

40A:11-3

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(Local Public
Contracts Law--
exempt energy
generation)

LAWS OF: 1991

CHAPTER: 143

Bill No: A3374

Sponsor(s): Salmon and LoBiondo

Date Introduced: April 23, 1990

Committee: Assembly: Municipal Government

Senate: State Government

Amended during passage: Yes Amendments denoted by asterisks.

Date of Passage: Assembly: November 19, 1990 re-enacted 4-25-91

Senate: February 28, 1991 re-enacted 5-20-91

Date of Approval: May 24, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

[SECOND REPRINT]
ASSEMBLY, No. 3374

STATE OF NEW JERSEY

INTRODUCED APRIL 23, 1990

By Assemblymen SALMON and LoBiondo

1 AN ACT concerning contracts for energy generation and
2 transmission, and amending P.L.1971, c.198, P.L.1972, c.112,
3 and P.L.1971, c.199.

4

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

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

9 3. a. Any purchase, contract or agreement for the
10 performance of any work or the furnishing or hiring of materials
11 or supplies, the cost or price of which, together with any other
12 sums expended or to be expended for the performance of any
13 work or services in connection with the same immediate program,
14 undertaking, activity or project or the furnishing of similar
15 materials or supplies during the same fiscal year paid with or out
16 of public funds, does not exceed in the fiscal year the total sum
17 of \$7,500.00 or the amount determined pursuant to subsection b.
18 of this section, may be made, negotiated or awarded by a
19 contracting agent when so authorized by resolution of the
20 governing body of the contracting unit without public advertising
21 for bids. Such authorization may be granted for each purchase,
22 contract or agreement or by a general delegation of the power to
23 make, negotiate or award such purchases, contracts or
24 agreements pursuant to this section.

25 Any purchase, contract or agreement made pursuant to this
26 section may be awarded for a period of 12 consecutive months
27 notwithstanding that such 12-month period does not coincide with
28 the fiscal year ²[, or may be awarded for a longer period if
29 provided by ¹[law] chapter 62 of Title 40 of the Revised
30 Statutes¹]. The Division of Local Government Services shall
31 adopt and promulgate rules and regulations concerning the
32 methods of accounting for all contracts that do not coincide with
33 the fiscal year.

34 b. The Governor, in consultation with the Department of the
35 Treasury, shall, no later than March 1 of each odd-numbered
36 year, adjust the threshold amount set forth in subsection a. of
37 this section, or subsequent to 1985 the threshold amount resulting

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AMG committee amendments adopted October 11, 1990.

² Assembly amendments adopted in accordance with Governor's
recommendations April 15, 1991.

1 from any adjustment under this subsection or section 17 of
2 P.L.1985, c.469, in direct proportion to the rise or fall of the
3 Consumer Price Index for all urban consumers in the New York
4 City and the Philadelphia areas as reported by the United States
5 Department of Labor. The Governor shall, no later than June 1
6 of each odd-numbered year, notify each governing body of the
7 adjustment. The adjustment shall become effective on July 1 of
8 each odd-numbered year.

9 (cf: P.L.1985, c.469, s.6)

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

12 5. Exceptions. Any purchase, contract or agreement of the
13 character described in section 4 of this act may be made,
14 negotiated or awarded by the governing body without public
15 advertising for bids and bidding therefor if

16 (1) The subject matter thereof consists of

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

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

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

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

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

45 (f) The supplying of any product or the rendering of any
46 service by a public utility, which is subject to the jurisdiction of
47 the Board of Public Utilities ²[or a federal regulatory agency] or
48 the U.S. Federal Energy Regulatory Commission or its
49 successor², in accordance with tariffs and schedules of charges

1 made, charged or exacted, filed with [said] the board or ²[agency]
2 commission²;

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

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

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

12 (j) The publishing of legal notices in newspapers as required by
13 law;

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

16 (l) Election expenses;

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

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

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

26 (p) Homemaker--home health services performed by
27 voluntary, nonprofit agencies;

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

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

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

47 (t) Emergency medical services provided by a hospital to the
48 residents of a municipality or county, provided that: (a) such
49 exception be allowed only after the governing body determines

1 that the emergency services are available only from one provider;
2 and (b) if the contract is awarded without advertising for bids or
3 bidding the governing body shall in each instance state supporting
4 reasons for its action in a resolution awarding the contract and
5 cause to be printed once in a newspaper authorized by law to
6 publish its legal advertisements a brief notice stating the nature,
7 duration, service, and amount of the contract; and (c) the
8 contract shall be kept on file for public inspection in the office of
9 the clerk of the municipality;

10 (u) The ²[supplying of any product or the rendering of any
11 service by] purchase of steam or electricity from, or the
12 rendering of services directly related to the purchase of such
13 steam or electricity from² a qualifying small power production
14 facility or a ²qualifying² cogeneration facility as defined
15 pursuant to 16 U.S.C. §796; or

16 (v) The purchase of electricity ²[and related transmission,
17 administrative and dispatching services] or administrative or
18 dispatching services directly related to the transmission of such
19 purchased electricity² by a contracting unit engaged in the
20 ¹[retail sale and distribution] generation¹ of electricity.

