

58:28-1

LEGISLATIVE HISTORY CHECKLIST
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(Water supply -- contracts)

NJSA: 58:28-1

LAWS OF: 1993 **CHAPTER:** 381

BILL NO: S1848

SPONSOR(S): Corman

DATE INTRODUCED: May 17, 1993

COMMITTEE: **ASSEMBLY:** ---
SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage
Senate substitute denoted by superscript numbers
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DATE OF PASSAGE: **ASSEMBLY:** November 15, 1993 Re-enacted 1-10-94
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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

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JAN 11 1994

[SECOND REPRINT]

SENATE SUBSTITUTE FOR
SENATE, No. 1848

STATE OF NEW JERSEY

ADOPTED JUNE 10, 1993

Sponsored by Senator CORMAN

1 AN ACT concerning long-term contracts between certain
2 municipalities and private firms for the provision of water
3 supply facilities and water supply services, amending P.L.1971,
4 c.198 and supplementing Title 58 of the Revised Statutes.

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

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

9 "Private firm" means a ²[person or persons] corporation or
10 other business entity that owns or operates, as of the effective
11 date of this act, an industrial facility engaging in manufacturing
12 operations having Standard Industrial Classification number
13 within 20-39 inclusive and is² financially, technically, and
14 administratively capable of financing, planning, designing,
15 constructing, operating, or maintaining, or any combination
16 thereof, water supply facilities, or of providing water supply
17 services to a public entity under the terms of a partnership
18 agreement awarded pursuant to the provisions of this act;

19 "Water supply facility" means the real property and the plants,
20 structures, interconnections between existing water supply
21 facilities, machinery and equipment and other property, real,
22 personal and mixed, acquired, constructed or operated, ²[or to be
23 acquired, constructed or operated, in whole or in part by or on
24 behalf of a public entity and private firm as partners] as an
25 industrial water supply system jointly owned or operated by two
26 or more private firms, which individually or collectively possess,
27 as of the effective date of this act, a water diversion for said
28 system in excess of fifteen million gallons per day (mgd) under an
29 existing water allocation permit granted by the Department of
30 Environmental Protection and Energy pursuant to the "Water
31 Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.)² .
32 for the purpose of augmenting the natural water resources of the
33 State and making available an increased supply of water for all
34 uses, or of conserving existing water resources, and any and all
35 appurtenances necessary, useful or convenient for the collecting,
36 impounding, storing, improving, treating, filtering, conserving or
37 transmitting of water, and for the preservation and protection of
38 these resources and facilities and providing for the conservation
39 and development of future water supply resources;

40 "Water supply services" means services provided by a water
41 supply facility.

ANALYST: Matter enclosed is held faced and filed in the
above bill is not enacted and is voided by the law

Matter enclosed is held faced and filed in the
above bill is not enacted and is voided by the law
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1 2. (New section) The provisions of any other law, rule or
2 regulation to the contrary notwithstanding, ²[any] a single²
3 municipality which owns and operates a municipal water utility
4 system may¹, within ²[one year] six months² of the effective
5 date of this act¹, enter into a contract not exceeding 40 years
6 with a private firm for the acquisition of an equitable interest,
7 not to exceed 50 percent, in a water supply facility ²[or]² for the
8 provision of water supply services to ²[the] those customers
9 located exclusively within the boundaries of the contracting
10 municipality or such other² customers served by the ²[municipal
11 water utility system] contracting municipality as of the effective
12 date of this act², which may include the financing, construction,
13 operation or maintenance, or any combination thereof, of a water
14 supply facility. ²This act shall not apply to any contract entered
15 into by more than one municipality.²

16 3. (New section) a. Any ¹[entity formed pursuant to a
17 contract entered into under section 2 of P.L. , c.
18 (C.) (pending before the Legislature as this bill)]
19 partnership or copartnership agreement entered into after the
20 effective date of this act pursuant to a contract authorized under
21 section 2 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) involving a private firm not previously
23 subject to the jurisdiction of the Board of Regulatory
24 Commissioners or its predecessor organizations¹ shall not be
25 considered a public utility for the purposes of R.S.48:2-13 ¹and
26 shall not be subject to oversight by the Board of Regulatory
27 Commissioners¹.

28 b. Any transaction undertaken by ¹[an entity formed pursuant
29 to a contract entered into under section 2 of P.L. , c.
30 (C.) (pending before the Legislature as this bill)] a
31 partnership or copartnership established pursuant to a contract
32 authorized under section 2 of P.L. , c. (C.)
33 (pending before the Legislature as this bill)¹ shall ²[not]² be
34 subject to oversight ²[or] and² approval of the Department of
35 Environmental Protection, and shall ²[not]² be subject to the
36 permit system established pursuant to the "Water Supply
37 Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.)², except
38 that any proposed modification to the existing water allocation
39 permit of a water supply facility, relating to the transaction, that
40 would authorize the transfer to a municipality of up to one-third
41 of the quantity of water allocated by the existing permit shall be
42 deemed to be automatically approved pursuant to the Water
43 Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.)².

44 c. Any agreement entered into ¹by a partnership or
45 copartnership established¹ pursuant to section 2 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill)
47 shall not be subject to the provisions of the "New Jersey Water
48 Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.).

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

51 5. Exceptions. Any purchase, contract or agreement of the
52 character described in section 4 of [this act] P.L.1971, c.198
53 (C.40A:11-5) may be made, negotiated or awarded by the
54 governing body without public advertising for bids and bidding
55 therefor if:

- 1 (1) The subject matter thereof consists of:
- 2 (a) (i) Professional services. The governing body shall in each
- 3 instance state supporting reasons for its action in the resolution
- 4 awarding each contract and shall forthwith cause to be printed
- 5 once, in a newspaper authorized by law to publish its legal
- 6 advertisements, a brief notice stating the nature, duration,
- 7 service and amount of the contract, and that the resolution and
- 8 contract are on file and available for public inspection in the
- 9 office of the clerk of the county or municipality, or, in the case
- 10 of a contracting unit created by more than one county or
- 11 municipality, of the counties or municipalities creating such
- 12 contracting unit; or (ii) Extraordinary unspecifiable services. The
- 13 application of this exception shall be construed narrowly in favor
- 14 of open competitive bidding, where possible, and the Division of
- 15 Local Government Services is authorized to adopt and promulgate
- 16 rules and regulations limiting the use of this exception in
- 17 accordance with the intention herein expressed. The governing
- 18 body shall in each instance state supporting reasons for its action
- 19 in the resolution awarding each contract and shall forthwith
- 20 cause to be printed, in the manner set forth in subsection (1)(a)(i)
- 21 of this section, a brief notice of the award of such contract;
- 22 (b) The doing of any work by employees of the contracting unit;
- 23 (c) The printing of legal briefs, records and appendices to be
- 24 used in any legal proceeding in which the contracting party may
- 25 be a party;
- 26 (d) The furnishing of a tax map or maps for the contracting
- 27 party;
- 28 (e) The purchase of perishable foods as a subsistence supply;
- 29 (f) The supplying of any product or the rendering of any
- 30 service by a public utility, which is subject to the jurisdiction of
- 31 the Board of [Public Utilities] Regulatory Commissioners or the
- 32 U.S. Federal Energy Regulatory Commission or its successor, in
- 33 accordance with tariffs and schedules of charges made, charged
- 34 or exacted, filed with the board or commission;
- 35 (g) The acquisition, subject to prior approval of the Attorney
- 36 General, of special equipment for confidential investigation;
- 37 (h) The printing of bonds and documents necessary to the
- 38 issuance and sale thereof by a contracting unit;
- 39 (i) Equipment repair service if in the nature of an
- 40 extraordinary unspecifiable service and necessary parts furnished
- 41 in connection with such service, which exception shall be in
- 42 accordance with the requirements for extraordinary unspecifiable
- 43 services;
- 44 (j) The publishing of legal notices in newspapers as required by
- 45 law;
- 46 (k) The acquisition of artifacts or other items of unique
- 47 intrinsic, artistic or historical character;
- 48 (l) Election expenses;
- 49 (m) Insurance, including the purchase of insurance coverage
- 50 and consultant services, which exception shall be in accordance
- 51 with the requirements for extraordinary unspecifiable services;
- 52 (n) The doing of any work by handicapped persons employed by
- 53 a sheltered workshop;
- 54 (o) The provision of any service or the furnishing of materials
- 55 including those of a commercial nature, attendant upon the

1 operation of a restaurant by any nonprofit, duly incorporated,
2 historical society at or on any historical preservation site;

3 (p) Homemaker--home health services performed by
4 voluntary, nonprofit agencies;

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

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

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

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

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

50 (v) The purchase of steam or electricity from, or the rendering
51 of services directly related to the purchase of such steam or
52 electricity from a qualifying small power production facility or a
53 qualifying cogeneration facility as defined pursuant to 16 U.S.C.
54 §796;

55 (w) The purchase of electricity or administrative or dispatching

1 services directly related to the transmission of such purchased
2 electricity by a contracting unit engaged in the generation of
3 electricity; [or]

4 (x) The printing of municipal ordinances or other services
5 necessarily incurred in connection with the revision and
6 codification of municipal ordinances; or

7 (y) An agreement for the purchase of an equitable interest in a
8 water supply facility or for the provision of water supply services
9 entered into pursuant to section 2 of P.L. _____, c. _____
10 (C. _____) (pending before the Legislature as this bill ², or an
11 agreement entered into pursuant to P.L.1989, c.109 (C.40A:31-1),
12 so long as such agreement is entered into no later than six months
13 after the effective date of this act².

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

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

33 (i) A reasonable effort is first made by the contracting agent
34 to determine that the same or equivalent materials or supplies, at
35 a cost which is lower than the negotiated price, are not available
36 from an agency or authority of the United States, the State of
37 New Jersey or of the county in which the contracting unit is
38 located, or any municipality in close proximity to the contracting
39 unit;

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

44 (iii) Any minor amendment or modification of any of the
45 terms, conditions, restrictions and specifications, which were the
46 subject of competitive bidding pursuant to section 4 of [this act]
47 P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution
48 awarding such contract or agreement; provided further, however,
49 that if on the second occasion the bids received are rejected as
50 unreasonable as to price, the contracting agent shall notify each
51 responsible bidder submitting bids on the second occasion of its
52 intention to negotiate, and afford each bidder a reasonable
53 opportunity to negotiate, but the governing body shall not award
54 such contract or agreement unless the negotiated price is lower
55 than the lowest rejected bid price submitted on the second

1 occasion by a responsible bidder, is the lowest negotiated price
2 offered by any responsible supplier, and is a reasonable price for
3 such work, materials, supplies or services.

4 Whenever a contracting unit shall determine that a bid was not
5 arrived at independently in open competition pursuant to
6 subsection (3) of this section it shall thereupon notify the county
7 prosecutor of the county in which the contracting unit is located
8 and the Attorney General of the facts upon which its
9 determination is based, and when appropriate, it may institute
10 appropriate proceedings in any State or federal court of
11 competent jurisdiction for a violation of any State or federal
12 antitrust law or laws relating to the unlawful restraint of trade.

13 (cf: P.L.1991, c.368, s.1)

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

16 15. All purchases, contracts or agreements for the performing
17 of work or the furnishing of materials, supplies or services shall
18 be made for a period not to exceed 12 consecutive months,
19 except that contracts or agreements may be entered into for
20 longer periods of time as follows:

21 (1) Supplying of:

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

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

27 (c) Thermal energy produced by a cogeneration facility, for
28 use for heating or air conditioning or both, for any term not
29 exceeding 40 years, when the contract is approved by the Board
30 of [Public Utilities] Regulatory Commissioners. For the purposes
31 of this paragraph, "cogeneration" means the simultaneous
32 production in one facility of electric power and other forms of
33 useful energy such as heating or process steam;

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

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

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

- 1 (5) Data processing service, for any term of not more than
2 three years;
- 3 (6) Insurance, for any term of not more than three years;
- 4 (7) Leasing or servicing of automobiles, motor vehicles,
5 machinery and equipment of every nature and kind, for a period
6 not to exceed three years; provided, however, such contracts
7 shall be entered into only subject to and in accordance with the
8 rules and regulations promulgated by the Director of the Division
9 of Local Government Services of the Department of Community
10 Affairs;
- 11 (8) The supplying of any product or the rendering of any
12 service by a telephone company which is subject to the
13 jurisdiction of the Board of [Public Utilities] Regulatory
14 Commissioners for a term not exceeding five years;
- 15 (9) Any single project for the construction, reconstruction or
16 rehabilitation of any public building, structure or facility, or any
17 public works project, including the retention of the services of
18 any architect or engineer in connection therewith, for the length
19 of time authorized and necessary for the completion of the actual
20 construction;
- 21 (10) The providing of food services for any term not exceeding
22 three years;
- 23 (11) On-site inspections undertaken by private agencies
24 pursuant to the "State Uniform Construction Code Act,"
25 P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more
26 than three years;
- 27 (12) The performance of work or services or the furnishing of
28 materials or supplies for the purpose of conserving energy in
29 buildings owned by, or operations conducted by, the contracting
30 unit, the entire price of which to be established as a percentage
31 of the resultant savings in energy costs, for a term not to exceed
32 10 years; provided, however, that such contracts shall be entered
33 into only subject to and in accordance with rules and regulations
34 promulgated by the Department of [Energy] Environmental
35 Protection establishing a methodology for computing energy cost
36 savings;
- 37 (13) The performance of work or services or the furnishing of
38 materials or supplies for the purpose of elevator maintenance for
39 any term not exceeding three years;
- 40 (14) Leasing or servicing of electronic communications
41 equipment for a period not to exceed five years; provided,
42 however, such contract shall be entered into only subject to and
43 in accordance with the rules and regulations promulgated by the
44 Director of the Division of Local Government Services of the
45 Department of Community Affairs;
- 46 (15) Leasing of motor vehicles, machinery and other equipment
47 primarily used to fight fires, for a term not to exceed seven
48 years, when the contract includes an option to purchase, subject
49 to and in accordance with rules and regulations promulgated by
50 the Director of the Division of Local Government Services of the
51 Department of Community Affairs;
- 52 (16) The provision of water supply services or the designing,
53 financing, construction, operation, or maintenance, or any
54 combination thereof, of a water supply facility, or any component
55 part or parts thereof, including a water filtration system, for a

