Sponsored by:
Assemblyman WILFREDO CARABALLO
District 29 (Essex and Union)

SYNOPSIS
Authorizes cities of the first class to contract with nonprofit organizations for the provision of water supply and wastewater treatment services.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning the provision of water supply and wastewater treatment services, and amending and supplementing parts of the statutory law.

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

1. (New section) a. Notwithstanding the provisions of the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.) or any other law, rule or regulation to the contrary, when the governing body of a city of the first class shall determine by ordinance, with or without competitive bidding, that it is in the public interest to contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), the governing body is hereby authorized to lease any real property, capital improvement or personal property, or interests therein, or any part thereof, without compliance with any other law governing disposal of lands by municipalities except as provided pursuant to paragraph (1) of this subsection. Any such lease may be made or given, with or without consideration, for a period not to exceed 40 years and under any agreement and on any terms and conditions which may be approved by the governing body and which may be agreed to by the nonprofit association.

   (1) (a) Any lands subject to the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, that are leased or otherwise conveyed to a duly incorporated nonprofit association pursuant to the provisions of P.L. , c. (C. ) (now before the Legislature as this bill) shall continue to be subject to the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19.

   (b) Upon leasing or otherwise controlling lands subject to the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, a duly incorporated nonprofit association subject to the provisions of P.L. , c. (C. ) (now before the Legislature as this bill) shall be subject to the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, with respect to those lands.

   (c) The leasing of lands subject to the provisions of P.L.1988, c.163, as amended by P.L.1990, c.19, by a city of the first class to a duly incorporated nonprofit association pursuant to the provisions of P.L. , c. (C. ) (now before the Legislature as this bill) shall not be considered a conveyance for the purposes of P.L.1988, c.163, as amended by P.L.1990, c.19.

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

Matter underlined thus is new matter.
(2) Nothing contained in this section abrogates, amends, modifies, impairs or repeals the obligations previously assumed by a city of the first class pursuant to the provisions of R.S. 58:14-1 et seq., including any contract or compact entered into thereby.

b. The authorization provided in this section shall be subject to the provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through 58:28-7)(now before the Legislature as this bill).

c. Notwithstanding any other provisions of this section to the contrary, a duly incorporated nonprofit association that intends to enter into a contract with the governing body of a city of the first class for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may be, shall be subject to the provisions of the "Local Fiscal Affairs Law," N.J.S.40A:5-1 et seq., the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), the "Local Government Ethics Law," P.L.1991, c.29 (C.40A:9-22.1 et seq.), and the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), inclusive, and shall be considered a "local unit" pursuant to N.J.S.40A:5-2, an "authority" pursuant to section 3 of P.L.1983, c.313 (C.40A:5A-3), a "local government agency" pursuant to section 3 of P.L.1991, c.29 (C.40A:9-22.3), and a "public body" pursuant to section 3 of P.L.1975, c.231 (C.10:4-8), respectively.

2. (New section) The Legislature finds and declares it to be in the public interest and to be the public policy of the State to foster and promote by all reasonable means the collection, storage and distribution of an adequate supply of water for the inhabitants and businesses of the counties and municipalities of this State and to foster and promote the public health by providing for the collection and treatment of sewerage through adequate sewerage facilities.

To further promote these interests, and notwithstanding the provisions of any other law, rule or regulation to the contrary, the governing body of a city of the first class may enter into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may be.

The governing body of a city of the first class that has entered into a contract with a duly incorporated nonprofit association pursuant to this section shall obtain the written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties given the terms of the contract and the federal laws or regulations concerning this matter.
Any concession fee or monetary benefit paid by a duly incorporated nonprofit association to the governing body of a city of the first class shall be used for the purposes of reducing or off-setting property taxes, reducing water supply services or wastewater treatment services charges, rates or fees, one-time nonrecurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems.

Upon executing such contract, the duly incorporated nonprofit association shall be deemed to be providing essential governmental functions on behalf of the city of the first class and, to the extent permitted in the contract, shall exercise all powers and responsibilities of the city of the first class related to the provision of water supply services and wastewater treatment services now or hereinafter provided under law.

The authorization provided in this section shall be subject to the provisions of sections 3 through 6 of P.L. , c. (C.58:28-4 through 58:28-7)(now before the Legislature as this bill).

