

P U B L I C H E A R I N G

New Jersey Legislature, before
"SENATE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT,"

on ←

Senate Bill No. 3090
(Local Public Contracts Law),

Held:
March 24, 1975
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Martin L. Greenberg (Chairman)

Senator Thomas G. Dunn

Senator William V. Musto

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SENATE, No. 3090

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1975

By Senators FELDMAN and HORN

Referred to Committee on Labor, Industry and Professions

AN ACT to amend and supplement the "Local Public Contracts Law," approved June 9, 1971 (P. L. 1971, c. 198).

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

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

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

5 (1) "Contracting unit" means

6 (a) Any county; or

7 (b) Any municipality; or

8 **[(c) Any board, commission, committee, officer, department,**
9 **branch, agency or school district of any county or municipality;**
10 **or**

11 **(d)] (c) Any board, commission, committee, authority or**
12 **agency, which is not a [State] State board, commission, com-**
13 **mittee, authority or agency, and which has administrative**
14 **jurisdiction over any district other than a school district,**
15 **project, or facility, included or operating in whole or in part,**
16 **within the territorial boundaries of any county or municipality**
17 **which exercises functions which are appropriate for the exer-**
18 **cise by one or more units of local government, and which has**
19 **statutory power to make purchases and enter into contracts**
20 **or agreements for the performance of any work or the furnish-**
21 **ing or hiring of any materials or supplies usually required,**
22 **the cost or contract price of which is to be paid with or out of**
23 **public funds.**

24 (2) "Governing body" means:

25 (a) The board of chosen freeholders of the county, when the

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

26 purchase is to be made or the contract or agreement is to be
27 entered into by, or in behalf of, a county; or

28 (b) The governing body of the municipality, when the pur-
29 chase is to be made or the contract or agreement is to be entered
30 into by, or on behalf of, a municipality; or

31 (c) Any board, commission, committee, *authority* or agency
32 of the character described in subsection (1) [(d)] (c) of this
33 section.

34 (3) "Contracting agent" means the governing body of a con-
35 tracting unit, or any board, commission, committee, officer, depart-
36 ment, branch[,] or agency [or school district] which has *the* power
37 to prepare the advertisements, to advertise for and receive [the]
38 bids and, *as permitted by this act*, to make awards for the contract-
39 ing unit in connection with [the] purchases, contracts or agree-
40 ments [governed by the provisions of this act].

41 (4) ["Purchase" includes an acquisition by sale, lease, ex-
42 change, discount, negotiation, mortgage, pledge, lien, issue or re-
43 issue, or any other voluntary transaction for consideration creating
44 an interest in property not made by contract or agreement.]

45 "*Purchase*" is a transaction, for a valuable consideration, creat-
46 ing or acquiring an interest in goods, services and property, except
47 real property or any interest therein.

48 (5) "Materials" includes goods *and property* subject to article
49 2 of Title 12A of the New Jersey Statutes, apparatus, or any other
50 tangible thing, except real property *or any interest therein* [and
51 capital improvements subject to chapters 32 and 60 of Title 40 of
52 the Revised Statutes relating to lands and buildings].

53 (6) ["Professional services" means:

54 (a) Services rendered or performed by a person authorized
55 by law to practice a recognized profession and whose practice
56 is regulated by law; or

57 (b) Services which are of such a qualitative nature as will
58 not reasonably permit the drawing of specifications or the
59 receipt of competitive bids; provided that, with respect to the
60 definitions under both (a) and (b), the governing body shall
61 state supporting reasons for its action in the resolution award-
62 ing the contract, and shall cause a copy of the resolution to be
63 printed in a newspaper of general circulation within the
64 boundaries of the contracting unit no more than 10 days after
65 passage of the resolution.]

66 "*Professional services*" means *services rendered or performed*
67 *by a person authorized by law to practice a recognized profession*

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68 *and whose practice is regulated by law, which services cannot rea-*
69 *sonably be described by written specifications, provided that the*
70 *governing body shall state supporting reasons for its action in the*
71 *resolution awarding the contract, and shall forthwith cause a copy*
72 *of the resolution to be printed once in a newspaper authorized by*
73 *law to publish legal advertisements.*

74 (7) "Nonprofessional technical services" means services re-
75 quiring expertise, which services are of a qualitative nature which
76 cannot reasonably be described by written specifications, provided
77 that the governing body shall state supporting reasons for its
78 action in the resolution awarding the contract, and shall forthwith
79 cause a copy of the resolution to be printed once in a newspaper
80 authorized by law to publish legal advertisements.

81 [(7)] (8) "Project" means any work, undertaking, program,
82 activity, development, redevelopment, construction or reconstruc-
83 tion of any area or areas.

84 [(8)] (9) "Sale" means the [conveyance of any interest in ma-
85 terials or supplies, by sale, lease or otherwise and shall include a
86 security interest subject to chapter 9 of Title 12A of the New
87 Jersey Statutes] transfer of title in or to any property or goods
88 owned by the contracting unit except real property or any interest
89 therein.

90 (10) "Work" includes services and any other activity of a tangi-
91 ble or intangible nature performed or assumed pursuant to a con-
92 tract or agreement with a contracting unit.

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

3 3. Purchases, contracts or agreements not required to be adver-
4 tised for. Any purchase, contract or agreement for the perform-
5 ance of any work or the furnishing or hiring of materials or
6 supplies, the cost or price of which, [inclusive of the cost or price
7 of any purchase, contract or agreement for the performance of
8 any work or the furnishing of, or of the use of, any materials or
9 supplies, which: (1) forms a part of] together with any other
10 sums expended or to be expended for the same immediate program,
11 undertaking, activity or project[, (2) is to be] paid with or out
12 of public funds, [and (3)] does not exceed [in the aggregate] the
13 total sum of [\$2,500.00] \$5,000.00 in the fiscal year[,] or, in the
14 case of purchases that are not annually recurring, in a period of 1
15 year[. These], may be made, negotiated or awarded [for] by a
16 contracting [unit] agent when so authorized by the contracting
17 unit without public advertising for bids [and bidding therefor,

18 notwithstanding that a lesser sum than \$2,500.00 is fixed as a maxi-
19 mum for said purpose in any other law].

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

3 4. Contracts and agreements required to be advertised for. Every
4 contract or agreement, for the performance of any work or the
5 furnishing or hiring of any materials or supplies, the cost or the
6 contract price whereof is to be paid with or out of public funds, not
7 included within the terms of section 3 of this act, shall be made or
8 awarded only after public advertising for bids and bidding there-
9 for, except as is provided otherwise in this act or specifically by
10 any other law. No work, materials or supplies shall be undertaken,
11 acquired or furnished for a sum exceeding in the aggregate
12 ~~[\$2,500.00]~~ \$5,000.00, except by contract or agreement.

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

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

7 (1) The subject matter thereof consists of

8 (a) Professional services or *nonprofessional technical ser-*
9 *vices;*

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

12 (c) Election expenses, including advertising expenses inci-
13 dental thereto;

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

17 (e) The furnishing of a tax map or maps for the contracting
18 party;

19 (f) The purchase of perishable foods as a subsistence
20 supply;

21 ~~[(g)]~~ The purchase of motor vehicles;

22 (h) ~~(g)~~ The supplying of any product or the rendering of
23 any service by a public utility, which is subject to the juris-
24 diction of the Board of Public Utility Commissioners, in ac-
25 cordance with tariffs and schedules of charges made, charged
26 or exacted, filed with said board;

27 ~~[(i)]~~ The hiring of supplementary labor, or equipment, for
28 the removal of snow or ice from roads and bridges and other

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29 public places required to be maintained by the contracting
30 party during an emergency caused by storm, when the need
31 for the hiring of such labor or equipment is not reasonably
32 foreseeable;】

33 (h) *The acquisition, subject to prior approval of the At-*
34 *torney General, of special equipment for confidential investi-*
35 *gation;*

36 (i) *Medical supplies;*

37 (j) *The printing of bonds and documents necessary to the*
38 *issuance and sale thereof by a contracting unit;*

39 (k) *Equipment of a technical nature and the parts therefor*
40 *if necessary to assure compatibility with existing equipment,*
41 *standardization of equipment and interchangeability of parts;*

42 (l) *Equipment repair service in the nature of a nonprofes-*
43 *sional technical service if necessary to assure standardization*
44 *and quality of equipment repair services;*

45 (m) *Specialized machinery or equipment such as will not*
46 *reasonably permit the drawing of specifications and the pro-*
47 *curement thereof is in the public interest;*

48 (n) *The plowing and removal of snow and ice from high-*
49 *ways and public places;*

50 (o) *The publishing of legal notices in newspapers as re-*
51 *quired by law;*

52 (p) *The acquisition of artifacts or other items of unique,*
53 *intrinsic, artistic or historical character; or*

54 (2) *Only one source of supply is available.*

55 【(2)】 (3) It is to be made or entered into with the United States
56 of America, the State of New Jersey, county or municipality or
57 any board, body, officer, agency or authority, thereof.

