

9 The bill provides that when the governing body of a city of the first
10 class shall determine by ordinance, with or without competitive
11 bidding, that it is in the public interest to contract with a duly
12 incorporated nonprofit association for the provision of such water
13 supply services or wastewater treatment services, the governing body
14 may lease any real property, capital improvement or personal property,
15 or interests therein, or any part thereof, without regard to the
16 provisions of the "Local Lands and Buildings Law" or compliance with
17 any other law governing disposal of lands by municipalities except the
18 watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990,
19 c.19). Any such lease may be made or given, with or without
20 consideration, for a period not to exceed 40 years and under any
21 agreement and on any terms and conditions which may be approved by
22 the governing body and which may be agreed to by the nonprofit
23 association.

24 The bill also provides that the Board of Public Utilities (BPU) shall
25 have no regulatory authority over the parties to a contract negotiated
26 between a city of the first class and a nonprofit association for the
27 provision of such water supply services or wastewater treatment
28 services, or the designing, financing, construction, operation, or
29 maintenance, or any combination thereof, of a water supply facility as
30 defined in subsection (16) of section 15 of P.L.1971, c.198
31 (C.40A:11-15) or a wastewater treatment system as defined in
32 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
33 any component part or parts thereof, including a water filtration
34 system as defined in subsection (16) of section 15 of P.L.1971, c.198
35 (C.40A:11-15), except that the BPU would have jurisdiction whenever
36 the nonprofit association supplies water to customers in another local
37 unit and over bulk sales to customers in other local units.

38 The bill would also:

39 (1) require written opinion of bond counsel as to the effect of the
40 contract on the tax exempt status of existing and future financing
41 instruments executed by the parties;

42 (2) require that any concession fee paid by the nonprofit association
43 must be used to offset property taxes, rates or fees, one-time recurring
44 expenses or capital asset expenditures related to water supply facilities
45 or wastewater treatment systems;

46 (3) require public notice of intent to enter the contract and

- 1 information on the type of services to be provided, and the reason for
2 the selection of the nonprofit association;
- 3 (4) require the governing body to provide copies of the proposed
4 contract upon request;
- 5 (5) require the governing body to notify, in writing, the BPU, the
6 Division of Local Government Services in the Department of
7 Community Affairs (DCA), and the Department of Environmental
8 Protection of its intent to enter into a contract;
- 9 (6) require the contract to include the charges, rates and fees that
10 will be charged by the nonprofit association for service; the allocation
11 of risks of financing and constructing capital additions or upgrades to
12 existing systems; the allocation of risks of operating the facility;
13 provisions to address the default and termination of the contract;
14 provisions to address employment of current municipal employees
15 whose positions would be affected by the contract; the nonprofit
16 association's authority to initiate, negotiate and finalize the bulk sale
17 of water; provision of a performance bond by the nonprofit
18 association, if so required by the governing body; and dispute
19 resolution procedures;
- 20 (7) require at least one public hearing on the contract, on revisions
21 to the contract and on substantial modifications to the contract;
- 22 (8) require that the notice of the public hearing include notice of
23 where and when the proposed contract will be available for public
24 inspection, the amount of any concession fee to be paid by the
25 nonprofit association, the potential impact of the concession fee on
26 charges, rates or fees paid for water supply services or wastewater
27 treatment services;
- 28 (9) require State agency review of the contract, which would
29 include an evaluation of the technical and administrative capacity of
30 the nonprofit association to ensure continuity of service, the
31 reasonableness of the terms of the contract, an evaluation of whether
32 water users outside the jurisdiction are not subsidizing the contract
33 through increased rates, fees or charges, a determination if the
34 concession fee to be paid is in the best interest of the parties to the
35 contract and that the terms of the contract do not impair the governing
36 body's ability to pay principal and interest on bonded indebtedness or
37 to supply essential public services;
- 38 (10) authorize the DCA and BPU to approve or conditionally
39 approve the contract, and if substantial revisions are required, require
40 an additional public hearing;
- 41 (11) clarify that whenever the nonprofit association supplies water
42 to customers in another local unit, the nonprofit association is subject
43 to BPU jurisdiction, rate regulation and control and that bulk sales to
44 customers in other local units would also be regulated;
- 45 (12) ensure that lands subject to the moratorium on conveyance of
46 watershed property imposed under P.L.1988, c.163 as amended by

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34

1 P.L.1990, c.19 would continue to be subject to that moratorium even
2 after being leased as allowed under the bill;

3 (13) ensure the continuance of any obligations assumed by a city of
4 the first class with the Passaic Valley Sewerage Commission, including
5 any contract or compact entered into thereby; and

6 (14) subject to the provisions of the "Local Fiscal Affairs Law," the
7 "Local Authorities Fiscal Control Law," the "Local Government Ethics
8 Law," and the "Open Public Meetings Act," any duly incorporated
9 nonprofit association intending to enter into a contract with the
10 governing body of a city of the first class for the provision of water
11 supply services or wastewater treatment services as allowed under the
12 bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 533

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2002

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Senate Bill No. 533 (1R).

This bill authorizes the governing body of a city of the first class to contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15) for a period not to exceed 40 years.

The bill provides that when the governing body of a city of the first class shall determine by ordinance, with or without competitive bidding, that it is in the public interest to contract with a duly incorporated nonprofit association for the provision of such water supply services or wastewater treatment services, the governing body may lease any real property, capital improvement or personal property, or interests therein, or any part thereof, without regard to the provisions of the "Local Lands and Buildings Law" or compliance with any other law governing disposal of lands by municipalities except the watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990, c.19). Any such lease may be made or given, with or without consideration, for a period not to exceed 40 years and under any agreement and on any terms and conditions which may be approved by the governing body and which may be agreed to by the nonprofit association.

The bill also provides that the Board of Public Utilities (BPU) shall have no regulatory authority over the parties to a contract negotiated between a city of the first class and a nonprofit association for the provision of such water supply services or wastewater treatment services, or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or

any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), except that the BPU would have jurisdiction whenever the nonprofit association supplies water to customers in another local unit and over bulk sales to customers in other local units.

The bill would also:

(1) require written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties;

(2) require that any concession fee paid by the nonprofit association must be used to offset property taxes, rates or fees, one-time recurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems;

(3) require public notice of intent to enter the contract and information on the type of services to be provided, and the reason for the selection of the nonprofit association;

(4) require the governing body to provide copies of the proposed contract upon request;

(5) require the governing body to notify, in writing, the BPU, the Division of Local Government Services in the Department of Community Affairs (DCA), and the Department of Environmental Protection of its intent to enter into a contract;

(6) require the contract to include the charges, rates and fees that will be charged by the nonprofit association for service; the allocation of risks of financing and constructing capital additions or upgrades to existing systems; the allocation of risks of operating the facility; provisions to address the default and termination of the contract; provisions to address employment of current municipal employees whose positions would be affected by the contract; the nonprofit association's authority to initiate, negotiate and finalize the bulk sale of water; provision of a performance bond by the nonprofit association, if so required by the governing body; and dispute resolution procedures;

(7) require at least one public hearing on the contract, on revisions to the contract and on substantial modifications to the contract;

(8) require that the notice of the public hearing include notice of where and when the proposed contract will be available for public inspection, the amount of any concession fee to be paid by the nonprofit association, the potential impact of the concession fee on charges, rates or fees paid for water supply services or wastewater treatment services;

(9) require State agency review of the contract, which would include an evaluation of the technical and administrative capacity of the nonprofit association to ensure continuity of service, the reasonableness of the terms of the contract, an evaluation of whether water users outside the jurisdiction are not subsidizing the contract through increased rates, fees or charges, a determination if the

concession fee to be paid is in the best interest of the parties to the contract and that the terms of the contract do not impair the governing body's ability to pay principal and interest on bonded indebtedness or to supply essential public services;

(10) authorize the DCA and BPU to approve or conditionally approve the contract, and if substantial revisions are required, require an additional public hearing;

(11) clarify that whenever the nonprofit association supplies water to customers in another local unit, the nonprofit association is subject to BPU jurisdiction, rate regulation and control and that bulk sales to customers in other local units would also be regulated;

(12) ensure that lands subject to the moratorium on conveyance of watershed property imposed under P.L.1988, c.163 as amended by P.L.1990, c.19 would continue to be subject to that moratorium even after being leased as allowed under the bill;

(13) ensure the continuance of any obligations assumed by a city of the first class with the Passaic Valley Sewerage Commission, including any contract or compact entered into thereby; and

(14) subject to the provisions of the "Local Fiscal Affairs Law," the "Local Authorities Fiscal Control Law," the "Local Government Ethics Law," and the "Open Public Meetings Act," any duly incorporated nonprofit association intending to enter into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services as allowed under the bill.

COMMITTEE AMENDMENTS:

Committee amendments to the bill:

(1) Specify that any lands leased or otherwise conveyed to a duly incorporated nonprofit association pursuant to the provisions of the bill shall not be developed for any purpose other than for the provision of water supply services or wastewater treatment services as determined by the Commissioner of Environmental Protection; and

(2) Clarify that the provisions of the bill do not abrogate, amend, modify, impair or repeal the obligations and responsibilities imposed on a city of the first class or a duly incorporated nonprofit association by the environmental laws of this State, including, but not limited to, the "Water Pollution Control Act," the "Safe Drinking Water Act," the "Water Supply Management Act," and the "Water Supply and Wastewater Operators' Licensing Act".

In reporting this legislation, it is the understanding of the committee that several amendatory items not considered and adopted by the committee at this time shall be the subject of discussions between committee members and the bill's sponsor prior to a final Assembly floor vote. These items include:

(1) A requirement that the Board of Public Utilities confer with, and obtain the concurrence of, the Department of Environmental

Protection as to the technical experience and competence of the duly incorporated nonprofit association when the Board is reviewing the contract and making the determination, with respect to the provision of water supply services, whether the duly incorporated nonprofit association entering into the contract has the technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the technical and administrative capacity of the nonprofit association are necessary and sufficient to protect the public interest; and

(2) A requirement that any construction to be undertaken or performed by or on behalf of a duly incorporated nonprofit association in furtherance of providing water supply services or wastewater treatment services, or both, as the case may be, on behalf of a city of the first class shall be subject to the provisions of the "Local Public Contracts Law," and any contract therefor shall be publicly bid and awarded to the lowest, responsible bidder.

