

58:26-19

**LEGISLATIVE HISTORY CHECKLIST**  
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("Water Supply Public-Private contracting")

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**LAWS OF:** 1995 **CHAPTER:** 101

**BILL NO:** S1292

**SPONSOR(S):** Connors and Kenny

**DATE INTRODUCED:** June 30, 1994

**COMMITTEE:** **ASSEMBLY:** Local Government

**SENATE:** Budget; Community Affairs  
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**DATE OF PASSAGE:** **ASSEMBLY:** March 13, 1995

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**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

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**REPORTS:** No

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[SECOND REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 1292

STATE OF NEW JERSEY

ADOPTED DECEMBER 3, 1994

Sponsored by Senators CONNORS, KENNY,  
Assemblymen Pascrell and Arnone

1 AN ACT concerning contracts between local government units  
2 and private firms for the provision of water supply services,  
3 supplementing Title 58 of the Revised Statutes and amending  
4 R.S.48:2-13 and P.L.1971, c.198.

5

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

8 1. (New section) Sections 1 through 8 of P.L. , c.  
9 (C. )(now pending before the Legislature as this bill) shall be  
10 known and may be cited as the "New Jersey Water Supply  
11 Public-Private Contracting Act."

12 2. (New section) The Legislature finds that it is in the public  
13 interest and the policy of the State to foster and promote by all  
14 reasonable means the provision and distribution of an adequate  
15 supply of water for the public and private uses of counties and  
16 municipalities and their inhabitants; that while the "New Jersey  
17 Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et  
18 seq.) enabled local government units to enter into long-term  
19 contracts with private-sector firms, the time consuming  
20 procedures and the regulatory framework required therein have  
21 dissuaded private firms and local government units from entering  
22 into contracts; that there is a need for an alternate statutory  
23 process which enables local government units to enter with  
24 private firms into long-term contracts that protect the rights and  
25 interests of residents of the local government unit, but allow the  
26 private firms to utilize their expertise, experience and resources  
27 to enable the local water system to comply with existing and  
28 more stringent future requirements of the federal Clean Water  
29 Act, 33 U.S.C.§1251 et seq., the "Water Pollution Control Act,"  
30 P.L.1977, c.74 (C.58:10A-1 et seq.) and the "Safe Drinking Water  
31 Act," P.L.1977, c.224 (C.58:12A-1 et seq.); and that such  
32 contracts can adequately protect the interests of residents and  
33 water users and assure conformance with environmentally sound  
34 water quality standards.

35 The Legislature therefore determines that it is in the public  
36 interest to establish a comprehensive procedure designed to  
37 authorize local government units to enter into contracts with  
38 private firms for the financing, designing, construction,  
39 improvement, operation, maintenance, or administration, or any  
40 combination thereof, of a water supply facility.

41 3. (New section) As used in sections 1 through 8 of P.L. ,  
42 c. (C. )(now pending before the Legislature as this bill):

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 enclosed thus in new matter  
Matter enclosed in superficially in new matter as follows:  
1 Senate floor amendment adopted by the Senate on 12/3/94  
2 Assembly floor amendment adopted by the Assembly on 12/3/94

1 "Board" means the New Jersey Board of Public Utilities:

2 "Department" means the New Jersey Department of  
3 Environmental Protection.

4 "Division" means the Local Finance Board within the Division  
5 of Local Government Services in the Department of Community  
6 Affairs.

7 "Governing body" means the board of chosen freeholders in the  
8 case of the county; the board of chosen freeholders and the  
9 county executive, the county supervisor or the county manager,  
10 as appropriate, in the case of a county organized pursuant to the  
11 provisions of the "Optional County Charter Law," P.L.1972. c.154  
12 (C.40:41A-1 et seq.); the commission, council, board or body, by  
13 whatever name it may be known, having charge of the finances of  
14 the municipality, in the case of a municipality; and the  
15 decision-making body of an authority or commission.

16 "Contract" means a long-term written agreement wherein a  
17 private firm agrees to provide water supply services for a public  
18 entity and wherein the private firm agrees to provide, during the  
19 term of the contract, capital expenditures on behalf of the public  
20 entity's water supply facilities, which expenditures are set forth  
21 in the contract.

22 "Private firm" means any privately or publicly held company  
23 qualified to do business in the State of New Jersey that is  
24 financially, technically, and administratively capable of providing  
25 water supply services to a public entity under the terms of a  
26 contract entered into pursuant to P.L. , c. (C. )(now  
27 pending before the Legislature as this bill).

28 "Proposal document" means the document prepared by or on  
29 behalf of a public entity describing the water supply services that  
30 the public entity is considering having provided by a private firm  
31 pursuant to a contract. The proposal document shall include  
32 specific minimum qualifications that a private firm shall meet, as  
33 well as the criteria that will be used by a public entity to  
34 evaluate a proposal submitted by a private firm.

35 "Public entity" means a county, a municipality, a municipal or  
36 county authority or any commission or other political subdivision  
37 of the State, or any two or more counties, municipalities,  
38 municipal or county utility authorities or any commission or other  
39 political subdivisions of the State, acting jointly, that are  
40 authorized by law to operate or maintain a public water supply  
41 system or to construct, rehabilitate, operate, or maintain water  
42 supply facilities or otherwise provide water for human  
43 consumption.

44 "Water supply facility" means the plants, structures, or other  
45 real or personal property acquired, constructed or operated, or to  
46 be acquired, constructed or operated, by or on behalf of a public  
47 entity for the collection, impoundment, storage, improvement,  
48 treatment, filtration, conservation, protection, transmission or  
49 distribution of water.

50 "Water supply services" means the financing, designing,  
51 construction, improvement, operation, maintenance,  
52 administration, or any combination thereof, of a water supply  
53 facility which services are provided pursuant to P.L. , c.  
54 (C. )(now pending before the Legislature as this bill).

1       4. (New section) Notwithstanding the provisions of any other  
2 law, rule or regulation to the contrary, a public entity may enter  
3 into a contract with a private firm pursuant to P.L....., c....(C....)  
4 (now pending before the Legislature as this bill) for the provision  
5 of water supply services. The provisions of P.L....., c.....  
6 (C.....)(now pending before the Legislature as this bill) shall not  
7 be deemed or interpreted to permit, nor used to accomplish, the  
8 acquisition of water supply facilities by private firms from public  
9 entities.

10       5. (New section) a. A public entity shall publish notice of its  
11 intent to enter into a contract pursuant to P.L....., c.....  
12 (C. ....)(now pending before the Legislature as this bill) in at  
13 least one newspaper of general circulation in the jurisdiction or  
14 service area that will receive water supply services under the  
15 terms of a contract and one newspaper of broad regional  
16 circulation, at least 60 days prior to conducting the public  
17 hearing required under section 6 of P.L. ...., c. ... (C. ....)(now  
18 pending before the Legislature as this bill). In addition, a public  
19 entity that intends to enter into a contract with a private firm  
20 for the provision of water supply services shall notify in writing  
21 the board, department and division of its intent.

22       b. The public notice required under subsection a. of this section  
23 shall describe the type of services desired and provide the name,  
24 address and phone number of the person who can provide  
25 additional information and a proposal document to an interested  
26 party. The notice shall specify a deadline, that shall be not less  
27 than 30 days from the date of the publication of the notice for  
28 the submission of proposals by private firms to the public entity.  
29 The public entity may at any time revise the proposal document  
30 and each private firm that received a proposal document shall be  
31 provided with the revised proposal document.

32       c. The public entity shall conduct a review of the proposals  
33 submitted by private firms to determine which proposals meet  
34 the minimum qualifications and standards. The review shall be  
35 conducted in a manner that avoids disclosure of the contents of a  
36 proposal to any private firm submitting a competing proposal.  
37 The public entity may conduct discussions with a private firm  
38 submitting a qualified proposal for the purpose of clarifying the  
39 information submitted in the proposal. The public entity may at  
40 any time revise its proposal document after the review of the  
41 submitted proposals if it notifies simultaneously and in writing  
42 each private firm that submitted a proposal of the revision and  
43 provides a uniform time within which a firm may submit a revised  
44 proposal for review.

45       d. A public entity shall select one qualified proposal from  
46 among those submitted. The public entity shall negotiate a  
47 contract with the private firm that submitted the selected  
48 proposal. If the public entity is unable to negotiate a satisfactory  
49 contract with the selected private firm, it may select another  
50 qualified proposal from among those submitted and proceed to  
51 negotiate a contract with the private firm that submitted the  
52 proposal. The public entity shall set forth in writing the reasons  
53 for the selection of the qualified proposal submitted by the  
54 private firm with which the public entity has negotiated a

1 proposed contract and shall make this document available to the  
2 public along with the proposed contract upon request and during  
3 the public hearing conducted pursuant to section 6 of P.L. ....,  
4 c. ... (C. ....)(now pending before the Legislature as this bill).

5 e. A contract entered into pursuant to P.L. ...., c.....  
6 (C. ....)(now pending before the Legislature as this bill) shall  
7 include provisions addressing the following:

8 (1) The charges, rates, fees or formulas to be used to  
9 determine the charges, rates, or fees to be charged by the public  
10 entity for the water supply services to be provided.

11 (2) The allocation of the risks of financing and constructing  
12 planned capital additions or upgrades to existing water supply  
13 facilities.

14 (3) The allocation of the risks of operating and maintaining the  
15 water supply facility.

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

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

19 (6) The employment of current employees of the public entity  
20 whose positions or employment will be affected by the terms of  
21 the contract.

22 (7) The private firm's authority and the extent, or the  
23 procedures for the use, of that authority to initiate, negotiate  
24 and finalize the terms for a bulk sale of surplus water. The  
25 contract shall either grant the private firm such authority or  
26 specifically state that the firm is denied that authority. <sup>1</sup>Nothing  
27 in P.L. , c. (C. )(now before the Legislature as this bill)  
28 shall be <sup>2</sup>[construed] construed<sup>2</sup> to authorize a public entity that  
29 enters into a contract pursuant to P.L. , c. (C. )(now  
30 before the Legislature as this bill) to provide for the bulk sale <sup>2</sup>,  
31 lease<sup>2</sup> or transfer of water <sup>2</sup>[to a private firm]<sup>2</sup> if the water  
32 being <sup>2</sup>[transferred] transferred, leased<sup>2</sup> or sold has been supplied  
33 to the public entity either by the New Jersey Water Supply  
34 Authority or by the North Jersey <sup>2</sup>[water supply district] District  
35 Water Supply Commission<sup>2</sup>, unless the authority pursuant to  
36 P.L.1981, c.293 (C.58:1B-1 et seq.) or the district pursuant to  
37 R.S.58:5-1 et seq., as appropriate, has agreed to the bulk  
38 <sup>2</sup>[transfer or] sale, lease or transfer<sup>2,1</sup>

39 (8) The requirements for the provision of a performance bond  
40 by the private firm, if so required by the public entity.