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

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

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

47 (ii) The terms, conditions, restrictions and specifications set
48 forth in the negotiated contract or agreement are not
49 substantially different from those which were the subject of

1 competitive bidding pursuant to section 4 of this act; and

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

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

26 (cf: P.L.1989, c.159, s.1)

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

29 10. Joint agreements for purchase of work, materials, supplies;
30 authorization.

31 (a) (1) The governing bodies of two or more contracting units
32 [within the same county, or adjoining counties,] ²within the same
33 county, or adjoining counties,² may provide by joint agreement
34 for the purchase of work, materials ¹[, services,]¹ and supplies
35 for use by their respective jurisdictions.

36 (2) The governing bodies of two or more contracting units
37 providing sewerage services pursuant to the "sewerage
38 authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), the
39 "municipal and county utilities authorities law," P.L.1957, c.183
40 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq.
41 may provide by joint agreement for the purchase of work related
42 to sewage sludge disposal.

43 ²(3) The governing body of two or more contracting units
44 providing electrical distribution services pursuant to and in
45 accord with R.S.40:62-12 through R.S.40:62-25, may provide by
46 joint agreement for the purchase of work, material and supplies
47 related to the distribution of electricity.²

48 (b) The governing body of any county or municipality may
49 provide by joint agreement with the board of education of any

1 school district located wholly or partially within the geographic
2 boundaries of the county or municipality for the purchase of
3 work, materials ¹[, services,]¹ and supplies for use by their
4 respective jurisdictions.

5 (c) Such agreement shall be entered into by resolution or
6 ordinance, as the case may be, adopted by each of the
7 participating bodies and boards, which shall set forth the
8 categories of work, materials ¹[, services,]¹ and supplies to be
9 purchased, the manner of advertising for bids and of awarding of
10 contracts, the method of payment by each participating body and
11 board, and other matters deemed necessary to carry out the
12 purposes of the agreement.

13 (d) Each participating body's and board's share of expenditures
14 for purchases under any such agreement shall be appropriated and
15 paid in the manner set forth in the agreement and in the same
16 manner as for other expenses of the participating body and board.
17 (cf: P.L.1985, c.452, s.1)

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

20 11. Additional matters regarding agreements for the purchases
21 of work, materials and supplies.

22 (1) The contracting units entering into a joint agreement
23 pursuant to section 10 of this act may designate a joint
24 purchasing agent, department or board pursuant to section 9 of
25 this act. Any such agent, board or department already designated
26 pursuant to section 9 may serve as the joint agent, department or
27 board designated pursuant to this section.

28 (2) Purchases, contracts or agreements made pursuant to a
29 joint purchasing agreement shall be subject to all of the terms
30 and conditions of this act.

31 (3) Any county or municipality serving as a purchasing agent,
32 board or department pursuant to this section 11, may make an
33 appropriation to enable it to perform any such contract and may
34 anticipate as revenue payments to be made and received by it
35 from any other party to the agreement. Any items so included in
36 a local budget shall be subject to the approval of the Director,
37 Division of Local Government Services, who shall consider the
38 matter in conjunction with the requirements of chapter 4 of Title
39 40A of the New Jersey Statutes. The agreement and any
40 subsequent amendment or revisions thereto shall be filed with the
41 Director of the Division of Local Government Services in the
42 Department of Community Affairs.

43 (4) Any agent, department or board so designated pursuant to a
44 joint purchasing agreement shall have the sole responsibility to
45 comply with the provisions of section 23 of this act.

46 (5) The governing bodies of two or more contracting units or
47 boards of education [within the same county, or adjoining
48 counties,] ²within the same county, or adjoining counties; or for
49 purposes related to the distribution of electricity, the governing

1 bodies of two or more contracting units providing electrical
2 distribution services pursuant to R.S.40:62-12 through
3 R.S.40:62-25,² may by ordinance or resolution, as appropriate,
4 establish a cooperative pricing system as hereinafter provided.
5 Any such ordinance or resolution shall establish procedures
6 whereby one participating contracting unit in the cooperative
7 pricing system shall be empowered to advertise and receive bids
8 to provide prices for all other participating contracting units in
9 such system for the purchase of work, materials ¹[,services,]¹ and
10 supplies; provided, however, that no purchase or contract shall be
11 made by any participating contracting unit for a price which
12 exceeds any other price available to the participating contracting
13 unit, or for a purchase in deviation from the specifications, price
14 or quality set forth by the participating contracting unit.