As amended and reported by the committee, Senate Bill No.533 (1R) is identical to Assembly Bill No.1902 as also amended and reported by the committee.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 533

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2002

The Senate Environment Committee reports favorably Senate Bill No. 533.

This bill authorizes the governing body of a city of the first class to contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15) for a period not to exceed 40 years.

The bill provides that when the governing body of a city of the first class shall determine by ordinance, with or without competitive bidding, that it is in the public interest to contract with a duly incorporated nonprofit association for the provision of such water supply services or wastewater treatment services, the governing body may lease any real property, capital improvement or personal property, or interests therein, or any part thereof, without regard to the provisions of the "Local Lands and Buildings Law" or compliance with any other law governing disposal of lands by municipalities except the watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990, c.19). Any such lease may be made or given, with or without consideration, for a period not to exceed 40 years and under any agreement and on any terms and conditions which may be approved by the governing body and which may be agreed to by the nonprofit association.

The bill also provides that the Board of Public Utilities (BPU) shall have no regulatory authority over the parties to a contract negotiated between a city of the first class and a nonprofit association for the provision of such water supply services or wastewater treatment services, or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), except that the BPU would have jurisdiction whenever the nonprofit association supplies water to customers in another local

unit and over bulk sales to customers in other local units.

The bill would also:

(1) require written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties;

(2) require that any concession fee paid by the nonprofit association must be used to offset property taxes, rates or fees, one-time recurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems;

(3) require public notice of intent to enter the contract and information on the type of services to be provided, and the reason for the selection of the nonprofit association;

(4) require the governing body to provide copies of the proposed contract upon request;

(5) require the governing body to notify, in writing, the BPU, the Division of Local Government Services in the Department of Community Affairs (DCA), and the Department of Environmental Protection of its intent to enter into a contract;

(6) require the contract to include the charges, rates and fees that will be charged by the nonprofit association for service; the allocation of risks of financing and constructing capital additions or upgrades to existing systems; the allocation of risks of operating the facility; provisions to address the default and termination of the contract; provisions to address employment of current municipal employees whose positions would be affected by the contract; the nonprofit association's authority to initiate, negotiate and finalize the bulk sale of water; provision of a performance bond by the nonprofit association, if so required by the governing body; and dispute resolution procedures;

(7) require at least one public hearing on the contract, on revisions to the contract and on substantial modifications to the contract;

(8) require that the notice of the public hearing include notice of where and when the proposed contract will be available for public inspection, the amount of any concession fee to be paid by the nonprofit association, the potential impact of the concession fee on charges, rates or fees paid for water supply services or wastewater treatment services;

(9) require State agency review of the contract, which would include an evaluation of the technical and administrative capacity of the nonprofit association to ensure continuity of service, the reasonableness of the terms of the contract, an evaluation of whether water users outside the jurisdiction are not subsidizing the contract through increased rates, fees or charges, a determination if the concession fee to be paid is in the best interest of the parties to the contract and that the terms of the contract do not impair the governing body's ability to pay principal and interest on bonded indebtedness or to supply essential public services;

(10) authorize the DCA and BPU to approve or conditionally

approve the contract, and if substantial revisions are required, require an additional public hearing;

(11) clarify that whenever the nonprofit association supplies water to customers in another local unit, the nonprofit association is subject to BPU jurisdiction, rate regulation and control and that bulk sales to customers in other local units would also be regulated;

(12) ensure that lands subject to the moratorium on conveyance of watershed property imposed under P.L.1988, c.163 as amended by P.L.1990, c.19 would continue to be subject to that moratorium even after being leased as allowed under the bill;

(13) ensure the continuance of any obligations assumed by a city of the first class with the Passaic Valley Sewerage Commission, including any contract or compact entered into thereby; and

(14) subject to the provisions of the "Local Fiscal Affairs Law," the "Local Authorities Fiscal Control Law," the "Local Government Ethics Law," and the "Open Public Meetings Act," any duly incorporated nonprofit association intending to enter into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services as allowed under the bill.

This bill was pre-filed for introduction in the 2002-2003 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
SENATE, No. 533

with Senate Floor Amendments
(Proposed By Senator McNAMARA)

ADOPTED: MARCH 7, 2002

This amendment would provide that notwithstanding the provisions of any other law to the contrary, any property that is leased or otherwise conveyed to a duly incorporated nonprofit association pursuant to the provisions of this bill shall not be subject to any exemption from taxation.

STATEMENT TO
[Second Reprint]
SENATE, No. 533

with Assembly Floor Amendments
(Proposed By Assemblyman CARABALLO)

ADOPTED: JUNE 13, 2002

These amendments provide that any expenditure of funds by a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class pursuant to this bill for any capital improvements to, or construction of, water supply facilities or wastewater treatment systems would be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11 -1 et seq.) whenever these funds have been derived from the proceeds of obligations or other available public moneys of any public entity including, but not limited to, debt issued by the New Jersey Environmental Infrastructure Trust, or a city of the first class.

ASSEMBLY, No. 1902

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

SYNOPSIS

Authorizes cities of the first class to contract with nonprofit organizations for the provision of water supply and wastewater treatment services.

CURRENT VERSION OF TEXT

As introduced.



A1902 CARABALLO

2

1 AN ACT concerning the provision of water supply and wastewater
2 treatment services, and amending and supplementing parts of the
3 statutory law.

4

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

7

8 1. (New section) a. Notwithstanding the provisions of the "Local
9 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.) or
10 any other law, rule or regulation to the contrary, when the governing
11 body of a city of the first class shall determine by ordinance, with or
12 without competitive bidding, that it is in the public interest to contract
13 with a duly incorporated nonprofit association for the provision of
14 water supply services as defined in subsection (16) of section 15 of
15 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
16 treatment services as defined in subsection (19) of section 15 of
17 P.L.1971, c.198 (C.40A:11-15), the governing body is hereby
18 authorized to lease any real property, capital improvement or personal
19 property, or interests therein, or any part thereof, without compliance
20 with any other law governing disposal of lands by municipalities
21 except as provided pursuant to paragraph (1) of this subsection. Any
22 such lease may be made or given, with or without consideration, for
23 a period not to exceed 40 years and under any agreement and on any
24 terms and conditions which may be approved by the governing body
25 and which may be agreed to by the nonprofit association.

26 (1) (a) Any lands subject to the provisions of P.L.1988, c.163, as
27 amended by P.L.1990, c.19, that are leased or otherwise conveyed to
28 a duly incorporated nonprofit association pursuant to the provisions
29 of P.L. , c. (C.) (now before the Legislature as this bill) shall
30 continue to be subject to the provisions of P.L.1988, c.163, as
31 amended by P.L.1990, c.19.

32 (b) Upon leasing or otherwise controlling lands subject to the
33 provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, a duly
34 incorporated nonprofit association subject to the provisions of P.L. ,
35 c. (C.) (now before the Legislature as this bill) shall be subject to
36 the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, with
37 respect to those lands.

38 (c) The leasing of lands subject to the provisions of P.L.1988,
39 c.163, as amended by P.L.1990, c.19, by a city of the first class to a
40 duly incorporated nonprofit association pursuant to the provisions of
41 P.L. , c. (C.) (now before the Legislature as this bill) shall not
42 be considered a conveyance for the purposes of P.L.1988, c.163, as
43 amended by P.L.1990, c.19.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

A1902 CARABALLO

1 (2) Nothing contained in this section abrogates, amends, modifies,
2 impairs or repeals the obligations previously assumed by a city of the
3 first class pursuant to the provisions of R.S.58:14-1 et seq., including
4 any contract or compact entered into thereby.

5 b. The authorization provided in this section shall be subject to the
6 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through
7 58:28-7)(now before the Legislature as this bill).

8 c. Notwithstanding any other provisions of this section to the
9 contrary, a duly incorporated nonprofit association that intends to
10 enter into a contract with the governing body of a city of the first class
11 for the provision of water supply services as defined in subsection (16)
12 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
13 of wastewater treatment services as defined in subsection (19) of
14 section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may
15 be, shall be subject to the provisions of the "Local Fiscal Affairs Law,"
16 N.J.S.40A:5-1 et seq., the "Local Authorities Fiscal Control Law,"
17 P.L.1983, c.313 (C.40A:5A-1 et seq.), the "Local Government Ethics
18 Law," P.L.1991, c.29 (C.40A:9-22.1 et seq.), and the "Open Public
19 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), inclusive, and shall
20 be considered a "local unit" pursuant to N.J.S.40A:5-2, an "authority"
21 pursuant to section 3 of P.L.1983, c.313 (C.40A:5A-3), a "local
22 government agency" pursuant to section 3 of P.L.1991, c.29
23 (C.40A:9-22.3), and a "public body" pursuant to section 3 of
24 P.L.1975, c.231 (C.10:4-8), respectively.

25
26 2. (New section) The Legislature finds and declares it to be in the
27 public interest and to be the public policy of the State to foster and
28 promote by all reasonable means the collection, storage and
29 distribution of an adequate supply of water for the inhabitants and
30 businesses of the counties and municipalities of this State and to foster
31 and promote the public health by providing for the collection and
32 treatment of sewerage through adequate sewerage facilities.

33 To further promote these interests, and notwithstanding the
34 provisions of any other law, rule or regulation to the contrary, the
35 governing body of a city of the first class may enter into a contract
36 with a duly incorporated nonprofit association for the provision of
37 water supply services as defined in subsection (16) of section 15 of
38 P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater
39 treatment services as defined in subsection (19) of section 15 of
40 P.L.1971, c.198 (C.40A:11-15), or both, as the case may be.