41 A contract may contain any other terms and conditions that  
42 have been negotiated by the public entity and the private firm.

43 f. If a dispute over contract compliance, performance or  
44 termination cannot be resolved by the public entity and the  
45 private firm pursuant to the procedures set forth in the contract,  
46 either party to the contract may file with the Superior Court  
47 which has appropriate jurisdiction a request for an order either to  
48 terminate the contract based on the reasons stated in the request  
49 or for an order for other appropriate relief to the dispute. The  
50 court may take such action as it may deem necessary to  
51 facilitate the expeditious resolution of the dispute and an  
52 expeditious response to the request, including ordering the parties  
53 to undertake a dispute resolution or mediation process. The court  
54 shall use, as it deems necessary, the services of a financial expert

1 in the area of water supply service contracts in its analysis of the  
2 contract and the issues before it. Within 90 days after the filing  
3 of a request, the court shall either grant the request or deny the  
4 request. If the request is granted, the court shall order such  
5 appropriate relief measures or remedies as it deems appropriate  
6 and necessary.

7 g. A public entity that has negotiated a contract with a  
8 private firm pursuant to P.L..... c.... (C.....)(now pending before  
9 Legislature as this bill) shall obtain the written opinion of bond  
10 counsel as to effect of the contract on the tax exempt status of  
11 existing and future financing instruments executed by the public  
12 entity given the terms of the contract and the federal laws or  
13 regulations concerning this matter.

14 h. If a public entity entering a contract consists of multiple  
15 municipalities, a concession fee or other monetary benefit paid  
16 by a private firm as a result of the contract shall be paid directly  
17 to the municipalities constituting that public entity. Any  
18 concession fee or monetary benefit paid by a private firm to a  
19 public entity shall be used for the purpose of reducing or  
20 off-setting property taxes.

21 6. (New section) a. A public entity that intends to enter into  
22 a contract with a private firm for the provision of water supply  
23 services pursuant to P.L. , c. (C. )(now pending before the  
24 Legislature as this bill) shall conduct a public hearing on the  
25 proposed contract negotiated pursuant to section 5 of P.L. ,  
26 c. (C. )(now pending before the Legislature as this bill). A  
27 public entity shall also conduct pursuant to this section a public  
28 hearing on revisions to a contract required by subsection b. of  
29 section 7 of P.L....., c..... (C.....)(now pending before the  
30 Legislature as this bill) or on substantial amendments to a  
31 contract as required by subsection g. of section 7 of P.L.....,  
32 c. ... (C. ... )(now pending before the Legislature as this bill).

33 b. The public entity shall provide at least 14 days' prior notice  
34 of the public hearing by publication in at least one newspaper of  
35 general circulation in the jurisdiction or service area of the  
36 public entity to be served under the terms of the proposed  
37 contract. The publication shall include notice of the date, time  
38 and place of the public hearing, notice of the place at which  
39 copies of the proposed contract will be available for public  
40 inspection, and the times during which such inspection will be  
41 permitted. The notice shall specifically state whether any  
42 concession fee or monetary benefit will be paid by a private firm  
43 to the public entity as a result of the contract for water supply  
44 services, the monetary amount of the fee or benefit and the  
45 potential impact of the fee or benefit on the charges, rates or  
46 fees which will be paid for the supply of water by water users in  
47 the jurisdiction or service area that will receive the water supply  
48 services pursuant to the terms of the contract.

49 c. At the public hearing, the public entity shall explain the  
50 terms and conditions of the proposed contract and shall answer  
51 questions raised by prospective consumers and other interested  
52 parties. The public entity shall explain during the hearing the  
53 charges, rates or fees that will or may be charged by the public  
54 entity for the supply of water as a result of the proposed

1 contract. In addition, the entity shall explain any concession fee  
2 or monetary benefit to be paid by a private firm to the public  
3 entity as a result of the contract for water supply services, the  
4 monetary amount of the fee or benefit and the potential impact  
5 of the fee or benefit on the charges, rates or fees which will be  
6 paid for the supply of water by water users in the jurisdiction or  
7 service area that will receive the water supply services pursuant  
8 to the terms of the contract.

9 d. The public entity shall produce a verbatim record of the  
10 public hearing. The record of the public hearing shall be kept  
11 open for a period of seven days following the conclusion of the  
12 hearing, during which time interested parties may submit written  
13 statements to be included in the hearing report. The public  
14 entity shall prepare a written hearing report, which shall include  
15 a copy of the proposed contract, a copy of the statement setting  
16 forth the public entity's reasons for the selection of the proposal  
17 submitted by the private firm with which the entity has  
18 negotiated a contract, the verbatim record of the public hearing,  
19 written statements submitted by interested parties, a copy of the  
20 bond counsel's written opinion required pursuant to subsection g.  
21 of section 5 of P.L....., c.....(C.....)(now pending before the  
22 Legislature as this bill) and a statement prepared by the public  
23 entity summarizing the major issues raised at the public hearing  
24 and the public entity's specific responses to those issues. The  
25 public entity shall make copies of the hearing report available to  
26 interested parties upon request at a cost not to exceed the actual  
27 cost of printing or copying.

28 e. The governing body of a public entity that has negotiated  
29 the proposed contract shall adopt an ordinance or a resolution, as  
30 appropriate, or parallel ordinances or resolutions, as the case may  
31 be, if there is more than one governing body involved, approving  
32 the proposed contract. The ordinance or resolution may be  
33 introduced at the first meeting of the governing body of the  
34 public entity held after the public hearing on the proposed  
35 contract, and shall acknowledge that the agreement needs to be  
36 approved pursuant to section 7 of P.L. , c. (C. )(now  
37 pending before the Legislature as this bill).

38 f. Within 30 days after the close of a public hearing on a  
39 proposed contract held pursuant to subsection a. of this section  
40 and upon at least 10 days' prior written notice, the public entity  
41 shall submit pursuant to section 7 of P.L....., c..... (C.....)(now  
42 pending before the Legislature as this bill) an application for  
43 approval to the division and the board and shall submit the  
44 hearing report to the department for review. The board and  
45 division shall specify the form of the application to be submitted.

46 7. (New section) a. Within 60 days of receipt of the  
47 application, the board and division shall approve, or conditionally  
48 approve, an application submitted by a public entity pursuant to  
49 subsection f. of section 6 of P.L....., c.... (C.....)(now pending  
50 before the Legislature as this bill). Within 60 days of receipt of  
51 the hearing report, the department shall provide any comments  
52 on the hearing report it deems appropriate to the board, division  
53 and public entity. If the board or division fail to approve or  
54 conditionally approve the application within 60 days after

1 receipt, the application shall be deemed approved, unless the  
2 public entity has agreed to an extension of the period.

3 b. If either the board or division conditionally approves the  
4 application, the board or division shall state in writing the  
5 revision to the proposed contract that is necessary in order for it  
6 to be approved. If the board or division determines that the  
7 required revision is substantial, the public entity shall hold a  
8 public hearing on the revision and adhere to the provisions of  
9 section 6 of P.L. , c. (C. ) (now pending before the  
10 Legislature as this bill) in so doing. A substantial revision shall  
11 be a change that results in an increase in the charges, rates or  
12 fees of the private firm or that materially changes other terms  
13 and conditions of the contract. The proposed revision to the  
14 contract shall be submitted to the board, division and department  
15 15 days prior to the date of the public hearing.

16 If the board or division determines that the required revision in  
17 the conditional approval is not substantial, the public entity shall  
18 submit the proposed revision to the contract to the board and the  
19 division for approval and to the department for review. The  
20 revision shall be approved if found to be consistent with the  
21 conditions set forth in the conditional approval, or disapproved  
22 with a written explanation as to why the revision is not  
23 consistent, within 15 days after the next public meeting of the  
24 board or division.

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

27 (1) The private firm entering into the contract has the  
28 financial capacity and technical and administrative experience to  
29 ensure continuity of service over the term of the contract and  
30 that the standards and requirements contained in the application  
31 documents concerning the financial, technical and administrative  
32 capacity of the private firm are necessary and sufficient to  
33 protect the public interest.

34 (2) The terms of the contract are not unreasonable. In  
35 determining whether the terms of the contract are not  
36 unreasonable, the board shall review the fees and charges to be  
37 charged or assessed under the contract to determine that they  
38 are reasonable to the public entity, taking into consideration all  
39 of the obligations undertaken by the private firm and all the  
40 benefits obtained by the public entity. In making this  
41 determination, the board shall not use the traditional rate based  
42 rate of return methodology.

43 (3) The franchise customers of a public utility participating in a  
44 contract are protected from the risks of the proposed contract  
45 and that they are not subsidizing the contract. If a private firm  
46 is not a public utility, the board shall ensure that under the terms  
47 of the proposed contract the users of water outside of the  
48 jurisdiction or service area that will receive water supply  
49 services under the contract are also protected from the risks of  
50 the contract and that water users outside the jurisdiction or  
51 service area are not subsidizing the contract through increased  
52 charges, rates or fees for the supply of water.

53 (4) The contract contains the provisions required by paragraphs  
54 (1), (2) and (6) of subsection e. of section 5 of P.L.....



1 c.....(C.....)(now pending before the Legislature as this bill).

2 Upon approval of a contract as proposed or as revised in  
3 response to a conditional approval, the jurisdiction of the board  
4 over the contract shall terminate until or unless the contract is  
5 amended to change the formula or other basis of determining  
6 charges contained therein.

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

9 (1) The terms of the proposed contract do not materially  
10 impair the ability of the public entity to punctually pay principal  
11 and interest due on its outstanding indebtedness and to supply  
12 other essential public improvements and services.

13 (2) A concession fee or other monetary benefit paid by a  
14 private firm as a result of the contract is paid directly to the  
15 municipalities constituting that public entity, if a public entity  
16 consisting of multiple municipalities has entered into a contract.  
17 Any concession fee or monetary benefit paid by a private firm to  
18 a public entity is used for the purpose 1of1 reducing or  
19 off-setting property taxes.

20 (3) The <sup>1</sup>[partnership agreement] contract<sup>1</sup> contains the  
21 provisions required by paragraphs (3), (4), (5), (7) and (8) of  
22 subsection e. of section 5 of P.L....., c.....(C.....)(now pending  
23 before the Legislature as this bill).

24 The division shall also review and specifically approve any  
25 contract provision pursuant to which a public entity will or may  
26 execute a financing instrument for the purposes set forth in the  
27 contract.

28 e. The board or division may provide the public entity with any  
29 non-binding comments or advice during or after the review of the  
30 application as the board or division deem appropriate.

31 f. The board or division shall assess and the applicant shall pay  
32 a fee equal to the cost incurred by the board or division for an  
33 analysis of an application by an independent person who has  
34 expertise in the area of water supply services if during the review  
35 of an application the board or division determine that such an  
36 analysis is required and a person with the required expertise is  
37 not readily available from within any executive department of  
38 the State government.