58 【(3)】 (4) The contracting unit has advertised for bids pursuant
59 to section 4 on two occasions and has received no bids in response
60 to its advertisement, and *after reasonable inquiry it is determined*
61 *that* no board, body, officer, agency or authority of the United States,
62 *or of* the State of New Jersey *or of any neighboring* county or
63 municipality is willing and able to perform any work or furnish or
64 hire any materials or supplies in conformity with the specifications
65 of the 【municipality】 contracting unit. Any such contract or agree-
66 ment may be made, negotiated or awarded only upon adoption of
67 a resolution by the affirmative vote of two-thirds of the full mem-
68 bership of the governing body of the contracting unit at a meeting
69 thereof authorizing such a contract or agreement. No such contract
70 or agreement may extend for a period greater than 1 *fiscal* year.

71 Any amendment or modification of the terms, conditions, restric-
 72 tions and specifications which were the subject of the competitive
 73 bidding pursuant to section 4 of this act shall be stated in the reso-
 74 lution awarding the contract.

75 **[(4)]** (5) The contracting unit has advertised for bids pursuant
 76 to section 4 on two occasions and the governing body thereof has
 77 rejected such bids on each occasion because the contracting unit
 78 has determined that they are not reasonable as to price on the
 79 basis of cost estimates prepared for the contracting unit prior to
 80 the advertising therefor or have not been independently arrived
 81 at in open competition, but no such contract or agreement may be
 82 entered into after such rejection of bids, unless:

83 (a) Notification of the intention to negotiate and a reason-
 84 able opportunity to negotiate shall have been given by the con-
 85 tracting unit to each responsible bidder;

86 (b) The negotiated price is lower than the lowest rejected
 87 bid price of a responsible bidder who bid thereon and is the
 88 lowest negotiated price offered by any responsible supplier
 89 and is a reasonable price for such work materials, supplies or
 90 services;

91 (c) Any amendment or modification of the terms, condi-
 92 tions, restrictions and specifications which were the subject of
 93 competitive bidding pursuant to section 4 of this act shall be
 94 stated in the resolution awarding the contract; and

95 (d) The negotiated price is lower than the price of the same
 96 or equivalent materials or supplies available from the State
 97 or the county in which the contracting unit is located.

98 Whenever a contracting unit shall determine that a bid was
 99 not arrived at independently in open competition pursuant to
 100 this subsection 5 of section 5, it shall thereupon notify the
 101 county prosecutor of the county in which the contracting unit
 102 is located and the Attorney General of the facts upon which
 103 its determination is based, and when appropriate, it may in-
 104 stitute appropriate proceedings in any State or Federal court
 105 of competent jurisdiction for a violation of any State or Fed-
 106 eral antitrust law or laws relating to the unlawful restraint
 107 of trade.

108 Any such contract or agreement may be made, negotiated or
 109 awarded only upon adoption of a resolution by the affirmative vote
 110 of two-thirds of the full membership of the governing body of the
 111 contracting unit at a meeting thereof authorizing such a contract
 112 or agreement.

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1 5. Section 6 of P. L. 1971, c. 198 (C. 40A:11-6) is amended to
2 read as follows:
3 6. [Authorization of certain exceptions.] *Emergency purchases*
4 *and contracts.* Any [such] purchase, contract or agreement may be
5 made, negotiated or awarded for a contracting [party] unit with-
6 out public advertising for bids and bidding therefor notwithstand-
7 ing that the cost or contract price will exceed [\$2,500.00] \$5,000.00,
8 when an emergency *affecting the public health, safety or welfare*
9 requires the immediate delivery of the articles or the performance
10 of the service, [and when prior to the making of such purchase,
11 contract or agreement or after the same, it is specifically authorized
12 to be so made, negotiated or awarded by resolution, adoption by
13 the affirmative vote of two-thirds of the full membership of the
14 governing body of the contract unit, for or on behalf of which the
15 same is made, negotiated or awarded if the full membership of
16 such governing body consists of more than four members, or of
17 three-quarters of all of the members thereof, if the full member-
18 ship thereof shall be four members, or of two-thirds of all the
19 members thereof, if the full membership thereof be three members,
20 provided such resolution describes specifically the circumstances,
21 declares the emergency, and further prescribes the manner in
22 which such purchase, contract or agreement shall be made, ne-
23 gotiated or awarded, which shall be of such character as to be
24 effective to promote free and full competition, whenever competi-
25 tion is practical under the circumstances.] *provided that the award-*
26 *ing or making of such purchases, contracts or agreements are made*
27 *in the following manner:*
28 a. *A written requisition for the performance of such work or*
29 *labor, or the furnishing of materials, supplies or services is filed*
30 *with the contracting agent or his deputy in charge describing the*
31 *nature of the emergency, the time of its occurrence and the need*
32 *for invoking this section, certified by the officer or director in charge*
33 *of the department wherein the emergency occurred, and the con-*
34 *tracting agent or his deputy in charge, being satisfied that the*
35 *emergency exists, is hereby authorized to award a contract for*
36 *said work or labor, materials, supplies or services.*
37 b. *Upon the furnishing of such work or labor, materials, sup-*
38 *plies or services, in accordance with the terms of the contract or*
39 *agreement, the contractor furnishing such work or labor, materials,*
40 *supplies or services, shall be entitled to be paid therefor and the*
41 *contracting unit shall be obligated for said payment. The govern-*
42 *ing body of the contracting unit shall take such action as shall be*
43 *required to provide for the payment of the contract price.*

44 c. *The governing body of the contracting unit may prescribe*
45 *additional rules and procedures to implement the requirements of*
46 *this section.*

1 6. (New section) a. All contracts and agreements shall be
2 awarded to the lowest responsible bidder whose bid, conforming to
3 the invitation for bids and plans and specifications, will be most
4 advantageous to the contracting unit, price and other factors con-
5 sidered.

6 b. Except contracts which require the performance of profes-
7 sional or nonprofessional technical services, all contracts or agree-
8 ments which do not require public advertising for bids and the
9 estimated cost or price exceeds \$500.00, at least three quotations
10 as to the cost or price, whenever practicable, shall be solicited by
11 the contracting agent, and the contract or agreement shall be made
12 with and awarded to the lowest responsible bidder, whose bid will
13 be most advantageous to the contracting unit, price and other
14 factors considered.

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

3 7. Contracts not to be divided. No purchase, contract or
4 agreement, which is single in character or which necessarily or by
5 reason of the quantities required to effectuate the purpose of the
6 purchase, contract or agreement, includes the furnishing of addi-
7 tional services or buying or hiring of materials or supplies or the
8 doing of additional work, shall be subdivided, so as to bring it or
9 any of the parts thereof under the maximum price or cost limitation
10 of ~~[\$2,500.00]~~ \$5,000.00 thus dispensing with the requirement of
11 public advertising and bidding therefor, and in purchasing or con-
12 tracting for, or agreeing for the furnishing of, any services, the
13 doing of any work or the supplying of any materials or the sup-
14 plying or hiring of any materials or supplies, included in or inci-
15 dent to the performance or completion of any project, program,
16 activity or undertaking which is single in character or inclusive
17 of the furnishing of additional services or buying or hiring of
18 materials or supplies or the doing of additional work, or which
19 requires the furnishing of more than one article of equipment or
20 buying or hiring of materials or supplies, all of the services, ma-
21 terials or property requisite for the completion of such project
22 shall be included in one purchase, contract or agreement.

1 8. Section 9 of P. L. 1971, c. 198 (C. 40A:11-9) is amended to
2 read as follows:

3 9. Purchasing agent, department or board; establishment;

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4 powers. The governing body of any local unit may, by ordi-
5 nance, in the case of a municipality, and resolution, in the case
6 of a county, provide for the appointment of a purchasing agent,
7 or purchasing department or a purchasing board, with authority
8 **to purchase**, as its contracting agent, *to prepare public adver-*
9 *tising for bids and to receive bids for the purchase of materials*
10 *and supplies on behalf of the contracting unit and, subject to the*
11 *provisions of this act, make awards of contracts in the name of the*
12 *contracting unit* **such materials and supplies required to be pur-**
13 **chased on behalf of the contracting unit, as said governing body**
14 **shall, by said ordinance, or resolution prescribe and such purchas-**
15 **ing agent, purchasing department or purchasing board shall have**
16 **authority to purchase such materials and supplies on behalf of the**
17 **contracting unit and prepare the public advertising for bids, to**
18 **receive the bids and to make the awards in such cases, subject to**
19 **the approval of the governing body to be given when and in such**
20 **manner as said governing body shall by such ordinance or reso-**
21 **lution prescribe**.

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

3 11. Additional matters regarding agreements for the purchases
4 of work, materials and supplies.

5 (1) The contracting units entering into a joint agreement pur-
6 suant to section 10 of this act may designate a joint purchasing
7 agent, department or board pursuant to section 9 of this act. Any
8 such agent, board or department already designated pursuant to
9 section 9 may serve as the joint agent, department or board desig-
10 nated pursuant to this section.