41 The governing body of a city of the first class that has entered into
42 a contract with a duly incorporated nonprofit association pursuant to
43 this section shall obtain the written opinion of bond counsel as to the
44 effect of the contract on the tax exempt status of existing and future
45 financing instruments executed by the parties given the terms of the
46 contract and the federal laws or regulations concerning this matter.

A1902 CARABALLO

1 Any concession fee or monetary benefit paid by a duly incorporated
2 nonprofit association to the governing body of a city of the first class
3 shall be used for the purposes of reducing or off-setting property
4 taxes, reducing water supply services or wastewater treatment services
5 charges, rates or fees, one-time nonrecurring expenses or capital asset
6 expenditures related to water supply facilities or wastewater treatment
7 systems.

8 Upon executing such contract, the duly incorporated nonprofit
9 association shall be deemed to be providing essential governmental
10 functions on behalf of the city of the first class and, to the extent
11 permitted in the contract, shall exercise all powers and responsibilities
12 of the city of the first class related to the provision of water supply
13 services and wastewater treatment services now or hereinafter
14 provided under law.

15 The authorization provided in this section shall be subject to the
16 provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through
17 58:28-7)(now before the Legislature as this bill).

18

19 3. (New section) As used in sections 3 through 6 of P.L. , c.
20 (C.58:28-4 through 58:28-7)(now before the Legislature as this bill):

21 "Board" means the Board of Public Utilities.

22 "Concession fee" means a payment from a duly incorporated
23 nonprofit association to the governing body of a city of the first class,
24 regardless of when it is received, that is exclusive of or exceeds any
25 contractually specified reimbursement of direct costs incurred by the
26 governing body.

27 "Contract" means a long-term written agreement wherein a duly
28 incorporated nonprofit association agrees to provide water supply
29 services or wastewater treatment services on behalf of the governing
30 body of a city of the first class and wherein the duly incorporated
31 nonprofit association agrees to provide, during the term of the
32 contract, capital expenditures on behalf of the governing body's water
33 supply facility as defined in subsection (16) of section 15 of P.L.1971,
34 c.198 (C.40A:11-15) or wastewater treatment system as defined in
35 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
36 both, as the case may be, which expenditures are set forth in the
37 contract.

38 "Department" means the Department of Environmental Protection.

39 "Director" means the Director of the Division of Local Government
40 Services in the Department of Community Affairs.

41 "Division" means the Division of Local Government Services in the
42 Department of Community Affairs.

43 "Proposal document" means the document prepared by or on behalf
44 of the governing body of a city of the first class describing the water
45 supply services or wastewater treatment services that the governing
46 body is considering having provided by a duly incorporated nonprofit

1 association pursuant to a contract.

2

3 4. (New section) a. The governing body of a city of the first class
4 shall publish notice of its intent to enter into a contract pursuant to
5 sections 1 and 2 of P.L. , c. (C.40A:12-17.1 and 40A:11-5.1)(now
6 before the Legislature as this bill) in at least one newspaper of general
7 circulation in the jurisdiction or service area that will receive water
8 supply services or wastewater treatment services under the terms of
9 the contract and one newspaper of broad regional circulation, at least
10 30 days prior to conducting the public hearing required under section
11 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this bill).
12 In addition, a governing body that intends to enter into a contract with
13 a duly incorporated nonprofit association for the provision of water
14 supply services or wastewater treatment services shall notify in writing
15 the board, department and division of its intent.

16 b. The public notice required under subsection a. of this section
17 shall describe the type of services desired and provide the name,
18 address and phone number of the person who can provide additional
19 information and a proposal document to an interested party.

20 c. The public entity shall set forth in writing the reasons for the
21 selection of the nonprofit association and shall make this document
22 available to the public along with the proposed contract upon request
23 and during the public hearing conducted pursuant to section 5 of
24 P.L. , c. (C.58:28-6)(now before the Legislature as this bill).

25 d. A contract entered into pursuant to sections 1 and 2 of P.L. ,
26 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
27 this bill) shall include provisions addressing the following:

28 (1) The charges, rates, fees or formulas to be used to determine the
29 charges, rates, or fees to be charged by the nonprofit association for
30 the water supply services or wastewater treatment services to be
31 provided.

32 (2) The allocation of the risks of financing and constructing
33 planned capital additions or upgrades to existing water supply facilities
34 or wastewater treatment systems.

35 (3) The allocation of the risks of operating and maintaining the
36 water supply facilities or wastewater treatment systems.

37 (4) The allocation of the risks associated with circumstances or
38 occurrences beyond the control of the parties to the contract.

39 (5) The defaulting and termination of the contract.

40 (6) The employment of current employees of the city of the first
41 class whose positions or employment will be affected by the terms of
42 the contract.

43 (7) The nonprofit association's authority and the extent, or the
44 procedures for the use, of that authority to initiate, negotiate and
45 finalize the terms for a bulk sale of surplus water. The contract shall
46 either grant the nonprofit association such authority or specifically

1 state that the nonprofit association is denied that authority. Nothing
2 in P.L. , c. (C.)(now before the Legislature as this bill) shall
3 be construed to authorize a city of the first class that enters into a
4 contract pursuant to sections 1 and 2 of P.L. , c. (C.40A:12-17.1
5 and 40A:11-5.1)(now before the Legislature as this bill) to provide for
6 the bulk sale, lease or transfer of water if the water being transferred,
7 leased or sold has been supplied to the city of the first class either by
8 the New Jersey Water Supply Authority or by the North Jersey District
9 Water Supply Commission, unless the authority pursuant to P.L.1981,
10 c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et
11 seq., as appropriate, has agreed to the bulk sale, lease or transfer.

12 (8) The requirements for the provision of a performance bond by
13 the nonprofit association, if so required by the governing body.

14 e. If a dispute over contract compliance, performance or
15 termination cannot be resolved by the parties to the contract pursuant
16 to the procedures set forth in the contract, either party to the contract
17 may file with the Superior Court which has appropriate jurisdiction a
18 request for an order either to terminate the contract based on the
19 reasons stated in the request or for an order for other appropriate
20 relief to the dispute. The court may take such action as it may deem
21 necessary to facilitate the expeditious resolution of the dispute and an
22 expeditious response to the request, including ordering the parties to
23 undertake a dispute resolution or mediation process. The court shall
24 use, as it deems necessary, the services of a financial expert in the area
25 of water supply service or wastewater treatment service contracts in
26 its analysis of the contract and the issues before it. Within 90 days
27 after the filing of a request, the court shall either grant the request or
28 deny the request. If the request is granted, the court shall order such
29 appropriate relief measures or remedies as it deems appropriate and
30 necessary.

31

32 5. (New section) a. The governing body of a city of the first class
33 that intends to enter into a contract with a duly incorporated nonprofit
34 association for the provision of water supply services as defined in
35 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
36 for the provision of wastewater treatment services as defined in
37 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
38 both, as the case may be, shall conduct a public hearing on the
39 proposed contract authorized pursuant to sections 1 and 2 of P.L. ,
40 c. (C.40A:12-17.1 and 40A:11-5.1)(now before the Legislature as
41 this bill). The governing body shall also conduct a public hearing
42 pursuant to this section on revisions to a contract required by
43 subsection b. of section 6 of P.L. , c. (C.58:28-7)(now before the
44 Legislature as this bill) or on substantial amendments to a contract as
45 required by subsection g. of section 6 of P.L. , c. (C.58:28-7)(now
46 before the Legislature as this bill).

1 b. The governing body shall provide, at least 14 days prior to the
2 public hearing, (1) notice in writing to the board, department and the
3 division of its intent to enter into a contract with a duly incorporated
4 nonprofit association for the provision of water supply services or
5 wastewater treatment services, and (2) notice of the public hearing by
6 publication in at least one newspaper of general circulation in the
7 jurisdiction or service area of the governing body to be served under
8 the terms of the proposed contract. The publication shall include
9 notice of the date, time and place of the public hearing, notice of the
10 place at which copies of the proposed contract will be available for
11 public inspection, and the times during which such inspection will be
12 permitted. The notice shall specifically state whether any concession
13 fee will be paid by the duly incorporated nonprofit association to the
14 governing body as a result of the contract for water supply services or
15 wastewater treatment services, the monetary amount of the concession
16 fee and the potential impact of the concession fee on the charges, rates
17 or fees which will be paid for water supply services or wastewater
18 treatment services by users in the jurisdiction or service area that will
19 receive the water supply services or wastewater treatment services
20 pursuant to the terms of the contract.

21 c. At the public hearing, the governing body shall explain the terms
22 and conditions of the proposed contract and shall answer questions
23 raised by prospective consumers and other interested parties. The
24 governing body shall explain during the hearing the charges, rates or
25 fees that will or may be charged to users in the jurisdiction or service
26 area for water supply services or wastewater treatment services as a
27 result of the proposed contract. In addition, the governing body shall
28 explain any concession fee to be paid by a duly incorporated nonprofit
29 association to the governing body as a result of the contract for water
30 supply services or wastewater treatment services, the monetary
31 amount of the concession fee and the potential impact of the
32 concession fee or benefit on the charges, rates or fees which will be
33 paid for water supply services or wastewater treatment services by
34 users in the jurisdiction or service area that will receive the water
35 supply services or wastewater treatment services pursuant to the terms
36 of the contract.

37 d. The governing body shall produce a verbatim record of the
38 public hearing. The record of the public hearing shall be kept open for
39 a period of seven days following the conclusion of the hearing, during
40 which time interested parties may submit written statements to be
41 included in the hearing report. The governing body shall prepare a
42 written hearing report, which shall include a copy of the proposed
43 contract, the verbatim record of the public hearing, written statements
44 submitted by interested parties, a copy of the bond counsel's written
45 opinion required pursuant to section 2 of P.L. , c. (C.40A:11-
46 5.1)(now before the Legislature as this bill) and a statement prepared

1 by the governing body summarizing the major issues raised at the
2 public hearing and the governing body's specific responses to those
3 issues. The governing body shall make copies of the hearing report
4 available to interested parties, upon request, at a cost not to exceed
5 the actual cost of printing or copying.