3. (New section) As used in sections 3 through 6 of P.L. , c. (C.58:28-4 through 58:28-7)(now before the Legislature as this bill):

"Board" means the Board of Public Utilities.
"Concession fee" means a payment from a duly incorporated nonprofit association to the governing body of a city of the first class, regardless of when it is received, that is exclusive of or exceeds any contractually specified reimbursement of direct costs incurred by the governing body.
"Contract" means a long-term written agreement wherein a duly incorporated nonprofit association agrees to provide water supply services or wastewater treatment services on behalf of the governing body of a city of the first class and wherein the duly incorporated nonprofit association agrees to provide, during the term of the contract, capital expenditures on behalf of the governing body's water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may be, which expenditures are set forth in the contract.
"Department" means the Department of Environmental Protection.
"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.
"Division" means the Division of Local Government Services in the Department of Community Affairs.
"Proposal document" means the document prepared by or on behalf of the governing body of a city of the first class describing the water supply services or wastewater treatment services that the governing body is considering having provided by a duly incorporated nonprofit
association pursuant to a contract.

4. (New section) a. The governing body of a city of the first class shall publish notice of its intent to enter into a contract pursuant to sections 1 and 2 of P.L. \( \text{C.40A:12-17.1 and 40A:11-5.1} \) (now before the Legislature as this bill) in at least one newspaper of general circulation in the jurisdiction or service area that will receive water supply services or wastewater treatment services under the terms of the contract and one newspaper of broad regional circulation, at least 30 days prior to conducting the public hearing required under section 5 of P.L. \( \text{C.58:28-6} \) (now before the Legislature as this bill).

In addition, a governing body that intends to enter into a contract with a duly incorporated nonprofit association for the provision of water supply services or wastewater treatment services shall notify in writing the board, department and division of its intent.

b. The public notice required under subsection a. of this section shall describe the type of services desired and provide the name, address and phone number of the person who can provide additional information and a proposal document to an interested party.

c. The public entity shall set forth in writing the reasons for the selection of the nonprofit association and shall make this document available to the public along with the proposed contract upon request and during the public hearing conducted pursuant to section 5 of P.L. \( \text{C.58:28-6} \) (now before the Legislature as this bill).

d. A contract entered into pursuant to sections 1 and 2 of P.L. \( \text{C.40A:12-17.1 and 40A:11-5.1} \) (now before the Legislature as this bill) shall include provisions addressing the following:

(1) The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the nonprofit association for the water supply services or wastewater treatment services to be provided.

(2) The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities or wastewater treatment systems.

(3) The allocation of the risks of operating and maintaining the water supply facilities or wastewater treatment systems.

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

(5) The defaulting and termination of the contract.

(6) The employment of current employees of the city of the first class whose positions or employment will be affected by the terms of the contract.

(7) The nonprofit association's authority and the extent, or the procedures for the use, of that authority to initiate, negotiate and finalize the terms for a bulk sale of surplus water. The contract shall either grant the nonprofit association such authority or specifically
state that the nonprofit association is denied that authority. Nothing
in P.L.  , c.  (C. ) (now before the Legislature as this bill) shall
be construed to authorize a city of the first class that enters into a
contract pursuant to sections 1 and 2 of P.L.  , c.  (C.40A:12-17.1
and 40A:11-5.1) (now before the Legislature as this bill) to provide for
the bulk sale, lease or transfer of water if the water being transferred,
leased or sold has been supplied to the city of the first class either by
the New Jersey Water Supply Authority or by the North Jersey District
Water Supply Commission, unless the authority pursuant to P.L.1981,
c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et
seq., as appropriate, has agreed to the bulk sale, lease or transfer.

(8) The requirements for the provision of a performance bond by
the nonprofit association, if so required by the governing body.
e. If a dispute over contract compliance, performance or
termination cannot be resolved by the parties to the contract pursuant
to the procedures set forth in the contract, either party to the contract
may file with the Superior Court which has appropriate jurisdiction a
request for an order either to terminate the contract based on the
reasons stated in the request or for an order for other appropriate
relief to the dispute. The court may take such action as it may deem
necessary to facilitate the expeditious resolution of the dispute and an
expeditious response to the request, including ordering the parties to
undertake a dispute resolution or mediation process. The court shall
use, as it deems necessary, the services of a financial expert in the area
of water supply service or wastewater treatment service contracts in
its analysis of the contract and the issues before it. Within 90 days
after the filing of a request, the court shall either grant the request or
deny the request. If the request is granted, the court shall order such
appropriate relief measures or remedies as it deems appropriate and
necessary.