15 No vendor shall be required or permitted to extend his bid
16 prices to participating contracting units in a cooperative pricing
17 system unless so specified in the bids.

18 No cooperative pricing system and agreements entered into
19 pursuant to such system, or joint purchase agreements established
20 pursuant to this act, the "Interlocal Services Act," (P.L.1973,
21 c.208; C.40:8A-1 et seq.) or any other provision of law, shall
22 become effective without prior approval of the Director of the
23 Division of Local Government Services and said approval shall be
24 valid for a period not to exceed 5 years²[, except as otherwise
25 provided by ¹[law] chapter 62 of Title 40 of the Revised
26 Statutes¹]².

27 The director's approval shall be based on the following:

28 (a) Provision for maintaining adequate records and orderly
29 procedures to facilitate audit and efficient administration, and

30 (b) Adequacy of public disclosure of such actions as are taken
31 by the participants, and

32 (c) Adequacy of procedures to facilitate compliance with all
33 provisions of the "Local Public Contracts Law" and corresponding
34 regulations, and

35 (d) Clarity of provisions to assure that the responsibilities of
36 the respective parties are understood.

37 Failure of the Director of the Division of Local Government
38 Services to approve or disapprove a properly executed and
39 completed application to establish a cooperative pricing system
40 and agreements entered into pursuant to such system or other
41 joint purchase agreement within 45 days from the date of receipt
42 of said application by the director shall constitute approval of
43 said application, which shall be valid for a period of [5] five
44 years, commencing from the date of receipt of said application
45 by the director²[, except that the approval shall be valid for more
46 than five years if provided by ¹[law] chapter 62 of Title 40 of the
47 Revised Statutes¹]².

48 The Director of the Division of Local Government Services is
49 hereby authorized to promulgate rules and regulations specifying

1 procedures pertaining to cooperative pricing systems and joint
2 purchase agreements entered into pursuant to this act, the
3 "Interlocal Services Act," (P.L.1973, c.208; C.40:8A-1 et seq.)
4 and any other provision of law.

5 (cf: P.L.1979, c.420, s.1)

6 ¹[5. Section 1 of P.L.1972, c.112 (C.40A:11-12.1) is amended
7 to read as follows:

8 1. As used in this act, except as otherwise clearly indicated or
9 required by the context:

10 a. "local unit" means a county, municipality, school district,
11 regional school district, vocational school district, community
12 college, authority, or other governmental instrumentality of this
13 State;

14 b. "governing body" means the board of chosen freeholders of
15 a county or the council, commission, committee or other board or
16 body, by whatever name designated, having control of the
17 finances of a municipality; and in the case of any local unit
18 having a chief executive officer authorized by law to participate
19 in such control through recommendation, approval or veto,
20 includes such officer to the extent of such participation;

21 c. "electronic data processing" means the storage, retrieval,
22 combination or collation of items of information by means of
23 electronic equipment involving the translation of words, numbers
24 and other symbolic elements into electrical impulses or currents;

25 d. "operate" and "operation" mean the acquisition,
26 construction, management and administration of any lands, public
27 improvements, works, facilities, services or undertakings; and

28 e. "electrical generation and transmission" means the
29 production of electricity by any means, and the transporting of
30 electricity to the point of use.

31 (cf: P.L.1972, c.112, s.1)]¹

32 ¹[6. Section 2 of P.L.1972, c.112 (C.40A:11-12.2) is amended
33 to read as follows:

34 2. a. The governing body of any local unit may by contract
35 provide electronic data processing services or electrical
36 generation and transmission services or facilities for another
37 governing body or bodies of any other local unit or units,
38 undertake with the governing body or bodies of such other local
39 unit or units the joint operation of electrical generation and
40 transmission services or facilities, or electronic data processing
41 of their several official records and other information relative to
42 their governmental activities, services and responsibilities.