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

14 (3) Any county **or** municipality **or** school district serving
15 as a purchasing agent, board or department pursuant to this
16 section 11, may make an appropriation to enable it to perform any
17 such contract and may anticipate as revenue payments to be made
18 and received by it from any other party to the agreement. Any
19 items so included in a local budget shall be subject to the approval
20 of the Director, Division of Local **Finance** *Government Services*,
21 who shall consider the matter in conjunction with the requirements
22 of chapter 4 of Title 40A of the New Jersey Statutes. The agree-
23 ment and any subsequent amendment or revisions thereto shall be
24 filed with the Director of the Division of Local **Finance** *Govern-*

25 *ment Services* in the Department of Community Affairs. The pur-
26 chasing agent, pursuant to such an agreement, shall also annually
27 file with the director a report of any purchases, contracts or agree-
28 ments and the amounts thereof annually. The director may, by
29 regulation, specify the form and content of such reports.

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

1 10. (New section) A contracting unit may enter into a contract
2 for the leasing or servicing of automobiles, motor vehicles, elec-
3 tronic communications equipment, machinery and equipment of
4 every nature and kind.

1 11. (New section) A contracting unit may enter into installment
2 contracts or agreements for the purchase of automobiles, motor
3 vehicles, machinery and equipment of every nature and kind.

1 12. Section 14 of P. L. 1971, c. 198 (C. 40A:11-14) is amended to
2 read as follows:

3 14. Form and execution of contracts and bonds. *All contracts*
4 *for the performing of work or furnishing materials, supplies or*
5 *services shall be in writing.* The governing body of any contracting
6 unit may, *subject to the requirements of law*, prescribe the form
7 and manner in which **[all]** contracts **[for performing work or**
8 **furnishing materials for the contracting unit]** shall be made and
9 executed, and the form and manner of execution and approval of all
10 guarantee, indemnity, fidelity and other bonds **[required to be**
11 **given to the contracting unit pursuant to law].**

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

3 15. **[Contracts for fuel or oil and snow and ice removal; dura-**
4 **tion.]** *Duration of certain contracts.* Any contracting unit may
5 enter into a contract for **[the]**

6 (1) Supplying of

7 (a) Fuel for heating purposes, for any term not exceeding
8 in the aggregate, 2 years; **[or]**

9 (b) Fuel or oil for use of airplanes, *automobiles, motor*
10 *vehicles or equipment* for any term not exceeding in the aggre-
11 gate, **[3]** 2 years; **[or]**

12 (2) The plowing and removal of snow and ice from highways
13 and public places, for any term not exceeding in the aggregate, 1
14 year; **[or]**

15 (3) The collection and disposal of garbage and refuse, for any
16 term not exceeding in the aggregate, 5 years,

17 **[notwithstanding that such terms exceed the fiscal year.]**

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18 (4) *Data processing service, for any term of not more than 3*
19 *years;*

20 (5) *Insurance, for any term of not more than 3 years;*

21 (6) *The leasing or servicing of electronic communications equip-*
22 *ment for a term of not more than 3 years;*

23 (7) *Installment payments for the purchase of automobiles, motor*
24 *vehicles, equipment or machinery, for a term of not more than 3*
25 *years;*

26 (8) *The leasing or servicing of automobiles, motor vehicles,*
27 *electronic communications, equipment, machinery and equipment*
28 *of every nature and kind, for a term of not more than 3 years;*

29 *notwithstanding that such terms exceed the fiscal year period; pro-*
30 *vided, however, such contracts may be entered into for longer terms*
31 *if approved by the Director of the Division of Local Government*
32 *Services.*

1 14. Section 16 of P. L. 1971, c. 198 (C. 40A:11-16) is amended to
2 read as follows:

3 16. Separate plans for various types of work; bids; contracts.
4 In the preparation of plans and specifications for the erection,
5 alteration or repair of any public building by any [political sub-
6 division of this State] *contracting unit*, when the entire cost of the
7 work will exceed [2,500.00] *\$5,000.00* in amount, the architect,
8 engineer or other person preparing the plans and specifications,
9 may prepare separate plans and specifications for

10 (1) The plumbing and gas fitting and all kindred work;

11 (2) Steam power plants, steam and hot water heating and
12 ventilating apparatus and all kindred work;

13 (3) Electrical work;

14 (4) Structural steel and ornamental iron work; and

15 (5) All other work required for the completion of the project.

16 The contracting [agent authorized to award such contract for
17 the erection, construction, alteration or repair of any public build-
18 ing] *unit or its contracting agent* shall advertise for and receive,
19 in the manner provided by law, either (a) separate bids for each of
20 said branches of work, or (b) bids for all the work and materials
21 required to complete the building to be included in a single overall
22 contract, or (c) both. There will be set forth in the bid the name
23 or names of, and evidence of performance security from, all sub-
24 contractors to whom the bidder will subcontract the furnishing of
25 plumbing and gas fitting, and all kindred work, and of the steam
26 and hot water heating and ventilating apparatus, steam power
27 plants and kindred work, and electrical work, structural steel and

28 ornamental iron work, each of which subcontractors shall be
29 qualified in accordance with this [Title] act.
30 Contracts shall be awarded to the lowest responsible bidder. In
31 the event that a contract is advertised in accordance with (c) above
32 said contract shall be awarded in the following manner: If the sum
33 total of the amounts bid by the lowest responsible bidder for each
34 branch is less than the amount bid by the lowest responsible bidder
35 for all the work and materials, the contracting [agent] unit shall
36 award separate contracts for each of such branches to the lowest
37 responsible bidder therefor, but if the sum total of the amount bid
38 by the lowest responsible bidder for each branch is not less than the
39 amount bid by the lowest responsible bidder for all the work and
40 materials, the contracting [agent] unit shall award a single overall
41 contract to the lowest responsible bidder for all of such work and
42 materials. In every case in which a contract is awarded under (b)
43 above, all payments required to be made under such contract for
44 work and materials supplied by a subcontractor shall, upon the
45 certification of the contractor of the amount due to the subcontrac-
46 tor, be paid directly to the subcontractor.

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

3 18. American and New Jersey goods and products to be used
4 where possible. Each local unit shall provide, in the specifications
5 for all contracts for county or municipal work or for work for
6 which it will pay any part of the cost, that only manufactured and
7 farm products of the United States, wherever available, be used in
8 such work and where possible, shall purchase such products and
9 services from vendors who have a place of business in New Jersey.

1 16. Section 23 of P. L. 1971, c. 198 (C. 40A:11-23) is amended to
2 read as follows:

3 23. Advertisements for bids; bids; general requirements. All
4 advertisements for bids shall be published [at least once, 10 days
5 prior to the date fixed for receiving the bids, in a newspaper of
6 general circulation published in this State and circulating within
7 the territory included within or served by the contracting unit]
8 in a legal newspaper sufficiently in advance of the date fixed for
9 receiving the bids to promote competitive bidding, but in no event
10 less than 10 days prior to such date. The advertisement shall
11 designate the manner of submitting and the method of receiving the
12 bids and the time and place at which the bids will be received. If the
13 published specifications provide for receipt of bids by mail, those
14 bids which are mailed to the contracting unit shall be sealed and

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15 shall only be opened for examination at such time and place as all
16 bids received are unsealed and announced. At such time and place
17 the contracting agent of the contracting unit shall publicly receive
18 the bids, and thereupon immediately proceed to unseal them and
19 publicly announce the contents, which announcement shall be made
20 in the presence of any parties bidding or their agents, who are
21 then and there present, and shall also make proper record of the
22 prices and terms, upon the minutes of the governing body, if the
23 award is to be made by the governing body of the contracting unit,
24 or in a book kept for that purpose, if the award is to be made by
25 other than the governing body, and in such latter case it shall be
26 reported to the governing body of the contracting unit for its action
27 thereon, when such action thereon is required. No bids shall be re-
28 ceived after the time designated in the advertisement.

1 17. Section 24 of P. L. 1971, c. 198 (C. 40A:11-24) is amended to
2 read as follows:

3 24. Time for making award; deposits returned. [The contracting
4 agent shall award the contract or contracts, or reject all bids there-
5 for within 30 days after they are received, and all checks or bonds
6 delivered with the bids.] *Every contract shall be awarded or all*
7 *bids therefor rejected within 60 days after the opening of bids*
8 *except where the invitation to bid states that the execution of the*
9 *contract shall be subject to prior approval or disapproval by a*
10 *Federal or State agency or department, in which event the contract*
11 *shall be awarded or all bids therefor rejected within 5 days after*
12 *the approval or disapproval by such Federal or State agency or*
13 *department. All security delivered with the bids, except the check*
14 *or bond of the bidder to whom the contract is awarded, shall be*
15 *returned within 3 days thereafter, Sundays and holidays excepted.*
16 *The check or bond of the bidder to whom the contract is awarded*
17 *shall be retained until a contract is executed and any required per-*
18 *formance bond or other security is submitted. [If for any reason*
19 *the contracting agent is unable to make an award within such 30-day*
20 *period, it shall be lawful for such agent and each of the three lowest*
21 *responsible bidders and his proposed surety, if any, to agree upon*
22 *an extension, not exceeding an additional 30 days, for the making*
23 *of the award, in which event the contracting agent shall make the*
24 *award or reject such bids on or before the end of such extended*
25 *period.]*

1 18. This act shall take effect immediately.