6 e. The governing body may adopt an ordinance as provided in
7 section 1 of P.L. , c. (C.40A:12-17.1)(now before the Legislature
8 as this bill) and may enter into a contract as provided in section 2 of
9 P.L. , c. (C.40A:11-5.1)(now before the Legislature as this bill).
10 The ordinance may be introduced at the first meeting of the governing
11 body held after the public hearing on the proposed contract, and shall
12 acknowledge that the contract requires approval pursuant to the
13 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
14 Legislature as this bill).

15 f. Within 30 days after the close of a public hearing on a proposed
16 contract held pursuant to subsection a. of this section and upon at least
17 seven days prior written notice, the governing body shall submit an
18 application for approval to the division and the board and shall submit
19 the hearing report to the department for review pursuant to the
20 provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
21 Legislature as this bill). The division shall specify the form of the
22 application to be submitted.

23

24 6. (New section) a. Within 45 days of receipt of the application,
25 the board and division shall approve, or conditionally approve, an
26 application submitted by a governing body pursuant to subsection f. of
27 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this
28 bill). Within 25 days of receipt of the hearing report, the department
29 shall provide any comments on the hearing report that it deems
30 appropriate to the board, division and the governing body. If the
31 board or division fail to approve or conditionally approve the
32 application within 50 days after receipt, the application shall be
33 deemed approved, unless the governing body has agreed to an
34 extension of the period.

35 b. If either the board or the division conditionally approves the
36 application, the board or division shall state in writing the revision to
37 the proposed contract that is necessary in order for it to be approved.
38 If the board or division determines that the required revision is
39 substantial, the governing body shall hold a public hearing on the
40 revision and adhere to the provisions of section 5 of P.L. , c.
41 (C.58:28-6)(now before the Legislature as this bill) in so doing, except
42 that the required notice shall be published at least seven days prior to
43 the public hearing. A substantial revision shall be a change that results
44 in an increase in the charges, rates or fees which will be paid for water
45 supply services or wastewater treatment services by users in the
46 jurisdiction or service area that will receive the water supply services

1 or wastewater treatment services pursuant to the terms of the contract,
2 or that materially changes other terms and conditions of the contract.
3 The proposed revision to the contract shall be submitted to the board,
4 division and the department 15 days prior to the date of the public
5 hearing.

6 If the board or division determines that the required revision in the
7 conditional approval is not substantial, the governing body shall submit
8 the proposed revision to the contract to the board and the division for
9 approval and to the department for review. The revision shall be
10 approved if found to be consistent with the conditions set forth in the
11 conditional approval, or disapproved with a written explanation as to
12 why the revision is not consistent, within 15 days after the next public
13 meeting of the board or division.

14 c. In its review of a contract, the board shall apply the following
15 criteria in determining whether to approve the contract:

16 (1) The duly incorporated nonprofit association entering into the
17 contract has the technical and administrative experience to ensure
18 continuity of service over the term of the contract and that the
19 standards and requirements contained in the application documents
20 concerning the technical and administrative capacity of the nonprofit
21 association are necessary and sufficient to protect the public interest.

22 (2) The terms of the contract are not unreasonable. In determining
23 whether the terms of the contract are not unreasonable, the board shall
24 review the charge, rates or fees to be charged or assessed under the
25 contract to determine that they are reasonable to the city of the first
26 class, taking into consideration all of the obligations undertaken by the
27 nonprofit association and all the benefits obtained by the city of the
28 first class. In making this determination, the board shall not use the
29 traditional rate based rate of return methodology.

30 (3) The franchise customers of a public utility participating in a
31 contract are protected from the risks of the proposed contract and that
32 they are not subsidizing the contract. If the nonprofit association is
33 not a public utility, the board shall ensure that under the terms of the
34 proposed contract the users of water outside of the jurisdiction or
35 service area that will receive water supply services under the contract
36 are also protected from the risks of the contract and that water users
37 outside the jurisdiction or service area are not subsidizing the contract
38 through increased charges, rates or fees for the supply of water.

39 (4) The contract contains the provisions required by paragraphs
40 (1), (2) and (6) of subsection d. of section 4 of P.L. , c.
41 (C.58:28-5)(now before the Legislature as this bill).

42 Upon approval of a contract as proposed or as revised in response
43 to a conditional approval, the jurisdiction of the board over the
44 contract shall terminate until or unless the contract is amended to
45 change the formula or other basis of determining charges, rates or fees
46 contained therein.

1 d. In its review of a contract, the division shall apply the following
2 criteria in determining whether to approve the contract:

3 (1) The terms of the proposed contract do not materially impair the
4 ability of the governing body to punctually pay principal and interest
5 due on its outstanding indebtedness and to supply other essential
6 public improvements and services;

7 (2) A concession fee paid by a duly incorporated nonprofit
8 association as a result of the contract is paid directly to the
9 municipality that created or constitutes the governing body, and any
10 concession fee paid by a duly incorporated nonprofit association to a
11 governing body is used for the purposes of reducing or off-setting
12 property taxes, reducing water supply services or wastewater
13 treatment services charges, rates or fees, one-time nonrecurring
14 expenses or capital asset expenditures related to water supply facilities
15 or wastewater treatment systems; and

16 (3) The contract contains the provisions required by paragraphs
17 (3), (4), (5), (7) and (8) of subsection d. of section 4 of P.L. , c.
18 (C.58:28-5)(now before the Legislature as this bill).

19 The division shall also review and specifically approve any contract
20 provision pursuant to which a governing body will or may execute a
21 financing instrument for the purposes set forth in the contract. In
22 addition, the division shall review any contract between the governing
23 body of a city of the first class and a duly incorporated nonprofit
24 association in which a concession fee is paid by the nonprofit
25 association to determine if the payment of the concession fee is in the
26 best interest of the parties to the contract.

27 e. The board or division may provide the governing body with any
28 non-binding comments or advice during or after the review of the
29 application as the board or division deems appropriate.

30 f. The board or division shall assess and the applicant shall pay a
31 fee equal to the cost incurred by the board or division for an analysis
32 of an application by an independent person who has expertise in the
33 areas of water supply services or wastewater treatment services if
34 during the review of an application the board or division determines
35 that such an analysis is required.

36 g. If the governing body of a city of the first class and the duly
37 incorporated nonprofit association would like to amend a contract
38 after approval of an application by the board and division, the
39 governing body shall submit proposed amendments to the board and
40 division for approval and to the department for review. At the next
41 public meeting of the board and of the division after receipt of
42 proposed amendments, the board and the division shall determine
43 whether the proposed amendments are substantial. If the amendments
44 are substantial in nature as determined by either the board or the
45 division, the governing body shall conduct a hearing pursuant to
46 section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as

1 this bill). Within 45 days of the receipt of proposed amendments that
2 are not determined to be substantial, or within 45 days of the receipt
3 of an application for approval of proposed amendments that are
4 determined to be substantial, the board and division shall approve or
5 conditionally approve the amendments in accordance with the
6 applicable procedures established for approval of an original contract
7 pursuant to this section.

8

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

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

13 (1) "Contracting unit" means:

14 (a) Any county; or

15 (b) Any municipality; or

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

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

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

32 "Contracting unit" shall not include a duly incorporated nonprofit
33 association that has entered into a contract with the governing body
34 of a city of the first class for the provision of water supply services
35 or wastewater treatment services pursuant to section 2 of P.L.2001,
36 c. (C.40A:11-5.1)(pending in the Legislature as this bill).

37 (2) "Governing body" means:

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

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

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

46 (3) "Contracting agent" means the governing body of a contracting

1 unit, or its authorized designee, which has the power to prepare the
2 advertisements, to advertise for and receive bids and, as permitted by
3 this act, to make awards for the contracting unit in connection with
4 purchases, contracts or agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (32) "Responsible" means able to complete the contract in

1 accordance with its requirements, including but not limited to
2 requirements pertaining to experience, moral integrity, operating
3 capacity, financial capacity, credit, and workforce, equipment, and
4 facilities availability.

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

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

13 (35) "Director" means the Director of the Division of Local
14 Government Services in the Department of Community Affairs.

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

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

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

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

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

45 (cf: P.L.1999, c.440, s.6)

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

3 5. Any contract the amount of which exceeds the bid threshold,
4 may be negotiated and awarded by the governing body without public
5 advertising for bids and bidding therefor and shall be awarded by
6 resolution of the governing body if:

7 (1) The subject matter thereof consists of:

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

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

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

30 (d) The furnishing of a tax map or maps for the contracting unit;

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

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

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

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

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

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

- 1 (k) The acquisition of artifacts or other items of unique intrinsic,
2 artistic or historical character;
- 3 (l) Those goods and services necessary or required to prepare and
4 conduct an election;
- 5 (m) Insurance, including the purchase of insurance coverage and
6 consultant services, which exception shall be in accordance with the
7 requirements for extraordinary unspecifiable services;
- 8 (n) The doing of any work by handicapped persons employed by a
9 sheltered workshop;
- 10 (o) The provision of any goods or services including those of a
11 commercial nature, attendant upon the operation of a restaurant by any
12 nonprofit, duly incorporated, historical society at or on any historical
13 preservation site;
- 14 (p) (Deleted by amendment, P.L.1999, c.440.)
- 15 (q) Library and educational goods and services;
- 16 (r) On-site inspections undertaken by private agencies pursuant to
17 the "State Uniform Construction Code Act," P.L.1975, c.217
18 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 19 (s) The marketing of recyclable materials recovered through a
20 recycling program, or the marketing of any product intentionally
21 produced or derived from solid waste received at a resource recovery
22 facility or recovered through a resource recovery program, including,
23 but not limited to, refuse-derived fuel, compost materials, methane
24 gas, and other similar products;
- 25 (t) (Deleted by amendment, P.L.1999, c.440.)
- 26 (u) Contracting unit towing and storage contracts, provided that
27 all such contracts shall be pursuant to reasonable non-exclusionary and
28 non-discriminatory terms and conditions, which may include the
29 provision of such services on a rotating basis, at the rates and charges
30 set by the municipality pursuant to section 1 of P.L.1979, c.101
31 (C.40:48-2.49). All contracting unit towing and storage contracts for
32 services to be provided at rates and charges other than those
33 established pursuant to the terms of this paragraph shall only be
34 awarded to the lowest responsible bidder in accordance with the
35 provisions of the "Local Public Contracts Law" and without regard for
36 the value of the contract therefor;
- 37 (v) The purchase of steam or electricity from, or the rendering of
38 services directly related to the purchase of such steam or electricity
39 from a qualifying small power production facility or a qualifying
40 cogeneration facility as defined pursuant to 16 U.S.C.796;
- 41 (w) The purchase of electricity or administrative or dispatching
42 services directly related to the transmission of such purchased
43 electricity by a contracting unit engaged in the generation of
44 electricity;
- 45 (x) The printing of municipal ordinances or other services
46 necessarily incurred in connection with the revision and codification