43 b. The records and other information originating with any local
44 unit participating in [such a] an electronic data processing
45 services contract may be combined, compiled, and conjoined with
46 the records and other information of any and all other
47 participating local units for the purposes of such electronic data
48 processing; and any provisions of law requiring such records to be
49 kept confidential or to be retained by any local unit or any

1 officer or agency thereof shall be deemed to be isolated thereby.
2 (cf: P.L.1972, c.112, s.2)]¹

3 ¹[7. Section 5 of P.L.1972, c.112 (C.40A:11-12.5) is amended
4 to read as follows:

5 5. Any local unit may raise and disburse all necessary money,
6 by taxation or the issuance of bonds, in the manner provided by
7 law to pay its respective share of the costs of operating joint
8 electronic data processing or electrical generation and
9 transmission under a contract pursuant to this act. Any
10 authorization for incurring debt or issuing bonds shall be
11 restricted to the purposes, and subject to the requirements, of[,]
12 the Local Bond Law.

13 (cf: P.L.1972, c.112, s.5)]¹

14 ¹[8.] 5.1 Section 15 of P.L.1971, c.198 (C.40A:11-15) is
15 amended to read as follows:

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

22 (1) Supplying of:

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

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

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

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

36 (3) The collection and disposal of garbage and refuse, and the
37 barging and disposal of sewage sludge, for any term not exceeding
38 in the aggregate, five years;

39 (4) The recycling of solid waste, including the collection of
40 methane gas from a sanitary landfill facility, for any term not
41 exceeding 25 years, when such contract is in conformance with a
42 solid waste management plan approved pursuant to P.L.1970, c.39
43 (C.13:1E-1 et seq.), and with the approval of the Division of
44 Local Government Services and the Department of Environmental
45 Protection. The contracting unit shall award the contract to the
46 highest responsible bidder, notwithstanding that the contract
47 price may be in excess of the amount of any necessarily related
48 administrative expenses; except that if the contract requires the
49 contracting unit to expend funds only, the contracting unit shall

- 1 award the contract to the lowest responsible bidder. The
2 approval by the Division of Local Government Services of public
3 bidding requirements shall not be required for those contracts
4 exempted therefrom pursuant to section 5 of P.L.1971, c.198
5 (C.40A:11-5);
- 6 (5) Data processing service, for any term of not more than
7 three years;
- 8 (6) Insurance, for any term of not more than three years;
- 9 (7) Leasing or servicing of automobiles, motor vehicles,
10 machinery and equipment of every nature and kind, for a period
11 not to exceed three years; provided, however, such contracts
12 shall be entered into only subject to and in accordance with the
13 rules and regulations promulgated by the Director of the Division
14 of Local Government Services of the Department of Community
15 Affairs;
- 16 (8) The supplying of any product or the rendering of any
17 service by a [telephone] ¹[public utility,] telephone¹ company
18 [which is] ¹[, or governmental unit] which is¹ subject to the
19 jurisdiction of the Board of Public Utilities [for a term not
20 exceeding five years] ¹[of this State or a similar regulatory body
21 of another state, or a federal regulatory agency, for a term not
22 to exceed seven years, except that purchase of electricity and
23 related transmission, administrative and dispatching services by a
24 contracting unit engaged in the retail sale and distribution of
25 electricity may be for a term not to exceed 40 years] for a term
26 not exceeding five years¹;
- 27 (9) Any single project for the construction, reconstruction or
28 rehabilitation of any public building, structure or facility, or any
29 public works project, including the retention of the services of
30 any architect or engineer in connection therewith, for the length
31 of time authorized and necessary for the completion of the actual
32 construction;
- 33 (10) The providing of food services for any term not exceeding
34 three years;
- 35 (11) On-site inspections undertaken by private agencies
36 pursuant to the "State Uniform Construction Code Act"
37 (P.L.1975, c.217; C.52:27D-119 et seq.) for any term of not more
38 than three years;
- 39 (12) The performance of work or services or the furnishing of
40 materials or supplies for the purpose of conserving energy in
41 buildings owned by, or operations conducted by, the contracting
42 unit, the entire price of which to be established as a percentage
43 of the resultant savings in energy costs, for a term not to exceed
44 10 years; provided, however, that such contracts shall be entered
45 into only subject to and in accordance with rules and regulations
46 promulgated by the [Department of Energy] Division of Energy
47 Planning and Conservation, of the Board of Public Utilities,
48 establishing a methodology for computing energy cost savings;
- 49 (13) The performance of work or services or the furnishing of

1 materials or supplies for the purpose of elevator maintenance for
2 any term not exceeding three years;

3 (14) Leasing or servicing of electronic communications
4 equipment for a period not to exceed five years; provided,
5 however, such contract shall be entered into only subject to and
6 in accordance with the rules and regulations promulgated by the
7 Director of the Division of Local Government Services of the
8 Department of Community Affairs;