STATEMENT

This bill is a replacement of Senate Bill No. 1322. It has been drafted by the Division of Law Revision in cooperation with the Senate Committee on County and Municipal Government to reflect further changes, suggestions and recommendations made to the Senate Committee and to the Division of Law Revision by the Legislative Committee of the New Jersey Institute of Municipal Attorneys and the New Jersey Purchasing Agents' Association, both of which are subgroups of the New Jersey League of Municipalities.

This bill seeks to rectify some of the more recurrent and serious problems that exist under the present law which have been raised by local public officials.

A constitutional problem has existed under the present law by reason of the inclusion of school districts in statutes relating to municipalities and counties. This bill corrects the problem.

Legislation has been prepared and introduced in the Assembly as Assembly Bill No. 3060, revising chapter 18 of Title 18A—the education statutes, to incorporate therein many of the provisions of the Local Public Contracts Law to accomplish uniformity in public contract law.

The provisions of this bill will extensively revise the existing law.

One of the changes made by this bill is a change in the definition section redefining contracting unit, contracting agent, purchase, materials, professional services, project and sale and defining non-professional technical services and work.

Under the existing law, all contracts, the cost or price of which, except those otherwise specifically excepted, exceeds \$2,500.00, may be awarded only after public advertising for bids and bidding therefor. This bill will provide a new legislative scheme for the entering into of contracts calling for the expenditure of public money by contracting units. It provides for uniform and simplified procedure, permits contracting units to take advantage of modern leasing and installment contract procedures and to get the benefits of lower pricing therefrom and allows responsible officers and employees to commit the contracting unit to the cost of making repairs in emergency situations. The scheme generally is that every contract over \$500.00 will require a solicitation of quotations whenever practicable. If the contract price exceeds \$5,000.00 there must be a public advertising for bids. The present statute requires public advertising where the price of a contract exceeds \$2,500.00. It has

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been suggested that this figure be raised to \$5,000.00 to conform with inflationary trends.

The present law includes certain items which may be purchased without public advertising even though the price exceeds the limit set. This bill would add to the list of exempt contracts those which would cover nonprofessional technical services, the acquisition of special equipment for confidential investigation subject to approval by the Attorney General, medical supplies, printing of bonds and documents necessary to the issuance and sale thereof, technical equipment, equipment repair services, the plowing and removal of snow from public places, publishing of legal notices, acquisition of artifacts and historical items, and other situations in which only one source of supply is available. However, all of these types of contract will require a solicitation for quotes if the price is above \$500.00. Motor vehicles will no longer be exempt.

The present law has an awkward provision providing for the awarding of the contract on which no bids have been received after public advertising. It requires that the contracting unit first ascertain whether any county or municipality or the State or Federal Governments are in a position to supply the articles or services. The acquiring of such information is an impossibility. This bill keeps the scheme of making it necessary that reasonable inquiries be made but removes the requirement of contacting all other local contracting units.

This bill changes the existing law relating to the awarding of contracts when an emergency exists requiring immediate delivery of materials and supplies or the performance of work. As provided in the bill, such contracts may be made or awarded without public advertising for bids although the cost or price thereof will exceed \$5,000.00 when an emergency affecting the public health, safety or welfare requires the immediate delivery of the articles or performance of the services provided such contracts are made or awarded in the following manner: a written requisition for the performance of such work or the furnishing of materials is filed with the contracting agent or his deputy in charge describing the emergency; the time of its occurrence and the need for invoking this section, certified by the officer or director in charge of the department wherein the emergency occurred; and the contracting agent, being satisfied that an emergency exists, may award such a contract. Upon the performance of such work or furnishing of materials, the contracting unit shall be obligated for the payment thereof, and the governing body of the contracting unit is authorized to pre-

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scribe additional rules and procedures to implement the requirements for the awarding of such contracts.

This bill supplements the existing law relating to the manner in which contracts shall be awarded. All contracts shall be awarded to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the contracting unit, price and other factors considered. Except contracts requiring the performance of professional or nonprofessional technical services, contracts which do not require public advertising for bids and the estimated cost and price thereof exceeds \$500.00, whenever practical, at least three quotations as to the cost or price shall be solicited by the contracting agent, and the contract shall be awarded to the lowest responsible bidder whose bid will be most advantageous to the contracting unit, price and other factors considered.

The bill supplements the existing law to provide that contracting units may enter into contracts for the leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery, equipment of every kind and nature, and also authorizes a contracting unit to enter into installment contracts for the purchase of automobiles, motor vehicles, machinery or equipment of every nature and kind.

The existing law is silent as to whether or not contracts for the performing of work or furnishing of materials and supplies shall be in writing. The absence of such a provision has resulted in confusion. Under this bill it is expressly provided that all such contracts for the performing of work or furnishing of materials and supplies shall be in writing.

The section of the present law relating to the duration of certain contracts which a contracting unit may enter into which exceed the fiscal year of the contracting unit is amended by adding thereto contracts for any term of not more than 3 years relating to data processing service, insurance, leasing or servicing of electronic communications equipment, installment contracts for the purchase of automobiles, etc., and the leasing or services of automobiles, etc. All contracts which may be entered into by a contracting unit under this section may be entered into for longer terms if approved by the Director of the Division of Local Government Services.

This bill also provides that where possible contracting units shall purchase products and services from vendors who have a place of business in New Jersey.

The section of the present law relating to advertisements for bids is changed to require that bids shall be advertised sufficiently in

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advance of the date fixed for receiving bids to promote competitive bidding, but in no event less than 10 days prior to such date. This conforms to the law relating to the advertising for bids for contracts entered into by the State.

The bill also changes the time within which contracts shall be awarded or bids rejected. All contracts shall be awarded or all bids rejected within 60 days after they are received except where the invitation to bid states that the execution of the contract is subject to approval or disapproval by the Federal or State Governments, in which event the contract shall be awarded or bids rejected within 5 days after such approval or disapproval.

This is a companion to a bill amending N. J. S. 40A :4-5 of the Local Budget Law.

SENATOR MARTIN L. GREENBERG (Chairman): Good morning, ladies and gentlemen.

This is the commencement of public hearings on Senate Bill No. 3090 before the Senate Committee on Municipal and County Government.

My name is Martin Greenberg and I am the Chairman of the Committee. With me, on my left, is Senator Dunn who is a member of that Committee. Other Senators are engaged in other matters this morning but hopefully will be dropping in as soon as they are able.

Senate Bill No. 3090 is a bill sponsored by Senators Feldman and Horn. Senator Feldman is here and will be the first witness.

Let me just state initially that if anyone wishing to testify has a prepared text of that testimony I would request that they give a copy of it to the stenographer and a copy to the members of the Committee before they begin to testify.

The proposed changes in the Local Public Contracts Law constitute the first major substantive revision of that Law since the 1971 codification. The Law prescribes the statutory authority for and the types of lease or purchase contracts or agreements, and the procedures therefor which local units of government may or are required to enter into for the acquisition of goods and services from private bodies or persons or through other public entities. The main provisions of the bill are as follows:

The deletion of school districts from the Local Public Contracts Law; extension of the provisions of the Law to local public authorities; an increase from \$2500 to \$5000 for the cost or value of contracts or agreements exempted from the public advertising for bids requirement; the exemption of nonprofessional technical services from

the requirement to publicly advertise for bids.

There are several other significant changes which we will get to, I assume, in the testimony.

This Committee is concerned with one basic consideration and that is the necessity of striking a proper balance between the need to assure full public accountability for the use of public funds and the conflicting requirement of encouraging more flexible purchasing practices in keeping with changing circumstances and needs.

I would request, because of a rather unique problem this morning - we have a session scheduled in the Senate commencing at 12 o'clock, - that witnesses present their testimony as concisely as possible, keeping within the range of 15 minutes if that is at all humanly possible. So the first witness will be the prime sponsor of the bill, Senator Matthew Feldman.

M A T T H E W F E L D M A N: Thank you, Mr. Chairman and Senator Dunn. I believe the Chairman has more or less capsuled the bill, S-3090, but I would like to make some additional comments and compliment what he has said.

S-3090 is a replacement for S-1322 which embodies substantial changes in our Local Public Contracts Law. S-3090 reflects further changes, suggestions and recommendations made to the Senate Committee since S-1322 was introduced.

It seeks to rectify some of the more recurrent and serious problems that exist under the present law, which have been raised by local public officials and these local officials have had substantial input into the changes made by S-3090, and I want to express my appreciation for their interest and their help.

I also want to acknowledge the cooperation of the New Jersey Institute of Municipal Attorneys and the New Jersey Purchasing Agents Association, both of which are part of the New Jersey League of Municipalities.

The major changes are concisely summarized in the statement attached to the bill. Generally, I believe the changes reflect a proper balance between assuring ample public accountability and the need for efficient operations.

The provisions, Mr. Chairman, of this Act will permit contracting units to take advantage of modern leasing and installment contract procedures and to get the benefits of local pricing therefrom.

The Bill also allows responsible officials and employees to commit the contracting unit to the cost of making repairs in emergency situations.

A provision that has been stated, this legislation raises from \$2500 to \$5000 the amount of a purchase or other transaction which may be exempted from public advertising and bidding. This change was requested by the Purchasing Agents to conform with inflationary trends. And this may be, Senator Greenberg and Senator Dunn, a source of some contention and some comments later on.