- 1 of municipal ordinances;
- 2 (y) An agreement for the purchase of an equitable interest in a
3 water supply facility or for the provision of water supply services
4 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
5 an agreement entered into pursuant to P.L.1989, c.109
6 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
7 later than six months after the effective date of P.L.1993, c.381;
- 8 (z) A contract for the provision of water supply services entered
9 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 10 (aa) The cooperative marketing of recyclable materials recovered
11 through a recycling program;
- 12 (bb) A contract for the provision of wastewater treatment services
13 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 14 (cc) Expenses for travel and conferences;
- 15 (dd) The provision or performance of goods or services for the
16 support or maintenance of proprietary computer hardware and
17 software, except that this provision shall not be utilized to acquire or
18 upgrade non-proprietary hardware or to acquire or update non-
19 proprietary software;
- 20 (ee) The management or operation of an airport owned by the
21 contracting unit pursuant to R.S.40:8-1 et seq;
- 22 (ff) Purchases of goods and services at rates set by the Universal
23 Service Fund administered by the Federal Communications
24 Commission;
- 25 (gg) A contract for the provision of water supply services or
26 wastewater treatment services entered into pursuant to section 2 of
27 P.L.2001, c. (C.40A:11-5.1)(pending in the Legislature as this bill),
28 or the designing, financing, construction, operation, or maintenance,
29 or any combination thereof, of a water supply facility as defined in
30 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a
31 wastewater treatment system as defined in subsection (19) of section
32 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts
33 thereof, including a water filtration system as defined in subsection
34 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15).
- 35 (2) It is to be made or entered into with the United States of
36 America, the State of New Jersey, county or municipality or any
37 board, body, officer, agency or authority thereof or any other state or
38 subdivision thereof.
- 39 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
40 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
41 received on both occasions in response to the advertisement, or (b)
42 the governing body has rejected such bids on two occasions because
43 it has determined that they are not reasonable as to price, on the basis
44 of cost estimates prepared for or by the contracting agent prior to the
45 advertising therefor, or have not been independently arrived at in open
46 competition, or (c) on one occasion no bids were received pursuant

1 to (a) and on one occasion all bids were rejected pursuant to (b), in
2 whatever sequence; any such contract may then be negotiated and may
3 be awarded upon adoption of a resolution by a two-thirds affirmative
4 vote of the authorized membership of the governing body authorizing
5 such contract; provided, however, that:

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

12 (ii) The terms, conditions, restrictions and specifications set forth
13 in the negotiated contract are not substantially different from those
14 which were the subject of competitive bidding pursuant to section 4 of
15 P.L.1971, c.198 (C.40A:11-4); and

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

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

38 (4) The contracting unit has solicited and received at least three
39 quotations on materials, supplies or equipment for which a State
40 contract has been issued pursuant to section 12 of P.L.1971, c.198
41 (C.40A:11-12), and the lowest responsible quotation is at least 10%
42 less than the price the contracting unit would be charged for the
43 identical materials, supplies or equipment, in the same quantities,
44 under the State contract. Any such contract entered into pursuant to
45 this subsection may be awarded only upon adoption of a resolution by
46 the affirmative vote of two-thirds of the full membership of the

1 governing body of the contracting unit at a meeting thereof
2 authorizing such a contract. A copy of the purchase order relating to
3 any such contract, the requisition for purchase order, if applicable, and
4 documentation identifying the price of the materials, supplies or
5 equipment under the State contract and the State contract number
6 shall be filed with the director within five working days of the award
7 of any such contract by the contracting unit. The director shall notify
8 the contracting unit of receipt of the material and shall make the
9 material available to the State Treasurer. The contracting unit shall
10 make available to the director upon request any other documents
11 relating to the solicitation and award of the contract, including, but not
12 limited to, quotations, requests for quotations, and resolutions. The
13 director periodically shall review material submitted by contracting
14 units to determine the impact of such contracts on local contracting
15 and shall consult with the State Treasurer on the impact of such
16 contracts on the State procurement process. The director may, after
17 consultation with the State Treasurer, adopt rules in accordance with
18 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.) to limit the use of this subsection, after considering the impact of
20 contracts awarded under this subsection on State and local
21 contracting, or after considering the extent to which the award of
22 contracts pursuant to this subsection is consistent with and in
23 furtherance of the purposes of the public contracting laws.

24 (5) Notwithstanding any provision of law, rule or regulation to the
25 contrary, the subject matter consists of the combined collection and
26 marketing, or the cooperative combined collection and marketing of
27 recycled material recovered through a recycling program, or any
28 product intentionally produced or derived from solid waste received
29 at a resource recovery facility or recovered through a resource
30 recovery program including, but not limited to, refuse-derived fuel,
31 compost materials, methane gas, and other similar products, provided
32 that in lieu of engaging in such public advertising for bids and the
33 bidding therefor, the contracting unit shall, prior to commencing the
34 procurement process, submit for approval to the Director of the
35 Division of Local Government Services, a written detailed description
36 of the process to be followed in securing said services. Within 30 days
37 after receipt of the written description the director shall, if the director
38 finds that the process provides for fair competition and integrity in the
39 negotiation process, approve, in writing, the description submitted by
40 the contracting unit. If the director finds that the process does not
41 provide for fair competition and integrity in the negotiation process,
42 the director shall advise the contracting unit of the deficiencies that
43 must be remedied. If the director fails to respond in writing to the
44 contracting unit within 30 days, the procurement process as described
45 shall be deemed approved. As used in this section, "collection" means
46 the physical removal of recyclable materials from curbside or any other

1 location selected by the contracting unit.

2 (cf: P.L.1999, c.440, s.9)

3

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

6 15. All contracts for the provision or performance of goods or
7 services shall be awarded for a period not to exceed 24 consecutive
8 months, except that contracts for professional services pursuant to
9 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
10 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
11 exceed 12 consecutive months. Contracts may be awarded for longer
12 periods of time as follows:

13 (1) Supplying of:

14 (a) (Deleted by amendment, P.L.1996, c.113.)

15 (b) (Deleted by amendment, P.L.1996, c.113.)

16 (c) Thermal energy produced by a cogeneration facility, for use for
17 heating or air conditioning or both, for any term not exceeding
18 40 years, when the contract is approved by the Board of Public
19 Utilities. For the purposes of this paragraph, "cogeneration" means the
20 simultaneous production in one facility of electric power and other
21 forms of useful energy such as heating or process steam;

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

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

26 (4) The collection and recycling of methane gas from a sanitary
27 landfill facility, for any term not exceeding 25 years, when such
28 contract is in conformance with a district solid waste management plan
29 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
30 approval of the Division of Local Government Services in the
31 Department of Community Affairs and the Department of
32 Environmental Protection. The contracting unit shall award the
33 contract to the highest responsible bidder, notwithstanding that the
34 contract price may be in excess of the amount of any necessarily
35 related administrative expenses; except that if the contract requires the
36 contracting unit to expend funds only, the contracting unit shall award
37 the contract to the lowest responsible bidder. The approval by the
38 Division of Local Government Services of public bidding requirements
39 shall not be required for those contracts exempted therefrom pursuant
40 to section 5 of P.L.1971, c.198 (C.40A:11-5);

41 (5) Data processing service, for any term of not more than seven
42 years;

43 (6) Insurance, including the purchase of insurance coverages,
44 insurance consulting or administrative services, claims administration
45 services and including participation in a joint self-insurance fund, risk
46 management program or related services provided by a contracting

1 unit insurance group, or participation in an insurance fund established
2 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
3 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
4 term of not more than three years;

5 (7) Leasing or servicing of automobiles, motor vehicles, machinery
6 and equipment of every nature and kind, for a period not to exceed
7 five years; provided, however, such contracts shall be awarded only
8 subject to and in accordance with the rules and regulations
9 promulgated by the Director of the Division of Local Government
10 Services of the Department of Community Affairs;

11 (8) The supplying of any product or the rendering of any service
12 by a company providing voice, data, transmission or switching services
13 for a term not exceeding five years;

14 (9) Any single project for the construction, reconstruction or
15 rehabilitation of any public building, structure or facility, or any public
16 works project, including the retention of the services of any architect
17 or engineer in connection therewith, for the length of time authorized
18 and necessary for the completion of the actual construction;

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

21 (11) On-site inspections and plan review services undertaken by
22 private agencies pursuant to the "State Uniform Construction Code
23 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
24 more than three years;

25 (12) The provision or performance of goods or services for the
26 purpose of conserving energy in buildings owned by, or operations
27 conducted by, the contracting unit, the entire price of which to be
28 established as a percentage of the resultant savings in energy costs, for
29 a term not to exceed 15 years; provided, however, that such contracts
30 shall be entered into only subject to and in accordance with guidelines
31 promulgated by the Board of Public Utilities establishing a
32 methodology for computing energy cost savings;

33 (13) (Deleted by amendment, P.L.1999, c.440.)

34 (14) (Deleted by amendment, P.L.1999, c.440.)