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

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

49 (17) The provision of solid waste disposal services by a

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

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

35 (19) The provision of wastewater treatment services or the
36 designing, financing, construction, operation, or maintenance, or
37 any combination thereof, of a wastewater treatment system, or
38 any component part or parts thereof, for a period not to exceed
39 40 years, when the contract for these services is approved by the
40 Division of Local Government Services in the Department of
41 Community Affairs and the Department of Environmental
42 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For
43 the purposes of this subsection, "wastewater treatment services"
44 means any service provided by a wastewater treatment system,
45 and "wastewater treatment system" means equipment, plants,
46 structures, machinery, apparatus, or land, or any combination
47 thereof, acquired, used, constructed, or operated for the storage,
48 collection, reduction, recycling, reclamation, disposal,
49 separation, or other treatment of wastewater or sewage sludge,

1 or for the final disposal of residues resulting from the treatment
2 of wastewater, including, but not limited to, pumping and
3 ventilating stations, facilities, plants and works, connections,
4 outfall sewers, interceptors, trunk lines, and other personal
5 property and appurtenances necessary for their operation;

6 (20) The supplying of materials or services for the purpose of
7 lighting public streets, for a term not to exceed five years,
8 provided that the rates, fares, tariffs or charges for the supplying
9 of electricity for that purpose are approved by the Board of
10 Public Utilities;

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

15 (22) Fuel for ²[an electrical generating facility] the purpose of
16 generating electricity² for a term not to exceed ²[10] eight²
17 years¹;

18 (23) The ²[supplying of electricity and transmission,
19 administrative, and dispatching services by] purchase of
20 electricity or administrative or dispatching services related to
21 the transmission of such electricity, from² a public utility
22 company subject to the jurisdiction of the Board of Public
23 Utilities, a similar regulatory body of another state, or a federal
24 regulatory agency, or ²[by] from² a qualifying ²small power
25 producing facility or qualifying cogeneration² facility, as defined
26 by 16 U.S.C. §796, ²[to] by² a contracting unit engaged in the
27 generation of electricity for retail sale, as of the date of this
28 amendatory act, for a term not to exceed 40 years¹.

29 All multi-year leases and contracts entered into pursuant to
30 this section, except contracts for the leasing or servicing of
31 equipment supplied by a telephone company which is subject to
32 the jurisdiction of the Board of Public Utilities, contracts
33 involving the supplying of electricity [for the purpose of lighting
34 public streets] ²for the purpose of lighting public streets² and
35 ²[related services,]² contracts for thermal energy authorized
36 pursuant to subsection (1) above, construction contracts
37 authorized pursuant to subsection (9) above, contracts and
38 agreements for the provision of work or the supplying of
39 equipment to promote energy conservation authorized pursuant to
40 subsection (12) above, contracts for water supply services or for a
41 water supply facility, or any component part or parts thereof
42 authorized pursuant to subsection (16) above, contracts for
43 resource recovery services or a resource recovery facility
44 authorized pursuant to subsection (17) above, contracts for the
45 sale of energy produced by a resource recovery facility
46 authorized pursuant to subsection (18) above, contracts for
47 wastewater treatment services or for a wastewater treatment
48 system or any component part or parts thereof authorized
49 pursuant to subsection (19) above, ²contracts for the purchase of

1 electricity or administrative or dispatching services related to
2 the transmission of such electricity authorized pursuant to
3 subsection (23) above,² shall contain a clause making them
4 subject to the availability and appropriation annually of sufficient
5 funds as may be required to meet the extended obligation, or
6 contain an annual cancellation clause.

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

11 (cf: P.L.1989, c.159, s.2)

12 ¹[9.] 6.¹ Section 15 of P.L.1971, c.199 (C.40A:12-15) is
13 amended to read as follows:

14 15. Purposes for which leases for a public purpose may be
15 made.

16 A leasehold for a term not in excess of 50 years may be made
17 pursuant to this act and extended for an additional 25 years by
18 ordinance or resolution thereafter for any county or municipal
19 public purpose, including, but not limited to:

20 (a) The provision of fire protection, first aid, rescue and
21 emergency services by an association duly incorporated for such
22 purposes.

23 (b) The provision of health care or services by a nonprofit
24 clinic, hospital, residential home, out patient center or other
25 similar corporation or association.

26 (c) The housing, recreation, education or health care of
27 veterans of any war of the United States by any nonprofit
28 corporation or association.

29 (d) Mental health[,] or psychiatric services or education for the
30 mentally ill, mentally retarded, or mentally defective by any
31 nonprofit corporation or association.

