

40A:11-5

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 296
NJSA: 40A:11-5 (Clarifies current law with regard to certain municipal providers of light, heat or power)
BILL NO: A3798

SPONSOR(S): Diegnan and others

DATE INTRODUCED: February 14, 2005

COMMITTEE: **ASSEMBLY:** Telecommunications and Utilities

SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2005

SENATE: January 9 2006

DATE OF APPROVAL: January 9, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

A3798

[SPONSOR'S STATEMENT:](#) (Begins on page 15 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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P.L. 2005, CHAPTER 296, *approved January 9, 2006*
Assembly, No. 3798 (*First Reprint*)

1 AN ACT concerning municipal providers of light, heat or power and
2 amending ¹[R.S. 40:62-15 and]¹ P.L.1971, c. 198.

3

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

6

7 ¹[1. R.S. 40:62-15 is amended to read as follows:

8 40:62-15. No municipality shall acquire or construct any light, heat
9 or power plant or works until a majority of the legal voters voting at
10 an election shall vote so to do except that any municipality which
11 initially acquires or constructs any light, heat or power plant or works
12 or has initially acquired or constructed any light, heat or power plant
13 or works pursuant to the requirements of this section, and engages in
14 the sale and distribution of light, heat or power to its residents, shall
15 not be required to thereafter obtain the approval of a majority of the
16 legal voters voting at an election prior to subsequently acquiring or
17 constructing any light, heat or power plant or works and associated
18 facilities for the purpose of distributing light, heat or power to its
19 residents. The exemption from the referendum requirements of this
20 section shall be construed to be applicable only to the subsequent
21 acquisition or construction of any light, heat or power plant or works
22 and associated facilities and not to the initial acquisition or
23 construction of light, heat or power plant or works.

24 If a petition signed by at least twenty per cent of the legal voters of
25 the municipality, requesting a referendum vote on the question of the
26 acquisition or construction of a light, heat or power plant or works,
27 and setting forth the specific question to be submitted as hereinafter
28 provided, shall be presented to the governing body, the governing
29 body shall pass a resolution to the effect that a vote is required upon
30 the question.

31 The petition and resolution shall state the specific question to be
32 submitted, i.e., whether the plant or works is to be constructed or
33 purchased, whether the plant or works is located or is proposed to be
34 located within or without such municipality, whether such plant or
35 works is to supply light, or heat, or power, or any two or all of them,
36 and whether the plant or works shall supply the commodity or
37 commodities or service or services by means of gas, or electricity, or
38 steam, or if some other means be proposed such means shall be
39 definitely stated.

40 The governing body may pass such resolution without a petition

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ATU committee amendments adopted June 9, 2005.

1 being presented to it, but in all cases the resolution shall state the
2 specific question to be submitted as hereinbefore provided.
3 (cf: R.S.40:62-15)]¹

4

5 ¹[2.] 1.¹ Section 5 of P.L.1971, c. 198 (C. 40A:11-5) is amended
6 to read as follows:

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

11 (1) The subject matter thereof consists of:

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

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

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

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

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

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

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

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

45 (i) Equipment repair service if in the nature of an extraordinary
46 unspecifiable service and necessary parts furnished in connection with

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

- 1 distribution]¹ of electricity;
- 2 (x) The printing of municipal ordinances or other services
3 necessarily incurred in connection with the revision and codification
4 of municipal ordinances;
- 5 (y) An agreement for the purchase of an equitable interest in a
6 water supply facility or for the provision of water supply services
7 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
8 an agreement entered into pursuant to P.L.1989, c.109
9 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
10 later than six months after the effective date of P.L.1993, c.381;
- 11 (z) A contract for the provision of water supply services entered
12 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 13 (aa) The cooperative marketing of recyclable materials recovered
14 through a recycling program;
- 15 (bb) A contract for the provision of wastewater treatment services
16 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 17 (cc) Expenses for travel and conferences;
- 18 (dd) The provision or performance of goods or services for the
19 support or maintenance of proprietary computer hardware and
20 software, except that this provision shall not be utilized to acquire or
21 upgrade non-proprietary hardware or to acquire or update
22 non-proprietary software;
- 23 (ee) The management or operation of an airport owned by the
24 contracting unit pursuant to R.S.40:8-1 et seq.;
- 25 (ff) Purchases of goods and services at rates set by the Universal
26 Service Fund administered by the Federal Communications
27 Commission;
- 28 (gg) A contract for the provision of water supply services or
29 wastewater treatment services entered into pursuant to section 2 of
30 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
31 construction, operation, or maintenance, or any combination thereof,
32 of a water supply facility as defined in subsection (16) of section 15 of
33 P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as
34 defined in subsection (19) of section 15 of P.L.1971, c.198
35 (C.40A:11-15), or any component part or parts thereof, including a
36 water filtration system as defined in subsection (16) of section 15 of
37 P.L.1971, c.198 (C.40A:11-15);
- 38 (hh) The purchase of electricity generated from a power production
39 facility that is fueled by methane gas extracted from a landfill in the
40 county of the contracting unit.
- 41 (2) It is to be made or entered into with the United States of
42 America, the State of New Jersey, county or municipality or any
43 board, body, officer, agency or authority thereof or any other state or
44 subdivision thereof.
- 45 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
46 c.198 (C.40A:11-4) on two occasions and (a) no bids have been

