

40A:11-5

**LEGISLATIVE HISTORY CHECKLIST**  
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**NJSA:** 40A:11-5

(Towing  
contractors--rotating  
list)

**LAWS OF:** 1991

**CHAPTER:** 142

**Bill No:** A3011

**Sponsor(s):** Zangari

**Date Introduced:** Febraury 26, 1990

**Com mittee: Assembly:** County Government

**Senate:** County & Municipal Government

**A mended during passage:** Yes      A mendments denoted by asterisks.

**Date of Passage: Assembly:** May 21, 1990      re-enacted 5-9-91

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

**Date of Approval:** May 24, 1991

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Com mittee Statement: Assembly:** Yes

**Senate:** Yes

**Fiscal Note:** No

**Veto Message:** Yes

**Message on signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

**KBG/SLJ**

1 **AN ACT** concerning local public contracts and amending  
2 P.L.1971, c.198 <sup>2</sup>and P.L.1979, c.101<sup>2</sup>.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the  
5 *State of New Jersey*:

6 1. 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.

24 The application of this exception shall be construed narrowly in  
25 favor of open competitive bidding, where possible, and the  
26 Division of Local Government Services is authorized to adopt and  
27 promulgate rules and regulations limiting the use of this  
28 exception in accordance with the intention herein expressed. The  
29 governing body shall in each instance state supporting reasons for  
30 its action in the resolution awarding each contract and shall  
31 forthwith cause to be printed, in the manner set forth in  
32 subsection (1)(a)(i) of this section, a brief notice of the award of  
33 such contract;

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

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

**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:

<sup>1</sup> Senate SCM committee amendments adopted September 24, 1990.

<sup>2</sup> Senate floor amendments adopted December 6, 1990.

<sup>3</sup> Senate floor amendments adopted January 14, 1991.

<sup>4</sup> Assembly amendments adopted in accordance with Governor's  
recommendations May 2, 1991.

1 be a party;

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

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

5 (f) The supplying of any product or the rendering of any  
6 service by a public utility, which is subject to the jurisdiction of  
7 the Board of Public Utilities, in accordance with tariffs and  
8 schedules of charges made, charged or exacted, filed with said  
9 board;

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

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

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

19 (j) The publishing of legal notices in newspapers as required by  
20 law;

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

23 (l) Election expenses;

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

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

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

33 (p) Homemaker--home health services performed by  
34 voluntary, nonprofit agencies;

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

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

48 (s) The marketing of recyclable materials recovered through a  
49 recycling program, or the marketing of any product intentionally

1 produced or derived from solid waste received at a resource  
2 recovery facility or recovered through a resource recovery  
3 program, including, but not limited to, refuse-derived fuel,  
4 compost materials, methane gas, and other similar products; or

5 (t) Emergency medical services provided by a hospital to the  
6 residents of a municipality or county, provided that: (a) such  
7 exception be allowed only after the governing body determines  
8 that the emergency services are available only from one provider;  
9 and (b) if the contract is awarded without advertising for bids or  
10 bidding the governing body shall in each instance state supporting  
11 reasons for its action in a resolution awarding the contract and  
12 cause to be printed once in a newspaper authorized by law to  
13 publish its legal advertisements a brief notice stating the nature,  
14 duration, service, and amount of the contract; and (c) the  
15 contract shall be kept on file for public inspection in the office of  
16 the clerk of the municipality;