A constitutional problem has existed under the present law by reason of the inclusion of school districts in statutes relating to municipalities and counties. This bill corrects the problem by deleting school districts from Local Public Contracts Law.

There are many other procedural changes in the bill which were requested by local officials and are more fully spelled out in the complete statement attached to the bill which goes into S-3090 more thoroughly than I can in the short time allotted to me.

I want to thank you very much for inviting me here today and also for the fact that your Committee is having a public hearing on this because we can only learn from the public, those who are vitally interested in correcting an anachronism over the years that we

want to better the system and this is why we're here.

SENATOR GREENBERG: Thank you very much, Senator Feldman. We appreciate your being here this morning and I want to thank you on behalf of the Committee for your cooperation with the Committee in the consideration of this major piece of legislation and congratulate you on your sponsorship of it.

Senator Dunn, do you have any questions?

SENATOR DUNN: No questions.

SENATOR GREENBERG: Thank you, Senator.

John Laezza.

If there are any individuals present who wish to testify on the bill, would you kindly indicate your name and your presence to Mr. Caramalis who is seated at my right.

Mr. Laezza, would you state your name and identify yourself, please?

J O H N F. L A E Z Z A: My name is John F. Laezza, Director of the Division of Local Government Services, Department of Community Affairs.

Senator Greenberg, Senator Dunn, thank you for allowing me the opportunity to make some comments on Senator Bill 3090.

I have a two-page prepared statement. In generalities, I have some comments that I have worked on that I could refer to following my prepared statement and would be happy to answer any questions with regard to the Division's position.

Comments on S-3090

Since the Local Public Contracts Law was passed in its present form in 1971, the Division of Local Government Services has been responsible for providing assistance to local governments in complying with the Law. The Division does not have a responsibility under this Law to enforce it. The Division has undertaken strenuous activities in these recent years to acquaint local officials with the requirements of the Law. The Local Finance Board has issued Local Public Contract Guidelines, which describe the Law's provisions in some detail. We have issued other publications, have made dozens of speeches to local officials on the subject and answered hundreds of letters and phone inquiries from local officials, vendors and citizens.

While this Law is certainly not perfect, we believe that it stands as one of the more important safeguards for the public. In discussing the provisions of the present Law with local officials and other concerned citizens, the Division has consistently taken a rigid position to the effect that any questions or doubts must be resolved on the side of the highest standards of public propriety. We say: "When in doubt, bid!" In today's climate, this is more important than ever. We believe that ostensibly plausible arguments, even when advanced with the most pure motives, must be set aside if they would weaken the spirit of free open and competitive bidding, in favor of assuring the public of the tightest possible statutory safeguards.

For this reason, we have responded to literally hundreds of requests from local officials, often telling them not what they might have wished to hear, but what we thought the existing Law required. We have also made our opposition known through appropriate channels to the various amendments that have been proposed to this Law when we thought they would weaken it. With regard to S-3090, we believe that this Bill represents some obvious hard work and some very good intentions. Some of the changes that we feel are acceptable are not of major importance. What concerns us is that there are a number of places in this Bill that would substantially expand the scope of purchases that would be made without competitive bidding. Without going through a lengthy and detailed list of these (which we are not prepared to do this morning), I would just like to mention several general areas:

1. Raising the bid level from \$2500 to \$5000 may be justifiable in terms of certain statistical indices of inflation. We do not think it is appropriate at this time since we are also concerned with indices of corruption, or more importantly, the pervasive public feeling these days that government is not to be trusted. Even though there are hundreds of conscientious local officials, today government must more than ever protect itself against charges that it is making life easier for those few who are not so conscientious. \$2500 is still a good useable figure. It does not go as far as it used to, but in the average taxpayers mind, it is still a lot of money. We do not favor raising the figure to \$5000.

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2. We think it would be inappropriate to double the number of exceptions to competitive bidding listed in section 5. We would applaud the deletion of the exception of the purchase of motor vehicles, but adding such things as contracts for so called specialized machinery, snowplowing, so called single source supplies and such things as "non-professional technical services" is not justifiable if the Contracts Law is to have any meaning. How many vendors do you know who don't claim that their equipment is not only superior but unique? Isn't "single source" coming close to "brand name," which another part of the Law frowns upon? How many service firms claim that they are the only ones who are really able to provide competent repair services for particular equipment? How many companies would like to be in a position of providing equipment and parts to a municipality on a continuing basis without bids on the grounds of compatibility with existing equipment, thereby really obtaining a monopoly? If all of the proposed exceptions are added to section 5, there may not be much left that can't be safeguarded under an exception from bidding. This is not to infer that all such exceptions would be abused or that they would even be taken advantage of by all municipalities, but it does not represent sound public policy to open the door so wide to so many things that would get around the competitive bidding requirements.
3. We think that the present Law should be tightened, to reduce the number of expenditures that can be made without bidding. Too many things now are being awarded without bid as "professional services." I believe that the example of the State government in obtaining bids for professional services should be followed, and the Contracts Law should reflect this. A number of towns are now obtaining bids for insurance. Engineering and auditing contracts may follow.

I certainly would like to applaud the specific inclusion of authorities under this Law. We have felt that the present Law did apply to local authorities, but there has been some disagreement on this. We also think that the procedures in section 24 dealing with the time for awarding contracts could be improved, but we don't think that the proposed language fully comes to grips with problems that municipalities have when bids come in higher than anticipated.

In conclusion, the Division of Local Government Services would respectfully recommend that this Bill not be enacted **in its present form.**

With regard to some of the specific areas in the legislation that we're specifically concerned with is the definition of "non-professional" services, and certain other small definitions. I refer to the \$5000. There are a number of exceptions under Section 5 of the legislation as it relates to Section 5 (1) old (i), which is presently new (n) as it relates to snowplowing equipment and the like. We believe the original definition is more in keeping with the requirements. The comments with regard to only one source of supply were in my prepared statement.

In Section 5 (3), the legislation refers to buying American and buying in New Jersey. I think that's the section we were referring to. We might indicate that in the last year or so the Department of Treasury and our Department have had questions from various municipalities with the ability to buy surplus equipment from other municipalities in other states.

These are areas that might be looked into and added on to this legislation to allow those types of purchases without bidding requirements.

In Section 9 of the Law, it allows the delegation of responsibility of the awarding of contracts to purchasing departments and the like. I feel that the legislation should require that the governing bodies award the contracts by resolution since they are aware of the spending needs and they should be aware of the sufficient dollar appropriation to award that contract rather than delegate the responsibility to one of their departmental agencies.

The new sections, 10 and 11, sound innocuous in their writings but without limitations could in effect circumvent the bond law the same as it relates to Section 15 generally but it would in fact mandate budget costs on future governing bodies.

Section 18, once again, is impractical as it indicates buy American and buy New Jersey. It's

inconsistent with the intent of competitive bidding.

There are other sections in the law but I would leave it open for questions.

SENATOR GREENBERG: Thank you, Mr. Laezza. I just have two questions for you.

The concluding sentence in your prepared statement talks in terms of a recommendation that this bill not be enacted. Is that the position of the Department?

MR. LAEZZA: No. Basically in this sense, I think there should be some changes in the Local Public Contracts Law and we would be happy to work with the Committee and with the Senator, along with the Department of Treasury, on making a bill that we think should correct some of the legislation we do now have. In its present form, I believe it should possibly be amended.

SENATOR GREENBERG: Do you have a draft of such proposed amendments?

MR. LAEZZA: Not immediately. I have some of my comments here that I think we could work with Senator Feldman on.

SENATOR GREENBERG: Would you be kind enough to prepare such a draft and submit it to the Committee?

MR. LAEZZA: Certainly.

SENATOR GREENBERG: The second question deals with a sentence in your prepared statement which reads: "I believe that the example of the State Government in obtaining bids for professional services should be followed." What is that procedure and how does it differ?

MR. LAEZZA: Well, specifically, now - and maybe that could be changed somewhat, in fact I did not read it as I was going through the prepared statement. There has been a question that there has been favoritism placed with regard to awarding professional contracts. I think

the law as it presently is written sets forth that professional services should at least be advertised to the extent that the public knows what the government officials are doing. I think that would accomplish what's been happening. The State Department of Treasury has bid on professional services for some of their contracts. I think this is an area that is being contemplated, under discussion, in the law of the Department of Public Safety and Consumer Affairs as it relates to changing professional boards and the requirements for professional bidding.

What I'm saying here is it seems to be the direction that the public wants to know what's happening with their dollars. Professional boards are taking that into consideration. I think it should be considered in this legislation.

SENATOR GREENBERG: Thank you.

Senator Dunn, any questions?

SENATOR DUNN: John, you mentioned that the Department of Community Affairs submits guidelines for bidding but does not have any enforcement power. Is that right?

MR. LAEZZA: Yes, Senator.

SENATOR DUNN: Were you implying in any way that perhaps the judgment of a purchasing agent and a governing body who usually oversees, one way or another, the work of a purchasing agent be an appeal board? Should somebody challenge the wisdom or judgment of a purchasing agent or a governing body?