1 received on both occasions in response to the advertisement, or (b) the
2 governing body has rejected such bids on two occasions because it has
3 determined that they are not reasonable as to price, on the basis of
4 cost estimates prepared for or by the contracting agent prior to the
5 advertising therefor, or have not been independently arrived at in open
6 competition, or (c) on one occasion no bids were received pursuant to
7 (a) and on one occasion all bids were rejected pursuant to (b), in
8 whatever sequence; any such contract may then be negotiated and may
9 be awarded upon adoption of a resolution by a two-thirds affirmative
10 vote of the authorized membership of the governing body authorizing
11 such contract; provided, however, that:

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

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

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

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

44 (4) The contracting unit has solicited and received at least three
45 quotations on materials, supplies or equipment for which a State
46 contract has been issued pursuant to section 12 of P.L.1971, c.198

1 (C.40A:11-12), and the lowest responsible quotation is at least 10%
2 less than the price the contracting unit would be charged for the
3 identical materials, supplies or equipment, in the same quantities,
4 under the State contract. Any such contract entered into pursuant to
5 this subsection may be awarded only upon adoption of a resolution by
6 the affirmative vote of two-thirds of the full membership of the
7 governing body of the contracting unit at a meeting thereof
8 authorizing such a contract. A copy of the purchase order relating to
9 any such contract, the requisition for purchase order, if applicable, and
10 documentation identifying the price of the materials, supplies or
11 equipment under the State contract and the State contract number
12 shall be filed with the director within five working days of the award
13 of any such contract by the contracting unit. The director shall notify
14 the contracting unit of receipt of the material and shall make the
15 material available to the State Treasurer. The contracting unit shall
16 make available to the director upon request any other documents
17 relating to the solicitation and award of the contract, including, but not
18 limited to, quotations, requests for quotations, and resolutions. The
19 director periodically shall review material submitted by contracting
20 units to determine the impact of such contracts on local contracting
21 and shall consult with the State Treasurer on the impact of such
22 contracts on the State procurement process. The director may, after
23 consultation with the State Treasurer, adopt rules in accordance with
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.) to limit the use of this subsection, after considering the impact of
26 contracts awarded under this subsection on State and local
27 contracting, or after considering the extent to which the award of
28 contracts pursuant to this subsection is consistent with and in
29 furtherance of the purposes of the public contracting laws.

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

1 provide for fair competition and integrity in the negotiation process,
2 the director shall advise the contracting unit of the deficiencies that
3 must be remedied. If the director fails to respond in writing to the
4 contracting unit within 30 days, the procurement process as described
5 shall be deemed approved. As used in this section, "collection" means
6 the physical removal of recyclable materials from curbside or any other
7 location selected by the contracting unit.

8 ¹(6) Notwithstanding any provision of law, rule or regulation to the
9 contrary, the contract is for the provision of electricity by a
10 contracting unit engaged in the distribution of electricity for retail sale,
11 or for the provision of administrative or dispatching services related
12 to the transmission of such electricity, provided that in lieu of
13 engaging in public advertising for bids and the bidding therefor, the
14 contracting unit shall, prior to commencing the procurement process,
15 submit for approval to the Director of the Division of Local
16 Government Services, a written detailed description of the process to
17 be followed in securing such services. Such process shall be designed
18 in a way that is appropriate to and commensurate with industry
19 practices, and the integrity of the government contracting process.
20 Within 30 days after receipt of the written description, the director
21 shall, if the director finds that the process provides for fair competition
22 and integrity in the negotiation process, approve, in writing, the
23 description submitted by the contracting unit. If the director finds that
24 the process does not provide for fair competition and integrity in the
25 negotiation process, the director shall advise the contracting unit of
26 the deficiencies that must be remedied. If the director fails to respond
27 in writing to the contracting unit within 30 days, the procurement
28 process, as submitted to the director pursuant to this section, shall be
29 deemed approved.¹

30 (cf: P.L.2003, c.150, s.2)

31
32 ¹[3.] 2.¹ Section 15 of P.L.1971, c.198 (C. 40A:11-15) is
33 amended to read as follows:

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

41 (1) Supplying of:

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

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

44 (c) Thermal energy produced by a cogeneration facility, for use for
45 heating or air conditioning or both, for any term not exceeding 40
46 years, when the contract is approved by the Board of Public Utilities.