5. (New section) a. The governing body of a city of the first class
that intends to enter into a contract with a duly incorporated nonprofit
association for the provision of water supply services as defined in
subsection (16) of section 15 of P.L. 1971, c.198 (C.40A:11-15), or
for the provision of wastewater treatment services as defined in
subsection (19) of section 15 of P.L. 1971, c.198 (C.40A:11-15), or
both, as the case may be, shall conduct a public hearing on the
proposed contract authorized pursuant to sections 1 and 2 of P.L.  ,
c.  (C.40A:12-17.1 and 40A:11-5.1) (now before the Legislature as
this bill). The governing body shall also conduct a public hearing
pursuant to this section on revisions to a contract required by
subsection b. of section 6 of P.L.  , c.  (C.58:28-7) (now before the
Legislature as this bill) or on substantial amendments to a contract as
required by subsection g. of section 6 of P.L.  , c.  (C.58:28-7) (now
before the Legislature as this bill).
b. The governing body shall provide, at least 14 days prior to the public hearing, (1) notice in writing to the board, department and the division of its intent to enter into a contract with a duly incorporated nonprofit association for the provision of water supply services or wastewater treatment services, and (2) notice of the public hearing by publication in at least one newspaper of general circulation in the jurisdiction or service area of the governing body to be served under the terms of the proposed contract. The publication shall include notice of the date, time and place of the public hearing, notice of the place at which copies of the proposed contract will be available for public inspection, and the times during which such inspection will be permitted. The notice shall specifically state whether any concession fee will be paid by the duly incorporated nonprofit association to the governing body as a result of the contract for water supply services or wastewater treatment services, the monetary amount of the concession fee and the potential impact of the concession fee on the charges, rates or fees which will be paid for water supply services or wastewater treatment services by users in the jurisdiction or service area that will receive the water supply services or wastewater treatment services pursuant to the terms of the contract.

c. At the public hearing, the governing body shall explain the terms and conditions of the proposed contract and shall answer questions raised by prospective consumers and other interested parties. The governing body shall explain during the hearing the charges, rates or fees that will or may be charged to users in the jurisdiction or service area for water supply services or wastewater treatment services as a result of the proposed contract. In addition, the governing body shall explain any concession fee to be paid by a duly incorporated nonprofit association to the governing body as a result of the contract for water supply services or wastewater treatment services, the monetary amount of the concession fee and the potential impact of the concession fee or benefit on the charges, rates or fees which will be paid for water supply services or wastewater treatment services by users in the jurisdiction or service area that will receive the water supply services or wastewater treatment services pursuant to the terms of the contract.

d. The governing body shall produce a verbatim record of the public hearing. The record of the public hearing shall be kept open for a period of seven days following the conclusion of the hearing, during which time interested parties may submit written statements to be included in the hearing report. The governing body shall prepare a written hearing report, which shall include a copy of the proposed contract, the verbatim record of the public hearing, written statements submitted by interested parties, a copy of the bond counsel's written opinion required pursuant to section 2 of P.L. 2011, c. 3 (C.40A:11-5.1)(now before the Legislature as this bill) and a statement prepared
by the governing body summarizing the major issues raised at the
public hearing and the governing body's specific responses to those
issues. The governing body shall make copies of the hearing report
available to interested parties, upon request, at a cost not to exceed
the actual cost of printing or copying.

e. The governing body may adopt an ordinance as provided in
section 1 of P.L. , c. (C.40A:12-17.1)(now before the Legislature
as this bill) and may enter into a contract as provided in section 2 of
P.L. , c. (C.40A:11-5.1)(now before the Legislature as this bill).
The ordinance may be introduced at the first meeting of the governing
body held after the public hearing on the proposed contract, and shall
acknowledge that the contract requires approval pursuant to the
provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
Legislature as this bill).

f. Within 30 days after the close of a public hearing on a proposed
contract held pursuant to subsection a. of this section and upon at least
seven days prior written notice, the governing body shall submit an
application for approval to the division and the board and shall submit
the hearing report to the department for review pursuant to the
provisions of section 6 of P.L. , c. (C.58:28-7)(now before the
Legislature as this bill). The division shall specify the form of the
application to be submitted.

6. (New section) a. Within 45 days of receipt of the application,
the board and division shall approve, or conditionally approve, an
application submitted by a governing body pursuant to subsection f. of
section 5 of P.L. , c. (C.58:28-6)(now before the Legislature as this
bill). Within 25 days of receipt of the hearing report, the department
shall provide any comments on the hearing report that it deems
appropriate to the board, division and the governing body. If the
board or division fail to approve or conditionally approve the
application within 50 days after receipt, the application shall be
deemed approved, unless the governing body has agreed to an
extension of the period.

b. If either the board or the division conditionally approves the
application, the board or division shall state in writing the revision to
the proposed contract that is necessary in order for it to be approved.
If the board or division determines that the required revision is
substantial, the governing body shall hold a public hearing on the
revision and adhere to the provisions of section 5 of P.L. , c.
(C.58:28-6)(now before the Legislature as this bill) in so doing, except
that the required notice shall be published at least seven days prior to
the public hearing. A substantial revision shall be a change that results
in an increase in the charges, rates or fees which will be paid for water
supply services or wastewater treatment services by users in the
jurisdiction or service area that will receive the water supply services
or wastewater treatment services pursuant to the terms of the contract, or that materially changes other terms and conditions of the contract. The proposed revision to the contract shall be submitted to the board, division and the department 15 days prior to the date of the public hearing.