MR. LAEZZA: I'm indicating that the way the law is written we have the administrative responsibility. In our guidelines we indicated that the legal responsibility and the resolution responsibility is the responsibility of the governing body. Subsequently, when there are

questions by the citizens, when there are questions by the public per se, as to the actions of the governing bodies we have to refer them specifically to the prosecutors in the various communities, and the like, and we indicate that we are not the enforcing agency, we are the administering agency. I do not indicate that I should be the enforcing agency or we at Community Affairs should be the appeal agency.

SENATOR DUNN: Where there is just a matter of a judgment, where there's absolutely no trace or hint of corruption involved, just a matter of a purchasing agent or the governing body using questionable wisdom in making a decision, are you suggesting in any way that perhaps an appeal board set up within the Department of Community Affairs might be considered?

MR. LAEZZA: Not particularly because in those areas we are specifically replying to the public. We will go in and investigate because accountability of public dollars is my responsibility under other statutes. We review the matter and if we feel it was just a matter of judgment we advise the public that they are the responsible officials to make the decisions and they have made the decisions as best they feel they should be made. As long as we find nothing that is against the legal ramifications of it we then, in fact, tell the public that that's their decision and their role is in the voting booth.

SENATOR DUNN: Senator, I would like to ask a question not about this particular piece of legislation but because of Mr. Laezza's wide experience it might help me make a decision on other legislation.

John, are you at all familiar with some of these affirmative action bills that have been placed before the Assembly and the Senate?

MR. LAEZZA: Some of them, Senator, yes.

SENATOR DUNN: I don't claim to be an expert on

any of them by any stretch of the imagination; I'm not too familiar with them. But I get this very strong impression that a vendor, even though that particular firm might be the low bidder for any service or commodity being furnished, could be ruled ineligible if that firm is on a list of non-affirmative action vendors. Do you know anything about that at all?

MR. LAEZZA: I believe you are correct in your assumption and those pieces of legislation would affect the Local Public Contracts Law which does not respond to that area also. I agree with you.

SENATOR DUNN: Well, this is of great concern to me and I don't think many of the Legislators - I mean, if my suspicion is correct, I don't think many Legislators are aware of the fact that a vendor or a contractor could be the lowest bidder on a very major job --

MR. LAEZZA: Would not be eligible.

SENATOR DUNN: -- but would not be eligible. Therefore, this affirmative action legislation could, theoretically, defeat the purpose of competitive bidding.

MR. LAEZZA: I agree with you, Senator.

SENATOR DUNN: Thank you.

SENATOR GREENBERG: I just have one additional question, John.

You indicated an objection to Section 10 in that it might circumvent the bonding requirement. Would you just succinctly, please, explain the basis for that objection so that I understand it?

MR. LAEZZA: Okeh. The Bond Law specifically indicates that if you're going to acquire capital needs there is a debt limitation in the State of New Jersey that municipalities would have to appear before the local Finance Board if their acquisition of those capital needs exceeded that debt statement. There is nothing in this legislation that would indicate that they could

lease capital projects, through their budget process develop future liabilities, which is borrowing money to meet those needs, without having to conform with the local Bond Law. It could affect their net debt position in a municipality.

SENATOR GREENBERG: In your preparation of suggested amendments or proposals, would you deal with that subject?

MR. LAEZZA: Surely.

SENATOR GREENBERG: And also indicate whether or not some method of longterm leasing could be worked out that would be satisfactory to the Department.

MR. LAEZZA: Fine.

SENATOR DUNN: One last question. John, you obviously are opposed to the \$2500 being raised to \$5000, is there any circumstance that might get an affirmative response from you, the size of the city for instance?

MR. LAEZZA: Not only on size of cities, I imagine \$2500 is a very limited amount for county government and large cities. However, when you go to those counties and those large cities they probably have sufficient sophistication to know what their needs are so that whether it's a bid for \$2500 or \$5000 it's the same requirement. There are more than 300 municipalities that have less than 5,000 population and a \$5000 figure would, in effect, require that they would not have to enter into any competitive bidding whatsoever. So I think that there are areas that one might consider with regard to the \$5000 figure.

SENATOR DUNN: Thank you.

SENATOR GREENBERG: Thank you.

Mr. Rathblott.

A L B E R T R A T H B L O T T: Senator Greenberg and Senator Dunn:

I am Albert Rathblott, a member of the New Jersey Bar, President of the New Jersey Institute of Municipal Attorneys, and also on the staff of the Law Department of the City of Camden. I appreciate this opportunity to comment on Senate Bill #3090.

It should be of interest to this committee to know that the Legislative Committee, of the New Jersey Institute of Municipal Attorneys and a number of municipal purchasing agents have met to discuss the existing law for in-put which we feel is now included in the proposed Senate Bill #3090. You are aware of the meeting held by the Purchasing Agents Association during the League of Municipalities conclave last November.

The "Local Public Contracts Law" is in the public interest. Thus, the statute should have sufficient clarity which would eliminate the constant deluge of inquiries for legal opinion and declaratory judgments for an interpretation of legislative intent. Senate Bill #3090 would appear to substantially overcome this problem.

The New Jersey Institute of Municipal Attorneys support the amendment as being necessary for a more effective, unencumbered, and understandable guideline for both the attorneys and purchasing agents of municipalities.

As Attorney for the City of Camden, our Department dealt with all kinds of problems relating to contracts. Increasing the amount from \$2,500 to \$5,000 as proposed in the amendment of Section 3 Chapter 198 of the P.L. 1971 (40A:11-3) would save substantial advertising costs for items which have increased in cost because of the inflationary economy.

I cannot urge too strongly for your support and recommendation of Section 5 dealing with emergency purchases. This is an area which not only affects the public interest but could be of vital concern for the health and safety of the community. Emergencies require prompt decisions; this often creates concern as to propriety, etc., and whether or not the judgment was proper. This amendment would serve the purpose of eliminating delay. The requirement for a sworn statement should be a certification under the penalty of perjury for falsification. It will also have the attention of the person faced with the emergency, his superior and the purchasing agent. All of this gives protection to the employees as well as the public.

I believe that your endorsement and recommendation in favor of this bill would be hailed by the purchasing agents and the municipal attorneys throughout the state.

SENATOR GREENBERG: Thank you, Mr. Rathblott.

Would you please direct some remarks to your view with regard to the section dealing with professional services?

MR. RATHBLOTT: Yes, I would be happy to.

With respect to professional services, I feel they should not be subject to bid. It is my feeling, particularly thinking in terms of professions, people who are licensed and regulated by the State, in many cases they may be licensed and may not really be qualified in the true sense of the word for performing a particular function or service. Particularly, let me refer to attorneys.

There are many attorneys who are very competent and qualified as members of the Bar but who have no experience whatsoever with respect to foreclosures, for example, or other municipal work. It is my feeling that a municipality should have the opportunity to pick that man who is best qualified to serve the community and keep it as nonpolitical as possible.

SENATOR GREENBERG: Do you feel the same way with regard to consulting engineers?

MR. RATHBLOTT: I feel that is more of a non-professional, technical service. In other words, I put that not in the same category as a licensed attorney or a physician, for example. In the City of Camden we have a licensed physician who is the City Physician and I am sure there are plenty of licensed physicians that we might not employ, that would not serve our purpose.

SENATOR GREENBERG: Then your view is, with regard to consulting engineers, that they could well be but that physicians and attorneys should not.

MR. RATHBLOTT: Not exactly, Senator. I feel that if an engineer is licensed, the same explanation

could apply to him. There are all kinds of engineers. We may feel, for example, that a particular engineer has more skill and is more familiar with our local situation, even though he may not be a local man, so that we might have a better service.

SENATOR GREENBERG: Then what is your view with regard to the proposed language in the bill dealing with professional services?

MR. RATHBLOTT: My view is that it should be supported and should not be submitted to bids, it should be exempt.

SENATOR GREENBERG: Senator Dunn?

SENATOR DUNN: No questions.

SENATOR GREENBERG: Thank you.

MR. RATHBLOTT: Thank you, Senator.

SENATOR GREENBERG: Richard Lion, Comptroller of Wildwood.

R I C H A R D A. L I O N: I am Richard Lion, Comptroller of Wildwood and I am here representing the New Jersey State League of Municipalities. I am Chairman of a Sub-Committee of the League's Legislative Committee which was composed of a cross-section of municipal officials who would have close contact with the administration of the Public Contracts Law, and we were directed to make a study of Senate Bill 1322 which is the predecessor, of course, to Senate Bill 3090. So we are at a little disadvantage here this morning because we haven't been able to have a meeting of our Sub-Committee since 3090 was published.

However, I am pleased to note that almost all of the points which we were going to recommend to the League have been included in Senate 3090. The League has gone on record as being in favor of raising the \$2500 limit to \$5000 because of the inflationary times and costs of advertising for smaller bids.

The League's Legislative Committee is going to meet next Tuesday, April 1st, and they will take up this bill and give it their final consideration. But I would say for the record now that I feel the League will generally be in favor of Senate 3090 since it does include the many points that we would have normally raised.

There is one question which I had, in Section 5(4) which deals with the awarding of contracts when there are no bids.

SENATOR GREENBERG: What page, please?