35 (15) Leasing of motor vehicles, machinery and other equipment
36 primarily used to fight fires, for a term not to exceed ten years, when
37 the contract includes an option to purchase, subject to and in
38 accordance with rules and regulations promulgated by the Director of
39 the Division of Local Government Services of the Department of
40 Community Affairs;

41 (16) The provision of water supply services or the designing,
42 financing, construction, operation, or maintenance, or any combination
43 thereof, of a water supply facility, or any component part or parts
44 thereof, including a water filtration system, for a period not to exceed
45 40 years, when the contract for these services is approved by the
46 Division of Local Government Services in the Department of

1 Community Affairs, the Board of Public Utilities, and the Department
2 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
3 al.), except that no such approvals shall be required for those contracts
4 otherwise exempted pursuant to subsection (30), (31), (34) [or], (35)
5 or (43) of this section. For the purposes of this subsection, "water
6 supply services" means any service provided by a water supply facility;
7 "water filtration system" means any equipment, plants, structures,
8 machinery, apparatus, or land, or any combination thereof, acquired,
9 used, constructed, rehabilitated, or operated for the collection,
10 impoundment, storage, improvement, filtration, or other treatment of
11 drinking water for the purposes of purifying and enhancing water
12 quality and insuring its potability prior to the distribution of the
13 drinking water to the general public for human consumption, including
14 plants and works, and other personal property and appurtenances
15 necessary for their use or operation; and "water supply facility" means
16 and refers to the real property and the plants, structures,
17 interconnections between existing water supply facilities, machinery
18 and equipment and other property, real, personal and mixed, acquired,
19 constructed or operated, or to be acquired, constructed or operated,
20 in whole or in part by or on behalf of a political subdivision of the
21 State or any agency thereof, for the purpose of augmenting the natural
22 water resources of the State and making available an increased supply
23 of water for all uses, or of conserving existing water resources, and
24 any and all appurtenances necessary, useful or convenient for the
25 collecting, impounding, storing, improving, treating, filtering,
26 conserving or transmitting of water and for the preservation and
27 protection of these resources and facilities and providing for the
28 conservation and development of future water supply resources;

29 (17) The provision of resource recovery services by a qualified
30 vendor, the disposal of the solid waste delivered for disposal which
31 cannot be processed by a resource recovery facility or the residual ash
32 generated at a resource recovery facility, including hazardous waste
33 and recovered metals and other materials for reuse, or the design,
34 financing, construction, operation or maintenance of a resource
35 recovery facility for a period not to exceed 40 years when the contract
36 is approved by the Division of Local Government Services in the
37 Department of Community Affairs, and the Department of
38 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
39 al.); and when the resource recovery facility is in conformance with a
40 district solid waste management plan approved pursuant to P.L.1970,
41 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
42 "resource recovery facility" means a solid waste facility constructed
43 and operated for the incineration of solid waste for energy production
44 and the recovery of metals and other materials for reuse; or a
45 mechanized composting facility, or any other facility constructed or
46 operated for the collection, separation, recycling, and recovery of

1 metals, glass, paper, and other materials for reuse or for energy
2 production; and "residual ash" means the bottom ash, fly ash, or any
3 combination thereof, resulting from the combustion of solid waste at
4 a resource recovery facility;

5 (18) The sale of electricity or thermal energy, or both, produced by
6 a resource recovery facility for a period not to exceed 40 years when
7 the contract is approved by the Board of Public Utilities, and when the
8 resource recovery facility is in conformance with a district solid waste
9 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
10 seq.). For the purposes of this subsection, "resource recovery facility"
11 means a solid waste facility constructed and operated for the
12 incineration of solid waste for energy production and the recovery of
13 metals and other materials for reuse; or a mechanized composting
14 facility, or any other facility constructed or operated for the collection,
15 separation, recycling, and recovery of metals, glass, paper, and other
16 materials for reuse or for energy production;

17 (19) The provision of wastewater treatment services or the
18 designing, financing, construction, operation, or maintenance, or any
19 combination thereof, of a wastewater treatment system, or any
20 component part or parts thereof, for a period not to exceed 40 years,
21 when the contract for these services is approved by the Division of
22 Local Government Services in the Department of Community Affairs
23 and the Department of Environmental Protection pursuant to
24 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals shall
25 be required for those contracts otherwise exempted pursuant to
26 subsection (36) or (43) of this section. For the purposes of this
27 subsection, "wastewater treatment services" means any services
28 provided by a wastewater treatment system, and "wastewater
29 treatment system" means equipment, plants, structures, machinery,
30 apparatus, or land, or any combination thereof, acquired, used,
31 constructed, or operated for the storage, collection, reduction,
32 recycling, reclamation, disposal, separation, or other treatment of
33 wastewater or sewage sludge, or for the final disposal of residues
34 resulting from the treatment of wastewater, including, but not limited
35 to, pumping and ventilating stations, facilities, plants and works,
36 connections, outfall sewers, interceptors, trunk lines, and other
37 personal property and appurtenances necessary for their operation;

38 (20) The supplying of goods or services for the purpose of lighting
39 public streets, for a term not to exceed five years;

40 (21) The provision of emergency medical services for a term not
41 to exceed five years;

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

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

1 (24) The purchase of electricity or administrative or dispatching
2 services related to the transmission of such electricity, from a public
3 utility company subject to the jurisdiction of the Board of Public
4 Utilities, a similar regulatory body of another state, or a federal
5 regulatory agency, or from a qualifying small power producing facility
6 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
7 a contracting unit engaged in the generation of electricity for retail
8 sale, as of May 24,1991, for a term not to exceed 40 years;

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

15 (26) (Deleted by amendment, P.L.1999, c.440.)

16 (27) The provision of transportation services to elderly, disabled
17 or indigent persons for any term of not more than three years. For the
18 purposes of this subsection, "elderly persons" means persons who are
19 60 years of age or older. "Disabled persons" means persons of any age
20 who, by reason of illness, injury, age, congenital malfunction, or other
21 permanent or temporary incapacity or disability, are unable, without
22 special facilities or special planning or design to utilize mass
23 transportation facilities and services as effectively as persons who are
24 not so affected. "Indigent persons" means persons of any age whose
25 income does not exceed 100 percent of the poverty level, adjusted for
26 family size, established and adjusted under section 673(2) of subtitle
27 B, the "Community Services Block Grant Act," Pub.L.97-35
28 (42 U.S.C.s.9902 (2));

29 (28) The supplying of liquid oxygen or other chemicals, for a term
30 not to exceed five years, when the contract includes the installation of
31 tanks or other storage facilities by the supplier, on or near the
32 premises of the contracting unit;

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

36 (30) The acquisition of an equitable interest in a water supply
37 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
38 contract entered into pursuant to the "County and Municipal Water
39 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no
40 later than January 7, 1995, for any term of not more than forty years;

41 (31) The provision of water supply services or the financing,
42 construction, operation or maintenance or any combination thereof, of
43 a water supply facility or any component part or parts thereof, by a
44 partnership or copartnership established pursuant to a contract
45 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
46 period not to exceed 40 years;

- 1 (32) Laundry service and the rental, supply and cleaning of
2 uniforms for any term of not more than three years;
- 3 (33) The supplying of any product or the rendering of any service,
4 including consulting services, by a cemetery management company for
5 the maintenance and preservation of a municipal cemetery operating
6 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for
7 a term not exceeding 15 years;
- 8 (34) A contract between a public entity and a private firm pursuant
9 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water
10 supply services may be entered into for any term which, when all
11 optional extension periods are added, may not exceed 40 years;
- 12 (35) A contract for the purchase of a supply of water from a public
13 utility company subject to the jurisdiction of the Board of Public
14 Utilities in accordance with tariffs and schedules of charges made,
15 charged or exacted or contracts filed with the Board of Public
16 Utilities, for any term of not more than 40 years;
- 17 (36) A contract between a public entity and a private firm or public
18 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the
19 provision of wastewater treatment services may be entered into for any
20 term of not more than 40 years, including all optional extension
21 periods;
- 22 (37) The operation and management of a facility under a license
23 issued or permit approved by the Department of Environmental
24 Protection, including a wastewater treatment system or a water supply
25 or distribution facility, as the case may be, for any term of not more
26 than ten years. For the purposes of this subsection, "wastewater
27 treatment system" refers to facilities operated or maintained for the
28 storage, collection, reduction, disposal, or other treatment of
29 wastewater or sewage sludge, remediation of groundwater
30 contamination, stormwater runoff, or the final disposal of residues
31 resulting from the treatment of wastewater; and "water supply or
32 distribution facility" refers to facilities operated or maintained for
33 augmenting the natural water resources of the State, increasing the
34 supply of water, conserving existing water resources, or distributing
35 water to users;
- 36 (38) Municipal solid waste collection from facilities owned by a
37 contracting unit, for any term of not more than three years;
- 38 (39) Fuel for heating purposes, for any term of not more than
39 three years;
- 40 (40) Fuel or oil for use in motor vehicles for any term of not more
41 than three years;
- 42 (41) Plowing and removal of snow and ice for any term of not
43 more than three years;
- 44 (42) Purchases made under a contract awarded by the Director of
45 the Division of Purchase and Property in the Department of the
46 Treasury for use by counties, municipalities or other contracting units

1 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term
2 not to exceed the term of that contract;

3 (43) A contract between the governing body of a city of the first
4 class and a duly incorporated nonprofit association for the provision
5 of water supply services as defined in subsection (16) of this section,
6 or wastewater treatment services as defined in subsection (19) of this
7 section, may be entered into for a period not to exceed 40 years.

8 Any contract for services other than professional services, the
9 statutory length of which contract is for three years or less, may
10 include provisions for no more than one two-year, or two one-year,
11 extensions, subject to the following limitations: a. The contract shall
12 be awarded by resolution of the governing body upon a finding by the
13 governing body that the services are being performed in an effective
14 and efficient manner; b. No such contract shall be extended so that it
15 runs for more than a total of five consecutive years; c. Any price
16 change included as part of an extension shall be based upon the price
17 of the original contract as cumulatively adjusted pursuant to any
18 previous adjustment or extension and shall not exceed the change in
19 the index rate for the 12 months preceding the most recent quarterly
20 calculation available at the time the contract is renewed; and d. The
21 terms and conditions of the contract remain substantially the same.