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

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

(1) The duly incorporated nonprofit association entering into the contract has the technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the technical and administrative capacity of the nonprofit association are necessary and sufficient to protect the public interest.

(2) The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the board shall review the charge, rates or fees to be charged or assessed under the contract to determine that they are reasonable to the city of the first class, taking into consideration all of the obligations undertaken by the nonprofit association and all the benefits obtained by the city of the first class. In making this determination, the board shall not use the traditional rate based rate of return methodology.

(3) The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If the nonprofit association is not a public utility, the board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.

(4) The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection d. of section 4 of P.L. , c. (C.58:28-5)(now before the Legislature as this bill).

Upon approval of a contract as proposed or as revised in response to a conditional approval, the jurisdiction of the board over the contract shall terminate until or unless the contract is amended to change the formula or other basis of determining charges, rates or fees contained therein.
d. In its review of a contract, the division shall apply the following criteria in determining whether to approve the contract:

1. The terms of the proposed contract do not materially impair the ability of the governing body to punctually pay principal and interest due on its outstanding indebtedness and to supply other essential public improvements and services;
2. A concession fee paid by a duly incorporated nonprofit association as a result of the contract is paid directly to the municipality that created or constitutes the governing body, and any concession fee paid by a duly incorporated nonprofit association to a governing body is used for the purposes of reducing or off-setting property taxes, reducing water supply services or wastewater treatment services charges, rates or fees, one-time nonrecurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems; and
3. The contract contains the provisions required by paragraphs (3), (4), (5), (7) and (8) of subsection d. of section 4 of P.L. , c. (now before the Legislature as this bill).

The division shall also review and specifically approve any contract provision pursuant to which a governing body will or may execute a financing instrument for the purposes set forth in the contract. In addition, the division shall review any contract between the governing body of a city of the first class and a duly incorporated nonprofit association in which a concession fee is paid by the nonprofit association to determine if the payment of the concession fee is in the best interest of the parties to the contract.

e. The board or division may provide the governing body with any non-binding comments or advice during or after the review of the application as the board or division deems appropriate.

f. The board or division shall assess and the applicant shall pay a fee equal to the cost incurred by the board or division for an analysis of an application by an independent person who has expertise in the areas of water supply services or wastewater treatment services if during the review of an application the board or division determines that such an analysis is required.

g. If the governing body of a city of the first class and the duly incorporated nonprofit association would like to amend a contract after approval of an application by the board and division, the governing body shall submit proposed amendments to the board and division for approval and to the department for review. At the next public meeting of the board and of the division after receipt of proposed amendments, the board and the division shall determine whether the proposed amendments are substantial. If the amendments are substantial in nature as determined by either the board or the division, the governing body shall conduct a hearing pursuant to section 5 of P.L. , c. (now before the Legislature as
this bill). Within 45 days of the receipt of proposed amendments that
are not determined to be substantial, or within 45 days of the receipt
of an application for approval of proposed amendments that are
determined to be substantial, the board and division shall approve or
conditionally approve the amendments in accordance with the
applicable procedures established for approval of an original contract
pursuant to this section.

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

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

(1) “Contracting unit” means:

(a) Any county; or

(b) Any municipality; or

(c) Any board, commission, committee, authority or agency, which
is not a State board, commission, committee, authority or agency, and
which has administrative jurisdiction over any district other than a
school district, project, or facility, included or operating in whole or
in part, within the territorial boundaries of any county or municipality
which exercises functions which are appropriate for the exercise by
one or more units of local government, and which has statutory power
to make purchases and enter into contracts awarded by a contracting
agent for the provision or performance of goods or services.

The term shall not include a private firm that has entered into a
contract with a public entity for the provision of water supply services
pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

“Contracting unit” shall not include a private firm or public
authority that has entered into a contract with a public entity for the
provision of wastewater treatment services pursuant to P.L.1995,
c.216 (C.58:27-19 et al.).

“Contracting unit” shall not include a duly incorporated nonprofit
association that has entered into a contract with the governing body
of a city of the first class for the provision of water supply services
or wastewater treatment services pursuant to section 2 of P.L.2001,
c. (C.40A:11-5.1)(pending in the Legislature as this bill).