17 (u) <sup>2</sup>[Local government] Contracting unit<sup>2</sup> towing <sup>2</sup>and  
18 storage<sup>2</sup> contracts, provided that <sup>2</sup>[the local governing body has  
19 enacted an ordinance or resolution, <sup>1</sup>[as] whichever may be<sup>1</sup>  
20 appropriate, establishing criteria and procedures for an annual  
21 list of towing contractors to be selected on a rotating basis <sup>1</sup>,  
22 which list shall be updated on an annual basis by the clerk of the  
23 municipality or county<sup>1</sup>. The criteria which must be met by a  
24 towing contractor in order to qualify to appear on the annual list  
25 shall include, but not be limited to, reliability, location of storage  
26 facilities, <sup>1</sup>maximum<sup>1</sup> towing fees, possession of adequate  
27 equipment to safely handle common vehicle types, and  
28 maintenance of adequate liability insurance. A towing contractor  
29 may be removed from the annual list by resolution of the  
30 governing body if his performance is determined to be unreliable  
31 or inadequate. <sup>1</sup>The original and annual public reporting of the  
32 current list of designated towing contractors containing the  
33 company name, address, telephone number and maximum towing  
34 fees shall be printed and circulated in the municipality or county  
35 as appropriate. The annual reporting of the list shall be available  
36 for inspection by any member of the general public upon  
37 request.<sup>1</sup> all such contracts shall be pursuant to reasonable  
38 non-exclusionary and non-discriminatory terms and conditions,  
39 <sup>3</sup>[which may include the provision of such services on a rotating  
40 basis,]<sup>3</sup> <sup>4</sup>which may include the provision of such services on a  
41 rotating basis,<sup>4</sup> at the rates and charges set by the municipality  
42 pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All  
43 contracting unit towing and storage contracts for services to be  
44 provided at rates and charges other than those established  
45 pursuant to the terms of this paragraph shall only be awarded to  
46 the lowest responsible bidder in accordance with the provisions of  
47 the "Local Public Contracts Law" and without regard for the  
48 value of the contract <sup>3</sup>[therefore. Each of the aforementioned  
49 means of contracting shall be subject to any regulations adopted

1 by the Commissioner of Insurance pursuant to section 60 of  
2 P.L.1990, c.8 (C.17:33B-47)] therefor<sup>3,2</sup> <sup>4</sup>Each of the  
3 forementioned means of contracting shall be subject to any  
4 regulations adopted by the Commissioner of Insurance pursuant to  
5 section 60 of P.L.1990, c.8 (C.17:33B-47).<sup>4</sup>

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

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

25 (i) A reasonable effort is first made by the contracting agent  
26 to determine that the same or equivalent materials or supplies, at  
27 a cost which is lower than the negotiated price, are not available  
28 from an agency or authority of the United States, the State of  
29 New Jersey or of the county in which the contracting unit is  
30 located, or any municipality in close proximity to the contracting  
31 unit;

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

36 (iii) Any minor amendment or modification of any of the  
37 terms, conditions, restrictions and specifications, which were the  
38 subject of competitive bidding pursuant to section 4 of this act,  
39 shall be stated in the resolution awarding such contract or  
40 agreement; provided further, however, that if on the second  
41 occasion the bids received are rejected as unreasonable as to  
42 price, the contracting agent shall notify each responsible bidder  
43 submitting bids on the second occasion of its intention to  
44 negotiate, and afford each such bidder a reasonable opportunity  
45 to negotiate, but the governing body shall not award such  
46 contract or agreement unless the negotiated price is lower than  
47 the lowest rejected bid price submitted on the second occasion by  
48 a responsible bidder, is the lowest negotiated price offered by any  
49 responsible supplier, and is a reasonable price for such work,

1 materials, supplies or services.

2 Whenever a contracting unit shall determine that a bid was not  
3 arrived at independently in open competition pursuant to  
4 subsection (3) of this section it shall thereupon notify the county  
5 prosecutor of the county in which the contracting unit is located  
6 and the Attorney General of the facts upon which its  
7 determination is based, and when appropriate, it may institute  
8 appropriate proceedings in any State or federal court of  
9 competent jurisdiction for a violation of any State or federal  
10 antitrust law or laws relating to the unlawful restraint of trade.  
11 (cf: P.L.1989, c.159, s.1)

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

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

20 (1) Supplying of:

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

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

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

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

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

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

1 bidding requirements shall not be required for those contracts  
2 exempted therefrom pursuant to section 5 of P.L.1971, c.198  
3 (C.40A:11-5);