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

45 The Division of Local Government Services in the Department of
46 Community Affairs shall adopt and promulgate rules and regulations

1 concerning the methods of accounting for all contracts that do not
2 coincide with the fiscal year.

3 All contracts shall cease to have effect at the end of the contracted
4 period and shall not be extended by any mechanism or provision,
5 unless in conformance with the "Local Public Contracts Law,"
6 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be
7 extended by mutual agreement of the parties to the contract when a
8 contracting unit has commenced rebidding prior to the time the
9 contract expires or when the awarding of a contract is pending at the
10 time the contract expires.

11 (cf: P.L.1999, c.440, s.23)

12

13 10. R.S.48:2-13 is amended to read as follows:

14 48:2-13. a. The board shall have general supervision and
15 regulation of and jurisdiction and control over all public utilities as
16 defined in this section and their property, property rights, equipment,
17 facilities and franchises so far as may be necessary for the purpose of
18 carrying out the provisions of this Title.

19 The term "public utility" shall include every individual,
20 copartnership, association, corporation or joint stock company, their
21 lessees, trustees or receivers appointed by any court whatsoever, their
22 successors, heirs or assigns, that now or hereafter may own, operate,
23 manage or control within this State any railroad, street railway,
24 traction railway, autobus, charter bus operation, special bus operation,
25 canal, express, subway, pipeline, gas, electricity distribution, water,
26 oil, sewer, solid waste collection, solid waste disposal, telephone or
27 telegraph system, plant or equipment for public use, under privileges
28 granted or hereafter to be granted by this State or by any political
29 subdivision thereof.

30 b. Nothing contained in this Title shall extend the powers of the
31 board to include any supervision and regulation of, or jurisdiction and
32 control over any vehicles engaged in ridesharing arrangements with a
33 maximum carrying capacity of not more than 15 passengers, including
34 the driver, where the transportation of passengers is incidental to the
35 purpose of the driver or any vehicles engaged in the transportation of
36 passengers for hire in the manner and form commonly called taxicab
37 service unless such service becomes or is held out to be regular service
38 between stated termini; hotel buses used exclusively for the
39 transportation of hotel patrons to or from local railroad or other
40 common carrier stations, including local airports, or bus employed
41 solely for transporting school children and teachers, to and from
42 school, or any autobus with a carrying capacity of not more than 10
43 passengers now or hereafter operated under municipal consent upon
44 a route established wholly within the limits of a single municipality or
45 with a carrying capacity of not more than 20 passengers operated
46 under municipal consent upon a route established wholly within the

1 limits of not more than four contiguous municipalities within any
2 county of the fifth or sixth class, which route in either case does not
3 in whole or in part parallel upon the same street the line of any street
4 railway or traction railway or any other autobus route.

5 c. Except as provided in section 7 of P.L.1995, c.101
6 (C.58:26-25), the board shall have no regulatory authority over the
7 parties to a contract negotiated between a public entity and a private
8 firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection
9 with the performance of their respective obligations thereunder.
10 Nothing contained in this title shall extend the powers of the board to
11 include any supervision and regulation of, or jurisdiction and control
12 over, any public-private contract for the provision of water supply
13 services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

14 d. Unless otherwise specifically provided pursuant to P.L.1999,
15 c.23 (C.48:3-49 et al.), all services necessary for the transmission and
16 distribution of electricity and gas, including but not limited to safety,
17 reliability, metering, meter reading and billing, shall remain the
18 jurisdiction of the Board of Public Utilities. The board shall also
19 maintain the necessary jurisdiction with regard to the production of
20 electricity and gas to assure the reliability of electricity and gas supply
21 to retail customers in the State as prescribed by the board or any other
22 federal or multi-jurisdictional agency responsible for reliability and
23 capacity in the State.

24 e. Notwithstanding the provisions of subsection a. of this section,
25 the board shall have the authority to classify as regulated the sale of
26 any thermal energy service by a cogenerator or district heating system,
27 for the purpose of providing heating or cooling to a residential
28 dwelling if, after notice and hearing, it determines that the customer
29 does not have sufficient space on its property to install an alternative
30 source of equivalent thermal energy, there is no contract governing the
31 provision of thermal energy service for the relevant period of time, and
32 that sufficient competition is no longer present, based upon
33 consideration of such factors as: ease of market entry; presence of
34 other competitors; and the availability of like or substitute services in
35 the relevant geographic area. Upon such a classification, the board
36 may determine such rates for the thermal energy service for the
37 purpose of providing heating or cooling to a residential dwelling as it
38 finds to be consistent with the prevailing cost of alternative sources of
39 thermal energy in similar situations. The board, however, shall
40 continue to monitor the thermal energy service to such residential
41 dwellings and, whenever the board finds that the thermal energy
42 service has again become sufficiently competitive pursuant to the
43 criteria listed above, the board shall cease to regulate the sale or
44 production of the service. The board shall not have the authority to
45 regulate the sale or production of steam or any other form of thermal
46 energy, including hot and chilled water, to non-residential customers.

1 f. Nothing contained in this Title shall extend the powers of the
2 board to include supervision and regulation of, or jurisdiction and
3 control over, an entity engaged in the provision or use of sewage
4 effluent for the purpose of providing a cooling medium to an end user
5 or end users on a single site, which provision results in the
6 conservation of potable water which would otherwise have been used
7 for such purposes.

8 g. Except as provided herein, the board shall have no regulatory
9 authority over the parties to a contract entered into between the
10 governing body of a city of the first class and a duly incorporated
11 nonprofit association in connection with the performance of their
12 respective obligations thereunder when the governing body of a city
13 of the first class shall determine by ordinance that it is in the public
14 interest to contract with that duly incorporated nonprofit association
15 for the provision of water supply services as defined in subsection (16)
16 of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision
17 of wastewater treatment services as defined in subsection (19) of
18 section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
19 financing, construction, operation, or maintenance, or any combination
20 thereof, of a water supply facility as defined in subsection (16) of
21 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
22 treatment system as defined in subsection (19) of section 15 of
23 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
24 thereof, including a water filtration system as defined in subsection
25 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval
26 of the contract pursuant to the provisions of section 6 of P.L. , c.
27 (C.58:28-7)(now before the Legislature as this bill).

28 Notwithstanding any other provision of P.L. , c. (now before the
29 Legislature as this bill) whenever the governing body of a city of the
30 first class enters into a contract with a duly incorporated nonprofit
31 association for the provision of water supply services as defined in
32 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
33 the designing, financing, construction, operation, or maintenance, or
34 any combination thereof, of a water supply facility as defined in
35 subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and
36 that governing body operates water supply facilities as authorized
37 pursuant to the provisions of N.J.S.40A:31-4, which supply water to
38 customers within another local unit, the nonprofit association or
39 governing body shall be subject to the jurisdiction, rate regulation and
40 control of the Board of Public Utilities as provided in
41 N.J.S.40A:31-23, to the extent the nonprofit association or governing
42 body supplies water to customers within that other local unit.

43 (cf: P.L.1999, c.23, s.52)

44
45 11. N.J.S.40A:31-23 is amended to read as follows:

46 40A:31-23 a. Nothing contained in this act shall in any way impair

1 the obligations previously assumed by any other public or private
2 agency for the provision of water supply services and facilities to the
3 citizens and industries of this State, or for any other purpose
4 authorized by any law repealed by N.J.S.40A:31-24.

5 b. In the event a municipal utilities authority has been established
6 in a local unit pursuant to the provisions of the "municipal and county
7 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), no
8 local unit or units shall establish any facility within the territory of that
9 local unit which is competitive with any water supply facility operated
10 by that authority.

11 c. No water supply services shall be provided in accordance with
12 this act to users in another local unit without the prior approval of the
13 governing body of that other local unit.

14 d. (1) Subject to the terms of any agreement entered into by
15 participating local units or between a supplying and receiving local
16 unit or units and the provisions of this act, a local unit or local units
17 owning and operating water supply facilities in accordance with the
18 provisions of N.J.S.40A:31-4, which supply water to more than 1,000
19 billed customers within another local unit, shall be subject to the
20 jurisdiction, regulation and control of the Board of Public Utilities in
21 accordance with the provisions of Title 48 of the Revised Statutes.
22 The provisions of this subsection shall not apply [where] whenever
23 water is supplied to customers in another local unit at bulk rates.

24 (2) Notwithstanding any provision of this subsection to the
25 contrary, whenever the governing body of a city of the first class
26 enters into a contract with a duly incorporated nonprofit association
27 for the provision of water supply services as defined in subsection (16)
28 of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
29 financing, construction, operation, or maintenance, or any combination
30 thereof, of a water supply facility as defined in subsection (16) of
31 section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body
32 operates water supply facilities as authorized pursuant to the
33 provisions of N.J.S.40A:31-4, which supply water to customers within
34 another local unit, the nonprofit association or governing body shall
35 be subject to the jurisdiction, rate regulation and control of the Board
36 of Public Utilities to the extent the nonprofit association or governing
37 body supplies water to customers within that other local unit. The
38 provisions of this paragraph shall apply whenever water is supplied to
39 customers in another local unit at bulk rates.

40 (cf: N.J.S.40A:31-23)

41

42 12. This act shall take effect immediately.

1 STATEMENT

2

3 This bill authorizes the governing body of a city of the first class to
4 contract with a duly incorporated nonprofit association for the
5 provision of water supply services as defined in subsection (16) of
6 section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment
7 services as defined in subsection (19) of section 15 of P.L.1971, c.198
8 (C.40A:11-15) for a period not to exceed 40 years.

9 The bill provides that when the governing body of a city of the first
10 class shall determine by ordinance, with or without competitive
11 bidding, that it is in the public interest to contract with a duly
12 incorporated nonprofit association for the provision of such water
13 supply services or wastewater treatment services, the governing body
14 may lease any real property, capital improvement or personal property,
15 or interests therein, or any part thereof, without regard to the
16 provisions of the "Local Lands and Buildings Law" or compliance with
17 any other law governing disposal of lands by municipalities except the
18 watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990,
19 c.19). Any such lease may be made or given, with or without
20 consideration, for a period not to exceed 40 years and under any
21 agreement and on any terms and conditions which may be approved by
22 the governing body and which may be agreed to by the nonprofit
23 association.