1 period not to exceed 40 years, when the contract for these
2 services is approved by the Division of Local Government
3 Services in the Department of Community Affairs, the Board of
4 [Public Utilities] Regulatory Commissioners, and the Department
5 of Environmental Protection pursuant to P.L.1985, c.37
6 (C.58:26-1 et seq.)¹, except for those contracts otherwise
7 exempted pursuant to paragraph (30) or (31) of this section¹. For
8 the purposes of this subsection, "water supply services" means
9 any service provided by a water supply facility; "water filtration
10 system" means any equipment, plants, structures, machinery,
11 apparatus, or land, or any combination thereof, acquired, used,
12 constructed, rehabilitated, or operated for the collection,
13 impoundment, storage, improvement, filtration, or other
14 treatment of drinking water for the purposes of purifying and
15 enhancing water quality and insuring its potability prior to the
16 distribution of the drinking water to the general public for human
17 consumption, including plants and works, and other personal
18 property and appurtenances necessary for their use or operation;
19 and "water supply facility" means and refers to the real property
20 and the plants, structures, interconnections between existing
21 water supply facilities, machinery and equipment and other
22 property, real, personal and mixed, acquired, constructed or
23 operated, or to be acquired, constructed or operated, in whole or
24 in part by or on behalf of a political subdivision of the State or
25 any agency thereof, for the purpose of augmenting the natural
26 water resources of the State and making available an increased
27 supply of water for all uses, or of conserving existing water
28 resources, and any and all appurtenances necessary, useful or
29 convenient for the collecting, impounding, storing, improving,
30 treating, filtering, conserving or transmitting of water and for
31 the preservation and protection of these resources and facilities
32 and providing for the conservation and development of future
33 water supply resources;

34 (17) The provision of solid waste disposal services by a
35 resource recovery facility, the furnishing of products of a
36 resource recovery facility, the disposal of the solid waste
37 delivered for disposal which cannot be processed by a resource
38 recovery facility or the waste products resulting from the
39 operation of a resource recovery facility, including hazardous
40 waste and recovered metals and other materials for reuse, or the
41 design, financing, construction, operation or maintenance of a
42 resource recovery facility for a period not to exceed 40 years
43 when the contract is approved by the Division of Local
44 Government Services in the Department of Community Affairs,
45 the Board of [Public Utilities] Regulatory Commissioners, and the
46 Department of Environmental Protection; and when the facility is
47 in conformance with a solid waste management plan approved
48 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes
49 of this subsection, "resource recovery facility" means a solid
50 waste facility constructed and operated for the incineration of
51 solid waste for energy production and the recovery of metals and
52 other materials for reuse, or a mechanized composting facility,
53 or any other solid waste facility constructed or operated for the
54 collection, separation, recycling, and recovery of metals, glass,
55 paper, and other materials for reuse or for energy production,

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

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

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

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

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

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

49 (24) The purchase of electricity or administrative or
50 dispatching services related to the transmission of such
51 electricity, from a public utility company subject to the
52 jurisdiction of the Board of [Public Utilities] Regulatory
53 Commissioners, a similar regulatory body of another state, or a
54 federal regulatory agency, or from a qualifying small power
55 producing facility or qualifying cogeneration facility, as defined

1 by 16 U.S.C. §796, by a contracting unit engaged in the
2 generation of electricity for retail sale, as of the date of this
3 amendatory act, for a term not to exceed 40 years;

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

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

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

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

30 (29) The performance of patient care services by contracted
31 medical staff at county hospitals, correction facilities and long
32 term care facilities, for any term of not more [that] than three
33 years; ¹[and]¹

34 (30) The acquisition of an equitable interest in a water supply
35 facility pursuant to section 2 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), for any term of not
37 more than forty years¹; and

38 (31) The provision of water supply services or the financing,
39 construction, operation or maintenance or any combination
40 thereof, of a water supply facility or any component part or parts
41 thereof, by a partnership or copartnership established pursuant
42 to a contract authorized under section 2 of P.L. c.
43 (C.) (pending before the Legislature as this bill) for a
44 period not to exceed 40 years¹.

45 All multiyear leases and contracts entered into pursuant to this
46 section, except contracts for the leasing or servicing of
47 equipment supplied by a telephone company which is subject to
48 the jurisdiction of the Board of [Public Utilities] Regulatory
49 Commissioners, contracts involving the supplying of electricity
50 for the purpose of lighting public streets and contracts for
51 thermal energy authorized pursuant to subsection (1) above,
52 construction contracts authorized pursuant to subsection (9)
53 above, contracts and agreements for the provision of work or the
54 supplying of equipment to promote energy conservation
55 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 (16)
3 above, contracts for resource recovery services or a resource
4 recovery facility authorized pursuant to subsection (17) above,
5 contracts for the sale of energy produced by a resource recovery
6 facility authorized pursuant to subsection (18) above, contracts
7 for wastewater treatment services or for a wastewater treatment
8 system or any component part or parts thereof authorized
9 pursuant to subsection (19) above, and contracts for the purchase
10 of electricity or administrative or dispatching services related to
11 the transmission of such electricity authorized pursuant to
12 subsection (24) above, shall contain a clause making them subject
13 to the availability and appropriation annually of sufficient funds
14 as may be required to meet the extended obligation, or contain an
15 annual cancellation clause.

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

20 (cf: P.L.1992, c.98, s.2)

21 6. This act shall take effect immediately.

22

23

24

25

26 Authorizes public-private partnership agreements for provision of
27 water supply services.

SENATE, No. 1848

STATE OF NEW JERSEY

INTRODUCED MAY 17, 1993

By Senator CORMAN

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

6

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

9 1. (New section) Sections 1 through 13 of this act shall be
10 known and may be cited as the "New Jersey Water Supply
11 Public-Private Partnership 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 has
21 dissuaded private firms from entering into contracts with local
22 government units; that there is a need for a new framework to
23 enable local government units to enter into partnership
24 agreements with private firms without jeopardizing the rights and
25 interests of residents of the local government unit but enabling
26 the new entity to operate within a less bureaucratic framework;
27 and that contractual agreements can adequately protect the
28 interests of residents and water users and assure conformance
29 with environmentally sound water quality standards.