- 1 For the purposes of this paragraph, "cogeneration" means the
2 simultaneous production in one facility of electric power and other
3 forms of useful energy such as heating or process steam;
- 4 (2) (Deleted by amendment, P.L.1977, c.53.)
- 5 (3) The collection and disposal of municipal solid waste, the
6 collection and disposition of recyclable material, or the disposal of
7 sewage sludge, for any term not exceeding in the aggregate, five years;
- 8 (4) The collection and recycling of methane gas from a sanitary
9 landfill facility, for any term not exceeding 25 years, when such
10 contract is in conformance with a district solid waste management plan
11 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
12 approval of the Division of Local Government Services in the
13 Department of Community Affairs and the Department of
14 Environmental Protection. The contracting unit shall award the
15 contract to the highest responsible bidder, notwithstanding that the
16 contract price may be in excess of the amount of any necessarily
17 related administrative expenses; except that if the contract requires the
18 contracting unit to expend funds only, the contracting unit shall award
19 the contract to the lowest responsible bidder. The approval by the
20 Division of Local Government Services of public bidding requirements
21 shall not be required for those contracts exempted therefrom pursuant
22 to section 5 of P.L.1971, c.198 (C.40A:11-5);
- 23 (5) Data processing service, for any term of not more than seven
24 years;
- 25 (6) Insurance, including the purchase of insurance coverages,
26 insurance consulting or administrative services, claims administration
27 services and including participation in a joint self-insurance fund, risk
28 management program or related services provided by a contracting
29 unit insurance group, or participation in an insurance fund established
30 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
31 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
32 term of not more than three years;
- 33 (7) Leasing or servicing of automobiles, motor vehicles, machinery
34 and equipment of every nature and kind, for a period not to exceed
35 five years; provided, however, such contracts shall be awarded only
36 subject to and in accordance with the rules and regulations
37 promulgated by the Director of the Division of Local Government
38 Services of the Department of Community Affairs;
- 39 (8) The supplying of any product or the rendering of any service by
40 a company providing voice, data, transmission or switching services
41 for a term not exceeding five years;
- 42 (9) Any single project for the construction, reconstruction or
43 rehabilitation of any public building, structure or facility, or any public
44 works project, including the retention of the services of any architect
45 or engineer in connection therewith, for the length of time authorized
46 and necessary for the completion of the actual construction;

- 1 (10) The providing of food services for any term not exceeding
2 three years;
- 3 (11) On-site inspections and plan review services undertaken by
4 private agencies pursuant to the "State Uniform Construction Code
5 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
6 more than three years;
- 7 (12) The provision or performance of goods or services for the
8 purpose of conserving energy in buildings owned by, or operations
9 conducted by, the contracting unit, the entire price of which to be
10 established as a percentage of the resultant savings in energy costs, for
11 a term not to exceed 15 years; provided, however, that such contracts
12 shall be entered into only subject to and in accordance with guidelines
13 promulgated by the Board of Public Utilities establishing a
14 methodology for computing energy cost savings;
- 15 (13) (Deleted by amendment, P.L.1999, c.440.)
- 16 (14) (Deleted by amendment, P.L.1999, c.440.)
- 17 (15) Leasing of motor vehicles, machinery and other equipment
18 primarily used to fight fires, for a term not to exceed ten years, when
19 the contract includes an option to purchase, subject to and in
20 accordance with rules and regulations promulgated by the Director of
21 the Division of Local Government Services of the Department of
22 Community Affairs;
- 23 (16) The provision of water supply services or the designing,
24 financing, construction, operation, or maintenance, or any combination
25 thereof, of a water supply facility, or any component part or parts
26 thereof, including a water filtration system, for a period not to exceed
27 40 years, when the contract for these services is approved by the
28 Division of Local Government Services in the Department of
29 Community Affairs, the Board of Public Utilities, and the Department
30 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
31 al.), except that no such approvals shall be required for those contracts
32 otherwise exempted pursuant to subsection (30), (31), (34), (35) or
33 (43) of this section. For the purposes of this subsection, "water supply
34 services" means any service provided by a water supply facility; "water
35 filtration system" means any equipment, plants, structures, machinery,
36 apparatus, or land, or any combination thereof, acquired, used,
37 constructed, rehabilitated, or operated for the collection,
38 impoundment, storage, improvement, filtration, or other treatment of
39 drinking water for the purposes of purifying and enhancing water
40 quality and insuring its potability prior to the distribution of the
41 drinking water to the general public for human consumption, including
42 plants and works, and other personal property and appurtenances
43 necessary for their use or operation; and "water supply facility" means
44 and refers to the real property and the plants, structures,
45 interconnections between existing water supply facilities, machinery
46 and equipment and other property, real, personal and mixed, acquired,