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

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

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

13 Affairs;

14 (8) The supplying of any product or the rendering of any  
15 service by a telephone company which is subject to the  
16 jurisdiction of the Board of Public Utilities for a term not  
17 exceeding five years;

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

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

26 (11) 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.) for any term of not more  
29 than three years;

30 (12) The performance of work or services or the furnishing of  
31 materials or supplies for the purpose of conserving energy in  
32 buildings owned by, or operations conducted by, the contracting  
33 unit, the entire price of which to be established as a percentage  
34 of the resultant savings in energy costs, for a term not to exceed  
35 10 years; provided, however, that such contracts shall be entered  
36 into only subject to and in accordance with rules and regulations  
37 promulgated by the Department of Energy establishing a  
38 methodology for computing energy cost savings;

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

42 (14) Leasing or servicing of electronic communications  
43 equipment for a period not to exceed five years; provided,  
44 however, such contract shall be entered into only subject to and  
45 in accordance with the rules and regulations promulgated by the  
46 Director of the Division of Local Government Services of the  
47 Department of Community Affairs;

48 (15) Leasing of motor vehicles, machinery and other equipment  
49 primarily used to fight fires, for a term not to exceed seven

1 years, when the contract includes an option to purchase, subject  
2 to and in accordance with rules and regulations promulgated by  
3 the Director of the Division of Local Government Services of the  
4 Department of Community Affairs;

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

39 (17) The provision of solid waste disposal services by a  
40 resource recovery facility, the furnishing of products of a  
41 resource recovery facility, the disposal of the solid waste  
42 delivered for disposal which cannot be processed by a resource  
43 recovery facility or the waste products resulting from the  
44 operation of a resource recovery facility, including hazardous  
45 waste and recovered metals and other materials for reuse, or the  
46 design, financing, construction, operation or maintenance of a  
47 resource recovery facility for a period not to exceed 40 years  
48 when the contract is approved by the Division of Local  
49 Government Services in the Department of Community Affairs,



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

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

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

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

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

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

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

31 The Division of Local Government Services shall adopt and  
32 promulgate rules and regulations concerning the methods of  
33 accounting for all contracts that do not coincide with the fiscal  
34 year.<sup>2</sup>

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

36 <sup>23.</sup> Section 1 of P.L.1979, c.101 (C.40:48-2.49) is amended to  
37 read as follows:

38 1. Notwithstanding the provisions of section 1 of P.L.1973,  
39 c.137 (C.39:4-56.6) or any other law, and except to the extent  
40 regulated by the Commissioner of Insurance pursuant to section  
41 60 of P.L.1990, c.8 (C.17:33B-47), a municipality may regulate,  
42 by ordinance, the removal of motor vehicles from private or  
43 public property by operators engaged in such practice, including,  
44 but not limited to, the fees charged for storage following removal  
45 in accordance with section 3 of P.L.1987, c.127 (C.40:48-2.50),  
46 fees charged for such removal, notice requirements therefor, and  
47 the mercantile licensing of such operators.

48 The ordinance shall set forth non-discriminatory and  
49 non-exclusionary regulations governing operators engaged in the

1 business of removing and storing motor vehicles. The regulations  
2 shall include, but not be limited to:

3 a. A schedule of fees or other charges which an operator may  
4 charge vehicle owners for towing services, storage services or  
5 both;

6 b. Minimum standards of operator performance, including but  
7 not limited to standards concerning the adequacy of equipment  
8 and facilities, availability and response time, and the security of  
9 vehicles towed or stored;

10 c. The designation of a municipal officer or agency to enforce  
11 the provisions of the ordinance in accordance with due process of  
12 law;

13 d. The requirement that such regulations and fee schedules of  
14 individual towers shall be made available to the public during  
15 normal business hours of the municipality.<sup>2</sup>

16 (cf: P.L.1987, c.127, s.2)

17 <sup>2</sup>[2.] 4.<sup>2</sup> This act shall take effect immediately.