30 The Legislature therefore determines that it is in the public
31 interest to establish a comprehensive procedure designed to
32 authorize local government units to enter into partnership
33 agreements with private firms for the ownership of water supply
34 facilities and the provision of water supply services.

35 3. (New Section) As used in this act:

36 "Governing body" means, in the case of a county, the board of
37 chosen freeholders, or in the case of a county organized pursuant
38 to the provisions of the "Optional County Charter Law,"
39 P.L.1972, c.154 (C.40:41A-1 et seq.), the board of chosen
40 freeholders and the county executive, the county supervisor or
41 the county manager, as appropriate, and in the case of a
42 municipality, the commission, council, board or body, by
43 whatever name it may be known, having charge of the finances of
44 the municipality,

45 "Person" means a private corporation, partnership or individual,

EXPLANATION: This bill is enclosed in bold-faced brackets. If this bill is not enacted and is considered to be omitted in the law,

Matter enclosed thus is omitted.

1 "Private firm" means a person or persons financially,
2 technically, and administratively capable of financing, planning,
3 designing, constructing, operating, or maintaining, or any
4 combination thereof, water supply facilities, or of providing
5 water supply services to a public entity under the terms of a
6 partnership agreement awarded pursuant to the provisions of this
7 act;

8 "Public entity" means a county, a municipality or any two or
9 more counties or municipalities acting jointly and which are
10 authorized pursuant to law to operate or maintain a public water
11 supply system or to construct, rehabilitate, operate, or maintain
12 water supply facilities or otherwise provide water for human
13 consumption;

14 "Water supply facility" means and refers to the real property
15 and the plants, structures, interconnections between existing
16 water supply facilities, machinery and equipment and other
17 property, real, personal and mixed, acquired, constructed or
18 operated, or to be acquired, constructed or operated, in whole or
19 in part by or on behalf of a public entity and private firm as
20 partners, for the purpose of augmenting the natural water
21 resources of the State and making available an increased supply
22 of water for all uses, or of conserving existing water resources,
23 and any and all appurtenances necessary, useful or convenient for
24 the collecting, impounding, storing, improving, treating, filtering,
25 conserving or transmitting of water, and for the preservation and
26 protection of these resources and facilities and providing for the
27 conservation and development of future water supply resources;

28 "Water supply services" means services provided by a water
29 supply facility.

30 4. (New Section) The provisions of any other law, or rules and
31 regulations adopted pursuant thereto to the contrary
32 notwithstanding, any public entity may enter into a partnership
33 agreement with a private firm for the joint ownership of a water
34 supply facility or for the provision of water supply services,
35 which may include the financing, designing, construction,
36 operation, or maintenance, or any combination thereof of a water
37 supply facility pursuant to the provisions of this act.

38 5. (New section) A public entity which intends to enter into a
39 partnership agreement with a private firm for the joint ownership
40 of a water supply facility or for the provision of water supply
41 services shall negotiate a proposed partnership agreement with
42 the private firm it has selected. Upon negotiating a proposed
43 partnership agreement, the public entity shall make the proposed
44 partnership agreement available to the public at its main offices.

45 6. a. (New Section) A public entity which intends to enter
46 into a partnership agreement with a private firm for the joint
47 ownership of a water supply facility or for the provision of water
48 supply services pursuant to the provisions of this act shall
49 conduct a public hearing on the charges, rates, or fees, or the
50 formula for determining these charges, rates, or fees, and the
51 other provisions contained in the proposed partnership agreement
52 negotiated pursuant to section 4 of this act. The public entity
53 shall provide at least 4 days' notice of the public hearing by
54 publication in at least one newspaper of general circulation in the

1 jurisdictional or service area of the public entity to be served
2 under the terms of the proposed partnership agreement. The
3 publication shall include notice of the date, time and place of the
4 public hearing, notice of the place at which copies of the
5 proposed partnership agreement are available for public
6 inspection, and the times at which such inspection is permitted.

7 At the public hearing, the public entity shall explain the terms
8 and conditions of the proposed partnership agreement, and shall
9 answer questions raised by prospective consumers and other
10 interested parties. The public entity shall have the burden to
11 show that the proposed partnership agreement complies with the
12 provisions of this act, and that entry into the partnership
13 agreement is in the best interests of the public entity. The
14 selected private firm shall be present at the public hearing. The
15 public entity shall provide that a verbatim record be kept of the
16 public hearing, and that a written transcript of this record be
17 printed and made available to the public within 21 days of the
18 close of the public hearing or as soon as is practicable. After the
19 public hearing the public entity and the private firm may agree to
20 amend the proposed partnership agreement. If the proposed
21 partnership agreement is amended, the public entity shall make
22 the amended proposed partnership agreement, a copy of the
23 printed transcript of the public hearing, and a statement
24 summarizing the major issues raised at the public hearing and the
25 response of the public entity to these issues available to the
26 public at its main offices and transmit a notice of the amended
27 proposed partnership agreement to all persons who attended the
28 public hearing.

29 The public entity shall also provide public notice that the
30 amended proposed partnership agreement is available for
31 inspection at least 15 days prior to the introduction of an
32 ordinance or a resolution, as appropriate, authorizing the private
33 entity to enter into the partnership agreement. This notice shall
34 be published in at least one newspaper of general circulation in
35 the jurisdictional or service area of the public entity to be served
36 under the terms of the proposed partnership agreement

37 b. If a partnership agreement entered into pursuant to the
38 provisions of this act is renegotiated, the public entity shall
39 conduct a public hearing on the renegotiated agreement pursuant
40 to the provisions of this section.

41 7. (New Section) The governing body of a public entity
42 authorized to enter into a partnership agreement pursuant to
43 section 4 of this act may do so by the adoption of an ordinance if
44 it is a municipality, or an ordinance or a resolution, as
45 appropriate, if it is a county, or parallel ordinances or
46 resolutions, as the case may be, by each of the participating
47 public entities. The ordinance or resolution may be introduced at
48 the first meeting of the governing body of the public entity held
49 after the public hearing or at least 15 days after public notice of
50 the availability of inspection of an amended proposed partnership
51 agreement, whichever is later.

52 8 (New Section) A copy of the resolution or ordinance for the
53 formation of a partnership pursuant to the provisions of this act,
54 duly certified by the appropriate officer of the public entity, and

1 a copy of the partnership agreement entered into shall be filed in
2 the office of the Secretary of State. Upon proof of the filing of a
3 certified copy of a resolution or ordinance and a copy of the
4 partnership agreement, the partnership therein referred to shall,
5 in any suit, action or proceeding involving the validity or
6 enforcement of, or relating to, any contract or obligation or act
7 of the partnership, be conclusively deemed to have been lawfully
8 and properly created, organized and established and authorized to
9 transact business and exercise its powers under this act.