32 (e) Any shelter care or services for persons aged 62 or over
33 receiving Social Security payments, pensions, or disability
34 benefits which constitute a substantial portion of the gross
35 income by any nonprofit corporation or association.

36 (f) Services or care for the education or treatment of cerebral
37 palsy patients by any nonprofit corporation or association.

38 (g) Any civic or historic programs or activities by duly
39 incorporated historical societies.

40 (h) Services, education, training, care or treatment of poor or
41 indigent persons or families by any nonprofit corporation or
42 association.

43 (i) Any activity for the promotion of the health, safety, morals
44 and general welfare of the community of any nonprofit
45 corporation or association.

46 (j) The cultivation or use of vacant lots for gardening or
47 recreational purposes.

48 (k) The provision of electrical transmission ¹[through the lines
49 of others for the purpose of transporting electricity] service

1 across the lines of a public utility for a ²[contracting unit] county
2 or municipality² pursuant to ²[chapter 62 of Title 40 of the
3 Revised Statutes¹] R.S.40:62-12 through R.S.40:62-25².

4 [In] Except as otherwise provided in subsection (k) of this
5 section, in no event shall any lease under this section be entered
6 into for, with, or on behalf of any commercial, business, trade,
7 manufacturing, wholesaling, retailing, or other profit-making
8 enterprise, nor shall any lease pursuant to this section be entered
9 into with any political, partisan, sectarian, denominational or
10 religious corporation or association, or for any political, partisan,
11 sectarian, denominational or religious purpose, except that a
12 county or municipality may enter into a lease for the use
13 permitted under subsection (j) with a sectarian, denominational or
14 religious corporation; provided the property is not used for a
15 sectarian, denominational or religious purpose. In the case of a
16 municipality the governing body may designate the municipal
17 manager, business administrator or any other municipal official
18 for the purpose of entering into a lease for the use permitted
19 under subsection (j).

20 (cf: P.L.1984, c.27, s.2)

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

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

25 (1) "Contracting unit" means:

26 (a) Any county; or

27 (b) Any municipality; or

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

40 (2) "Governing body" means:

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

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

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

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

1 contracting unit, or any board, commission, committee, officer,
2 department, branch or agency which has the power to prepare the
3 advertisements, to advertise for and receive bids and, as
4 permitted by this act, to make awards for the contracting unit in
5 connection with purchases, contracts or agreements.

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

9 (5) "Materials" includes goods and property subject to chapter
10 2 of Title 12A of the New Jersey Statutes, apparatus, or any
11 other tangible thing, except real property or any interest therein.

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

22 (7) "Extraordinary unspecifiable services" means services
23 which are specialized and qualitative in nature requiring
24 expertise, extensive training and proven reputation in the field of
25 endeavor.

26 (8) "Project" means any work, undertaking, program, activity,
27 development, redevelopment, construction or reconstruction of
28 any area or areas.

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

32 (10) "Homemaker--home health services" means at home
33 personal care and home management provided to an individual or
34 members of his family who reside with him, or both, necessitated
35 by the individual's illness or incapacity. "Homemaker--home
36 health services" includes, but is not limited to, the services of a
37 trained homemaker.

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

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

46 (13) "Marketing" means the marketing of designated
47 recyclable materials source separated in a municipality which
48 entails a marketing cost less than the cost of transporting the
49 recyclable materials to solid waste facilities and disposing of the

1 materials as municipal solid waste at the facility utilized by the
2 municipality.

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

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

10 (16) "Transmission" (when used in relation to electricity)
11 means the conveyance of electricity from its point of generation
12 to a contracting unit who purchases it on a wholesale basis for
13 resale.²

14 (cf: P.L.1987, c.102, s.30)

15 ¹[10.] ²[7.1] 8.² This act shall take effect immediately.

16

17

18

LOCAL BUDGET AND FINANCE

19

20 Amends the "Local Public Contracts Law" to authorize
21 multi-year contracts for energy generation and transmission.

1 incorporated historical societies.

2 (h) Services, education, training, care or treatment of poor or
3 indigent persons or families by any nonprofit corporation or
4 association.

5 (i) Any activity for the promotion of the health, safety, morals
6 and general welfare of the community of any nonprofit
7 corporation or association.

8 (j) The cultivation or use of vacant lots for gardening or
9 recreational purposes.

10 (k) The provision of electrical transmission through the lines of
11 others for the purpose of transporting electricity.