18  
19  
20 LOCAL GOVERNMENT

21  
22 Exempts local government towing contracts from bidding  
23 requirements of "Local Public Contracts Law" under certain  
24 circumstances.

ASSEMBLY, No. 3011

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1990

By Assemblyman ZANGARI

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2 P.L.1971, c.198.

3  
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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  
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24 The application of this exception shall be construed narrowly in  
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34 (b) The doing of any work by employees of the contracting  
35 unit;

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

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

Matter underlined thus is new matter.

- 1 (d) The furnishing of a tax map or maps for the contracting  
2 party;
- 3 (e) The purchase of perishable foods as a subsistence supply;
- 4 (f) The supplying of any product or the rendering of any  
5 service by a public utility, which is subject to the jurisdiction of  
6 the Board of Public Utilities, in accordance with tariffs and  
7 schedules of charges made, charged or exacted, filed with said  
8 board;
- 9 ~~(g) The acquisition, subject to prior approval of the Attorney  
10 General, of special equipment for confidential investigation;~~
- 11 (h) The printing of bonds and documents necessary to the  
12 issuance and sale thereof by a contracting unit;
- 13 (i) Equipment repair service if in the nature of an  
14 extraordinary unspecifiable service and necessary parts furnished  
15 in connection with such service, which exception shall be in  
16 accordance with the requirements for extraordinary unspecifiable  
17 services;
- 18 (j) The publishing of legal notices in newspapers as required by  
19 law;
- 20 (k) The acquisition of artifacts or other items of unique  
21 intrinsic, artistic or historical character;
- 22 (l) Election expenses;
- 23 (m) Insurance, including the purchase of insurance coverage  
24 and consultant services, which exception shall be in accordance  
25 with the requirements for extraordinary unspecifiable services;
- 26 (n) The doing of any work by handicapped persons employed by  
27 a sheltered workshop;
- 28 (o) The provision of any service or the furnishing of materials  
29 including those of a commercial nature, attendant upon the  
30 operation of a restaurant by any nonprofit, duly incorporated,  
31 historical society at or on any historical preservation site;
- 32 (p) Homemaker--home health services performed by  
33 voluntary, nonprofit agencies;
- 34 (q) The purchase of materials and services for a law library  
35 established pursuant to R.S.40:33-14, including books, periodicals,  
36 newspapers, documents, pamphlets, photographs, reproductions,  
37 microforms, pictorial or graphic works, copyright and patent  
38 materials, maps, charts, globes, sound recordings, slides, films,  
39 filmscripts, video and magnetic tapes, and other audiovisual,  
40 printed, or published material of a similar nature; necessary  
41 binding or rebinding of law library materials; and specialized  
42 library services;
- 43 (r) On-site inspections undertaken by private agencies  
44 pursuant to the "State Uniform Construction Code Act"  
45 (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations  
46 adopted pursuant thereto;
- 47 (s) The marketing of recyclable materials recovered through a  
48 recycling program, or the marketing of any product intentionally

1 produced or derived from solid waste received at a resource  
2 recovery facility or recovered through a resource recovery  
3 program, including, but not limited to, refuse-derived fuel,  
4 compost materials, methane gas, and other similar products; or

5 (t) Emergency medical services provided by a hospital to the  
6 residents of a municipality or county, provided that: (a) such  
7 exception be allowed only after the governing body determines  
8 that the emergency services are available only from one provider;  
9 and (b) if the contract is awarded without advertising for bids or  
10 bidding the governing body shall in each instance state supporting  
11 reasons for its action in a resolution awarding the contract and  
12 cause to be printed once in a newspaper authorized by law to  
13 publish its legal advertisements a brief notice stating the nature,  
14 duration, service, and amount of the contract; and (c) the  
15 contract shall be kept on file for public inspection in the office of  
16 the clerk of the municipality;

17 (u) Local government towing contracts, provided that the local  
18 governing body has enacted an ordinance or resolution, as  
19 appropriate, establishing criteria and procedures for an annual  
20 list of towing contractors to be selected on a rotating basis. The  
21 criteria which must be met by a towing contractor in order to  
22 qualify to appear on the annual list shall include, but not be  
23 limited to, reliability, location of storage facilities, towing fees,  
24 possession of adequate equipment to safely handle common  
25 vehicle types, and maintenance of adequate liability insurance. A  
26 towing contractor may be removed from the annual list by  
27 resolution of the governing body if his performance is determined  
28 to be unreliable or inadequate.