10 9. (New section) Except as otherwise provided in this act, a
11 partnership formed pursuant to the provisions of this act, and the
12 relationship between the public entity and the private firm which
13 has entered into a partnership agreement pursuant to the
14 provisions of this act, shall operate as if governed by the
15 provisions of the "uniform partnership law," R.S.42:1-1 et seq.;
16 however, if the agreement is drafted as a limited partnership, the
17 partnership and the relationship between the public entity and the
18 private firm shall operate as if governed by the provisions of the
19 "Uniform Limited Partnership Law (1976)," P.L.1983, c.489
20 (C.42:2A-1 et seq.).

21 10. (New section) A partnership agreement entered into
22 pursuant to the provisions of this act shall include, but not be
23 limited to, provisions:

24 a. Ensuring that a water supply facility and the provision of
25 water supply services shall meet appropriate environmental and
26 water quality standards, and be consistent with the State primary
27 drinking water regulations or requirements for the jurisdictional
28 or service area to be served under the terms of the agreement
29 pursuant to the "Safe Drinking Water Act," P.L.1977, c.224
30 (C.58:12A-1 et seq.);

31 b. Concerning the periodic preparation of an operating
32 performance report and an audited balance statement of the
33 partnership, which shall be made available to the public at the
34 main offices of the partnership and the main offices of the public
35 entity, and shall be submitted to the Division of Local
36 Government Services in the Department of Community Affairs;

37 c. Setting forth the formulas to be used to determine the
38 charges, rates, or fees to be charged for the water supply
39 services, and the methodologies used to develop these formulas;

40 d. Concerning the dissolution or insolvency of the partnership.

41 11. (New section) a. A partnership agreement entered into
42 pursuant to the provisions of this act may provide for the
43 establishment of an insurance fund:

44 (1) To insure against any loss or damage however caused to any
45 property, motor vehicles, equipment or apparatus owned by the
46 partnership;

47 (2) To insure against liability resulting from the use or
48 operation of motor vehicles, equipment or apparatus owned by or
49 controlled by the partnership; or

50 (3) To insure against liability for the partnership's negligence
51 and that of its officers, employees and servants, whether or not
52 compensated or part time, who are authorized to perform any
53 act or services, but not including an independent contractor
54 within the limitations of the "New Jersey Tort Claims Act"

1 N.J.S.59:1-1 et seq. The partnership may appropriate the moneys
2 necessary for the purposes of this section.

3 b. The partnership agreement may designate the maximum or
4 minimum amount of the fund, and provide for the disposition of
5 any excess over and above the maximum amount fixed, or of the
6 interest or profits arising therefrom when the fund shall have
7 reached the maximum limit at the discretion of the partnership.

8 c. Upon establishment of an insurance fund, the members of
9 the partnership shall establish an insurance fund office. The
10 insurance fund office may:

11 (1) Employ necessary clerical assistants, whose compensation
12 shall be fixed and paid by the partnership in the same manner as
13 is that of other employees of the partnership;

14 (2) Invest the fund and all additions and accretions thereto in
15 such securities as it shall deem best suited for the purposes of
16 this section;

17 (3) Adopt rules and regulations for the control and investment
18 of the fund; and

19 (4) Keep on hand at all times sufficient money, or have the
20 same invested in such securities as can be immediately sold for
21 cash, for the payment of losses, not otherwise insured, to any
22 buildings or property of the partnership, or liability resulting
23 from the acts of employees and the operation of partnership
24 owned motor vehicles, equipment or apparatus.

25 All insurance upon property owned or controlled by the
26 partnership shall be placed and effected by the insurance fund
27 office.

28 d. The insurance fund office shall prepare, or cause to be
29 prepared a plan of risk management for the insurance fund. The
30 plan shall include, but not be limited to:

31 (1) The perils or liability to be insured against;

32 (2) Limits of coverage, whether self-insurance, direct
33 insurance purchased from commercial carrier, or reinsurance;

34 (3) The amount of risk to be retained by the fund;

35 (4) The amount of reserves to be established;

36 (5) Procedures governing loss adjustment and legal fees;

37 (6) Coverage to be purchased from a commercial insurer, if
38 any;

39 (7) Reinsurance to be purchased, if any, and the amount of the
40 premium therefor; and

41 (8) Such other procedures and information as the
42 Commissioner of Community Affairs may require by rule or
43 regulation.

44 e. No insurance fund shall be established by a partnership until
45 its plan of risk management has been approved by the
46 Commissioner of Community Affairs.

47 f. The Commissioner of Community Affairs shall adopt,
48 pursuant to the "Administrative Procedure Act," P.L.1968. c.410
49 (C.52:14B-1 et seq.), rules and regulations necessary to
50 implement this section.

51 12. (New section) In order to pay its part of the cost of the
52 water supply facility, a public entity may issue bonds in
53 accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq.

54 13. (New section) A partnership entered into pursuant to the

1 provisions of this act is authorized and empowered to finance,
2 design, construct, operate and maintain a water supply facility.
3 The partnership may make and enter into all contracts and
4 agreements necessary or incidental to the performance of the
5 duties and powers authorized under this act, and to employ
6 consulting and other engineers, superintendents, managers,
7 attorneys, financial or other consultants or experts, and such
8 other employees and agents as may be deemed necessary, and to
9 fix their compensation.

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

11 48:2-13. The board shall have general supervision and
12 regulation of and jurisdiction and control over all public utilities
13 as hereinafter in this section defined and their property, property
14 rights, equipment, facilities and franchises so far as may be
15 necessary for the purpose of carrying out the provisions of this
16 Title.

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

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

52 Nothing contained in this Title shall extend the powers of the
53 board to include any supervision and regulation of, or jurisdiction
54 and control over any public private partnership for the joint

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

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

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

7 2. Definitions. As used herein the following words have the
8 following 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 partnership entered into between a
24 county, a municipality, or two or more of the foregoing which are
25 authorized pursuant to law to operate or maintain a public water
26 supply system or to construct, rehabilitate, operate, or maintain
27 water supply facilities or otherwise provide water for human
28 consumption and any private person or persons financially,
29 technically, and administratively capable of financing, planning,
30 designing, constructing, operating, or maintaining, or any
31 combination thereof, water supply facilities, or of providing
32 water supply services to a local government unit under the terms
33 of a partnership agreement entered into pursuant to the
34 provisions of P.L. , c. (C.)(pending before the Legislature
35 as this bill) shall not be considered a contracting unit as
36 otherwise defined in this section.

37 (2) "Governing body" means:

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

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

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

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

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

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

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

14 (7) "Extraordinary unspecifiable services" means services
15 which are specialized and qualitative in nature requiring
16 expertise, extensive training and proven reputation in the field of
17 endeavor.