12 [In] Except as otherwise provided in subsection (k) of this
13 section, in no event shall any lease under this section be entered
14 into for, with, or on behalf of any commercial, business, trade,
15 manufacturing, wholesaling, retailing, or other profit-making
16 enterprise, nor shall any lease pursuant to this section be entered
17 into with any political, partisan, sectarian, denominational or
18 religious corporation or association, or for any political, partisan,
19 sectarian, denominational or religious purpose, except that a
20 county or municipality may enter into a lease for the use
21 permitted under subsection (j) with a sectarian, denominational or
22 religious corporation; provided the property is not used for a
23 sectarian, denominational or religious purpose. In the case of a
24 municipality the governing body may designate the municipal
25 manager, business administrator or any other municipal official
26 for the purpose of entering into a lease for the use permitted
27 under subsection (j).

28 (cf: P.L.1984, c.27, s.2)

29 10. This act shall take effect immediately.

30

31

32 *SPONSORS'* STATEMENT

33

34 This bill amends the "Local Public Contracts Law" to authorize
35 local units of government to enter into multi-year contracts for
36 energy generation and transmission, and related services,
37 including contracts with qualifying small power production
38 facilities or cogeneration facilities.

39

40

41

LOCAL BUDGET AND FINANCE

42

43 Amends the "Local Public Contracts Law" to authorize
44 multi-year contracts for energy generation and transmission.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3374

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 11, 1990

The Assembly Municipal Government Committee reports favorably Assembly Bill No. 3374 with Assembly committee amendments.

This bill, as amended by the committee, amends the "Local Public Contracts Law" to authorize local units of government to enter into multi-year contracts for energy generation and transmission, and related services, including contracts with qualifying small power production facilities or cogeneration facilities.

COMMITTEE AMENDMENTS

The committee amendments clarify various references to "law" in the bill with a specific reference to chapter 62 of Title 40 of the Revised Statutes, concerning municipally owned public utilities. The committee amendments also limit the proposed bidding exception to the "Local Public Contracts Law," for the purchase and transmission of electricity, to local contracting units engaged in the generation of electricity, rather than local contracting units engaged in the retail sale and distribution of electricity.

The committee amendments delete the proposed authorization of joint agreements between contracting units for the purchase of services and also continue the five year duration limit on contracts with telephone companies by moving the proposed language permitting contracts with any public utility, or governmental unit subject to the jurisdiction of a governmental regulatory body, to have a duration of seven years and up to 40 years for the purchase and transmission of electricity, into a new subsection.

SENATE STATE GOVERNMENT AND FEDERAL
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 3374

STATE OF NEW JERSEY

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DATED: JANUARY 10, 1991

The Senate State Government and Federal and Interstate Relations Committee reports favorably Assembly, No. 3374 [1R].

This bill provides that a local governing body may award a contract without public advertising for bids if the subject matter consists of: (1) the supplying of any product or service by a public utility which is subject to a federal regulatory agency; (2) the supplying of any product or service by a qualifying small power production or cogeneration facility; and (3) the purchase of electricity and related transmission, administrative and dispatching services by a contracting unit engaged in the generation of electricity. The bill also (1) removes the requirement from joint purchase agreements that two or more contracting units must be within the same or adjoining counties; (2) provides that a contract may be for up to ten years for fuel for an electrical generating facility and for up to 40 years for the supplying of electricity and transmission, administrative and dispatching services by a public utility; and (3) provides that a county or municipality may enter into a 50 year lease (which may be extended for an additional 25 years) for the provision of electrical transmission service across the lines of a public utility.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 15, 1991

ASSEMBLY BILL NO. 3374

(FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14, of the Constitution, I am returning Assembly Bill No. 3374 with my objections for reconsideration.

This bill would amend several sections of the Local Public Contracts Law for the purpose of allowing municipally-owned electrical generating facilities additional flexibility in the acquisition of electricity, material, and services necessary for the conduct of its operations. However, in doing so it creates the potential to undermine the integrity of the Local Public Contracts Law as it applies not only to such facilities, but to all other applicable contracting units.

While I am committed to assist local governments to fulfill their obligations, I am hesitant to endorse this bill in its current form. The amendments I propose provide the proper mechanism to enable municipalities to fulfill their legal and contractual obligations and provide electricity for their residents. These amendments ensure that the operating flexibility intended by the original legislation is achieved and that the integrity of the Local Public Contracts Law is not compromised.