MR. LION: Page 5, line 70. It begins on line 69. It deals with the term of the contract which may be awarded under those circumstances. And it says: "No such contract or agreement may extend for a period greater than 1 fiscal year." And I question whether the use of "fiscal" means that the contract may only be awarded for the balance of the fiscal year - of course, the municipality has the calendar year - that might cause some problems because if the contract which normally would have been awarded for a full year or twelve months should come up during the year, that would mean that would have to be rebid so that it could be awarded again for the following January 1st. If it should come up late in the year, let's say around the 1st of October or November, it would mean that you would award a contract for two months and then take bids again with the likelihood that you may not get any bids the second time.

SENATOR GREENBERG: What would you recommend?

MR. LION: Well, my thought would be, leave the word "fiscal" out and say "one year".

SENATOR GREENBERG: You're talking then about a 12 month period?

MR. LION: Yes. I'm not sure what the intent of the word "fiscal" was there but it would seem to me that's what it might be.

SENATOR GREENBERG: The Committee has discussed that and there's tentative agreement that some modification should be made with regard to that language.

Any other points?

MR. LION: No, that's all I have.

SENATOR GREENBERG: Thank you.

Senator Dunn, any questions?

SENATOR DUNN: No questions.

SENATOR GREENBERG: Thank you.

Frank Trocino.

Incidentally, the record of this hearing will be continued and held open for a period of two weeks after the hearing is concluded. If there are any additional statements or positions to be submitted, they can be submitted during that period of time and will become part of the record, by addressing them to the Committee's Office here in this building.

F R A N K P. T R O C I N O: Mr. Chairman and members of the Committee: My name is Frank Trocino. I am an Attorney-at-Law of the State of New Jersey and hold the public position of City Attorney of the City of Elizabeth, New Jersey. I have been associated as a City Attorney with the City of Elizabeth for more than 10 years and, therefore, have had the opportunity to experience the administering of the current Local Public Contracts Law, effective since July 1, 1971, as well as the law which preceded it.

Due to the many changes which occurred as a result of the 1971 Revision, I believe that I will join the voices of many government attorneys affected by the law in saying that a good deal of confusion, as well as problems, developed in the administering and enforcing of the present statute.

HOWEVER, AS THE RESULT OF CONSTANT REVIEW BY THE LEGISLATURE, AS WELL AS BY THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, AND MANY INTERESTED LOCAL GOVERNMENT OFFICIALS, THERE IS BEFORE THE SENATE THE CURRENT PROPOSED AMENDMENTS WHICH, IN MY VIEW, REPRESENT AN IMPROVEMENT IN THE LAW OF LOCAL PUBLIC CONTRACTS, AND WILL EASE THE BURDEN OF ADMINISTRATION FOR LOCAL OFFICIALS, AS WELL AS BENEFIT THE PUBLIC.

I AM HAPPY TO SEE A PROPOSAL WHICH WILL REDEFINE AND CLARIFY MORE PRECISELY THE MEANING OF "PROFESSIONAL SERVICES AND NON-PROFESSIONAL TECHNICAL SERVICES". LOCAL GOVERNMENTAL AGENCIES ARE CONSTANTLY IN NEED OF BOTH TYPES OF SERVICES WHICH, BY THEIR RESPECTIVE NATURES AND THE EXPERTISE REQUIRED IN THE AREA OF PROFESSIONAL AND TECHNICAL SERVICES, DO NOT REASONABLY ALLOW FOR THE DRAFTING OF WRITTEN SPECIFICATIONS AND THE SUBSEQUENT ADVERTISING FOR THE RECEIPT OF BIDS FOR THE AWARDING OF A CONTRACT. IT IS IN MY VIEW A REALISTIC APPROACH WITH THE SAFEGUARD OF REQUIRING THAT THE LOCAL GOVERNING BODY STATE SUPPORTING REASONS FOR ITS ACTION IN AWARDING A CONTRACT FOR BOTH PROFESSIONAL AND NON-PROFESSIONAL TECHNICAL SERVICES THAT THIS PROVISION BE ADOPTED.

I ALSO FAVOR THE PROPOSED CHANGE TO \$5,000 AS THE FIGURE ABOVE WHICH BIDDING IS REQUIRED FOR ALL CONTRACTS NOT OTHERWISE EXEMPT BY LAW. ONCE AGAIN, IN THIS DAY AND AGE, AND IN CONSIDERING THE GENERAL PRICING STRUCTURE WHICH NOT ONLY EXISTS IN THIS NATION, BUT IN THE STATE OF NEW JERSEY, IT IS UNREALISTIC TO MAINTAIN THE PRESENT BIDDING REQUIREMENT OF \$2,500.

I THINK IT GOOD THAT IT IS PROPOSED TO DELETE THE PHRASE "IN THE AGGREGATE" FROM SECTION 3 OF THE AMENDMENT, SINCE THAT PHRASE GAVE AT LEAST THE PURCHASING DEPARTMENT, AS WELL AS THE LAW DEPARTMENT IN THE CITY OF ELIZABETH, MANY HEADACHES IN INTERPRETATION AND MEANING OVER THE LAST SEVERAL YEARS. IT IS MY VIEW THAT THE PROPOSED SECTION, AS AMENDED, WILL "CLEAR THE AIR", SO TO SPEAK, AND MAKE IT EASIER FOR LOCAL GOVERNMENTAL UNITS TO DETERMINE WHEN BIDDING IS TO BE REQUIRED IN EACH CASE.

SECTION 6, DEALING WITH EMERGENCY PURCHASES FOR CONTRACTS WHICH EXCEED \$5,000 IS MOST CERTAINLY APPROVED AND IS, IN MY OPINION, A BETTER FORM OF THE LAW THAN AS IT CURRENTLY EXISTS, SINCE THERE IS A TIGHTENING OF THE REQUIREMENTS FOR EMERGENCY ACTION REQUIRING THE CERTIFICATION OF THE OFFICIAL OR DIRECTOR IN CHARGE OF THE DEPARTMENT WHEREIN THE EMERGENCY OCCURRED, WHILE, AT THE SAME TIME, PERMITTING ENOUGH FLEXIBILITY TO GIVE LOCAL UNITS THE MEANS TO ACT IN EMERGENT AND UNEXPECTED SITUATIONS.

THE AUTHORITY TO ENTER INTO MULTI-YEAR CONTRACTS IS ENHANCED BY THE ADDITIONS OF THE DATA PROCESSING SERVICE, INSURANCE, THE LEASING OF ELECTRONIC COMMUNICATION EQUIPMENT, THE INSTALLMENT PAYMENTS FOR THE PURCHASE OF AUTOMOBILES, MOTOR VEHICLES, ETC., AND THE LEASING AND SERVICING OF AUTOMOBILES, AND REPRESENTS IMPROVEMENT OVER THE EXISTING AUTHORITY.

MAY I SUGGEST, HOWEVER, THE ADDITION OF LABOR CONTRACTS NEGOTIATED WITH GOVERNMENT EMPLOYEES UNDER THE PUBLIC EMPLOYMENT RELATIONS ACT. AT THE PRESENT TIME, NUMEROUS

GOVERNMENTAL UNITS ARE ENTERING INTO LABOR PACTS FOR A MULTI-YEAR DURATION THROUGH THE INTERPRETATION OF OTHER LAWS GOVERNING THE FISCAL AFFAIRS OF LOCAL UNITS. HOWEVER, AN AMENDMENT TO

THE LOCAL PUBLIC CONTRACTS LAW SPECIFICALLY SANCTIONING CONTRACTS BETWEEN EMPLOYEES AND EMPLOYERS FOR TWO, OR POSSIBLY THREE, YEARS WOULD PUT AN END TO ANY SPECULATION AS TO WHETHER SUCH AGREEMENTS ARE AUTHORIZED BY LAW.

THE AMENDMENT, AS CONTAINED IN SECTION 24, WHICH WOULD REQUIRE THE TIME FOR THE MAKING OF AN AWARD TO BE EXTENDED FROM 30 TO 60 DAYS AFTER THE OPENING OF BIDS, IS MUCH MORE REALISTIC THAN THE CURRENT STATUE AND WOULD PROVIDE A LOCAL UNIT WITH THE ADDITIONAL TIME TO REVIEW THE BIDS AND MAKE THE NECESSARY RECOMMENDATIONS TO THE LOCAL GOVERNING BODY REGARDING AWARD OR REJECTION.

AS STATED IN MY OPENING COMMENTS, I FEEL THAT, OVER ALL, THE PROPOSED AMENDMENTS ARE GOOD, REPRESENT AN IMPROVEMENT OVER THE EXISTING LAW AND WOULD FURTHER THE CAUSE OF JUSTICE IN THE AWARDING OF CONTRACTS IN THE PUBLIC SECTOR, AFFORDING PROTECTION TO THE CITIZENRY AND TAXPAYERS WHILE, AT THE SAME TIME, GIVING BETTER DIRECTION AND EASE OF ADMINISTRATION WITH REGARD TO THESE MATTERS TO THE LOCAL OFFICIALS CHARGED WITH THE RESPONSIBILITY OF ENFORCING THE LOCAL PUBLIC CONTRACTS LAW.

THANK YOU FOR THE OPPORTUNITY OF APPEARING BEFORE YOUR COMMITTEE.

SENATOR GREENBERG: Thank you, Frank.