18 (8) "Project" means any work, undertaking, program, activity,
19 development, redevelopment, construction or reconstruction of
20 any area or areas.

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

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

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

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

38 (13) "Marketing" means the marketing of designated
39 recyclable materials source separated in a municipality which
40 entails a marketing cost less than the cost of transporting the
41 recyclable materials to solid waste facilities and disposing of the
42 materials as municipal solid waste at the facility utilized by the
43 municipality.

44 (14) "Municipal solid waste" means all residential, commercial
45 and institutional solid waste generated within the boundaries of a
46 municipality.

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

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

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

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

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

8 5. Exceptions. Any purchase, contract or agreement of the
9 character described in section 4 of this act may be made,
10 negotiated or awarded by the governing body without public
11 advertising for bids and bidding therefor if:

12 (1) The subject matter thereof consists of:

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

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

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

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

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

40 (f) The supplying of any product or the rendering of any
41 service by a public utility, which is subject to the jurisdiction of
42 the Board of Public Utilities or the U.S. Federal Energy
43 Regulatory Commission or its successor, in accordance with
44 tariffs and schedules of charges made, charged or exacted, filed
45 with the board or commission;

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

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

50 (i) Equipment repair service if in the nature of an
51 extraordinary unspecifiable service and necessary parts furnished
52 in connection with such service, which exception shall be in
53 accordance with the requirements for extraordinary unspecifiable
54 services,

- 1 (j) The publishing of legal notices in newspapers as required by
2 law;
- 3 (k) The acquisition of artifacts or other items of unique
4 intrinsic, artistic or historical character;
- 5 (l) Election expenses;
- 6 (m) Insurance, including the purchase of insurance coverage
7 and consultant services, which exception shall be in accordance
8 with the requirements for extraordinary unspecifiable services;
- 9 (n) The doing of any work by handicapped persons employed by
10 a sheltered workshop;
- 11 (o) The provision of any service or the furnishing of materials
12 including those of a commercial nature, attendant upon the
13 operation of a restaurant by any nonprofit, duly incorporated,
14 historical society at or on any historical preservation site;
- 15 (p) Homemaker--home health services performed by
16 voluntary, nonprofit agencies;
- 17 (q) The purchase of materials and services for a law library
18 established pursuant to R.S.40:33-14, including books, periodicals,
19 newspapers, documents, pamphlets, photographs, reproductions,
20 microforms, pictorial or graphic works, copyright and patent
21 materials, maps, charts, globes, sound recordings, slides, films,
22 filmstrips, video and magnetic tapes, and other audiovisual,
23 printed, or published material of a similar nature; necessary
24 binding or rebinding of law library materials; and specialized
25 library services;
- 26 (r) On-site inspections undertaken by private agencies
27 pursuant to the "State Uniform Construction Code Act"
28 (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations
29 adopted pursuant thereto;
- 30 (s) The marketing of recyclable materials recovered through a
31 recycling program, or the marketing of any product intentionally
32 produced or derived from solid waste received at a resource
33 recovery facility or recovered through a resource recovery
34 program, including, but not limited to, refuse-derived fuel,
35 compost materials, methane gas, and other similar products;
- 36 (t) Emergency medical services provided by a hospital to the
37 residents of a municipality or county, provided that: (a) such
38 exception be allowed only after the governing body determines
39 that the emergency services are available only from one provider;
40 and (b) if the contract is awarded without advertising for bids or
41 bidding the governing body shall in each instance state supporting
42 reasons for its action in a resolution awarding the contract and
43 cause to be printed once in a newspaper authorized by law to
44 publish its legal advertisements a brief notice stating the nature,
45 duration, service, and amount of the contract; and (c) the
46 contract shall be kept on file for public inspection in the office of
47 the clerk of the municipality;
- 48 (u) Contracting unit towing and storage contracts, provided
49 that all such contracts shall be pursuant to reasonable
50 non-exclusionary and non-discriminatory terms and conditions,
51 which may include the provision of such services on a rotating
52 basis, at the rates and charges set by the municipality pursuant to
53 section 1 of P.L. 1979, c.101 (C.40:48-2.49). All contracting unit
54 towing and storage contracts for services to be provided at rates

1 and charges other than those established pursuant to the terms of
2 this paragraph shall only be awarded to the lowest responsible
3 bidder in accordance with the provision of the "Local Public
4 Contracts Law" and without regard for the value of the contract
5 therefor. Each of the aforementioned means of contracting shall
6 be subject to any regulations adopted by the Commissioner of
7 Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

8 (v) The purchase of steam or electricity from, or the rendering
9 of services directly related to the purchase of such steam or
10 electricity from a qualifying small power production facility or a
11 qualifying cogeneration facility as defined pursuant to 16 U.S.C.
12 §796;

13 (w) The purchase of electricity or administrative or dispatching
14 services directly related to the transmission of such purchased
15 electricity by a contracting unit engaged in the generation of
16 electricity; [or]

17 (x) The printing of municipal ordinances or other services
18 necessarily incurred in connection with the revision and
19 codification of municipal ordinances; or

20 (y) A partnership agreement for the joint ownership of a water
21 supply facility or for 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).

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 this act,
3 shall be stated in the resolution awarding such contract or
4 agreement; provided further, however, that if on the second
5 occasion the bids received are rejected as unreasonable as to
6 price, the contracting agent shall notify each responsible bidder
7 submitting bids on the second occasion of its intention to
8 negotiate, and afford each bidder a reasonable opportunity to
9 negotiate, but the governing body shall not award such contract
10 or agreement unless the negotiated price is lower than the lowest
11 rejected bid price submitted on the second occasion by a
12 responsible bidder, is the lowest negotiated price offered by any
13 responsible supplier, and is a reasonable price for such work,
14 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.1991, c.368 s.1)

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

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

33 (1) Supplying of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (14) Leasing or servicing of electronic communications
53 equipment for a period not to exceed five years; provided,
54 however, such contract shall be entered into only subject to and

1 in accordance with the rules and regulations promulgated by the
2 Director of the Division of Local Government Services of the
3 Department of Community Affairs;

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

10 (16) The provision of water supply services or the designing,
11 financing, construction, operation, or maintenance, or any
12 combination thereof, of a water supply facility, or any component
13 part or parts thereof, including a water filtration system, for a
14 period:

15 (a) not to exceed 40 years, when the contract for these
16 services is approved by the Division of Local Government
17 Services in the Department of Community Affairs, the Board of
18 Public Utilities, and the Department of Environmental Protection
19 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.); or

20 (b) of indefinite duration when a partnership agreement for
21 these services is entered into pursuant to the provisions of P.L. ,
22 c. (C.) (pending before the Legislature as this bill).