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

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

48 (i) A reasonable effort is first made by the contracting agent

1 to determine that the same or equivalent materials or supplies, at  
2 a cost which is lower than the negotiated price, are not available  
3 from an agency or authority of the United States, the State of  
4 New Jersey or of the county in which the contracting unit is  
5 located, or any municipality in close proximity to the contracting  
6 unit;

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

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

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

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

36 2. This act shall take effect immediately.

37

38

39

#### STATEMENT

40

41 The purpose of this bill is to remove local government towing  
42 contracts from the bidding requirements of the "Local Public  
43 Contracts Law," P.L.1971, c.198 (C.40A:11-1) for municipalities  
44 or counties that choose to adopt an ordinance, or resolution, as  
45 appropriate, establishing an annual towing contractor list from  
46 which towing contractors are called on a rotating basis.  
47 Establishing a list of towing contractors carries the advantage of  
48 providing opportunity to several different towing contractors and

1 assuring adequate and prompt towing service in emergency  
2 situations that one towing contractor would be unable to handle.

3 The awarding of towing contracts by local government units  
4 has historically involved a number of factors such as equipment,  
5 experience, response time, and location of storage facilities,  
6 which do not always lend themselves to the constraints of the  
7 bidding process. This bill is intended to permit those  
8 municipalities and counties who have found the bidding process  
9 inadequate for their needs to use a rotational list approach.

10

11

12

#### LOCAL GOVERNMENT

13

14 Removes local government towing contracts from bidding  
15 requirements of "Local Public Contracts Law" upon  
16 establishment of rotating list of towing contractors.



ASSEMBLY COUNTY GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3011

STATE OF NEW JERSEY

DATED: APRIL 2, 1990

The Assembly County Government Committee favorably reports Assembly Bill No. 3011.

The purpose of Assembly Bill No. 3011 is to remove local government towing contracts from the bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1) for municipalities or counties that choose to adopt an ordinance, or resolution, as appropriate, establishing an annual towing contractor list from which towing contractors are called on a rotating basis. Establishing a list of towing contractors carries the advantage of providing opportunity to several different towing contractors and assuring adequate and prompt towing service in emergency situations that one towing contractor would be unable to handle.

The awarding of towing contracts by local government units has historically involved a number of factors such as equipment, experience, response time, and location of storage facilities, which do not always lend themselves to the constraints of the bidding process. This bill is intended to permit those municipalities and counties who have found the bidding process inadequate for their needs to use a rotational list approach.

SENATE COUNTY AND MUNICIPAL  
GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3011

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 24, 1990

The Senate County and Municipal Government Committee favorably reports Assembly Bill No. 3011 with Senate committee amendments.

Assembly Bill No. 3011, as amended by the committee, permits removal of local government towing contracts from the bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1) for municipalities or counties that choose to adopt an ordinance, or resolution, as appropriate, establishing an annual towing contractor list from which towing contractors are called on a rotating basis. Establishing a list of towing contractors carries the advantage of providing opportunity to several different towing contractors and assuring adequate and prompt towing service in emergency situations that one towing contractor would be unable to handle.

The awarding of towing contracts by local government units has historically involved a number of factors such as equipment, experience, response time, and location of storage facilities, which do not always lend themselves to the constraints of the bidding process. This bill is intended to permit those municipalities and counties who have found the bidding process inadequate for their needs to use a rotational list approach.