39 g. If <sup>1</sup>[a contract is amended by]<sup>1</sup> the public entity <sup>1</sup>and  
40 private firm would like to amend a contract<sup>1</sup> after approval <sup>1</sup>of  
41 an application<sup>1</sup> by the board and division, the public entity shall  
42 submit <sup>1</sup>[such] proposed<sup>1</sup> amendments to the board and division  
43 <sup>1</sup>[within 10 days after the amendment is agreed to by the parties]  
44 for approval and to the department for review. At the next  
45 public meeting of the board and of the division after receipt of  
46 proposed amendments, the board and the division shall determine  
47 whether the proposed amendments are substantial<sup>1</sup> . If the  
48 amendments are substantial in nature as determined by <sup>1</sup>[the  
49 public entity] either the board or the division<sup>1</sup> , the public entity  
50 shall conduct a hearing pursuant to section 6 of P.L....., c.....  
51 (C.....)(now pending before the Legislature as this bill) <sup>1</sup>[and  
52 secure the approval of the board and division for the amended  
53 contract]. Within 60 days of the receipt of proposed amendments  
54 that are not determined to be substantial, or within 60 days of

1 the receipt of an application for approval of proposed  
2 amendments that are determined to be substantial, the board and  
3 division shall approve or conditionally approve the amendments<sup>1</sup>  
4 in accordance with the applicable procedures established for  
5 <sup>1</sup>[obtaining an]<sup>1</sup> approval of an original contract pursuant to  
6 section 7 of P.L...., c..... (C.....)(now pending before the  
7 Legislature as this bill).

8 8. (New section) In order to pay its part of the cost of the  
9 water supply facility, a public entity may issue bonds in  
10 accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. If  
11 a public entity enters into a financing instrument the proceeds of  
12 which are used by the private firm for a capital expenditure for  
13 the benefit of a water supply facility, the expenditure of the  
14 funds provided by the public entity shall be in compliance with  
15 applicable public contracting statutes.

16 <sup>1</sup>9. (New section) Notwithstanding any other provision of  
17 P.L. , c. (C. )(now before the Legislature as this bill)  
18 whenever a private firm enters into a contract with a public  
19 entity to provide water supply services pursuant to P.L. , c.  
20 (C. )(now before the Legislature as this bill), and that public  
21 entity operates water supply facilities, in accordance with the  
22 provisions of N.J.S.40A:31-4, within another public entity, the  
23 private firm or public entity shall be subject to the jurisdiction,  
24 regulation and control of the Board of Public Utilities as provided  
25 in N.J.S.40A:31-23, to the extent the private firm or public  
26 entity operates a water supply facilities within that another  
27 public entity.<sup>1</sup>

28 <sup>1</sup>[9.] 10.<sup>1</sup> R.S.48:2-13 is amended to read as follows:

29 48:2-13. The board shall have general supervision and  
30 regulation of and jurisdiction and control over all public utilities  
31 as hereinafter in this section defined and their property, property  
32 rights, equipment, facilities and franchises so far as may be  
33 necessary for the purpose of carrying out the provisions of this  
34 Title.

35 The term "public utility" shall include every individual,  
36 copartnership, association, corporation or joint stock company,  
37 their lessees, trustees or receivers appointed by any court  
38 whatsoever, their successors, heirs or assigns, that now or  
39 hereafter may own, operate, manage or control within this State  
40 any railroad, street railway, traction railway, autobus, charter  
41 bus operation, special bus operation, canal, express, subway,  
42 pipeline, gas, electric light, heat, power, water, oil, sewer, solid  
43 waste collection, solid waste disposal, telephone or telegraph  
44 system, plant or equipment for public use, under privileges  
45 granted or hereafter to be granted by this State or by any  
46 political subdivision thereof.

47 Nothing contained in this Title shall extend the powers of the  
48 board to include any supervision and regulation of, or jurisdiction  
49 and control over any vehicles engaged in ridesharing  
50 arrangements with a maximum carrying capacity of not more  
51 than 15 passengers, including the driver, where the transportation  
52 of passengers is incidental to the purpose of the driver or any  
53 vehicles engaged in the transportation of passengers for hire in  
54 the manner and form commonly called taxicab service unless such

1 service becomes or is held out to be regular service between  
2 stated termini; hotel buses used exclusively for the transportation  
3 of hotel patrons to or from local railroad or other common  
4 carrier stations, including local airports, or bus employed solely  
5 for transporting school children and teachers, to and from school,  
6 or any autobus with a carrying capacity of not more than 10  
7 passengers now or hereafter operated under municipal consent  
8 upon a route established wholly within the limits of a single  
9 municipality or with a carrying capacity of not more than 20  
10 passengers operated under municipal consent upon a route  
11 established wholly within the limits of not more than four  
12 contiguous municipalities within any county of the fifth or sixth  
13 class, which route in either case does not in whole or in part  
14 parallel upon the same street the line of any street railway or  
15 traction railway or any other autobus route.

16 Except as provided in section 7 of P.L. , c. , (C. ) (now  
17 pending before the Legislature as this bill), the board shall have  
18 no regulatory authority over the parties to a contract negotiated  
19 between a public entity and a private firm pursuant to P.L.....,  
20 c..... (C.....)(now pending before the Legislature as this bill) in  
21 connection with the performance of their respective obligations  
22 thereunder. Nothing contained in this title shall extend the  
23 powers of the board to include any supervision and regulation of,  
24 or jurisdiction and control over, any public-private contract for  
25 the provision of water supply services established pursuant to  
26 P.L. , c. (C. ) (now pending before the Legislature as this bill).  
27 (cf: P.L.1981, c.413, s.10)

28 <sup>1</sup>[10.] 11.<sup>1</sup> Section 2 of P.L.1971, c.198 (C.40A:11-2) is  
29 amended to read as follows:

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

32 (1) "Contracting unit" means:

33 (a) Any county; or

34 (b) Any municipality; or

35 (c) Any board, commission, committee, authority or agency,  
36 which is not a State board, commission, committee, authority or  
37 agency, and which has administrative jurisdiction over any  
38 district other than a school district, project, or facility, included  
39 or operating in whole or in part, within the territorial boundaries  
40 of any county or municipality which exercises functions which are  
41 appropriate for the exercise by one or more units of local  
42 government, and which has statutory power to make purchases  
43 and enter into contracts or agreements for the performance of  
44 any work or the furnishing or hiring of any materials or supplies  
45 usually required, the cost or contract price of which is to be paid  
46 with or out of public funds.

47 The term shall not include a private firm that has entered into  
48 a contract with a public entity for the provision of water supply  
49 services pursuant to P.L. , c. (C. ) (now pending before the  
50 Legislature as this bill).

51 (2) "Governing body" means:

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

- 1 (b) The governing body of the municipality, when the purchase  
2 is to be made or the contract or agreement is to be entered into  
3 by, or on behalf of, a municipality; or
- 4 (c) Any board, commission, committee, authority or agency of  
5 the character described in subsection (1)(c) of this section.
- 6 (3) "Contracting agent" means the governing body of a  
7 contracting unit, or any board, commission, committee, officer,  
8 department, branch or agency which has the power to prepare the  
9 advertisements, to advertise for and receive bids and, as  
10 permitted by this act, to make awards for the contracting unit in  
11 connection with purchases, contracts or agreements.
- 12 (4) "Purchase" is a transaction, for a valuable consideration,  
13 creating or acquiring an interest in goods, services and property,  
14 except real property or any interest therein.
- 15 (5) "Materials" includes goods and property subject to chapter  
16 2 of Title 12A of the New Jersey Statutes, apparatus, or any  
17 other tangible thing, except real property or any interest therein.
- 18 (6) "Professional services" means services rendered or  
19 performed by a person authorized by law to practice a recognized  
20 profession, whose practice is regulated by law, and the  
21 performance of which services requires knowledge of an advanced  
22 type in a field of learning acquired by a prolonged formal course  
23 of specialized instruction and study as distinguished from general  
24 academic instruction or apprenticeship and training. Professional  
25 services may also mean services rendered in the performance of  
26 work that is original and creative in character in a recognized  
27 field of artistic endeavor.
- 28 (7) "Extraordinary unspecifiable services" means services  
29 which are specialized and qualitative in nature requiring  
30 expertise, extensive training and proven reputation in the field of  
31 endeavor.
- 32 (8) "Project" means any work, undertaking, program, activity,  
33 development, redevelopment, construction or reconstruction of  
34 any area or areas.
- 35 (9) "Work" includes services and any other activity of a  
36 tangible or intangible nature performed or assumed pursuant to a  
37 contract or agreement with a contracting unit.
- 38 (10) "Homemaker--home health services" means at home  
39 personal care and home management provided to an individual or  
40 members of his family who reside with him, or both, necessitated  
41 by the individual's illness or incapacity. "Homemaker--home  
42 health services" includes, but is not limited to, the services of a  
43 trained homemaker.
- 44 (11) "Recyclable material" means those materials which would  
45 otherwise become municipal solid waste, and which may be  
46 collected, separated or processed and returned to the economic  
47 mainstream in the form of raw materials or products.
- 48 (12) "Recycling" means any process by which materials which  
49 would otherwise become solid waste are collected, separated or  
50 processed and returned to the economic mainstream in the form  
51 of raw materials or products.
- 52 (13) "Marketing" means the marketing of designated recyclable  
53 materials source separated in a municipality which entails a  
54 marketing cost less than the cost of transporting the recyclable

1 materials to solid waste facilities and disposing of the materials  
2 as municipal solid waste at the facility utilized by the  
3 municipality.

4 (14) "Municipal solid waste" means all residential, commercial  
5 and institutional solid waste generated within the boundaries of a  
6 municipality.