1 constructed or operated, or to be acquired, constructed or operated,
2 in whole or in part by or on behalf of a political subdivision of the
3 State or any agency thereof, for the purpose of augmenting the natural
4 water resources of the State and making available an increased supply
5 of water for all uses, or of conserving existing water resources, and
6 any and all appurtenances necessary, useful or convenient for the
7 collecting, impounding, storing, improving, treating, filtering,
8 conserving or transmitting of water and for the preservation and
9 protection of these resources and facilities and providing for the
10 conservation and development of future water supply resources;

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

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

45 (19) The provision of wastewater treatment services or the
46 designing, financing, construction, operation, or maintenance, or any

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

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

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

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

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

29 (24) The purchase of electricity or administrative or dispatching
30 services related to the transmission of such electricity, from a ¹[public
31 utility company] supplier of electricity¹ subject to the jurisdiction of
32 ¹[the Board of Public Utilities, a similar regulatory body of another
33 state, or]¹ a federal regulatory agency, ¹[or from a subsidiary of any
34 such company, or]¹ from a qualifying small power producing facility
35 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or
36 from any supplier of electricity ¹[recognized by the State of New
37 Jersey,] within any regional transmission organization or independent
38 system operator or from such organization or operator or their
39 successors,¹ by a contracting unit engaged in the generation [or
40 distribution]¹ of electricity for retail sale, as of May 24,1991, for a
41 term not to exceed 40 years ¹, or by a contracting unit engaged solely
42 in the distribution of electricity for retail sale for a term not to exceed
43 ten years, except that a contract with a contracting unit, engaged
44 solely in the distribution of electricity for retail sale, in excess of ten
45 years, shall require the written approval of the Director of the Division

1 of Local Government Services. If the director fails to respond in
2 writing to the contracting unit within 10 business days, the contract
3 shall be deemed approved¹;

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

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

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

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

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

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

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

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

44 (33) The supplying of any product or the rendering of any service,
45 including consulting services, by a cemetery management company for
46 the maintenance and preservation of a municipal cemetery operating

- 1 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for
2 a term not exceeding 15 years;
- 3 (34) A contract between a public entity and a private firm pursuant
4 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water
5 supply services may be entered into for any term which, when all
6 optional extension periods are added, may not exceed 40 years;
- 7 (35) A contract for the purchase of a supply of water from a public
8 utility company subject to the jurisdiction of the Board of Public
9 Utilities in accordance with tariffs and schedules of charges made,
10 charged or exacted or contracts filed with the Board of Public
11 Utilities, for any term of not more than 40 years;
- 12 (36) A contract between a public entity and a private firm or public
13 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the
14 provision of wastewater treatment services may be entered into for any
15 term of not more than 40 years, including all optional extension
16 periods;
- 17 (37) The operation and management of a facility under a license
18 issued or permit approved by the Department of Environmental
19 Protection, including a wastewater treatment system or a water supply
20 or distribution facility, as the case may be, for any term of not more
21 than ten years. For the purposes of this subsection, "wastewater
22 treatment system" refers to facilities operated or maintained for the
23 storage, collection, reduction, disposal, or other treatment of
24 wastewater or sewage sludge, remediation of groundwater
25 contamination, stormwater runoff, or the final disposal of residues
26 resulting from the treatment of wastewater; and "water supply or
27 distribution facility" refers to facilities operated or maintained for
28 augmenting the natural water resources of the State, increasing the
29 supply of water, conserving existing water resources, or distributing
30 water to users;
- 31 (38) Municipal solid waste collection from facilities owned by a
32 contracting unit, for any term of not more than three years;
- 33 (39) Fuel for heating purposes, for any term of not more than three
34 years;
- 35 (40) Fuel or oil for use in motor vehicles for any term of not more
36 than three years;
- 37 (41) Plowing and removal of snow and ice for any term of not more
38 than three years;
- 39 (42) Purchases made under a contract awarded by the Director of
40 the Division of Purchase and Property in the Department of the
41 Treasury for use by counties, municipalities or other contracting units
42 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term
43 not to exceed the term of that contract;
- 44 (43) A contract between the governing body of a city of the first
45 class and a duly incorporated nonprofit association for the provision
46 of water supply services as defined in subsection (16) of this section,

1 or wastewater treatment services as defined in subsection (19) of this
2 section, may be entered into for a period not to exceed 40 years;

3 (44) The purchase of electricity generated from a power production
4 facility that is fueled by methane gas extracted from a landfill in the
5 county of the contacting unit for any term not exceeding 25 years.