COMMITTEE AMENDMENTS

The committee made technical and clarifying language changes to the bill including changing one of the criteria which must be met by a towing contractor seeking annual list qualification from declaring towing fees to declaring maximum towing fees.

The committee also amended subsection 1(u) of the bill to provide that the annual list of towing contractors be updated on an annual basis by the clerk of the municipality or county. Also the committee amended the bill to require that the original and annual public reporting of the current list of designated towing contractors containing the company name, address, telephone number and maximum towing fees shall be printed and circulated in the municipality or county as appropriate. Further, the committee provided that the annual reporting of the list shall be available for inspection by any member of the general public upon request.

As amended by the committee, this bill is identical to Senate Bill No. 2396 as that bill amended by the committee on September 24, 1990.

SENATE SCM COMMITTEE

ADOPT

AMENDMENTS

SEP 24 1990

to

**ASSEMBLY, No. 3011**  
(Sponsored by ZANGARI)

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

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

(1) The subject matter thereof consists of

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

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

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

- (d) The furnishing of a tax map or maps for the contracting party;
- (e) The purchase of perishable foods as a subsistence supply;
- (f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged or exacted, filed with said board;
- (g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;
- (h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;
- (i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- (j) The publishing of legal notices in newspapers as required by law;
- (k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;
- (l) Election expenses;
- (m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- (n) The doing of any work by handicapped persons employed by a sheltered workshop;
- (o) The provision of any service or the furnishing of materials including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
- (p) Homemaker--home health services performed by voluntary, nonprofit agencies;
- (q) The purchase of materials and services for a law library established pursuant to R.S.40:33-14, including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, copyright and patent materials, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, and other audiovisual, printed, or published material of a similar nature; necessary binding or rebinding of law library materials; and specialized library services;
- (r) On-site inspections undertaken by private agencies pursuant to the "State Uniform Construction Code Act" (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- (s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally

produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products; or

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

(u) Local government towing contracts, provided that the local governing body has enacted an ordinance or resolution, <sup>1</sup>[as] whichever may be<sup>1</sup> appropriate, establishing criteria and procedures for an annual list of towing contractors to be selected on a rotating basis, which list shall be updated on an annual basis by the clerk of the municipality or county<sup>1</sup>. The criteria which must be met by a towing contractor in order to qualify to appear on the annual list shall include, but not be limited to, reliability, location of storage facilities, <sup>1</sup>maximum<sup>1</sup> towing fees, possession of adequate equipment to safely handle common vehicle types, and maintenance of adequate liability insurance. A towing contractor may be removed from the annual list by resolution of the governing body if his performance is determined to be unreliable or inadequate. <sup>1</sup>The original and annual public reporting of the current list of designated towing contractors containing the company name, address, telephone number and maximum towing fees shall be printed and circulated in the municipality or county as appropriate. The annual reporting of the list shall be available for inspection by any member of the general public upon request.<sup>1</sup>

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

(3) The contracting agent has advertised for bids pursuant to section 4 on two occasions and (a) has received no bids on both occasions in response to its advertisement, or (b) the governing body has rejected such bids on two occasions because the contracting agent has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant

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

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

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

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

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

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

Senate Amendments  
(Proposed by Senator Lynch)

to

**ASSEMBLY, No. 3011 (1R)**

(Sponsored by Assembly ZANGARI)

**ADOPTED**

**DEC 6 1990**

REPLACE TITLE TO READ:

AN ACT concerning local public contracts and amending P.L.1971, c.198 <sup>2</sup>and P.L.1979, c.101<sup>2</sup>.