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

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

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

18 (cf: P.L.1992, c.98, s.1)

19 <sup>1</sup>[11.] 12.<sup>1</sup> Section 5 of P.L.1971, c.198 (C.40A:11-5) is  
20 amended to read as follows:

21 5. Exceptions. Any purchase, contract or agreement of the  
22 character described in section 4 of P.L.1971, c.198 (C.40A:11-4)  
23 may be made, negotiated or awarded by the governing body  
24 without public advertising for bids and bidding therefor if:

25 (1) The subject matter thereof consists of:

26 (a) (i) Professional services. The governing body shall in each  
27 instance state supporting reasons for its action in the resolution  
28 awarding each contract and shall forthwith cause to be printed  
29 once, in a newspaper authorized by law to publish its legal  
30 advertisements, a brief notice stating the nature, duration,  
31 service and amount of the contract, and that the resolution and  
32 contract are on file and available for public inspection in the  
33 office of the clerk of the county or municipality, or, in the case  
34 of a contracting unit created by more than one county or  
35 municipality, of the counties or municipalities creating such  
36 contracting unit; or (ii) Extraordinary unspecifiable services. The  
37 application of this exception shall be construed narrowly in favor  
38 of open competitive bidding, where possible, and the Division of  
39 Local Government Services is authorized to adopt and promulgate  
40 rules and regulations limiting the use of this exception in  
41 accordance with the intention herein expressed. The governing  
42 body shall in each instance state supporting reasons for its action  
43 in the resolution awarding each contract and shall forthwith  
44 cause to be printed, in the manner set forth in subsection (1)(a)(i)  
45 of this section, a brief notice of the award of such contract;

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

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

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

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

53 (f) The supplying of any product or the rendering of any  
54 service by a public utility, which is subject to the jurisdiction of

1 the Board of [Regulatory Commissioners] Public Utilities or the  
2 U.S. Federal Energy Regulatory Commission or its successor, in  
3 accordance with tariffs and schedules of charges made, charged  
4 or exacted, filed with the board or commission;

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

7 (h) The printing <sup>2</sup>[(-GL-)(-NORTH-)documents] of bonds and  
8 documents<sup>2</sup> necessary to the issuance and sale thereof by a  
9 contracting unit;

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

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

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

19 (l) Election expenses;

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

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

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

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

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

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

44 (s) The marketing of recyclable materials recovered through a  
45 recycling program, or the marketing of any product intentionally  
46 produced or derived from solid waste received at a resource  
47 recovery facility or recovered through a resource recovery  
48 program, including, but not limited to, refuse-derived fuel,  
49 compost materials, methane gas, and other similar products;

50 (t) Emergency medical services provided by a hospital to the  
51 residents of a municipality or county, provided that: (a) such  
52 exception be allowed only after the governing body determines  
53 that the emergency services are available only from one provider;  
54 and (b) if the contract is awarded without advertising for bids or

1 bidding the governing body shall in each instance state supporting  
2 reasons for its action in a resolution awarding the contract and  
3 cause to be printed once in a newspaper authorized by law to  
4 publish its legal advertisements a brief notice stating the nature,  
5 duration, service, and amount of the contract; and (c) the  
6 contract shall be kept on file for public inspection in the office of  
7 the clerk of the municipality;

8 (u) Contracting unit towing and storage contracts, provided  
9 that all such contracts shall be pursuant to reasonable  
10 non-exclusionary and non-discriminatory terms and conditions,  
11 which may include the provision of such services on a rotating  
12 basis, at the rates and charges set by the municipality pursuant to  
13 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit  
14 towing and storage contracts for services to be provided at rates  
15 and charges other than those established pursuant to the terms of  
16 this paragraph shall only be awarded to the lowest responsible  
17 bidder in accordance with the provision of the "Local Public  
18 Contracts Law" and without regard for the value of the contract  
19 therefor. Each of the aforementioned means of contracting shall  
20 be subject to any regulations adopted by the Commissioner of  
21 Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

22 (v) The purchase of steam or electricity from, or the rendering  
23 of services directly related to the purchase of such steam or  
24 electricity from a qualifying small power production facility or a  
25 qualifying cogeneration facility as defined pursuant to 16  
26 U.S.C. §796;

27 (w) The purchase of electricity or administrative or  
28 dispatching services directly related to the transmission of such  
29 purchased electricity by a contracting unit engaged in the  
30 generation of electricity;

31 (x) The printing of municipal ordinances or other services  
32 necessarily incurred in connection with the revision and  
33 codification of municipal ordinances; [or]

34 (y) An agreement for the purchase of an equitable interest in a  
35 water supply facility or for the provision of water supply services  
36 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2),  
37 or an agreement entered into pursuant to P.L.1989, c.109  
38 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into  
39 no later than six months after the effective date of [this act]  
40 P.L.1993, c.381; or

41 (z) A contract for the provision of water supply services  
42 entered into pursuant to P.L. c. (C. ) (now pending before the  
43 Legislature as this bill).

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

48 (3) The contracting agent has advertised for bids pursuant to  
49 section 4 of P.L.1971, c.198 (C.40A.11-4) on two occasions and  
50 (a) has received no bids on both occasions in response to its  
51 advertisement, or (b) the governing body has rejected such bids on  
52 two occasions because the contracting agent has determined that  
53 they are not reasonable as to price, on the basis of cost estimates  
54 prepared for or by the contracting agent prior to the advertising

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

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

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

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

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

45 (cf: P.L.1993, c.381, s.4)

46 <sup>1</sup>[12.] 13.<sup>1</sup> Section 15 of P.L.1971, c.198 (C.40A:11-15) is  
47 amended to read as follows:

48 15. All purchases, contracts or agreements for the performing  
49 of work or the furnishing of materials, supplies or services shall  
50 be made for a period not to exceed 12 consecutive months,  
51 except that contracts or agreements may be entered into for  
52 longer periods of time as follows:

53 (1) Supplying of:

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



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

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

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

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

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

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

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

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

43 (8) The supplying of any product or the rendering of any  
44 service by a telephone company which is subject to the  
45 jurisdiction of the Board of [Regulatory Commissioners] Public  
46 Utilities for a term not exceeding five years;

47 (9) Any single project for the construction, reconstruction or  
48 rehabilitation of any public building, structure or facility, or any  
49 public works project, including the retention of the services of  
50 any architect or engineer in connection therewith, for the length  
51 of time authorized and necessary for the completion of the actual  
52 construction;

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

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

5 (12) The performance of work or services or the furnishing of  
6 materials or supplies for the purpose of conserving energy in  
7 buildings owned by, or operations conducted by, the contracting  
8 unit, the entire price of which to be established as a percentage  
9 of the resultant savings in energy costs, for a term not to exceed  
10 10 years; provided, however, that such contracts shall be entered  
11 into only subject to and in accordance with rules and regulations  
12 promulgated by the Department of Environmental Protection  
13 establishing a methodology for computing energy cost savings;

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

17 (14) Leasing or servicing of electronic communications  
18 equipment for a period not to exceed five years; provided,  
19 however, such contract shall be entered into only subject to and  
20 in accordance with the rules and regulations promulgated by the  
21 Director of the Division of Local Government Services of the  
22 Department of Community Affairs;

23 (15) Leasing of motor vehicles, machinery and other equipment  
24 primarily used to fight fires, for a term not to exceed seven  
25 years, when the contract includes an option to purchase, subject  
26 to and in accordance with rules and regulations promulgated by  
27 the Director of the Division of Local Government Services of the  
28 Department of Community Affairs;

29 (16) The provision of water supply services or the designing,  
30 financing, construction, operation, or maintenance, or any  
31 combination thereof, of a water supply facility, or any component  
32 part or parts thereof, including a water filtration system, for a  
33 period not to exceed 40 years, when the contract for these  
34 services is approved by the Division of Local Government  
35 Services in the Department of Community Affairs, the Board of  
36 [Regulatory Commissioners] Public Utilities, and the Department  
37 of Environmental Protection pursuant to P.L.1985, c.37  
38 (C.58:26-1 et al.), except for those contracts otherwise exempted  
39 pursuant to [subsection] subsections (30) [or] <sup>1</sup>(31) <sup>2</sup>[(32) or (33)]  
40 (34) or (35)<sup>2</sup> of this section. For the purposes of this subsection,  
41 "water supply services" means any service provided by a water  
42 supply facility; "water filtration system" means any equipment,  
43 plants, structures, machinery, apparatus, or land, or any  
44 combination thereof, acquired, used, constructed, rehabilitated,  
45 or operated for the collection, impoundment, storage,  
46 improvement, filtration, or other treatment of drinking water for  
47 the purposes of purifying and enhancing water quality and  
48 insuring its potability prior to the distribution of the drinking  
49 water to the general public for human consumption, including  
50 plants and works, and other personal property and appurtenances  
51 necessary for their use or operation; and "water supply facility"  
52 means and refers to the real property and the plants, structures,  
53 interconnections between existing water supply facilities,  
54 machinery and equipment and other property, real, personal and

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

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

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

48 (19) The provision of wastewater treatment services or the  
49 designing, financing, construction, operation, or maintenance, or  
50 any combination thereof, of a wastewater treatment system, or  
51 any component part or parts thereof, for a period not to exceed  
52 40 years, when the contract for these services is approved by the  
53 Division of Local Government Services in the Department of  
54 Community Affairs and the Department of Environmental

1 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.). For the  
2 purposes of this subsection, "wastewater treatment services"  
3 means any services provided by a wastewater treatment system,  
4 and "wastewater treatment system" means equipment, plants,  
5 structures, machinery, apparatus, or land, or any combination  
6 thereof, acquired, used, constructed, or operated for the storage,  
7 collection, reduction, recycling, reclamation, disposal,  
8 separation, or other treatment of wastewater or sewage sludge,  
9 or for the final disposal of residues resulting from the treatment  
10 of wastewater, including, but not limited to, pumping and  
11 ventilating stations, facilities, plants and works, connections,  
12 outfall sewers, interceptors, trunk lines, and other personal  
13 property and appurtenances necessary for their operation;

14 (20) The supplying of materials or services for the purpose of  
15 lighting public streets, for a term not to exceed five years,  
16 provided that the rates, fares, tariffs or charges for the supplying  
17 of electricity for that purpose are approved by the Board of  
18 [Regulatory Commissioners] Public Utilities;

19 (21) In the case of a contracting unit which is a county or  
20 municipality, the provision of emergency medical services by a  
21 hospital to residents of a municipality or county as appropriate  
22 for a term not to exceed five years;

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

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

28 (24) The purchase of electricity or administrative or  
29 dispatching services related to the transmission of such  
30 electricity, from a public utility company subject to the  
31 jurisdiction of the Board of [Regulatory Commissioners] Public  
32 Utilities, a similar regulatory body of another state, or a federal  
33 regulatory agency, or from a qualifying small power producing  
34 facility or qualifying cogeneration facility, as defined by 16  
35 U.S.C. §796, by a contracting unit engaged in the generation of  
36 electricity for retail sale, as of the date of [this amendatory act]  
37 P.L.1991, c.407, for a term not to exceed 40 years;

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

44 (26) Claims administration services, for any term not to  
45 exceed three years;

46 (27) The provision of transportation services to elderly,  
47 disabled or indigent persons for any term of not more than three  
48 years. For the purposes of this subsection, "elderly persons"  
49 means persons who are 60 years of age or older. "Disabled  
50 persons" means persons of any age who, by reason of illness,  
51 injury, age, congenital malfunction, or other permanent or  
52 temporary incapacity or disability, are unable, without special  
53 facilities or special planning or design to utilize mass  
54 transportation facilities and services as effectively as persons

1 who are not so affected. "Indigent persons" means persons of any  
 2 age whose income does not exceed 100 percent of the poverty  
 3 level, adjusted for family size, established and adjusted under  
 4 section 673(2) of subtitle B, the "Community Services Block  
 5 Grant Act," Pub.L.97-35 (42 U.S.C.§9902 (2));

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

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

13 (30) The acquisition of an equitable interest in a water supply  
 14 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
 15 an agreement entered into pursuant to the "County and Municipal  
 16 Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is  
 17 entered into no more than six months after the effective date of  
 18 this amendatory act, P.L.1994, c.71 (C.40A:11-15), for any term  
 19 of not more than forty years; [and]

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

26 <sup>2</sup>(32) Laundry service and the rental, supply and cleaning of  
 27 uniforms for any term of not more than three years;

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

33 [(32)] (34)<sup>2</sup> A contract between a public entity and a private  
 34 firm pursuant to P.L. , c. (C. ) (now pending before the  
 35 Legislature as this bill) for the provision of water supply services  
 36 may be entered into for any term which, when all optional  
 37 extension periods are added, may not exceed 40 years; and

38 <sup>2</sup>[(33)] (35)<sup>2</sup> An agreement for the purchase of a supply of  
 39 water from a public utility company subject to the jurisdiction of  
 40 the Board of Public Utilities in accordance with tariffs and  
 41 schedules of charges made, charged or exacted or contracts filed  
 42 with the Board of Public Utilities, for any term of not more than  
 43 40 years.