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

20 All multiyear leases and contracts entered into pursuant to this
21 section, including any two-year or one-year extensions, except
22 contracts involving the supplying of electricity for the purpose of
23 lighting public streets and contracts for thermal energy authorized
24 pursuant to subsection (1) above, construction contracts authorized
25 pursuant to subsection (9) above, contracts for the provision or
26 performance of goods or services or the supplying of equipment to
27 promote energy conservation authorized pursuant to subsection (12)
28 above, contracts for water supply services or for a water supply
29 facility, or any component part or parts thereof authorized pursuant to
30 subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts
31 for resource recovery services or a resource recovery facility
32 authorized pursuant to subsection (17) above, contracts for the sale of
33 energy produced by a resource recovery facility authorized pursuant
34 to subsection (18) above, contracts for wastewater treatment services
35 or for a wastewater treatment system or any component part or parts
36 thereof authorized pursuant to subsection (19), (36), (37) or (43)
37 above, and contracts for the purchase of electricity or administrative
38 or dispatching services related to the transmission of such electricity
39 authorized pursuant to subsection (24) above and contracts for the
40 purchase of electricity generated from a power production facility that
41 is fueled by methane gas authorized pursuant to subsection (44) above,
42 shall contain a clause making them subject to the availability and
43 appropriation annually of sufficient funds as may be required to meet
44 the extended obligation, or 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
47 concerning the methods of accounting for all contracts that do not
48 coincide with the fiscal year.

1 All contracts shall cease to have effect at the end of the contracted
2 period and shall not be extended by any mechanism or provision,
3 unless in conformance with the "Local Public Contracts Law,"
4 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be
5 extended by mutual agreement of the parties to the contract when a
6 contracting unit has commenced rebidding prior to the time the
7 contract expires or when the awarding of a contract is pending at the
8 time the contract expires.
9 (cf: P.L.2003, c.150, s.3)

10

11 ¹[4.] 3.¹ This act shall take effect immediately.

12

13

14

15

16 Clarifies current law with regard to certain municipal providers of
17 light, heat or power.

ASSEMBLY, No. 3798

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 14, 2005

Sponsored by:

Assemblyman PATRICK DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblyman JEFF VAN DREW

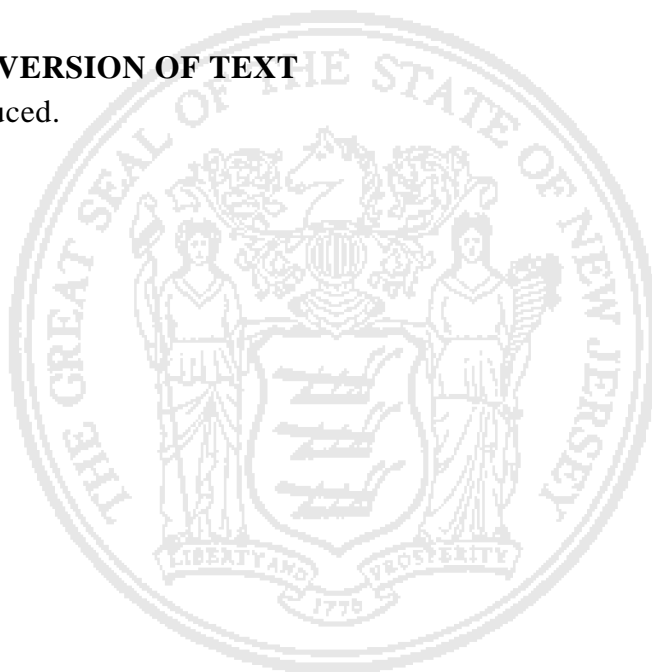
District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Clarifies current law with regard to certain municipal providers of light, heat or power.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2005)

A3798 DIEGNAN, BARNES

2

1 AN ACT concerning municipal providers of light, heat or power and
2 amending R.S. 40:62-15 and P.L.1971, c. 198.

3

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

6

7 1. R.S. 40:62-15 is amended to read as follows:

8 40:62-15. No municipality shall acquire or construct any light, heat
9 or power plant or works until a majority of the legal voters voting at
10 an election shall vote so to do except that any municipality which
11 initially acquires or constructs any light, heat or power plant or works
12 or has initially acquired or constructed any light, heat or power plant
13 or works pursuant to the requirements of this section, and engages in
14 the sale and distribution of light, heat or power to its residents, shall
15 not be required to thereafter obtain the approval of a majority of the
16 legal voters voting at an election prior to subsequently acquiring or
17 constructing any light, heat or power plant or works and associated
18 facilities for the purpose of distributing light, heat or power to its
19 residents. The exemption from the referendum requirements of this
20 section shall be construed to be applicable only to the subsequent
21 acquisition or construction of any light, heat or power plant or works
22 and associated facilities and not to the initial acquisition or
23 construction of light, heat or power plant or works.

24 If a petition signed by at least twenty per cent of the legal voters of
25 the municipality, requesting a referendum vote on the question of the
26 acquisition or construction of a light, heat or power plant or works,
27 and setting forth the specific question to be submitted as hereinafter
28 provided, shall be presented to the governing body, the governing
29 body shall pass a resolution to the effect that a vote is required upon
30 the question.

31 The petition and resolution shall state the specific question to be
32 submitted, i.e., whether the plant or works is to be constructed or
33 purchased, whether the plant or works is located or is proposed to be
34 located within or without such municipality, whether such plant or
35 works is to supply light, or heat, or power, or any two or all of them,
36 and whether the plant or works shall supply the commodity or
37 commodities or service or services by means of gas, or electricity, or
38 steam, or if some other means be proposed such means shall be
39 definitely stated.

40 The governing body may pass such resolution without a petition
41 being presented to it, but in all cases the resolution shall state the
42 specific question to be submitted as hereinbefore provided.

43 (cf: R.S.40:62-15)

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

Matter underlined thus is new matter.

1 2. 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, whenever
19 possible, and the Division of Local Government Services is authorized
20 to adopt and promulgate rules and regulations after consultation with
21 the Commissioner of Education limiting the use of this exception in
22 accordance with the intention herein expressed. The governing body
23 shall in each instance state supporting reasons for its action in the
24 resolution awarding each contract and shall forthwith cause to be
25 printed, in the manner set forth in subsection (1) (a) (i) of this section,
26 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 law;

46 (k) The acquisition of artifacts or other items of unique intrinsic,

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

- 1 (y) An agreement for the purchase of an equitable interest in a
2 water supply facility or for the provision of water supply services
3 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
4 an agreement entered into pursuant to P.L.1989, c.109
5 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
6 later than six months after the effective date of P.L.1993, c.381;
- 7 (z) A contract for the provision of water supply services entered
8 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 9 (aa) The cooperative marketing of recyclable materials recovered
10 through a recycling program;
- 11 (bb) A contract for the provision of wastewater treatment services
12 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 13 (cc) Expenses for travel and conferences;
- 14 (dd) The provision or performance of goods or services for the
15 support or maintenance of proprietary computer hardware and
16 software, except that this provision shall not be utilized to acquire or
17 upgrade non-proprietary hardware or to acquire or update
18 non-proprietary software;
- 19 (ee) The management or operation of an airport owned by the
20 contracting unit pursuant to R.S.40:8-1 et seq.;
- 21 (ff) Purchases of goods and services at rates set by the Universal
22 Service Fund administered by the Federal Communications
23 Commission;
- 24 (gg) A contract for the provision of water supply services or
25 wastewater treatment services entered into pursuant to section 2 of
26 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
27 construction, operation, or maintenance, or any combination thereof,
28 of a water supply facility as defined in subsection (16) of section 15 of
29 P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as
30 defined in subsection (19) of section 15 of P.L.1971, c.198
31 (C.40A:11-15), or any component part or parts thereof, including a
32 water filtration system as defined in subsection (16) of section 15 of
33 P.L.1971, c.198 (C.40A:11-15);
- 34 (hh) The purchase of electricity generated from a power production
35 facility that is fueled by methane gas extracted from a landfill in the
36 county of the contracting unit.
- 37 (2) It is to be made or entered into with the United States of
38 America, the State of New Jersey, county or municipality or any
39 board, body, officer, agency or authority thereof or any other state or
40 subdivision thereof.
- 41 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
42 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
43 received on both occasions in response to the advertisement, or (b) the
44 governing body has rejected such bids on two occasions because it has
45 determined that they are not reasonable as to price, on the basis of
46 cost estimates prepared for or by the contracting agent prior to the

1 advertising therefor, or have not been independently arrived at in open
2 competition, or (c) on one occasion no bids were received pursuant to
3 (a) and on one occasion all bids were rejected pursuant to (b), in
4 whatever sequence; any such contract may then be negotiated and may
5 be awarded upon adoption of a resolution by a two-thirds affirmative
6 vote of the authorized membership of the governing body authorizing
7 such contract; provided, however, that:

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

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

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

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

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

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

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

1 shall be deemed approved. As used in this section, "collection" means
2 the physical removal of recyclable materials from curbside or any other
3 location selected by the contracting unit.