REPLACE SECTION 1 TO READ:

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

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

(1) The subject matter thereof consists of

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

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

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

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

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

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged or exacted, filed with said board;

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

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

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

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

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

(l) Election expenses;

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

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

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

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

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

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

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



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

(u) <sup>2</sup>[Local government] Contracting unit<sup>2</sup> towing <sup>2</sup>and storage<sup>2</sup> contracts, provided that <sup>2</sup>[the local governing body has enacted an ordinance or resolution, <sup>1</sup>[as] whichever may be<sup>1</sup> appropriate, establishing criteria and procedures for an annual list of towing contractors to be selected on a rotating basis <sup>1</sup>, which list shall be updated on an annual basis by the clerk of the municipality or county<sup>1</sup>. The criteria which must be met by a towing contractor in order to qualify to appear on the annual list shall include, but not be limited to, reliability, location of storage facilities, <sup>1</sup>maximum<sup>1</sup> towing fees, possession of adequate equipment to safely handle common vehicle types, and maintenance of adequate liability insurance. A towing contractor may be removed from the annual list by resolution of the governing body if his performance is determined to be unreliable or inadequate. <sup>1</sup>The original and annual public reporting of the current list of designated towing contractors containing the company name, address, telephone number and maximum towing fees shall be printed and circulated in the municipality or county as appropriate. The annual reporting of the list shall be available for inspection by any member of the general public upon request.<sup>1</sup>] all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefore. Each of the aforementioned means of contracting shall be subject to any regulations adopted by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8<sup>c</sup> (C.17:33B-47).<sup>2</sup>

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

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

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

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

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

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

(cf: P.L.1989, c.159, s.1)<sup>o1K</sup>

INSERT NEW SECTION 2 TO READ:

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

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

(1) Supplying of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes of this subsection, "water supply services" means any service provided by a water supply facility;

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

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

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the

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

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

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

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

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

All multi-year leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and

agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.<sup>2</sup>

(cf: P.L.1989, c.159, s.2)<sup>ck</sup>

INSERT NEW SECTION 3 TO READ:

<sup>23</sup> Section 1 of P.L.1979, c.101 (C.40:48-2.49) is amended to read as follows:

✓ 1. Notwithstanding the provisions of section 1 of P.L.1973, c. 137 (C. 39:4-56.6) or any other law and except to the extent regulated by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47), a municipality may regulate, by ordinance, the removal of motor vehicles from private or public property by operators engaged in such practice, including, but not limited to, the fees charged for storage following removal in accordance with section 3 of P.L.1987, c. 127 (C. 40:48-2.50), fees charged for such removal, notice requirements therefor, and the mercantile licensing of such operators.

The ordinance shall set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles. The regulations shall include, but not be limited to:

a. A schedule of fees or other charges which an operator may charge vehicle owners for towing services, storage services or both;

b. Minimum standards of operator performance, including but not limited to standards concerning the adequacy of equipment and facilities, availability and response time, and the security of vehicles towed or stored;

c. The designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law;

d. The requirement that such regulations and fee schedules of individual towers shall be made available to the public during normal business hours of the municipality.<sup>2</sup>

(cf. P.L.1987, c.127, s.2)

**RENUMBER SECTION 2 AS SECTION 4**

**REPLACE SYNOPSIS TO READ:**

Exempts local government towing contracts from bidding requirements of "Local Public Contracts Law" under certain circumstances.

**STATEMENT**

With these amendments, this bill would permit local government towing contracts to be exempt from the bidding requirements of the "Local Public Contracts Law," as long as they follow reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101<sup>OK</sup> (C.40:48-2.49). These amendments are needed to avoid certain anti-trust problems identified in the bill by an Attorney General's opinion.



Senate Amendments  
(Proposed by Senator LYNCH)

to

**ASSEMBLY, No. 3011 (2R)**

(Sponsored by Assemblyman ZANGARI and  
Assemblywoman KALIK)

**ADOPTED**

**JAN 14 1991**

**REPLACE SECTION 1 TO READ:**

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

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

(1) The subject matter thereof consists of

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

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

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

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

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

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged or exacted, filed with said board;

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

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

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

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

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

(l) Election expenses;