44 All multiyear leases and contracts entered into pursuant to this  
 45 section, except contracts for the leasing or servicing of  
 46 equipment supplied by a telephone company which is subject to  
 47 the jurisdiction of the Board of [Regulatory Commissioners]  
 48 Public Utilities, contracts involving the supplying of electricity  
 49 for the purpose of lighting public streets and contracts for  
 50 thermal energy authorized pursuant to subsection (1) above,  
 51 construction contracts authorized pursuant to subsection (9)  
 52 above, contracts and agreements for the provision of work or the  
 53 supplying of equipment to promote energy conservation  
 54 authorized pursuant to subsection (12) above, contracts for water

1 supply services or for a water supply facility, or any component  
2 part or parts thereof authorized pursuant to [subsection]  
3 subsections (16) , <sup>2</sup>[32 or 33] (34) or (35)<sup>2</sup> above, contracts for  
4 resource recovery services or a resource recovery facility  
5 authorized pursuant to subsection (17) above. contracts for the  
6 sale of energy produced by a resource recovery facility  
7 authorized pursuant to subsection (18) above. contracts for  
8 wastewater treatment services or for a wastewater treatment  
9 system or any component part or parts thereof authorized  
10 pursuant to subsection (19) above, and contracts for the purchase  
11 of electricity or administrative or dispatching services related to  
12 the transmission of such electricity authorized pursuant to  
13 subsection (24) above, shall contain a clause making them subject  
14 to the availability and appropriation annually of sufficient funds  
15 as may be required to meet the extended obligation, or contain an  
16 annual cancellation clause.

17 The Division of Local Government Services shall adopt and  
18 promulgate rules and regulations concerning the methods of  
19 accounting for all contracts that do not coincide with the fiscal  
20 year.

21 (cf: P.L.1995, c.41, s.2)

22 <sup>2</sup>14. (New section) Notwithstanding any provision of P.L.....,  
23 c....(C.....) (now pending before the Legislature as this bill) or in  
24 R.S.40:62-110 et seq., to the contrary, the Passaic Valley Water  
25 Commission shall not enter into a contract with a private firm  
26 for the provision of water supply services pursuant to P.L.....,  
27 c.... (C.....) (now pending before the Legislature as this bill)  
28 unless the governing bodies of each of the member municipalities  
29 comprising the Passaic Valley Water Commission shall have first  
30 approved the contract.<sup>2</sup>

31 <sup>2</sup>15. (New section) Any procurement commenced prior to the  
32 effective date of P.L....., c....(C.....) (now pending before the  
33 Legislature as this bill) which was advertised as being undertaken  
34 pursuant to that act in anticipation of its enactment and which is  
35 in substantial compliance with the provisions of P.L....., c....  
36 (C.....) (now pending before the Legislature as this bill), is  
37 hereby deemed valid and undertaken under valid legal authority.<sup>2</sup>

38 <sup>1</sup>[13.] <sup>2</sup>[14.1] <sup>16.2</sup> This act shall take effect immediately.

39

40

41

42

43 New Jersey Water Supply Public-Private Contracting Act.

SENATE, No. 1292

STATE OF NEW JERSEY

INTRODUCED JUNE 30, 1994

By Senators CONNORS and KENNY

1 AN ACT concerning partnership agreements between local  
2 government units and private firms for either the construction,  
3 improvement, enlargement, extension or reconstruction of a  
4 water supply facility, or the provision of water supply services,  
5 or both, supplementing Title 58 of the Revised Statutes and  
6 amending R.S.48:2-13, and P.L.1971, c.198.

7  
8 BE IT ENACTED by the Senate and General Assembly of the  
9 State of New Jersey:

10 1. (New section) Sections 1 through 8 of this act shall be  
11 known and may be cited as the "New Jersey Water Supply  
12 Public-Private Act."

13 2. (New section) The Legislature finds that it is in the public  
14 interest and the policy of the State to foster and promote by all  
15 reasonable means the provision and distribution of an adequate  
16 supply of water for the public and private uses of counties and  
17 municipalities and their inhabitants; that while the "New Jersey  
18 Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et  
19 seq.), enabled local government units to enter into long term  
20 contracts with private sector firms, the time consuming  
21 procedures and the regulatory framework required therein has  
22 dissuaded private firms and local government units from entering  
23 into such contracts; that there is a need for an alternative contract  
24 process which enables local government units to enter with  
25 private firms into long term partnership agreements which  
26 protect the rights and interests of residents of the local  
27 government unit but allow the private firm to utilize its  
28 expertise, experience and resources to enable the local water  
29 system to comply with existing and more stringent future  
30 requirements of the federal Clean Water Act, 33 U.S.C. §1251 et  
31 seq., the "Water Pollution Control Act," P.L.1977, c.74  
32 (C.58:10A-1 et seq.) and the "Safe Drinking Water Act,"  
33 P.L.1977, c.224 (C.58:12A-1 et seq.); and that such contractual  
34 agreements can adequately protect the interests of residents and  
35 water users and assure conformance with environmentally sound  
36 water quality standards.

37 The Legislature therefore determines that it is in the public  
38 interest to establish a comprehensive procedure designed to  
39 authorize local government units to enter into partnership  
40 agreements with private firms for either the construction of  
41 water supply facilities or the provision of water supply services,  
42 or both.

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

Matter underlined thus is new matter.

- 1       3. (New section) As used in this act.
- 2       "Board" means the New Jersey Board of Regulatory  
3 Commissioners;
- 4       "Department" means the New Jersey Department of  
5 Environmental Protection and Energy;
- 6       "Division" means the Division of Local Government Services in  
7 the Department of Community Affairs;
- 8       "Governing body" means, in the case of the county, the board  
9 of chosen freeholders, or in the case of a county organized  
10 pursuant to the provisions of the "Optional County Charter Law,"  
11 P.L.1972, c.154 (C.40:41A-1 et seq.), the board of chosen  
12 freeholders and the county executive, the county supervisor or  
13 the county manager, as appropriate, and in the case of a  
14 municipality, the commission, council, board or body, by  
15 whatever name it may be known, having charge of the finances of  
16 the municipality;
- 17       "Private firm" means an existing public utility, its parent  
18 company, or subsidiaries thereof, financially, technically, and  
19 administratively capable of financing, planning, designing,  
20 constructing, operating, or maintaining, or any combination  
21 thereof, water supply facilities, or of providing water supply  
22 services to a public entity under the terms of a partnership  
23 agreement awarded pursuant to the provision of this act;
- 24       "Public entity" means a county, a municipality a municipal or  
25 county authority or any commission or other political subdivision  
26 of the State, or any two or more counties, municipalities,  
27 municipal or county utility authorities or any commission or other  
28 potential subdivisions of the State, acting jointly, which are  
29 authorized pursuant to law to operate or maintain a public water  
30 supply system or to construct, rehabilitate, operate, or maintain  
31 water supply facilities or otherwise provide water for human  
32 consumption;
- 33       "Water supply facility" means and refers to the real property  
34 and the plants, structures, interconnections between existing  
35 water supply facilities, machinery and equipment and other  
36 property, real, personal and mixed, acquired, constructed or  
37 operated, or to be acquired, constructed or operated, in whole or  
38 in part by or on behalf of a public entity by a private firm, for  
39 the purpose of augmenting the natural water resources of the  
40 State and making available an increased supply of water for all  
41 uses, or of conserving existing water resources, and any and all  
42 appurtenances necessary, useful or convenient for the collecting,  
43 impounding, storing, improving, treating, filtering, conserving or  
44 transmitting of water, and for the preservation and protection of  
45 these resources and facilities and providing for the conservation  
46 and development of future water supply resources,
- 47       "Water supply services" means the financing, designing,  
48 construction, operation, maintenance, administration, or any  
49 combination thereof, of a water supply facility pursuant to the  
50 provision of this act.
- 51       4. (New section) Notwithstanding the provisions of any other  
52 law, rule or regulation to the contrary any public entity may  
53 enter into a partnership agreement with a private firm for the  
54 provision of water supply services in accordance with the



1 provisions of this act.

2 5. (New section) A public entity which intends to enter into a  
3 partnership agreement with a private firm for the provision of  
4 water supply services shall negotiate a proposed partnership  
5 agreement with the private firm it has selected. Upon  
6 negotiating a proposed partnership agreement, the public entity  
7 shall make the proposed partnership agreement available to the  
8 public at its main offices.

9 6. (New section) a. A public entity which intends to enter  
10 into a partnership agreement with a private firm for the provision  
11 of water supply services pursuant to the provisions of this act  
12 shall conduct a public hearing concerning the provisions contained  
13 in the proposed partnership agreement negotiated pursuant to  
14 section 5 of this act. The public entity shall provide at least 14  
15 days notice of the public hearing by publication in at least one  
16 newspaper of general circulation in the jurisdictional or service  
17 area of the public entity to be served under the terms of the  
18 proposed partnership agreement. The publication shall include  
19 notice of the date, time and place of the public hearing, notice of  
20 the place at which copies of the proposed partnership agreement  
21 are available for public inspection and the times at which such  
22 inspection is permitted.

23 At the public hearing, the public entity shall explain the terms  
24 and conditions of the proposed partnership agreement and shall  
25 answer questions raised by prospective consumers and other  
26 interested parties.

27 The public entity shall provide that a verbatim record be kept  
28 of the public hearing. The record of the public hearing shall be  
29 kept open for a period of seven days following the conclusion of  
30 the hearing, during which time interested parties may submit  
31 written statements to be included in the hearing record. The  
32 public entity shall provide that a hearing report be printed, which  
33 shall include the verbatim record of the public hearing, written  
34 statements submitted by interested parties, and a statement  
35 prepared by the public entity summarizing the major issues raised  
36 at the public hearing and the public entity's specific response to  
37 these issues. The public entity shall make copies of the  
38 transcript of the hearing report available to interested parties  
39 upon request at a cost not to exceed the actual cost of printing.