(2) “Governing body” means:

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

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

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

(3) “Contracting agent” means the governing body of a contracting
unit, or its authorized designee, which has the power to prepare the
advertisements, to advertise for and receive bids and, as permitted by
this act, to make awards for the contracting unit in connection with
purchases, contracts or agreements.

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

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

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

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

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

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

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

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

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

(13) "Marketing" means the sale, disposition, assignment, or
placement of designated recyclable materials with, or the granting of
a concession to, a reseller, processor, materials recovery facility, or
end-user of recyclable material, in accordance with a district solid
waste management plan adopted pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection of such recyclable
material when collected through a system of routes by local
government unit employees or under a contract administered by a local
government unit.

(14) "Municipal solid waste" means, as appropriate to the
circumstances, all residential, commercial and institutional solid waste
generated within the boundaries of a municipality; or the formal
collection of such solid wastes or recyclable material in any
combination thereof when collected through a system of routes by
local government unit employees or under a contract administered by
a local government unit.

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

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

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

(18) "Cooperative marketing" means the joint marketing by two or
more contracting units of the source separated recyclable materials
designated in a district recycling plan required pursuant to section 3 of
P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative
agreement entered into by the participating contracting units thereof.

(19) "Aggregate" means the sums expended or to be expended for
the provision or performance of any goods or services in connection
with the same immediate purpose or task, or the furnishing of similar
goods or services, during the same contract year through a contract
awarded by a contracting agent.

(20) "Bid threshold" means the dollar amount set in section 3 of
P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
advertise for and receive sealed bids in accordance with procedures set
forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

(21) "Contract" means any agreement, including but not limited to
a purchase order or a formal agreement, which is a legally binding
relationship enforceable by law, between a vendor who agrees to
provide or perform goods or services and a contracting unit which
agrees to compensate a vendor, as defined by and subject to the terms
and conditions of the agreement. A contract also may include an
arrangement whereby a vendor compensates a contracting unit for the
vendor’s right to perform a service, such as, but not limited to,
operating a concession.

(22) "Contract year" means the period of 12 consecutive months
following the award of a contract.

(23) "Competitive contracting” means the method described in
sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.

(24) "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.

(25) "Library and educational goods and services" means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.

(26) "Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.

(27) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

(28) "Official newspaper" means any newspaper designated by the contracting unit pursuant to R.S.35:1-1 et seq.

(29) "Purchase order" means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.

(30) "Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, and P.L.1971, c.198 (C.40A:11-1 et seq.).

(31) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.

(32) "Responsible" means able to complete the contract in
accordance with its requirements, including but not limited to
requirements pertaining to experience, moral integrity, operating
capacity, financial capacity, credit, and workforce, equipment, and
facilities availability.

(33) "Responsive" means conforming in all material respects to the
terms and conditions, specifications, legal requirements, and other
provisions of the request.

(34) "Public works" means building, altering, repairing, improving
or demolishing any public structure or facility constructed or acquired
by a contracting unit to house local government functions or provide
water, waste disposal, power, transportation, and other public
infrastructures.

(35) "Director" means the Director of the Division of Local
Government Services in the Department of Community Affairs.

(36) "Administrator" means a municipal administrator appointed
pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
administrator, a municipal manager or a municipal administrator
appointed pursuant to the "Optional Municipal Charter Law,"
P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed
pursuant to "the municipal manager form of government law,"
R.S.40:79-1 et seq.; or the person holding responsibility for the overall
operations of an authority that falls under the "Local Authorities Fiscal

(37) "Concession" means the granting of a license or right to act
for or on behalf of the contracting unit, or to provide a service
requiring the approval or endorsement of the contracting unit, and
which may or may not involve a payment or exchange, or provision of
services by or to the contracting unit.

(38) "Index rate" means the rate of annual percentage increase,
rounded to the nearest half-percent, in the Implicit Price Deflator for
State and Local Government Purchases of Goods and Services,
computed and published quarterly by the United States Department of
Commerce, Bureau of Economic Analysis.

(39) "Proprietary" means goods or services of a specialized nature,
that may be made or marketed by a person or persons having the
exclusive right to make or sell them, when the need for such goods or
services has been certified in writing by the governing body of the
contracting unit to be necessary for the conduct of its affairs.

(40) "Service or services" means the performance of work, or the
furnishing of labor, time, or effort, or any combination thereof, not
involving or connected to the delivery or ownership of a specified end
product or goods or a manufacturing process. Service or services may
also include an arrangement in which a vendor compensates the
contracting unit for the vendor's right to operate a concession.