The amendments allow generators to contract for the purchase of energy from cogeneration or other similarly-regulated power suppliers under contracts up to 40 years in length without the need for public bidding, and be exempt from the "annual appropriation of sufficient funds" clause. This allows for long-term commitments and more flexible contracting arrangements to meet the economic requirements of such expensive private sector undertakings. Contracts for fuel for municipally-owned generators are also permitted to be up to 8 years in length.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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The changes permit generators to purchase electricity from regional power "pools" and to incur the related transmission charges without the need for bidding as well. Finally, the few municipally-owned electrical utilities engaged in the distribution of electricity to retail customers are permitted to take advantage of joint and cooperative purchasing opportunities for materials and services related to the distribution of electricity to their customers.

Therefore, I herewith return Assembly Bill No. 3374 (First Reprint) and recommend that it be amended as follows.

Page 1, Section 1, Line 28:

After "year" delete ", or may be awarded for a longer period if provided by chapter 62 of Title 40 of the Revised Statutes"

Page 2, Section 2, Line 45:

After "Utilities" delete "or a federal regulatory agency" and insert "or the U.S. Federal Energy Regulatory Commission or its successor"

Page 2, Section 2, Line 47:

After "board or" delete "agency" and insert "Commission"

Page 4, Section 2, Line 6:

After "The" delete "supplying of any product or the rendering of any services by" and insert "purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from"

Page 4, Section 2, Line 8:

Before "cogeneration" insert "qualifying"

Page 4, Section 2, Line 9:

After "electricity" delete "and related transmission, administrative and dispatching services" and insert "or administrative or dispatching services directly related to the transmission of such purchased electricity"

Page 5, Section 3, Line 23:

After "units" insert "within the same county, or adjoining counties,"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 5, Section 3, After Line 33:

Insert "(3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accord with R.S. 40:62-12 through 40:62-25, may provide by joint agreement for the purchase of work, material and supplies related to the distribution of electricity."

Page 6, Section 4, Line 33:

After "education" insert "within the same county, or adjoining counties; or for purposes related to the distribution of electricity, the governing bodies of two or more contracting units providing electrical distribution services pursuant to R.S. 40:62-12 through 40:62-25,"

Page 7, Section 4, Line 6:

After "years" delete ", except as otherwise provided by chapter 62 of Title 40 of the Revised Statutes"

Page 7, Section 4, Line 26:

After "director" delete ", except that the approval shall be valid for more than five years if provided by chapter 62 of Title 40 of the Revised Statutes"

Page 12, Section 5, Line 45:

After "Fuel for" delete "an electrical generating facility" and insert "the purpose of generating electricity"

Page 12, Section 5, Line 46:

After "exceed" delete "10" and insert "8"

Page 12, Section 5, Line 47:

After "The" delete "supplying of electricity and transmission and dispatching services by" and insert "purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from"

Page 13, Section 5, Line 2:

After "or" delete "by" and insert "from"

Page 13, Section 5, Line 2:

After "qualifying" insert "small power producing facility or qualifying cogeneration"

Page 13, Section 5, Line 3:

After "s796," delete "to" and insert "by"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 13, Section 5, Line 10:

After "electricity" insert "for the purpose of lighting public streets"

Page 13, Section 5, Line 11:

After "and" delete "related services"

Page 13, Section 5, Line 25:

After "above," insert "contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (23) above,"

Page 14, Section 6, Line 23:

After "for a" delete "contracting unit" and insert "county or municipality"

Page 14, Section 6, Line 24:

After "to" insert "sections 12 through 25 of"

Page 14, Section 6, After Line 41:

Insert new section 7 as follows:

"7. Section 2 of P.L. 1971, c.199 (C.40A:11-2) is amended to read as follows:

As used herein the following words have the following definitions, unless the context otherwise indicates:

(1) "Contracting unit" means

(a) Any county; or

(b) Any municipality; or

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

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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(2) "Governing body" means:

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

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

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

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

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

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

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

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EXECUTIVE DEPARTMENT

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- (7) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.
- (8) "Project" means any work, undertaking, program, activity, development, redevelopment, construction or reconstruction of any area or areas.
- (9) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.
- (10) "Homemaker - home health services" means at home personal care and home management provided to an individual or members of his family who reside with him, or both, necessitated by the individual's illness or incapacity. "Homemaker - home health services" includes, but is not limited to, the services of a trained homemaker.
- (11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.
- (12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.
- (13) "Marketing" means the marketing of designated recyclable materials source separated in a municipality which entails a marketing cost less than the cost of transporting the recyclable material to solid waste facilities and disposing of the materials as municipal solid waste at the facility utilized by the municipality.
- (14) "Municipal solid waste" means all residential, commercial and institutional solid waste generated within the boundaries of a municipality.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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

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

Respectfully,

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Chief Counsel to the Governor