4 (cf: P.L.2003, c.150, s.2)

5

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

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

15 (1) Supplying of:

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

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

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

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

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

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

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

45 (6) Insurance, including the purchase of insurance coverages,
46 insurance consulting or administrative services, claims administration

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

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

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

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

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

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

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

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

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

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

43 (16) The provision of water supply services or the designing,
44 financing, construction, operation, or maintenance, or any combination
45 thereof, of a water supply facility, or any component part or parts
46 thereof, including a water filtration system, for a period not to exceed

1 40 years, when the contract for these services is approved by the
2 Division of Local Government Services in the Department of
3 Community Affairs, the Board of Public Utilities, and the Department
4 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
5 al.), except that no such approvals shall be required for those contracts
6 otherwise exempted pursuant to subsection (30), (31), (34), (35) or
7 (43) of this section. For the purposes of this subsection, "water supply
8 services" means any service provided by a water supply facility; "water
9 filtration system" means any equipment, plants, structures, machinery,
10 apparatus, or land, or any combination thereof, acquired, used,
11 constructed, rehabilitated, or operated for the collection,
12 impoundment, storage, improvement, filtration, or other treatment of
13 drinking water for the purposes of purifying and enhancing water
14 quality and insuring its potability prior to the distribution of the
15 drinking water to the general public for human consumption, including
16 plants and works, and other personal property and appurtenances
17 necessary for their use or operation; and "water supply facility" means
18 and refers to the real property and the plants, structures,
19 interconnections between existing water supply facilities, machinery
20 and equipment and other property, real, personal and mixed, acquired,
21 constructed or operated, or to be acquired, constructed or operated,
22 in whole or in part by or on behalf of a political subdivision of the
23 State or any agency thereof, for the purpose of augmenting the natural
24 water resources of the State and making available an increased supply
25 of water for all uses, or of conserving existing water resources, and
26 any and all appurtenances necessary, useful or convenient for the
27 collecting, impounding, storing, improving, treating, filtering,
28 conserving or transmitting of water and for the preservation and
29 protection of these resources and facilities and providing for the
30 conservation and development of future water supply resources;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (31) The provision of water supply services or the financing,
46 construction, operation or maintenance or any combination thereof, of

1 a water supply facility or any component part or parts thereof, by a
2 partnership or copartnership established pursuant to a contract
3 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
4 period not to exceed 40 years;

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

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

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

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

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

26 (37) The operation and management of a facility under a license
27 issued or permit approved by the Department of Environmental
28 Protection, including a wastewater treatment system or a water supply
29 or distribution facility, as the case may be, for any term of not more
30 than ten years. For the purposes of this subsection, "wastewater
31 treatment system" refers to facilities operated or maintained for the
32 storage, collection, reduction, disposal, or other treatment of
33 wastewater or sewage sludge, remediation of groundwater
34 contamination, stormwater runoff, or the final disposal of residues
35 resulting from the treatment of wastewater; and "water supply or
36 distribution facility" refers to facilities operated or maintained for
37 augmenting the natural water resources of the State, increasing the
38 supply of water, conserving existing water resources, or distributing
39 water to users;

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

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

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

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

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

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

11 (44) The purchase of electricity generated from a power production
12 facility that is fueled by methane gas extracted from a landfill in the
13 county of the contacting unit for any term not exceeding 25 years.

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

28 All multiyear leases and contracts entered into pursuant to this
29 section, including any two-year or one-year extensions, except
30 contracts involving the supplying of electricity for the purpose of
31 lighting public streets and contracts for thermal energy authorized
32 pursuant to subsection (1) above, construction contracts authorized
33 pursuant to subsection (9) above, contracts for the provision or
34 performance of goods or services or the supplying of equipment to
35 promote energy conservation authorized pursuant to subsection (12)
36 above, contracts for water supply services or for a water supply
37 facility, or any component part or parts thereof authorized pursuant to
38 subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts
39 for resource recovery services or a resource recovery facility
40 authorized pursuant to subsection (17) above, contracts for the sale of
41 energy produced by a resource recovery facility authorized pursuant
42 to subsection (18) above, contracts for wastewater treatment services
43 or for a wastewater treatment system or any component part or parts
44 thereof authorized pursuant to subsection (19), (36), (37) or (43)
45 above, and contracts for the purchase of electricity or administrative
46 or dispatching services related to the transmission of such electricity

1 authorized pursuant to subsection (24) above and contracts for the
2 purchase of electricity generated from a power production facility that
3 is fueled by methane gas authorized pursuant to subsection (44) above,
4 shall contain a clause making them subject to the availability and
5 appropriation annually of sufficient funds as may be required to meet
6 the extended obligation, or contain an annual cancellation clause.