24 The bill also provides that the Board of Public Utilities (BPU) shall
25 have no regulatory authority over the parties to a contract negotiated
26 between a city of the first class and a nonprofit association for the
27 provision of such water supply services or wastewater treatment
28 services, or the designing, financing, construction, operation, or
29 maintenance, or any combination thereof, of a water supply facility as
30 defined in subsection (16) of section 15 of P.L.1971, c.198
31 (C.40A:11-15) or a wastewater treatment system as defined in
32 subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or
33 any component part or parts thereof, including a water filtration
34 system as defined in subsection (16) of section 15 of P.L.1971, c.198
35 (C.40A:11-15), except that the BPU would have jurisdiction whenever
36 the nonprofit association supplies water to customers in another local
37 unit and over bulk sales to customers in other local units.

38 The bill would also:

39 (1) require written opinion of bond counsel as to the effect of the
40 contract on the tax exempt status of existing and future financing
41 instruments executed by the parties;

42 (2) require that any concession fee paid by the nonprofit association
43 must be used to offset property taxes, rates or fees, one-time recurring
44 expenses or capital asset expenditures related to water supply facilities
45 or wastewater treatment systems;

46 (3) require public notice of intent to enter the contract and

- 1 information on the type of services to be provided, and the reason for
2 the selection of the nonprofit association;
- 3 (4) require the governing body to provide copies of the proposed
4 contract upon request;
- 5 (5) require the governing body to notify, in writing, the BPU, the
6 Division of Local Government Services in the Department of
7 Community Affairs (DCA), and the Department of Environmental
8 Protection of its intent to enter into a contract;
- 9 (6) require the contract to include the charges, rates and fees that
10 will be charged by the nonprofit association for service; the allocation
11 of risks of financing and constructing capital additions or upgrades to
12 existing systems; the allocation of risks of operating the facility;
13 provisions to address the default and termination of the contract;
14 provisions to address employment of current municipal employees
15 whose positions would be affected by the contract; the nonprofit
16 association's authority to initiate, negotiate and finalize the bulk sale
17 of water; provision of a performance bond by the nonprofit
18 association, if so required by the governing body; and dispute
19 resolution procedures;
- 20 (7) require at least one public hearing on the contract, on revisions
21 to the contract and on substantial modifications to the contract;
- 22 (8) require that the notice of the public hearing include notice of
23 where and when the proposed contract will be available for public
24 inspection, the amount of any concession fee to be paid by the
25 nonprofit association, the potential impact of the concession fee on
26 charges, rates or fees paid for water supply services or wastewater
27 treatment services;
- 28 (9) require State agency review of the contract, which would
29 include an evaluation of the technical and administrative capacity of
30 the nonprofit association to ensure continuity of service, the
31 reasonableness of the terms of the contract, an evaluation of whether
32 water users outside the jurisdiction are not subsidizing the contract
33 through increased rates, fees or charges, a determination if the
34 concession fee to be paid is in the best interest of the parties to the
35 contract and that the terms of the contract do not impair the governing
36 body's ability to pay principal and interest on bonded indebtedness or
37 to supply essential public services;
- 38 (10) authorize the DCA and BPU to approve or conditionally
39 approve the contract, and if substantial revisions are required, require
40 an additional public hearing;
- 41 (11) clarify that whenever the nonprofit association supplies water
42 to customers in another local unit, the nonprofit association is subject
43 to BPU jurisdiction, rate regulation and control and that bulk sales to
44 customers in other local units would also be regulated;
- 45 (12) ensure that lands subject to the moratorium on conveyance of
46 watershed property imposed under P.L.1988, c.163 as amended by

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1 P.L.1990, c.19 would continue to be subject to that moratorium even
2 after being leased as allowed under the bill;

3 (13) ensure the continuance of any obligations assumed by a city of
4 the first class with the Passaic Valley Sewerage Commission, including
5 any contract or compact entered into thereby; and

6 (14) subject to the provisions of the "Local Fiscal Affairs Law," the
7 "Local Authorities Fiscal Control Law," the "Local Government Ethics
8 Law," and the "Open Public Meetings Act," any duly incorporated
9 nonprofit association intending to enter into a contract with the
10 governing body of a city of the first class for the provision of water
11 supply services or wastewater treatment services as allowed under the
12 bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1902

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2002

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 1902.

This bill authorizes the governing body of a city of the first class to contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15) for a period not to exceed 40 years.

The bill provides that when the governing body of a city of the first class shall determine by ordinance, with or without competitive bidding, that it is in the public interest to contract with a duly incorporated nonprofit association for the provision of such water supply services or wastewater treatment services, the governing body may lease any real property, capital improvement or personal property, or interests therein, or any part thereof, without regard to the provisions of the "Local Lands and Buildings Law" or compliance with any other law governing disposal of lands by municipalities except the watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990, c.19). Any such lease may be made or given, with or without consideration, for a period not to exceed 40 years and under any agreement and on any terms and conditions which may be approved by the governing body and which may be agreed to by the nonprofit association.

The bill also provides that the Board of Public Utilities (BPU) shall have no regulatory authority over the parties to a contract negotiated between a city of the first class and a nonprofit association for the provision of such water supply services or wastewater treatment services, or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration

system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), except that the BPU would have jurisdiction whenever the nonprofit association supplies water to customers in another local unit and over bulk sales to customers in other local units.

The bill would also:

(1) require written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties;

(2) require that any concession fee paid by the nonprofit association must be used to offset property taxes, rates or fees, one-time recurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems;

(3) require public notice of intent to enter the contract and information on the type of services to be provided, and the reason for the selection of the nonprofit association;

(4) require the governing body to provide copies of the proposed contract upon request;

(5) require the governing body to notify, in writing, the BPU, the Division of Local Government Services in the Department of Community Affairs (DCA), and the Department of Environmental Protection of its intent to enter into a contract;

(6) require the contract to include the charges, rates and fees that will be charged by the nonprofit association for service; the allocation of risks of financing and constructing capital additions or upgrades to existing systems; the allocation of risks of operating the facility; provisions to address the default and termination of the contract; provisions to address employment of current municipal employees whose positions would be affected by the contract; the nonprofit association's authority to initiate, negotiate and finalize the bulk sale of water; provision of a performance bond by the nonprofit association, if so required by the governing body; and dispute resolution procedures;

(7) require at least one public hearing on the contract, on revisions to the contract and on substantial modifications to the contract;

(8) require that the notice of the public hearing include notice of where and when the proposed contract will be available for public inspection, the amount of any concession fee to be paid by the nonprofit association, the potential impact of the concession fee on charges, rates or fees paid for water supply services or wastewater treatment services;

(9) require State agency review of the contract, which would include an evaluation of the technical and administrative capacity of the nonprofit association to ensure continuity of service, the reasonableness of the terms of the contract, an evaluation of whether water users outside the jurisdiction are not subsidizing the contract through increased rates, fees or charges, a determination if the concession fee to be paid is in the best interest of the parties to the contract and that the terms of the contract do not impair the governing

body's ability to pay principal and interest on bonded indebtedness or to supply essential public services;

(10) authorize the DCA and BPU to approve or conditionally approve the contract, and if substantial revisions are required, require an additional public hearing;

(11) clarify that whenever the nonprofit association supplies water to customers in another local unit, the nonprofit association is subject to BPU jurisdiction, rate regulation and control and that bulk sales to customers in other local units would also be regulated;

(12) ensure that lands subject to the moratorium on conveyance of watershed property imposed under P.L.1988, c.163 as amended by P.L.1990, c.19 would continue to be subject to that moratorium even after being leased as allowed under the bill;

(13) ensure the continuance of any obligations assumed by a city of the first class with the Passaic Valley Sewerage Commission, including any contract or compact entered into thereby; and

(14) subject to the provisions of the "Local Fiscal Affairs Law," the "Local Authorities Fiscal Control Law," the "Local Government Ethics Law," and the "Open Public Meetings Act," any duly incorporated nonprofit association intending to enter into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services as allowed under the bill.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

(1) Specify that any lands leased or otherwise conveyed to a duly incorporated nonprofit association pursuant to the provisions of the bill shall not be developed for any purpose other than for the provision of water supply services or wastewater treatment services as determined by the Commissioner of Environmental Protection;

(2) Provide that notwithstanding the provisions of any other law to the contrary, any property that is leased or otherwise conveyed to a duly incorporated nonprofit association pursuant to the provisions of this bill shall not be subject to any exemption from taxation;

(3) Clarify that the provisions of the bill do not abrogate, amend, modify, impair or repeal the obligations and responsibilities imposed on a city of the first class or a duly incorporated nonprofit association by the environmental laws of this State, including, but not limited to, the "Water Pollution Control Act," the "Safe Drinking Water Act," the "Water Supply Management Act," and the "Water Supply and Wastewater Operators' Licensing Act"; and

(4) Make technical amendments to the bill.

In reporting this legislation, it is the understanding of the committee that several amendatory items not considered and adopted by the committee at this time shall be the subject of discussions between committee members and the bill's sponsor prior to a final Assembly floor vote. These items include:

(1) A requirement that the Board of Public Utilities confer with, and obtain the concurrence of, the Department of Environmental Protection as to the technical experience and competence of the duly incorporated nonprofit association when the Board is reviewing the contract and making the determination, with respect to the provision of water supply services, whether the duly incorporated nonprofit association entering into the contract has the technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the technical and administrative capacity of the nonprofit association are necessary and sufficient to protect the public interest; and

(2) A requirement that any construction to be undertaken or performed by or on behalf of a duly incorporated nonprofit association in furtherance of providing water supply services or wastewater treatment services, or both, as the case may be, on behalf of a city of the first class shall be subject to the provisions of the "Local Public Contracts Law," and any contract therefor shall be publicly bid and awarded to the lowest, responsible bidder.

As amended and reported by the committee, Assembly Bill No. 1902 is identical to Senate Bill No.533 (1R) as also amended and reported by the committee.