23 For the purposes of this subsection, "water supply services"
24 means any service provided by a water supply facility; "water
25 filtration system" means any equipment, plants, structures,
26 machinery, apparatus, or land, or any combination thereof,
27 acquired, used, constructed, rehabilitated, or operated for the
28 collection, impoundment, storage, improvement, filtration, or
29 other treatment of drinking water for the purposes of purifying
30 and enhancing water quality and insuring its potability prior to
31 the distribution of the drinking water to the general public for
32 human consumption, including plants and works, and other
33 personal property and appurtenances necessary for their use or
34 operation; and "water supply facility" means and refers to the
35 real property and the plants, structures, interconnections
36 between existing water supply facilities, machinery and
37 equipment and other property, real, personal and mixed, acquired,
38 constructed or operated, or to be acquired, constructed or
39 operated, in whole or in part by or on behalf of a political
40 subdivision of the State or any agency thereof, or a partnership
41 entered into pursuant to the provisions of P.L. , c. (C.)
42 (pending before the Legislature as this bill), for the purpose of
43 augmenting the natural water resources of the State and making
44 available an increased supply of water for all uses, or of
45 conserving existing water resources, and any and all
46 appurtenances necessary, useful or convenient for the collecting,
47 impounding, storing, improving, treating, filtering, conserving or
48 transmitting of water and for the preservation and protection of
49 these resources and facilities and providing for the conservation
50 and development of future water supply resources;

51 (17) The provision of solid waste disposal services by a
52 resource recovery facility, the furnishing of products of a
53 resource recovery facility, the disposal of the solid waste
54 delivered for disposal which cannot be processed by a resource

1 recovery facility or the waste products resulting from the
2 operation of a resource recovery facility, including hazardous
3 waste and recovered metals and other materials for reuse, or the
4 design, financing, construction, operation or maintenance of a
5 resource recovery facility for a period not to exceed 40 years
6 when the contract is approved by the Division of Local
7 Government Services in the Department of Community Affairs,
8 the Board of Public Utilities, and the Department of
9 Environmental Protection; and when the facility is in
10 conformance with a solid waste management plan approved
11 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes
12 of this subsection, "resource recovery facility" means a solid
13 waste facility constructed and operated for the incineration of
14 solid waste for energy production and the recovery of metals and
15 other materials for reuse; or a mechanized composting facility,
16 or any other solid waste facility constructed or operated for the
17 collection, separation, recycling, and recovery of metals, glass,
18 paper, and other materials for reuse or for energy production;

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

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

52 (20) The supplying of materials or services for the purpose of
53 lighting public streets, for a term not to exceed five years.
54 provided that the rates, fares, tariffs or charges for the supplying

1 of electricity for that purpose are approved by the Board of
2 Public Utilities;

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

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

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

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

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

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

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

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

48 (29) The performance of patient care services by contracted
49 medical staff at county hospitals, correction facilities and long
50 term care facilities, for any term of not more that three years.

51 All multiyear leases and contracts entered into pursuant to this
52 section, except contracts for the leasing or servicing of
53 equipment supplied by a telephone company which is subject to
54 18e jurisdiction of the Board of Public Utilities, contracts

1 involving the supplying of electricity for the purpose of lighting
2 public streets and contracts for thermal energy authorized
3 pursuant to subsection (1) above, construction contracts
4 authorized pursuant to subsection (9) above, contracts and
5 agreements for the provision of work or the supplying of
6 equipment to promote energy conservation authorized pursuant to
7 subsection (12) above, contracts for water supply services or for a
8 water supply facility, or any component part or parts thereof
9 authorized pursuant to subsection (16) above, contracts for
10 resource recovery services or a resource recovery facility
11 authorized pursuant to subsection (17) above, contracts for the
12 sale of energy produced by a resource recovery facility
13 authorized pursuant to subsection (18) above, contracts for
14 wastewater treatment services or for a wastewater treatment
15 system or any component part or parts thereof authorized
16 pursuant to subsection (19) above, and contracts for the purchase
17 of electricity or administrative or dispatching services related to
18 the transmission of such electricity authorized pursuant to
19 subsection (24) above, shall contain a clause making them subject
20 to the availability and appropriation annually of sufficient funds
21 as may be required to meet the extended obligation, or contain an
22 annual cancellation clause.

23 The Division of Local Government Services shall adopt and
24 promulgate rules and regulations concerning the methods of
25 accounting for all contracts that do not coincide with the fiscal
26 year.

27 (cf: P.L.1992, c.98, s.2)

28 18. This act shall take effect immediately.

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Sponsor STATEMENT

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33 This bill would authorize counties and municipalities to enter
34 into partnership agreements with private firms for the ownership
35 of a water supply facility and the provision of water supply
36 services.

37 According to the procedures set forth in the bill, once a public
38 entity has negotiated a proposed partnership agreement with the
39 private firm it has selected, it must hold a public hearing to
40 explain the terms of the proposed partnership agreement and to
41 answer questions raised by members of the public. The public
42 entity must also show that the proposed partnership agreement
43 complies with the provisions contained in this bill and that entry
44 into the partnership agreement is in the best interests of the
45 public entity. After the public hearing the public entity and the
46 private firm may agree to amend the proposed partnership
47 agreement.

48 Thereafter, the public entity may enter into the partnership
49 agreement by adoption of an ordinance or resolution, as
50 appropriate. A copy of the resolution or ordinance and a copy of
51 the partnership agreement must be filed in the office of the
52 Secretary of State. The partnership and the relationship between
53 the parties thereto are to be governed by the provisions of the
54 "uniform partnership law," (R.S.42:1-1 et seq.) or the "Uniform

1 Limited Partnership Law," P.L.1983, c.489 (C.42:2A-1 et seq.),
2 depending on the draft of the partnership agreement.

3 A partnership agreement must contain provisions: ensuring
4 compliance with water quality standards; requiring the periodic
5 preparation of an operating performance report and an audited
6 balance statement of the partnership; setting forth the formulas
7 to be used to determine the charges, rates, or fees to be charged
8 for the water supply services, and the methodologies used to
9 develop these formulas; and concerning the dissolution or
10 insolvency of the partnership.

11 A partnership agreement may provide for the establishment of
12 an insurance fund to insure against any loss or damage to
13 property owned by the partnership; to insure against liability
14 resulting from the use or operation of motor vehicles, equipment
15 or apparatus owned by or controlled by the partnership; or to
16 insure against liability for the partnership's negligence and that
17 of its officers, employees and servants, whether or not
18 compensated or part-time, who are authorized to perform any
19 act or services, but not including an independent contractor
20 within the limitations of the "New Jersey Tort Claims Act"
21 (N.J.S.59:1-1 et seq.).

22 In order to pay its part of the cost of the water supply facility,
23 a public entity may issue bonds in accordance with the "Local
24 Bond Law," N.J.S.40A:2-1 et seq.