40 b. Within 30 days of the close of a public hearing on a proposed  
41 agreement held pursuant to this section, the public entity shall  
42 submit a copy of the hearing report to the department, the board  
43 and the division.

44 c. Prior to submission of the agreement for State agency  
45 review, the governing body of a public entity authorized to enter  
46 into a partnership agreement pursuant to section 4 of this act  
47 shall adopt an ordinance if it is a municipality, or an ordinance or  
48 a resolution, as appropriate, if it is a county, or parallel  
49 ordinances or resolutions, as the case may be, by each of the  
50 participating public entities. The ordinance or resolution may be  
51 introduced at the first meeting of the governing body of the  
52 public entity held after the public hearing, and shall provide that  
53 the agreement is subject to appropriate State agency approvals  
54 pursuant to section 7 hereunder.

1       7. (New section) Upon at least 10 days' prior written notice  
2 the hearing report shall be submitted by the public entity to the  
3 department, board and division. Within 30 days of receipt of the  
4 hearing report submitted by the public entity, the board and  
5 division shall approve or conditionally approve the proposed  
6 agreement and the department shall provide any comments it  
7 deems appropriate. If either the board or division conditionally  
8 approves the agreement, that agency shall state in writing the  
9 revisions to the proposed agreement which are necessary in order  
10 for it to be approved. If the board or division determines that the  
11 required revisions are substantial, the public entity shall hold a  
12 public hearing on the revisions and adhere to the provisions of  
13 sections 5 and 6 herein in so doing. Substantial revisions are  
14 changes which result in an increase in the charges, rates or fees  
15 of the private firm or which materially revise other terms and  
16 conditions of the contracting arrangement. It is the intent of the  
17 legislature that most required revisions would not be deemed to  
18 be substantial. The public entity may submit to the department,  
19 board and divisions contract revisions which are non-substantial,  
20 which revisions shall be reviewed and approved if consistent with  
21 the conditions set forth in a conditional approval, or disapproved  
22 with a written explanation as to why the contract revisions are  
23 not consistent, within 15 days of receipt by the agencies.

24       In their review of an agreement, the board and division shall  
25 apply the following criteria in determining whether to approve  
26 the agreement:

27       a. The board shall ensure that the financial structure and basis  
28 of the agreement between the private firm and the public entity  
29 for the provision of water supply services are not unreasonable.  
30 The test of reasonableness and financial integrity of the  
31 agreement to be applied by the board shall be whether it is  
32 consistent with charges for similar services in the New York/New  
33 Jersey metropolitan area. The board shall ensure that franchise  
34 customers of a public utility are protected from the risks of the  
35 contract and that they are not subsidizing the contractual  
36 arrangement. Upon approval of an agreement as proposed or as  
37 amended in response to a conditional approval, the jurisdiction of  
38 the board over the agreement shall terminate until or unless the  
39 agreement is amended so as to change the formula or other basis  
40 of determining charges contained therein.

41       b. The division shall ensure that the terms of the proposed  
42 agreement would not materially impair the ability of the public  
43 entity to punctually pay principal and interest due on its  
44 outstanding indebtedness and to supply the residential public  
45 improvements and services, except that the division shall be  
46 bound by any applicable findings or determinations of the Local  
47 Finance Board made pursuant to the provisions of subsection d. of  
48 N.J.S.40A:2-7.

49       c. If an approved agreement is amended the public entity shall  
50 conduct a hearing and secure State agency approvals of the  
51 amended agreement on the same basis as with the initial  
52 approved agreement.

53       8. (New section) In order to pay its part of the cost of the  
54 water supply facility, a public entity may issue bonds in

1 accordance with the "Local Board Law," N.J.S.40A:2-1 et seq.

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

3 48:2-13. The board shall have general supervision and  
4 regulation of and jurisdiction and control over all public utilities  
5 as hereinafter in this section defined and their property, property  
6 rights, equipment, facilities and franchises so far as may be  
7 necessary for the purpose of carrying out the provisions of this  
8 Title.

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

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

44 Except as provided in section 7 of P.L. , c. , (C. )  
45 (pending before the Legislature as this bill), the board shall have  
46 no regulatory authority over the parties to a partnership  
47 agreement negotiated between a public entity and a private firm  
48 in connection with the performance of their respective  
49 obligations thereunder. Nothing contained in this Title shall  
50 extend the powers of the board to include any supervision and  
51 regulation of, or jurisdiction and control over, any public-private  
52 partnership for either the construction, improvement,  
53 enlargement, extension or reconstruction of a water supply  
54 facility, or for the provision reconstruction of a water supply

1 facility, or both, including the provision of water supply services  
2 entered into pursuant to the provisions of P.L. , c. (C. )  
3 (pending before the Legislature as this bill).

4 (cf: P.L.1981, c.413, s.10)

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

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

9 (1) "Contracting unit" means:

10 (a) Any county; or

11 (b) Any municipality; or

12 (c) Any board, commission, committee, authority or agency,  
13 which is not a State board, commission, committee, authority or  
14 agency, and which has administrative jurisdiction over any  
15 district other than a school district, project, or facility, included  
16 or operating in whole or in part, within the territorial boundaries  
17 of any county or municipality which exercises functions which are  
18 appropriate for the exercise by one or more units of local  
19 government, and which has statutory power to make purchases  
20 and enter into contracts or agreements for the performance of  
21 any work or the furnishing or hiring of any materials or supplies  
22 usually required, the cost or contract price of which is to be paid  
23 with or out of public funds. A public entity which has entered  
24 into a partnership agreement with a private firm for either the  
25 construction, improvement, enlargement, extension or  
26 reconstruction of a water supply facility, or the provision of  
27 water supply services pursuant to the provisions of P.L. , c.  
28 (C. ) (pending before the Legislature as this bill), or both, shall  
29 not be considered a contracting unit as otherwise defined in this  
30 section.

31 (2) "Governing body" means:

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

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

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

40 (3) "Contracting agent" means the governing body of a  
41 contracting unit or any board, commission, committee, officer,  
42 department, branch or agency which has the power to prepare the  
43 advertisements, to advertise for and receive bids and, as  
44 permitted by this act, to make awards for the contracting unit in  
45 connection with purchases, contracts or agreements.

46 (4) "Purchase" is a transaction, for a valuable consideration,  
47 creating or acquiring an interest in goods, services and property,  
48 except real property or any interest therein.

49 (5) "Materials" includes goods and property subject to chapter  
50 2 of Title 12A of the New Jersey Statutes, apparatus, or any  
51 other tangible thing, except real property or any interest therein.

52 (6) "Professional services" means services rendered or  
53 performed by a person authorized by law to practice a recognized  
54 profession, whose practice is regulated by law, and the

1 performance of which services requires knowledge of an advanced  
2 type in a field of learning acquired by a prolonged formal course  
3 of specialized instruction and study as distinguished from general  
4 academic instruction or apprenticeship and training. Professional  
5 services may also mean services rendered in the performance of  
6 work that is original and creative in character in a recognized  
7 field of artistic endeavor.

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

12 (8) "Project" means any work, undertaking, program, activity,  
13 development, redevelopment, construction or reconstruction of  
14 any area or areas.

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

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

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

32 (13) "Marketing" means the marketing of designated recyclable  
33 materials source separated in a municipality which entails a  
34 marketing cost less than the cost of transporting the recyclable  
35 materials to solid waste facilities and disposing of the materials  
36 as municipal solid waste at the facility utilized by the  
37 municipality.

38 (14) "Municipal solid waste" means all residential, commercial  
39 and institutional solid waste generated within the boundaries of a  
40 municipality.

41 (15) "Distribution" (when used in relation to electricity) means  
42 the process of conveying electricity from a contracting unit who  
43 is a generator of electricity or a wholesale purchaser of  
44 electricity to retail customers or other end users of electricity.

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

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

52 (cf: P.L.1992, c.98, s.1)

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

1 5. Exceptions. Any purchase, contract or agreement of the  
2 character described in section 4 of P.L.1971, c.198 (C.40A:11-4)  
3 may be made, negotiated or awarded by the governing body  
4 without public advertising for bids and bidding therefor if:

5 (1) The subject matter thereof consists of:

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

26 (b) The doing of any work by employees of the contracting unit,

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

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

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

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

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

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

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

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

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

52 (l) Election expenses;

53 (m) Insurance, including the purchase of insurance coverage  
54 and consultant services, which exception shall be in accordance

1 with the requirements for extraordinary unspecifiable services;

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

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

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

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

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

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

29 (t) Emergency medical services provided by a hospital to the  
30 residents of a municipality or county, provided that: (a) such  
31 exception be allowed only after the governing body determines  
32 that the emergency services are available only from one provider;  
33 and (b) if the contract is awarded without advertising for bids or  
34 bidding the governing body shall in each instance state supporting  
35 reasons for its action in a resolution awarding the contract and  
36 cause to be printed once in a newspaper authorized by law to  
37 publish its legal advertisements a brief notice stating the nature,  
38 duration, service, and amount of the contract; and (c) the  
39 contract shall be kept on file for public inspection in the office of  
40 the clerk of the municipality;

41 (u) Contracting unit towing and storage contracts, provided  
42 that all such contracts shall be pursuant to reasonable  
43 non-exclusionary and non-discriminatory terms and conditions,  
44 which may include the provision of such services on a rotating  
45 basis, at the rates and charges set by the municipality pursuant to  
46 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit  
47 towing and storage contracts for services to be provided at rates  
48 and charges other than those established pursuant to the terms of  
49 this paragraph shall only be awarded to the lowest responsible  
50 bidder in accordance with the provision of the "Local Public  
51 Contracts Law" and without regard for the value of the contract  
52 therefor. Each of the aforementioned means of contracting shall  
53 be subject to any regulations adopted by the Commissioner of  
54 Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

1 (v) The purchase of steam or electricity from, or the rendering  
2 of services directly related to the purchase of such steam or  
3 electricity from a qualifying small power production facility or a  
4 qualifying cogeneration facility as defined pursuant to 16  
5 U.S.C. §796;

6 (w) The purchase of electricity or administrative or  
7 dispatching services directly related to the transmission of such  
8 purchased electricity by a contracting unit engaged in the  
9 generation of electricity;

10 (x) The printing of municipal ordinances or other services  
11 necessarily incurred in connection with the revision and  
12 codification of municipal ordinances; [or]

13 (y) An agreement for the purchase of an equitable interest in a  
14 water supply facility or for the provision of water supply services  
15 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2),  
16 or an agreement entered into pursuant to P.L.1989, c.109  
17 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into  
18 no later than six months after the effective date of this act; or

19 (z) A partnership agreement for either the construction,  
20 improvement, enlargement, extension or reconstruction of a  
21 water supply facility, or the provision of water supply services  
22 entered into pursuant to the provisions of P.L. c. (C. )  
23 (pending before the Legislature as this bill), or both.