(cf: P.L.1999, c.440, s.6)
8. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read as follows:

5. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body 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 the official newspaper, 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, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education 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 unit may be a party;

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

(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 or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

(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) Those goods and services necessary or required to prepare and conduct an election;
(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 goods or services 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) (Deleted by amendment, P.L.1999, c.440.)
(q) Library and educational goods and 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;
(t) (Deleted by amendment, P.L.1999, c.440.)
(u) Contracting unit towing and storage contracts, provided that 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 therefor;
(v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.796;
(w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;
(x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification
of municipal ordinances;
(y) An agreement for the purchase of an equitable interest in a
water supply facility or for the provision of water supply services
entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
an agreement entered into pursuant to P.L.1989, c.109
(N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
later than six months after the effective date of P.L.1993, c.381;
(z) A contract for the provision of water supply services entered
into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
(aa) The cooperative marketing of recyclable materials recovered
through a recycling program;
(bb) A contract for the provision of wastewater treatment services
entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
(cc) Expenses for travel and conferences;
(dd) The provision or performance of goods or services for the
support or maintenance of proprietary computer hardware and
software, except that this provision shall not be utilized to acquire or
upgrade non-proprietary hardware or to acquire or update non-
proprietary software;
(ee) The management or operation of an airport owned by the
contracting unit pursuant to R.S.40:8-1 et seq;
(ff) Purchases of goods and services at rates set by the Universal
Service Fund administered by the Federal Communications
Commission;
(gg) A contract for the provision of water supply services or
wastewater treatment services entered into pursuant to section 2 of
P.L.2001, c. (C.40A:11-5.1)(pending in the Legislature as this bill),
or the designing, financing, construction, operation, or maintenance,
or any combination thereof, of a water supply facility as defined in
subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a
wastewater treatment system as defined in subsection (19) of section
15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts
thereof, including a water filtration system as defined in subsection
(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 or any other state or
subdivision thereof.
(3) Bids have been advertised pursuant to section 4 of P.L.1971,
c.198 (C.40A:11-4) on two occasions and (a) no bids have been
received on both occasions in response to the advertisement, or (b)
the governing body has rejected such bids on two occasions because
it 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 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; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, 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 are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); 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 P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; 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 bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract 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 vendor, and is a reasonable price for such goods 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.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the
governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or 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, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other
9. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to read as follows:

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

(1) Supplying of:
   (a) (Deleted by amendment, P.L.1996, c.113.)
   (b) (Deleted by amendment, P.L.1996, c.113.)
   (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 municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;
   (4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district 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 in the Department of Community Affairs 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 seven years;
   (6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint self-insurance fund, risk management program or related services provided by a contracting
unit insurance group, or participation in an insurance fund established
by a local unit pursuant to N.J.S. 40A:10-6, or a joint insurance fund
established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), 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
five years; provided, however, such contracts shall be awarded 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 company providing voice, data, transmission or switching services
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 and plan review services undertaken by
private agencies pursuant to the "State Uniform Construction Code
more than three years;
(12) The provision or performance of goods or services 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 15 years; provided, however, that such contracts
shall be entered into only subject to and in accordance with guidelines
promulgated by the Board of Public Utilities establishing a
methodology for computing energy cost savings;
(13) (Deleted by amendment, P.L.1999, c.440.)
(14) (Deleted by amendment, P.L.1999, c.440.)
(15) Leasing of motor vehicles, machinery and other equipment
primarily used to fight fires, for a term not to exceed ten 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 al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (30), (31), (34) [or (35)] or (43) of this section. 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 resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at 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, and the Department of Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district 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 facility constructed or operated for the collection, separation, recycling, and recovery of
(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 resource recovery facility is in conformance with a district 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 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 al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (36) or (43) of this section. For the purposes of this subsection, "wastewater treatment services" means any services 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 goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services 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;

(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;
(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a public utility company subject to the jurisdiction of the Board of Public Utilities, a similar regulatory body of another state, or a federal regulatory agency, or from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24,1991, for a term not to exceed 40 years;
(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;
(26) (Deleted by amendment, P.L.1999, c.440.)
(27) The provision of transportation services to elderly, disabled or indigent persons for any term of not more than three years. For the purposes of this subsection, "elderly persons" means persons who are 60 years of age or older. "Disabled persons" means persons of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent persons" means persons of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));
(28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;
(29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities and long term care facilities, for any term of not more than three years;
(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no later than January 7, 1995, for any term of not more than forty years;
(31) The provision of water supply services or the financing, construction, operation or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a period not to exceed 40 years;
(32) Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

