

SENATE, No. 1932

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1997

By Senator EWING

1 AN ACT concerning certain contracts of the New Jersey Highway  
2 Authority and amending P.L.1968, c.459.

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

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7 1. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to read  
8 as follows:

9 1. a. The New Jersey Highway Authority, in the exercise of its  
10 authority to make and enter into contracts and agreements necessary  
11 or incidental to the performance of its duties and the execution of its  
12 powers, shall adopt standing operating rules and procedures providing  
13 that, except as hereinafter provided, no contract on behalf of the  
14 authority shall be entered into for the doing of any work, or for the  
15 hiring of equipment or vehicles, where the sum to be expended  
16 exceeds the sum of \$7,500.00 or, after June 30, 1985, the amount  
17 determined pursuant to subsection b. of this section unless the  
18 authority shall first publicly advertise for bids therefor, and shall  
19 award the contract to the lowest responsible bidder; provided,  
20 however, that such advertising shall not be required where the  
21 contract to be entered into is one for the furnishing or performing of  
22 services of a professional nature or for the supplying of any product  
23 or the rendering of any service by a public utility subject to the  
24 jurisdiction of the Board of Public [Utility Commissioners]Utilities of  
25 this State and tariffs and schedules of the charges, made, charged, or  
26 exacted by the public utility for any such products to be supplied or  
27 services to be rendered are filed with the said board. Contracts for  
28 towing and storage services shall be advertised and awarded pursuant  
29 to subsection c. of this section.

30 This subsection shall not prevent the authority from having any  
31 work done by its own employees, nor shall it apply to repairs, or to  
32 the furnishing of materials, supplies or labor, or the hiring of  
33 equipment or vehicles, when the safety or protection of its or other  
34 public property or the public convenience require, or the exigency 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.**

1 the authority's service will not admit of such advertisement. In such  
2 case the authority shall, by resolution, passed by the affirmative vote  
3 of a majority of its members, declare the exigency or emergency to  
4 exist, and set forth in the resolution the nature thereof and the  
5 approximate amount to be so expended.

6 b. Commencing January 1, 1985, the Governor, in consultation  
7 with the Department of the Treasury, shall, no later than March 1 of  
8 each odd-numbered year, adjust the threshold amount set forth in  
9 subsection a. of this section, or subsequent to 1985 the threshold  
10 amount resulting from any adjustment under this subsection, in direct  
11 proportion to the rise or fall of the consumer price index for all urban  
12 consumers in the New York City and the Philadelphia areas as  
13 reported by the United States Department of Labor. The Governor  
14 shall, no later than June 1 of each odd-numbered year, notify the  
15 authority of the adjustment. The adjustment shall become effective  
16 on July 1 of each odd-numbered year.

17 c. The authority shall adopt regulations, pursuant to the  
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
19 seq.), to provide open and competitive procedures for awarding  
20 contracts for towing and storage services. The regulations shall fix  
21 maximum towing and storage fees, subject to regulations promulgated  
22 by the Commissioner of Banking and Insurance pursuant to section 60  
23 of P.L.1990, c.8 (C.17:33B-47), and establish objective criteria to be  
24 considered in awarding a contract for towing and storage services  
25 which shall include, but shall not be limited to, reliability, experience,  
26 response time, acceptance of credit cards and prepaid towing  
27 contracts, adequate equipment to safely handle a sufficient volume of  
28 common vehicle types under a variety of traffic and weather  
29 conditions, location of storage and repair facilities, security of vehicles  
30 towed or stored, financial return to the authority, and maintenance of  
31 adequate liability insurance. Towing and storage fees, set by the  
32 authority, shall not be considered in awarding a contract for towing  
33 and storage services.

34 (cf: P.L.1984, c.128, s.3)

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36 2. This act shall take effect immediately and shall apply to  
37 contracts entered into on and after the 60th day following the effective  
38 date of this act and to renewals of contracts entered into prior to the  
39 effective date of this act, which renewals are effectuated after the 60th  
40 day following the effective date of this act.

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#### STATEMENT

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44 This bill would require the New Jersey Highway Authority (the  
45 authority), which operates the Garden State Parkway, to implement  
46 open and competitive procedures and develop objective criteria for

1 awarding contracts for towing and storage services.

2 In N.E.R.I. Corporation v. New Jersey Highway Authority, 147  
3 N.J. 223 (1996), the New Jersey Supreme Court ruled that authority  
4 contracts for towing and storage services must be competitively bid  
5 and awarded to the lowest responsible bidder. This standard does not  
6 provide the authority with sufficient discretion in awarding contracts,  
7 since factors such as equipment, experience, response time and  
8 location of facilities are not necessarily addressed under that bidding  
9 process. In his dissent, Justice Stein notes that the court's ruling  
10 "overrides the Authority's informed judgment and requires that the  
11 Authority award towing contracts only to those towers who bid the  
12 lowest rates" and that forcing "the Authority to select towers based on  
13 price rather than competence" is a result that "can hardly be  
14 understood to advance the best interests of Parkway motorists."  
15 Justice Stein further notes that the "Local Public Contracts Law,"  
16 N.J.S.40A:11-5(u), contains an exemption for towing and storage  
17 contracts and that it would better serve the public interest to also  
18 allow the authority to select towers on the basis of reliability rather  
19 than rates.

20 This bill would establish an exemption from bidding for the  
21 authority similar to exemption provided to local contracting units for  
22 towing and storage services under the "Local Public Contracts Law,"  
23 N.J.S.40A:11-5(u), when the contracting unit has set the rates and  
24 charges for those services.

25 The bill would require the authority to adopt regulations, pursuant  
26 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
27 et seq.), to provide open and competitive procedures for awarding  
28 contracts for towing and storage services. The regulations would fix  
29 maximum towing and storage fees, subject to regulations promulgated  
30 by the Commissioner of Banking and Insurance pursuant to section 60  
31 of P.L.1990, c.8 (C.17:33B-47), and establish objective criteria to be  
32 considered in awarding a contract for towing and storage services.  
33 The objective criteria would include, but not be limited to, reliability,  
34 experience, response time, acceptance of credit cards and prepaid  
35 towing contracts, adequate equipment to safely handle a sufficient  
36 volume of common vehicle types under a variety of traffic and weather  
37 conditions, location of storage and repair facilities, security of vehicles  
38 towed or stored, financial return to the authority, and maintenance of  
39 adequate liability insurance. As the bill requires the authority to set  
40 towing and storage fees, those fees would not be considered in  
41 awarding a contract for towing and storage services.

42 The bill would take effect immediately and would apply to contracts  
43 entered into on and after the 60th day following the effective date of  
44 the act and to renewals of contracts entered into prior to the effective  
45 date of this act which are effectuated after the 60th day following the  
46 effective date of the act.

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3 Requires New Jersey Highway Authority to implement open and  
4 competitive contracting procedures for contracts for towing and  
5 storage services.