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

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

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

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

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

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

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

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

(u) <sup>2</sup>[Local government] Contracting unit<sup>2</sup> towing <sup>2</sup>and storage<sup>2</sup> contracts, provided that <sup>2</sup>[the local governing body has enacted an ordinance or resolution, <sup>1</sup>[as] whichever may be<sup>1</sup> appropriate, establishing criteria and procedures for an annual list of towing contractors to be selected on a rotating basis <sup>1</sup>, which list shall be updated on an annual basis by the clerk of the municipality or county<sup>1</sup>. The criteria which must be met by a towing contractor in order to qualify to appear on the annual list shall include, but not be limited to, reliability, location of storage facilities, <sup>1</sup>maximum<sup>1</sup> towing fees, possession of adequate equipment to safely handle common vehicle types, and maintenance of adequate liability insurance. A towing contractor may be removed from the annual list by resolution of the governing body if his performance is determined to be unreliable or inadequate. <sup>1</sup>The original and annual public reporting of the current list of designated towing contractors containing the company name, address, telephone number and maximum towing fees shall be printed and circulated in the municipality or county as appropriate. The annual reporting of the list shall be available for inspection by any member of the general public upon request.<sup>1</sup>] all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, <sup>3</sup>[which may include the provision of such services on a rotating basis,]<sup>3</sup> at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract <sup>3</sup>[therefore. Each of the aforementioned means of contracting shall be subject to any regulations adopted by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47)] therefor<sup>3,2</sup>

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

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

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

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

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

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute

appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

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

#### STATEMENT

These amendments remove from the bill language permitting towing and storage contracts awarded by a contracting unit without public bidding to include the provision of such services on a rotating basis. The amendments also remove language that would subject all contracting for towing and storage to regulation by the Department of Insurance.



# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001  
Contact:**

Emma Byrne  
Nancy Kearney  
609/292-8956

**TRENTON, N.J. 08625**

**Release:**

Monday  
April 29, 1991

## ADVISORY

Governor Jim Florio today conditionally vetoed the following bill:

**A 3011/S 2396: Sponsored by Assemblyman James Zangari/Senator John Lynch**

This bill would exempt local government towing contracts from bidding requirements of "Local Public Contracts Law" under certain circumstances.

A copy of the bill and veto message is attached.

###

April 29, 1991

ASSEMBLY BILL NO. 3011

(THIRD REPRINT)

To the General Assembly:

Pursuant to Article 5, Section 1, Paragraph 14, of the Constitution, I am returning Assembly Bill No. 3011 (3R) with my objections for reconsideration.

This bill would amend the Local Public Contracts Law to allow municipalities and counties additional flexibility in the manner in which they award towing contracts. However, amendments to this bill during the legislative process undermine an important aspect of the original legislation and I am hesitant to endorse this bill in its current form.

The amendments I propose would permit municipalities and counties which have found the bidding process inadequate in their attempt to fulfill their statutory obligations with respect to towing services to utilize a reasonable non-exclusionary and non-discriminatory process which may include the use of a rotating list as an option. I am confident that this option will ensure that the underlying goals of the Local Public Contracts Law are met and will ensure competition in the marketplace.

The amendments would provide the proper mechanism to enable local and county governing bodies, by ordinance or resolution, to choose the method that best meets their individual circumstances. Any non-bid alternative can only be utilized when a system is developed to guarantee a reasonable non-exclusionary and non-discriminatory process. I have also proposed amendments to the bill to ensure that rates charged to the consumer will be at the lower of the rates and charges set by a local government entity pursuant to ordinance or set by the Commissioner of Insurance pursuant to Section 60 of P.L.1990, c.8 (C.17:33B-47).

Therefore, I herewith return Assembly Bill No. 3011 (Third Reprint) and recommend that it be amended as follows:

Page 3, Section 1, Line 37: After "conditions," insert "which may include the provision of such services on a rotating basis,"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

Page 3, Section 1, Line 49: After "therefor.", insert "Each of the aforementioned means of contracting shall be subject to any regulations adopted by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8(C.17:33B-47)."

Respectfully,

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Chief Counsel to the Governor