25 The bill provides that a partnership shall be outside of the
26 jurisdiction, supervision and regulation of the Board of
27 Regulatory Commissioners.

28 The bill also provides that the partnership agreement as well as
29 the contracts entered into by the partnership are outside of the
30 provisions of the "Local Public Contracts Law," N.J.S.40A:11-1
31 et seq.

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36 _____
Authorizes public-private partnerships for water supply purposes.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1848

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Community Affairs Committee reports favorably Senate Bill No. 1848.

Senate Bill No. 1848 authorizes counties and municipalities to enter into partnership agreements with private firms for the ownership of a water supply facility and 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. The public entity must also show that the proposed partnership agreement complies with the provisions contained in this bill and that entry into the partnership agreement is in the best interests of the public entity. After the public hearing the public entity and the private firm may agree to amend the proposed partnership agreement.

Thereafter, the public entity may enter into the partnership agreement by adoption of an ordinance or resolution, as appropriate. A copy of the resolution or ordinance and a copy of the partnership agreement must be filed in the office of the Secretary of State. The partnership and the relationship between the parties thereto are to be governed by the provisions of the "uniform partnership law," (R.S.42:1-1 et seq.) or the "Uniform Limited Partnership Law," P.L.1983, c.489 (C.42:2A-1 et seq.), depending on the draft of the partnership agreement.

A partnership agreement must contain provisions: ensuring compliance with water quality standards; requiring the periodic preparation of an operating performance report and an audited balance statement of the partnership; setting forth the formulas to be used to determine the charges, rates, or fees to be charged for the water supply services, and the methodologies used to develop these formulas; and concerning the dissolution or insolvency of the partnership.

A partnership agreement may provide for the establishment of an insurance fund to insure against any loss or damage to property owned by the partnership; to insure against liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the partnership; or to insure against liability for the partnership's negligence and that of its officers, employees and servants, whether or not compensated or part-time, who are authorized to perform any act or services, but not including an independent contractor within the limitations of the "New Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.).

In order to pay its part of the cost of the water supply facility, 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 shall be outside of the jurisdiction, supervision and regulation of the Board of Regulatory Commissioners.

The bill also provides that the partnership agreement as well as the contracts entered into by the partnership are outside of the provisions of the "Local Public Contracts Law," N.J.S.40A:11-1 et seq.

SENATE SUBSTITUTE FOR SENATE BILL NO. 1848
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning the Senate Substitute for Senate Bill No. 1848 (First Reprint) with my recommendations for reconsideration.

This substitute bill is intended to encourage the formation of contract-based partnerships between private firms and municipalities for the provision of water supply services to customers served by municipal water utility systems. To provide an incentive for the creation of these joint public-private ventures, the substitute bill would exempt these transactions from the traditional review and oversight procedures of the Department of Environmental Protection and Energy (DEPE) and other State agencies.

While I am generally supportive of proposals that would promote the development of new mechanisms for delivering public water supply services, I am nonetheless concerned about the potentially broad scope and impact of the existing provisions of this substitute bill. For example, under current bill provisions, any of the hundreds of municipalities that now operate their own utility systems would be authorized to enter into a public-private partnership with local industries, farms, water companies or other private parties. These joint water supply ventures would be free from review by the DEPE water supply officials and public utility regulators at the Board of Regulatory Commissions (BRC) who would typically scrutinize these types of public-private transactions to ensure that each New Jersey citizen will continue to receive a clean, affordable supply of drinking water. I am especially concerned that this substitute bill, in its current form, could seriously undermine DEPE's implementation of the recently-enacted "critical areas" water supply law that aims to improve the management of regional groundwater supplies previously damaged by drought conditions or overuse.

With these concerns in mind, I am proposing amendments that would narrow the potential scope of this substitute bill, but also allow these public-private partnerships to proceed in certain situations. This approach would be designed to promote the efficient, long-term use of large industrial water supply systems that are presently operated by manufacturing firms based in New Jersey. In this way, I am hopeful that private water supply facilities that might otherwise be shut down and dismantled when our State's manufacturing firms limit their on-site operations will instead be refurbished and adapted for the efficient delivery of water supply services to neighboring cities and towns.

To reduce the scope of public-private transactions authorized by this bill, I would initially limit the proposed regulatory exemptions to transactions involving a municipality and certain industrial water supply systems jointly owned or operated by private firms. Another amendment would further reduce the time frame allowed for the formation of public-private partnerships to a time period of six months following enactment date. Finally, I would propose an amendment that would authorize the automatic transfer of certain water rights within a public-private partnership, while at the same time restoring the DEPE's authority to regulate these partnerships pursuant to the provisions of the "Water Supply Management Act," including any new requirements applying to "critical areas" identified by the department.

For these reasons, I herewith return the Senate Substitute for Senate Bill No. 1848 (First Reprint) and recommend that it be amended as follows:

- Page 1, Section 1, Line 9: Delete "person or persons" and insert "corporation or other business entity that owns or operates, as of the effective date of this act, an industrial facility engaging in manufacturing operations having Standard Industrial Classification number within 20-39 inclusive and is"
- Page 1, Section 1, Lines 19 - 21: Delete ", or to be acquired, constructed or operated, in whole or in part by or on behalf of a public entity and private firm as partners," and insert "as an industrial water supply system jointly owned or operated by two or more private firms, which individually or collectively possess, as of the effective date of this act, a water diversion for said system in excess of fifteen million gallons per day (mgd) under an existing water allocation permit granted by the Department of Environmental Protection and Energy pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.),"
- Page 1, Section 2, Line 33: Delete "any" and insert "a single"
- Page 1, Section 2, Line 35: Delete "one year" and insert "six months"
- Page 1, Section 2, Line 38: Delete "or"
- Page 1, Section 2, Line 39: Delete "the" and insert "those customers located exclusively within the boundaries of the contracting municipality or such other"
- Page 1, Section 2, Lines 39-40: Delete "municipal water utility system" and insert "contracting municipality as of the effective date of this act"
- Page 1, Section 2, Line 42: After "facilities." insert "This act shall not apply to any contract entered into by more than one municipality."
- Page 2, Section 3, Line 18: Delete "not"
- Page 2, Section 3, Line 19: Delete "or" and insert "and"
- Page 2, Section 3, Line 20: Delete "not"

Page 2, Section 3, Line 22:

After "(C.58:1A-1 et seq.)" insert ", except that any proposed modification to the existing water allocation permit of a water supply facility, relating to the transaction, that would authorize the transfer to a municipality of up to one-third of the quantity of water allocated by the existing permit shall be deemed to be automatically approved pursuant to the Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.)"

Page 3, Section 1, Line 46:

After "bill" insert ", or an agreement entered into pursuant to P.L.1989, c.109 (C.40A:31-1), so long as such agreement is entered into no later than six months after the effective date of this act"

Respectfully,

GOVERNOR

Attest:

Chief Counsel to the Governor