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

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

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

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

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

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

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

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

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

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

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

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

All multiyear leases and contracts entered into pursuant to this
section, including any two-year or one-year extensions, except
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 for the provision or
performance of goods or services 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), (30), (31), (34), (35) or (37) or (43) 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), (36) or (37) or (43)
above, and contracts for the purchase of electricity or administrative
or dispatching services related to the transmission of such electricity
authorized pursuant to subsection (24) 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 in the Department of
Community Affairs shall adopt and promulgate rules and regulations
concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

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

(cf: P.L.1999, c.440, s.23)

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

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

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

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

c. Except as provided in section 7 of P.L.1995, c.101 (C.58:26-25), the board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

d. Unless otherwise specifically provided pursuant to P.L.1999, c.23 (C.48:3-49 et al.), all services necessary for the transmission and distribution of electricity and gas, including but not limited to safety, reliability, metering, meter reading and billing, shall remain the jurisdiction of the Board of Public Utilities. The board shall also maintain the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State as prescribed by the board or any other federal or multi-jurisdictional agency responsible for reliability and capacity in the State.

e. Notwithstanding the provisions of subsection a. of this section, the board shall have the authority to classify as regulated the sale of any thermal energy service by a cogenerator or district heating system, for the purpose of providing heating or cooling to a residential dwelling if, after notice and hearing, it determines that the customer does not have sufficient space on its property to install an alternative source of equivalent thermal energy, there is no contract governing the provision of thermal energy service for the relevant period of time, and that sufficient competition is no longer present, based upon consideration of such factors as: ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area. Upon such a classification, the board may determine such rates for the thermal energy service for the purpose of providing heating or cooling to a residential dwelling as it finds to be consistent with the prevailing cost of alternative sources of thermal energy in similar situations. The board, however, shall continue to monitor the thermal energy service to such residential dwellings and, whenever the board finds that the thermal energy service has again become sufficiently competitive pursuant to the criteria listed above, the board shall cease to regulate the sale or production of the service. The board shall not have the authority to regulate the sale or production of steam or any other form of thermal energy, including hot and chilled water, to non-residential customers.
f. Nothing contained in this Title shall extend the powers of the board to include supervision and regulation of, or jurisdiction and control over, an entity engaged in the provision or use of sewage effluent for the purpose of providing a cooling medium to an end user or end users on a single site, which provision results in the conservation of potable water which would otherwise have been used for such purposes.

g. Except as provided herein, the board shall have no regulatory authority over the parties to a contract entered into between the governing body of a city of the first class and a duly incorporated nonprofit association in connection with the performance of their respective obligations thereunder when the governing body of a city of the first class shall determine by ordinance that it is in the public interest to contract with that duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval of the contract pursuant to the provisions of section 6 of P.L. , c. (C.58:28-7)(now before the Legislature as this bill).

Notwithstanding any other provision of P.L. , c. (now before the Legislature as this bill) whenever the governing body of a city of the first class enters into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body operates water supply facilities as authorized pursuant to the provisions of N.J.S.40A:31-4, which supply water to customers within another local unit, the nonprofit association or governing body shall be subject to the jurisdiction, rate regulation and control of the Board of Public Utilities as provided in N.J.S.40A:31-23, to the extent the nonprofit association or governing body supplies water to customers within that other local unit. (cf: P.L.1999, c.23, s.52)

11. N.J.S.40A:31-23 is amended to read as follows: 40A:31-23 a. Nothing contained in this act shall in any way impair
the obligations previously assumed by any other public or private
agency for the provision of water supply services and facilities to the
citizens and industries of this State, or for any other purpose

b. In the event a municipal utilities authority has been established
in a local unit pursuant to the provisions of the "municipal and county
utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), no
local unit or units shall establish any facility within the territory of that
local unit which is competitive with any water supply facility operated
by that authority.

c. No water supply services shall be provided in accordance with
this act to users in another local unit without the prior approval of the
governing body of that other local unit.

d. (1) Subject to the terms of any agreement entered into by
participating local units or between a supplying and receiving local
unit or units and the provisions of this act, a local unit or local units
owning and operating water supply facilities in accordance with the
provisions of N.J.S.40A:31-4, which supply water to more than 1,000
billed customers within another local unit, shall be subject to the
jurisdiction, regulation and control of the Board of Public Utilities in
accordance with the provisions of Title 48 of the Revised Statutes.
The provisions of this subsection shall not apply [where] whenever
water is supplied to customers in another local unit at bulk rates.

