

§3
C. 40:48-2.54 &
Note To
40A:11-5a &
40:20-1
§4
C. 40:48-2.55
§5
C. 56:8-2.26
§6
Repealer

P.L. 1997, CHAPTER 387, *approved January 19, 1998*
Senate, No. 1785 (*First Reprint*)

1 **AN ACT** concerning motor vehicle towing and storage charges,
2 ¹[amending P.L.1979, c.101 and P.L.1971, c.198 and repealing
3 section 60 of P.L.1990, c.8] and revising parts of the statutory
4 law¹.

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

8
9 1. Section 1 of P.L.1979, c.101 (C.40:48-2.49) is amended to read
10 as follows:

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

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

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

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

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

32 d. The requirement that such regulations and fee schedules of

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 19, 1997.

1 individual towers shall be made available to the public during normal
2 business hours of the municipality.

3 (cf: P.L.1991, c.142, s.3)

4

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

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

11 (1) The subject matter thereof consists of:

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

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

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

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

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

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

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

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

45 (i) Equipment repair service if in the nature of an extraordinary
46 unspecifiable service and necessary parts furnished in connection with

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

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

15 (v) The purchase of steam or electricity from, or the rendering of
16 services directly related to the purchase of such steam or electricity
17 from a qualifying small power production facility or a qualifying
18 cogeneration facility as defined pursuant to 16 U.S.C.796;

19 (w) The purchase of electricity or administrative or dispatching
20 services directly related to the transmission of such purchased
21 electricity by a contracting unit engaged in the generation of
22 electricity;

23 (x) The printing of municipal ordinances or other services
24 necessarily incurred in connection with the revision and codification
25 of municipal ordinances;

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

32 (z) A contract for the provision of water supply services entered
33 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

34 (aa) The cooperative marketing of recyclable materials recovered
35 through a recycling program; or

36 (bb) A contract for the provision of wastewater treatment services
37 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.).

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

42 (3) The contracting agent has advertised for bids pursuant to
43 section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a)
44 has received no bids on both occasions in response to its
45 advertisement, or (b) the governing body has rejected such bids on
46 two occasions because the contracting agent has determined that they

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

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

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

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

34 Whenever a contracting unit shall determine that a bid was not
35 arrived at independently in open competition pursuant to subsection
36 (3) of this section it shall thereupon notify the county prosecutor of
37 the county in which the contracting unit is located and the Attorney
38 General of the facts upon which its determination is based, and when
39 appropriate, it may institute appropriate proceedings in any State or
40 federal court of competent jurisdiction for a violation of any State or
41 federal antitrust law or laws relating to the unlawful restraint of trade.
42 (cf: P.L.1995, c.216, s.11)

43
44 13. (New section) a. The governing body of municipality or
45 county which requires the towing and storage of motor vehicles
46 without the consent of the owners of those vehicles shall adopt an
47 ordinance or resolution, as appropriate, setting forth a model schedule
48 of towing and storage services which they require and the rates

1 therefor, which rates shall be based on the usual, customary and
2 reasonable rates of operators towing and storing motor vehicles in the
3 municipality or county, as applicable.

4 b. The governing body of every municipality or county setting forth
5 a schedule of services and rates pursuant to subsection a. of this
6 section shall implement a procedure to receive complaints and resolve
7 disputes arising from the towing and storage of motor vehicles
8 required by that municipality or county without the consent of the
9 owner.¹

10
11 ¹4. (New section) a. The Division of Consumer Affairs in the
12 Department of Law and Public Safety may establish a model schedule
13 of towing and storage services identifying those services for which a
14 fee may be charged by the governing body of a municipality or county.
15 This model schedule, if established, shall be provided, upon request,
16 to any municipality or county.

17 b. Each governing body that is required to adopt a resolution or
18 ordinance pursuant to section 3 of P.L. , c. (C.) (now before
19 the Legislature as this bill) shall submit its schedule of services and
20 rates for the towing and storage of motor vehicles to the Division of
21 Consumer Affairs for review within 90 days of the effective date of
22 this act, or within 90 days of the adoption of that ordinance or
23 resolution, whichever is later.¹

24
25 ¹5. (New section) It shall be an unlawful practice and a violation
26 of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge rates
27 which are discriminatory or are not usual, customary and reasonable
28 rates for the towing and storage of motor vehicles as provided in
29 section 3 of P.L. , c. (C.) (now before the Legislature as this
30 bill).¹

31
32 ¹[3.] 6.¹ Section 60 of P.L.1990, c.8 (C.17:33B-47) is repealed.

33
34 ¹[4.] 7.¹ This act shall take effect immediately.

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38
39 Expands municipal authority over motor vehicle towing and storage
40 charges.