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

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

43 (i) A reasonable effort is first made by the contracting agent  
44 to determine that the same or equivalent materials or supplies, at  
45 a cost which is lower than the negotiated price, are not available  
46 from an agency or authority of the United States, the State of  
47 New Jersey or of the county in which the contracting unit is  
48 located, or any municipality in close proximity to the contracting  
49 unit;

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

54 (iii) Any minor amendment or modification of any of the



1 terms, conditions, restrictions and specifications, which were the  
2 subject of competitive bidding pursuant to section 4 of P.L.1971,  
3 c.198 (C.40A:11-4), shall be stated in the resolution awarding  
4 such contract or agreement; provided further, however, that if on  
5 the second occasion the bids received are rejected as  
6 unreasonable as to price, the contracting agent shall notify each  
7 responsible bidder submitting bids on the second occasion of its  
8 intention to negotiate, and afford each bidder a reasonable  
9 opportunity to negotiate, but the governing body shall not award  
10 such contract or agreement unless the negotiated price is lower  
11 than the lowest rejected bid price submitted on the second  
12 occasion by a responsible bidder, is the lowest negotiated price  
13 offered by any responsible supplier, and is a reasonable price for  
14 such work, materials, supplies or services.

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

24 (cf: P.L.1993, c.381, s.4)

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

27 15. All purchases, contracts or agreements for the performing  
28 of work or the furnishing of materials, supplies or services shall  
29 be made for a period not to exceed 12 consecutive months,  
30 except that contracts or agreements may be entered into for  
31 longer periods of time as follows:

32 (1) Supplying of:

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

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

38 (c) Thermal energy produced by a cogeneration facility, for  
39 use for heating or air conditioning or both, for any term not  
40 exceeding 40 years, when the contract is approved by the Board  
41 of Regulatory Commissioners. For the purposes of this paragraph,  
42 "cogeneration" means the simultaneous production in one facility  
43 of electric power and other forms of useful energy such as  
44 heating or process steam;

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

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

50 (4) The collection and recycling of methane gas from a  
51 sanitary landfill facility, for any term not exceeding 25 years,  
52 when such contract is in conformance with a solid waste  
53 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1  
54 et seq.), and with the approval of the Division of Local

1 Government Services in the Department of Community Affairs  
2 and the Department of Environmental Protection. The  
3 contracting unit shall award the contract to the highest  
4 responsible bidder, notwithstanding that the contract price may  
5 be in excess of the amount of any necessarily related  
6 administrative expenses; except that if the contract requires the  
7 contracting unit to expend funds only, the contracting unit shall  
8 award the contract to the lowest responsible bidder. The  
9 approval by the Division of Local Government Services of public  
10 bidding requirements shall not be required for those contracts  
11 exempted therefrom pursuant to section 5 of P.L.1971, c.198  
12 (C.40A:11-5);

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

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

16 (7) Leasing or servicing of automobiles, motor vehicles,  
17 machinery and equipment of every nature and kind, for a period  
18 not to exceed three years; provided, however, such contracts  
19 shall be entered into only subject to and in accordance with the  
20 rules and regulations promulgated by the Director of the Division  
21 of Local Government Services of the Department of Community  
22 Affairs;

23 (8) The supplying of any product or the rendering of any  
24 service by a telephone company which is subject to the  
25 jurisdiction of the Board of Regulatory Commissioners for a term  
26 not exceeding five years;

27 (9) Any single project for the construction, reconstruction or  
28 rehabilitation of any public building, structure or facility, or any  
29 public works project, including the retention of the services of  
30 any architect or engineer in connection therewith, for the length  
31 of time authorized and necessary for the completion of the actual  
32 construction;

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

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

39 (12) The performance of work or services or the furnishing of  
40 materials or supplies for the purpose of conserving energy in  
41 buildings owned by, or operations conducted by, the contracting  
42 unit, the entire price of which to be established as a percentage  
43 of the resultant savings in energy costs, for a term not to exceed  
44 10 years; provided, however, that such contracts shall be entered  
45 into only subject to and in accordance with rules and regulations  
46 promulgated by the Department of Environmental Protection  
47 establishing a methodology for computing energy cost savings;

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

51 (14) Leasing or servicing of electronic communications  
52 equipment for a period not to exceed five years; provided,  
53 however, such contract shall be entered into only subject to and  
54 in accordance with the rules and regulations promulgated by the

1 Director of the Division of Local Government Services of the  
2 Department of Community Affairs;

3 (15) Leasing of motor vehicles, machinery and other equipment  
4 primarily used to fight fires, for a term not to exceed seven  
5 years, when the contract includes an option to purchase, subject  
6 to and in accordance with rules and regulations promulgated by  
7 the Director of the Division of Local Government Services of the  
8 Department of Community Affairs;

9 (16) The provision of water supply services or the designing,  
10 financing, construction, operation, or maintenance, or any  
11 combination thereof, of a water supply facility, or any component  
12 part or parts thereof, including a water filtration system, for a  
13 period not to exceed 40 years, when the contract for these  
14 services is approved by the Division of Local Government  
15 Services in the Department of Community Affairs, the Board of  
16 Regulatory Commissioners, and the Department of Environmental  
17 Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except  
18 for those contracts otherwise exempted pursuant to subsection  
19 (30) or (31) of this section. For the purposes of this subsection,  
20 "water supply services" means any service provided by a water  
21 supply facility; "water filtration system" means any equipment,  
22 plants, structures, machinery, apparatus, or land, or any  
23 combination thereof, acquired, used, constructed, rehabilitated,  
24 or operated for the collection, impoundment, storage,  
25 improvement, filtration, or other treatment of drinking water for  
26 the purposes of purifying and enhancing water quality and  
27 insuring its potability prior to the distribution of the drinking  
28 water to the general public for human consumption, including  
29 plants and works, and other personal property and appurtenances  
30 necessary for their use or operation; and "water supply facility"  
31 means and refers to the real property and the plants, structures,  
32 interconnections between existing water supply facilities,  
33 machinery and equipment and other property, real, personal and  
34 mixed, acquired, constructed or operated, or to be acquired,  
35 constructed or operated, in whole or in part by or on behalf of a  
36 political subdivision of the State or any agency thereof, for the  
37 purpose of augmenting the natural water resources of the State  
38 and making available an increased supply of water for all uses, or  
39 of conserving existing water resources, and any and all  
40 appurtenances necessary, useful or convenient for the collecting,  
41 impounding, storing, improving, treating, filtering, conserving or  
42 transmitting of water and for the preservation and protection of  
43 these resources and facilities and providing for the conservation  
44 and development of future water supply resources;

45 (17) The provision of solid waste disposal services by a  
46 resource recovery facility, the furnishing of products of a  
47 resource recovery facility, the disposal of the solid waste  
48 delivered for disposal which cannot be processed by a resource  
49 recovery facility or the waste products resulting from the  
50 operation of a resource recovery facility, including hazardous  
51 waste and recovered metals and other materials for reuse, or the  
52 design, financing, construction, operation or maintenance of a  
53 resource recovery facility for a period not to exceed 40 years  
54 when the contract is approved by the Division of Local

1 Government Services in the Department of Community Affairs,  
2 the Board of Regulatory Commissioners, and the Department of  
3 Environmental Protection; and when the facility is in  
4 conformance with a solid waste management plan approved  
5 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes  
6 of this subsection, "resource recovery facility" means a solid  
7 waste facility constructed and operated for the incineration of  
8 solid waste for energy production and the recovery of metals and  
9 other materials for reuse; or a mechanized composting facility,  
10 or any other solid waste facility constructed or operated for the  
11 collection, separation, recycling, and recovery of metals, glass,  
12 paper, and other materials for reuse or for energy production;

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

26 (19) The provision of wastewater treatment services or the  
27 designing, financing, construction, operation, or maintenance, or  
28 any combination thereof, of a wastewater treatment system, or  
29 any component part or parts thereof, for a period not to exceed  
30 40 years, when the contract for these services is approved by the  
31 Division of Local Government Services in the Department of  
32 Community Affairs and the Department of Environmental  
33 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.). For the  
34 purposes of this subsection, "wastewater treatment services"  
35 means any services provided by a wastewater treatment system,  
36 and "wastewater treatment system" means equipment, plants,  
37 structures, machinery, apparatus, or land, or any combination  
38 thereof, acquired, used, constructed, or operated for the storage,  
39 collection, reduction, recycling, reclamation, disposal,  
40 separation, or other treatment of wastewater or sewage sludge,  
41 or for the final disposal of residues resulting from the treatment  
42 of wastewater, including, but not limited to, pumping and  
43 ventilating stations, facilities, plants and works, connections,  
44 outfall sewers, interceptors, trunk lines, and other personal  
45 property and appurtenances necessary for their operation;

46 (20) The supplying of materials or services for the purpose of  
47 lighting public streets, for a term not to exceed five years,  
48 provided that the rates, fares, tariffs or charges for the supplying  
49 of electricity for that purpose are approved by the Board of  
50 Regulatory Commissioners;

51 (21) In the case of a contracting unit which is a county or  
52 municipality, the provision of emergency medical services by a  
53 hospital to residents of a municipality or county as appropriate  
54 for a term not to exceed five years;

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

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

6 (24) The purchase of electricity or administrative or  
7 dispatching services related to the transmission of such  
8 electricity, from a public utility company subject to the  
9 jurisdiction of the Board of Regulatory Commissioners, a similar  
10 regulatory body of another state, or a federal regulatory agency,  
11 or from a qualifying small power producing facility or qualifying  
12 cogeneration facility, as defined by 16 U.S.C. §796, by a  
13 contracting unit engaged in the generation of electricity for  
14 retail sale, as of the date of this amendatory act, for a term not  
15 to exceed 40 years;

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

22 (26) Claims administration services, for any term not to  
23 exceed three years;

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

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

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

45 (30) The acquisition of an equitable interest in a water supply  
46 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2). for  
47 any term of not more than forty years; [and]

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

54 (32) A partnership agreement between a public entity and a

1 private firm pursuant to P.L. , c. (C. ) (pending before the  
2 Legislature as this bill) for either the construction, improvement,  
3 enlargement, extension or reconstruction of a water supply  
4 facility, or the provision of water supply services, or both, may  
5 be entered into for any term which, when all optional extension  
6 periods are added, may not exceed 40 years.