7 The Division of Local Government Services in the Department of
8 Community Affairs shall adopt and promulgate rules and regulations
9 concerning the methods of accounting for all contracts that do not
10 coincide with the fiscal year.

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

19 (cf: P.L.2003, c.150, s.3)

20
21 4. This act shall take effect immediately.
22
23

24 STATEMENT
25

26 This bill clarifies several sections of current law with regard to
27 certain municipal providers of light, heat or power as follows:

28 (1) the bill amends R.S. 40:62-15 to clarify that the referendum
29 requirement of this section shall only apply to a municipality's initial
30 acquisition or construction of any light, heat or power plant or works
31 and not to any subsequent acquisition or construction for the purpose
32 of distributing light, heat or power to its residents (recent
33 interpretation of R.S. 40:62-15 by a New Jersey court held that even
34 municipalities with pre-existing electric systems had to go to
35 referendum on a variety of matters related to the subsequent purchase
36 of light, heat or power for its residents);

37 (2) the bill amends section 5 of P.L.1971, c. 198 (C. 40A:11-5) to
38 eliminate the public bidding requirement for the purchase of electricity
39 by those municipal providers of electricity that engage in either the
40 generation or distribution of electricity (current law exempts only
41 municipal providers that engage in generation of electricity); and

42 (3) the bill amends section 15 of P.L.1971, c. 198 (C. 40A:11-15)
43 to clarify that the same opportunities that are extended to municipal
44 providers of electricity engaged in the generation of electricity shall
45 also extend to municipal providers of electricity that engage in the
46 distribution of electricity (this clarification would enable municipal

A3798 DIEGNAN, BARNES

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- 1 distribution systems such as the Borough of South River in Middlesex
- 2 County to enter into contracts for up to 40 years and to contract with
- 3 all suppliers in the electric power market to obtain the lowest available
- 4 wholesale power costs).

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3798

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2005

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 3798 with committee amendments.

As amended, this bill clarifies sections of current law with regard to certain municipal providers of light, heat or power as follows:

(1) the bill amends section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) to exempt certain municipal providers of electricity that engage in distribution of electricity for retail sale or related services from the public bidding requirements if the provider submits a written description of its procurement process to the Director of the Division of Local Government Services for approval, and the provider receives written approval from the director or the director fails to respond in writing to the municipal provider within 30 days;

(2) the bill amends section 15 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-15) to extend the same opportunities that are presently extended to municipal providers that are engaged in the generation of electricity to municipal providers of electricity engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that contracts with such providers that exceed ten years shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing within ten business days, the contract shall be deemed approved; and

(3) the bill, as amended, also eliminates certain provisions of the bill concerning referendum requirements and makes certain technical amendments to the bill.

COMMITTEE AMENDMENTS

The committee adopted amendments to:

(1) eliminate references to referendum requirements and to make various technical changes to the bill; (2) to require certain contracting units to submit a procurement model to the Director of Local Government Services for approval in order to be exempt from public

bidding requirements for certain contracts; and (3) to provide that certain contracting units shall not enter into contracts for the purchase of electricity or related services for more than ten years with out the written approval of the Director of the Division of Local Government Services.

The amendments also provide that if the director fails to respond in writing to a contracting unit's request for approval within ten days, the contract shall be deemed to be approved.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3798

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2005

The Senate Economic Growth Committee reports favorably Assembly Bill No. 3798 (1R).

This bill clarifies sections of current law with regard to certain municipal providers of light, heat or power as follows:

(1) the bill amends section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) to exempt certain municipal providers of electricity that engage in distribution of electricity for retail sale or related services from the public bidding requirements if the provider submits a written description of its procurement process to the Director of the Division of Local Government Services for approval, and the provider receives written approval from the director or the director fails to respond in writing to the municipal provider within 30 days; and

(2) the bill amends section 15 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-15) to extend the same opportunities that are presently extended to municipal providers that are engaged in the generation of electricity to municipal providers of electricity engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that contracts with such providers that exceed ten years shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing within ten business days, the contract shall be deemed approved.