(2) Notwithstanding any provision of this subsection to the
contrary, whenever the governing body of a city of the first class
enters into a contract with a duly incorporated nonprofit association
for the provision of water supply services as defined in subsection (16)
of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing,
financing, construction, operation, or maintenance, or any combination
thereof, of a water supply facility as defined in subsection (16) of
section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body
operates water supply facilities as authorized pursuant to the
provisions of N.J.S.40A:31-4, which supply water to customers within
another local unit, the nonprofit association or governing body shall
be subject to the jurisdiction, rate regulation and control of the Board
of Public Utilities to the extent the nonprofit association or governing
body supplies water to customers within that other local unit. The
provisions of this paragraph shall apply whenever water is supplied to
customers in another local unit at bulk rates.

cf: N.J.S.40A:31-23)

12. This act shall take effect immediately.
This bill authorizes the governing body of a city of the first class to contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15) for a period not to exceed 40 years.

The bill provides that when the governing body of a city of the first class shall determine by ordinance, with or without competitive bidding, that it is in the public interest to contract with a duly incorporated nonprofit association for the provision of such water supply services or wastewater treatment services, the governing body may lease any real property, capital improvement or personal property, or interests therein, or any part thereof, without regard to the provisions of the "Local Lands and Buildings Law" or compliance with any other law governing disposal of lands by municipalities except the watershed moratorium law (P.L.1988, c.163 as amended by P.L.1990, c.19). Any such lease may be made or given, with or without consideration, for a period not to exceed 40 years and under any agreement and on any terms and conditions which may be approved by the governing body and which may be agreed to by the nonprofit association.

The bill also provides that the Board of Public Utilities (BPU) shall have no regulatory authority over the parties to a contract negotiated between a city of the first class and a nonprofit association for the provision of such water supply services or wastewater treatment services, or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), except that the BPU would have jurisdiction whenever the nonprofit association supplies water to customers in another local unit and over bulk sales to customers in other local units.

The bill would also:

1. require written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties;
2. require that any concession fee paid by the nonprofit association must be used to offset property taxes, rates or fees, one-time recurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems;
3. require public notice of intent to enter the contract and
information on the type of services to be provided, and the reason for
the selection of the nonprofit association;
(4) require the governing body to provide copies of the proposed
contract upon request;
(5) require the governing body to notify, in writing, the BPU, the
Division of Local Government Services in the Department of
Community Affairs (DCA), and the Department of Environmental
Protection of its intent to enter into a contract;
(6) require the contract to include the charges, rates and fees that
will be charged by the nonprofit association for service; the allocation
of risks of financing and constructing capital additions or upgrades to
existing systems; the allocation of risks of operating the facility;
provisions to address the default and termination of the contract;
provisions to address employment of current municipal employees
whose positions would be affected by the contract; the nonprofit
association's authority to initiate, negotiate and finalize the bulk sale
of water; provision of a performance bond by the nonprofit
association, if so required by the governing body; and dispute
resolution procedures;
(7) require at least one public hearing on the contract, on revisions
to the contract and on substantial modifications to the contract;
(8) require that the notice of the public hearing include notice of
where and when the proposed contract will be available for public
inspection, the amount of any concession fee to be paid by the
nonprofit association, the potential impact of the concession fee on
charges, rates or fees paid for water supply services or wastewater
treatment services;
(9) require State agency review of the contract, which would
include an evaluation of the technical and administrative capacity of
the nonprofit association to ensure continuity of service, the
reasonableness of the terms of the contract, an evaluation of whether
water users outside the jurisdiction are not subsidizing the contract
through increased rates, fees or charges, a determination if the
concession fee to be paid is in the best interest of the parties to the
contract and that the terms of the contract do not impair the governing
body's ability to pay principal and interest on bonded indebtedness or
to supply essential public services;
(10) authorize the DCA and BPU to approve or conditionally
approve the contract, and if substantial revisions are required, require
an additional public hearing;
(11) clarify that whenever the nonprofit association supplies water
to customers in another local unit, the nonprofit association is subject
to BPU jurisdiction, rate regulation and control and that bulk sales to
customers in other local units would also be regulated;
(12) ensure that lands subject to the moratorium on conveyance of
watershed property imposed under P.L.1988, c.163 as amended by
P.L. 1990, c. 19 would continue to be subject to that moratorium even after being leased as allowed under the bill; (13) ensure the continuance of any obligations assumed by a city of the first class with the Passaic Valley Sewerage Commission, including any contract or compact entered into thereby; and (14) subject to the provisions of the "Local Fiscal Affairs Law," the "Local Authorities Fiscal Control Law," the "Local Government Ethics Law," and the "Open Public Meetings Act," any duly incorporated nonprofit association intending to enter into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services as allowed under the bill.