7 All multiyear leases and contracts entered into pursuant to this  
8 section, except contracts for the leasing or servicing of  
9 equipment supplied by a telephone company which is subject to  
10 the jurisdiction of the Board of Regulatory Commissioners,  
11 contracts involving the supplying of electricity for the purpose of  
12 lighting public streets and contracts for thermal energy  
13 authorized pursuant to subsection (1) above, construction  
14 contracts authorized pursuant to subsection (9) above, contracts  
15 and agreements for the provision of work or the supplying of  
16 equipment to promote energy conservation authorized pursuant to  
17 subsection (12) above, contracts for water supply services or for a  
18 water supply facility, or any component part or parts thereof  
19 authorized pursuant to subsection (16) or (32) above, contracts for  
20 resource recovery services or a resource recovery facility  
21 authorized pursuant to subsection (17) above, contracts for the  
22 sale of energy produced by a resource recovery facility  
23 authorized pursuant to subsection (18) above, contracts for  
24 wastewater treatment services or for a wastewater treatment  
25 system or any component part or parts thereof authorized  
26 pursuant to subsection (19) above, and contracts for the purchase  
27 of electricity or administrative or dispatching services related to  
28 the transmission of such electricity authorized pursuant to  
29 subsection (24) above, shall contain a clause making them subject  
30 to the availability and appropriation annually of sufficient funds  
31 as may be required to meet the extended obligation, or contain an  
32 annual cancellation clause.

33 The Division of Local Government Services shall adopt and  
34 promulgate rules and regulations concerning the methods of  
35 accounting for all contracts that do not coincide with the fiscal  
36 year

37 (cf: P.L.1993, c.381, s.5)

38 13. This act shall take effect immediately.

39  
40  
41 *SPONSORS' STATEMENT*

42  
43 The exacting requirements of the federal Clean Water Act, 33  
44 U.S.C. §1251 et seq., the "Water Pollution Control Act."  
45 P.L.1977, c.74 (C.58:10A-1 et seq.) and the "Safe Drinking Water  
46 Act," P.L.1977, c.224 (C.58:12A-1 et seq.), have made it  
47 increasingly difficult for municipal water systems to operate in  
48 accordance with law in a cost effective manner. These acts  
49 require constant and continuing improvement of water quality in  
50 accordance with increasingly stringent standards over time. As  
51 an alternative to continued municipal operation or sale of such  
52 systems, this bill would authorize counties and municipalities to  
53 enter into partnership agreements with certain private firms with  
54 demonstrated expertise and resources for the upgrade, extension

1 or construction of a water supply facility and the provision of  
2 water supply services.

3 According to the procedures set forth in the bill, once a public  
4 entity has negotiated a proposed partnership agreement with the  
5 private firm it has selected, it must hold a public hearing to  
6 explain the terms of the proposed partnership agreement and to  
7 answer questions raised by members of the public. A verbatim  
8 transcript of the public hearing will be made.

9 The New Jersey Department of Environmental Protection and  
10 Energy, Board of Regulatory Commissioners and Division of Local  
11 Government Services in the Department of Community Affairs  
12 must review a proposed partnership agreement, and in so doing  
13 will be provided the full record of the public hearing. The Board  
14 of Regulatory Commissioners and Division of Local Government  
15 Services, under prescribed criteria, must approve of the  
16 agreement before it is executed and binding. All applicable  
17 standards as to water supply and water quality remain in place  
18 under the proposed legislation and are enforceable by the  
19 Department of Environmental Protection and Energy.

20 In order to pay its part of the cost of a water supply facility  
21 being constructed or upgraded under the terms of a partnership  
22 agreement, a public entity may issue bonds in accordance with  
23 the "Local Bond Law," N.J.S.40A:2-1 et seq.

24 The bill provides that the partnership agreement is exempt  
25 from the provisions of the "Local Public Contracts Law,"  
26 P.L.1971, c.198 (C.40A:11-1 et seq.).

27 This legislation provides a useful alternative allowing  
28 municipalities or counties to avail themselves of the expertise of  
29 the private sector in water supply and treatment while containing  
30 safeguards sufficient to protect the public interest. The  
31 procedures contained in this legislation, while protecting the  
32 public interest, are less burdensome and cumbersome than those  
33 in the existing "New Jersey Water Supply Privatization Act,"  
34 P.L.1985, c.37 (C.58:26-1 et seq.), which act has yet to be  
35 utilized.

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38

39

40 "New Jersey Water Supply Public-Private Act."

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 1292**

**STATE OF NEW JERSEY**

DATED: MARCH 9, 1995

The Assembly Local Government Committee reports favorably Senate Bill No. 1292 (SCS/1R).

Senate Bill No. 1292 (SCS/1R) authorizes various public entities to enter into contracts with private firms for the provision of water supply services. A private firm may be any publicly or privately held company qualified to do business in the State and capable of financing, planning, designing, constructing, improving, operating or maintaining a water supply facility. The contract will be a long-term agreement wherein a private firm agrees to provide water supply services for a public entity and wherein the private firm agrees to provide, during the term of the contract, capital expenditures on behalf of the public entity's water supply facilities, which expenditures are set forth in the contract. "Water supply services" are defined as the financing, designing, construction, improvement, operation, maintenance or administration of a water supply facility.

The bill details the procedures the public entity must follow for the public notice of its intent to enter into a contract with a private firm; the review of proposals received from private firms; the negotiation of the contract and its terms; and the public hearing the public entity must hold to explain the terms of the proposed contract and answer questions raised by members of the public.

The Board of Public Utilities, the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection must review the proposed contract. The Board of Public Utilities and the Local Finance Board of the Division of Local Government Services, under prescribed criteria, must approve the agreement before it is executed. All applicable standards as to water supply and water quality will remain in place and are enforceable by the Department of Environmental Protection.

In order to pay its part of the cost of a water supply facility being constructed or upgraded under the terms of a contract, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. and the expenditure of such bond funds will have to be in compliance with applicable public contracting statutes.

Senate Bill No. 1292 (SCS/1R) makes clear that it shall not be construed to authorize a public entity that enters into a contract pursuant to the bill to provide for the bulk sale or transfer of water to a private firm if the water being transferred or sold has been supplied to the public entity either by the New Jersey Water Supply Authority or by the North Jersey Water Supply District, unless the



authority pursuant to P.L.1981, c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et seq., as appropriate, has agreed to the bulk transfer or sale.

Senate Bill No. 1292 (SCS/1R) also states that whenever a private firm enters into a contract with a public entity to provide water supply services pursuant to the bill, and that public entity operates water supply facilities within another public entity, in accordance with the provisions of N.J.S.40A:31-4, the private firm or public entity shall be subject to the jurisdiction, regulation and control of the Board of Public Utilities as provided in N.J.S.40A:31-23, to the extent the private firm or public entity operates a water supply facility within that other public entity.

The bill provides an alternative to the "New Jersey Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.), which act has not been utilized by any public entity.

Senate Bill No. 1292 (SCS/1R) also:

- \* Changes the term "partnership agreement" as used in the original bill to "contract;"

- \* Specifies the items to be included in a contract, including whether or not the private firm has the authority to initiate, negotiate and finalize the bulk sale of surplus water;

- \* Specifies the criteria to be used by the Board of Public Utilities and the Local Finance Board for their review of a proposed contract;

- \* Provides that an agreement for the purchase of a water supply from a public utility cannot exceed a term of 40 years;

- \* Requires public notice if concession fees or other monetary benefits are paid by a private firm to a public entity and that these fees or benefits are to be used to reduce or off-set property taxes;

- \* Provides for an expedited court proceeding in the event of a contract compliance, performance or termination dispute.

Senate Bill No. 1292 (SCS/1R) is identical, except for several technical corrections, to Assembly committee substitute for A-2109 also released from committee this date.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1292

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1994

The Senate Community Affairs Committee reports favorably and with committee amendments Senate Bill No. 1292.

As amended by the committee, this bill would authorize various public entities to enter into partnership agreements with certain private firms that possess demonstrated expertise and resources for the provision of water supply services.

According to the procedures set forth in the bill, once a public entity has negotiated a proposed partnership agreement with the private firm it has selected, it must hold a public hearing to explain the terms of the proposed partnership agreement and to answer questions raised by members of the public. A verbatim transcript of the public hearing will be made.

The New Jersey Department of Environmental Protection, the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs must review a proposed partnership agreement, and in so doing will be provided the full record of the public hearing. The Board of Public Utilities and the Division of Local Government Services, under prescribed criteria, must approve the agreement before it is executed and binding. All applicable standards as to water supply and water quality remain in place under the proposed legislation and are enforceable by the Department of Environmental Protection.

In order to pay its part of the cost of a water supply facility being constructed or upgraded under the terms of a partnership agreement, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq.

The bill provides that a partnership agreement would be exempt from the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

The bill provides an alternative to the "New Jersey Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.), which act has yet to have been utilized by any public entity.

The committee amended the bill to expand the period of time that the Board of Public Utilities and the Division of Local Government Services may review a proposed partnership agreement from 30 to 60 days. The amendments also specify that when a public entity consisting of multiple municipalities has entered into a partnership agreement, the division must ensure that any concession fees or other monetary benefits arising out of the partnership agreement are paid directly to the municipalities constituting that public entity. The committee amendments also incorporate various technical amendment into the bill.

The committee substitute also:

- \* Changes the term "partnership agreement" as used in the original bill to "contract."

- \* Specifies the items to be included in a contract, including whether or not the private firm has the authority to initiate, negotiate and finalize the bulk sale of surplus water;

- \* Specifies the criteria to be used by the Board of Public Utilities' and the Local Finance Board for their review of a proposed contract.

- \* Provides that an agreement for the purchase of a water supply from a public utility cannot exceed a term of 40 years.

- \* Requires public notice if concession fees or other monetary benefits are paid by a private firm to a public entity and that these fees or benefits are to be used to reduce or off-set property taxes.

- \* Provides for an expedited court proceeding in the event of a contract compliance, performance or termination dispute.

#### FISCAL IMPACT

This bill does not have an impact on State revenues and expenditures.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1292

STATE OF NEW JERSEY

DATED: DECEMBER 8, 1994

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1292.

The Senate Committee Substitute for Senate Bill No. 1292 authorizes various public entities to enter into contracts with private firms for the provision of water supply services. A private firm may be any publicly or privately held company qualified to do business in the State and capable of financing, planning, designing, constructing, improving, operating or maintaining a water supply facility. The contract will be a long-term agreement wherein a private firm agrees to provide water supply services for a public entity and wherein the private firm agrees to provide, during the term of the contract, capital expenditures on behalf of the public entity's water supply facilities, which expenditures are set forth in the contract. "Water supply services" are defined as the financing, designing, construction, improvement, operation, maintenance or administration of a water supply facility.

The bill details the procedures the public entity must follow for the public notice of its intent to enter into a contract with a private firm, the review of proposals received from private firms; the negotiation of the contract and its terms; and the public hearing the public entity must hold to explain the terms of the proposed contract and answer questions raised by members of the public.

The Board of Public Utilities, the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection must review the proposed contract. The Board of Public Utilities and the Local Finance Board of the Division of Local Government Services, under prescribed criteria, must approve the agreement before it is executed. All applicable standards as to water supply and water quality will remain in place and are enforceable by the Department of Environmental Protection.

In order to pay its part of the cost of a water supply facility being constructed or upgraded under the terms of a contract, a public entity may issue bonds in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. and the expenditure of such bond funds will have to be in compliance with applicable public contracting statutes.

The bill provides an alternative to the "New Jersey Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.), which act has not been utilized by any public entity.