Is there any real concern that you have with regard to the authority, at this point, of a municipality to enter into a collective bargaining agreement that extends beyond one year?

MR. TROCINO: I, personally, have wrestled with this problem after the adoption of Chapter 303.

SENATOR GREENBERG: PERC.

MR. TROCINO: And ultimately came to the conclusion that it would be permissible by interpreting another section of the Local Fiscal Affairs Law for municipalities which had the word "services" in there. However, my suggestion is made here for the purpose of once and for all clarifying for all local governmental units the authority to enter into labor contracts which extend beyond the fiscal year or the budgetary year for municipalities.

SENATOR GREENBERG: You're doing it now, I assume.

MR. TROCINO: We're doing it now and so are most governmental units.

SENATOR GREENBERG: Your position as City Attorney for the City of Elizabeth - do you envision that that position is reasonably describable by written specifications?

MR. TROCINO: Well, in the case of the City of Elizabeth that position of City Attorney is incorporated within the meaning of the Director of the Department of Law, and that is a direct appointment under the Elizabeth Code and the Faulkner Act, appointment by the Mayor and confirmed by the local governing body. So it is not contemplated to be in the same fashion as professional services are defined in this law. So it would be exempt from that and it would not, to directly answer your question - no, it is not capable of specifications being drawn for the position and it would not fall within this law as it is presently written nor in the law that is currently on the books.

SENATOR GREENBERG: Are you satisfied with the language that I've been referring to which deals with the definition of professional services so that your jobs and the jobs of other city attorneys would not be made more difficult by litigation as to the meaning of that language? Is that language sufficiently clear, from your point of view, with regard to the exemption that is proposed?

MR. TROCINO: That language --

SENATOR GREENBERG: I am referring to the language at the bottom of page 2 and the top of page 3.

MR. TROCINO: Right, the definition of "professional services".

SENATOR GREENBERG: More specifically, which services cannot reasonably be described by written specs?

MR. TROCINO: It is a problem, to a certain degree. However, it also incorporates the language that the practice is to be regulated by law.

SENATOR GREENBERG: Well, I'm assuming that the person is authorized by law to practice a recognized profession and it's regulated by law. Now those two are fairly clear. I have no problem with that. But when we get into the next qualification, which is "which services cannot reasonably be described by written specifications", etc., that's where I have some difficulty. Do you envision problems with that language as to whether or not certain professional services might fall within or without that descriptive language?

MR. TROCINO: I can only say that in the experience since 1971, where we have had a similar type of situation, a similar type law in comparing it to the present law, which is the (b) section of the definition as we have it today, our municipality has not had any litigation, which you may fear by the comments you have made. We have not had any but we have carefully prepared,

whenever we have used this section, reasons supporting the use of the section, and published in accordance with law, and we have not had any litigation in this area since 1971 and the adoption of the law which is currently on the books.

SENATOR GREENBERG: What are you doing with consulting engineers?

MR. TROCINO: Consulting engineers are appointed by the governing body and exempt from bidding.

SENATOR GREENBERG: Thank you.
Senator Dunn.

SENATOR DUNN: On the way down this morning Mr. Trocino and I were talking about a situation that Elizabeth is faced with and while it does not relate to this bill it can be, depending on how it's interpreted - should professional services be placed up for bidding.

In the last couple of weeks we, in the City of Elizabeth, have been faced with what we consider to be unreasonable and unconscionable bills submitted by attorneys who represented public employees who were in all cases police officers who were indicted many months ago for one offense or another and only recently, during the past two weeks, the men that I'm referring to were all found not guilty in separate trials because they were different indictments.

As a result of the findings of the jury that these men were not guilty for whatever they were charged with, the City now must not only pay all the back pay of these police officers who were suspended at the time of indictment but we must now also pay the fees of the attorneys. And one attorney has hit us with a bill I think amounting to \$53,000, or thereabouts, for a trial that perhaps Mr. Trocino or some other attorney would estimate should be in the area of \$15,000 instead of \$53,000 or some such comparison as that.

This brings to my mind, at least, the question of if all professional services were to be bid, including legal services, would not then a city like Elizabeth or any municipality go around shopping for lawyers to represent city employees, especially their policemen, when they're involved in something, in order to get the cheapest possible professional services rather than to have the thing negotiated after the fact as we will have to do now. And by the same token, without going into the salary that we pay Mr. Trocino as City Attorney under the Faulkner Act now, I'm given the opportunity of appointing him because I recognize many of his attributes and he must be confirmed by City Council, I can see the chaos that could be involved were some other attorney to come in and say that he would take over the City Attorney's job for \$5,000 a year less and possibly not be approved by City Council. There would be a definite conflict, I imagine, with many provisions of the Faulkner Act.

I think you pointed that out too. So that when you get into bidding on professional services there is bound to be a considerable conflict with other existing statutes which would have to be amended or changed or repealed.

So, other than those comments, I have no questions to ask of Mr. Trocino.

SENATOR GREENBERG: Thank you very much.

MR. TROCINO: Thank you, Senator.

Is Mayor Holland here? (No response)

John Jackson.

J O H N J A C K S O N: Good morning. I am John Jackson, Representative of the Governmental Purchasing Association of New Jersey as Executive Director. I am also Purchasing Agent for the City of East Orange.

The Governmental Purchasing Association of New Jersey is generally in favor of S-3090. However, we

had a Committee which met last week, which was primarily the same Committee that met before and made recommendations, and at this time we again have several recommendations that we would like to present at this hearing. And we feel that consideration should be given to these recommendations before final enactment of the bill.

Now our first change - we call this Proposed Changes in S-3090 - Page 3, Section 3, beginning with line 3, where it says "same immediate program, undertaking, activity or project" - we thought that this section should be amended to read as follows:

"Purchases, contracts or agreements not required to be advertised for. Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any other sums expended for similar supplies or services, is to be paid with or out of public funds, does not exceed the total sum of \$5,000 in the fiscal year, or in the case of purchases that are not annually recurring in the period of one year, may be made, negotiated or awarded by a contracting agent when so authorized by the contracting unit without public advertising for bids."

SENATOR GREENBERG: May I interrupt you?

MR. JACKSON: Yes.

SENATOR GREENBERG: Would you stay with that because it's difficult for us to follow you without a prepared statement for the submission of the amendments in writing.

Would you please tell us the purpose of the suggested change?

MR. JACKSON: On this, the wording, "same immediate program, undertaking, activity or project". We felt that it should read in here, "for similar supplies or services". we thought that this was ambiguous "immediate program, undertaking activity or project" and we wanted that to --

SENATOR GREENBERG: Be clarified.

MR. JACKSON: Right.

SENATOR GREENBERG: Okeh. Thank you.

MR. JACKSON: Now, on page 4, section 5, lines 12 and 13, delete (c) "Election expenses, including advertising expenses incidental thereto."

We feel that many of the things which may be termed as election expenses are biddable items. Take, for instance, voting machines. That could be called election expenses and they are definitely something that should be bid. This could amount to hundreds of thousands of dollars. We felt the language here is not precise and should be spelled out.

On page 5, section 5, line 30, change the word "party" to "unit".

Line 36, also page 5 --

SENATOR GREENBERG: That's been deleted.

MR. JACKSON: What? Party?

SENATOR GREENBERG: "i", appearing on the bottom of page 4. That is not in the bill.

MR. JACKSON: Oh, I'm sorry. It isn't. All right, I see.

SENATOR GREENBERG: Go ahead.

MR. JACKSON: On line 36, page 5, delete "medical supplies".

We felt that medical supplies were biddable. The State bids for medical supplies and why can't others. Where there's enough involved it should be bid.

Line 39 (k) amend to read as follows: "Parts necessary for repair of equipment to assure compatibility with existing equipment and interchangeability".

Lines 45, 46 and 47, page 5. This is about "specialized machinery or equipment such as will not reasonably permit the drawing of specifications and the procurement thereof is in the public interest". This, we felt, should be deleted entirely and replaced with "Data processing

equipment of such a technical nature that will not permit the drawing of specifications and the procurement thereof without advertising is in the public interest".

Going back and placing emphasis on "specialized machinery", we had this before in the old law where everything became specialized equipment and municipalities were not bidding on the premise that just about everything was specialized equipment, and this was one of the things we felt should be clarified.

SENATOR GREENBERG: Next you have lines 48 & 49.

MR. JACKSON: Yes. Delete existing wording in there. We feel that the wording that is now in Chapter 198 is preferred for snow and ice removal, that this is something that you know is coming up every year and it can be bid in advance for removal of snow and ice from public streets and sidewalks and so on.

Page 5, section 5, line 54, delete: "Only one source of supply is available." This is an out for many governmental agencies that will say only one source of supply is available. Whether it is or not is very hard to determine. How far are you going to go to find out if there are any other sources of supply?

Line 55 (3) amend to read as follows: "It is to be made or entered into with the United States of America or any State, County or Municipality, or any Board, Body, Agency, Authority or Political Subdivision in the United States of America". We thought this would clarify this statement about buying in America and New Jersey, and so on.

Line 70 - Delete "fiscal year" and replace with "a twelve month period". This is something that was brought out before.

Page 8 (6) New Section (a) Lines 1 through 5: Amend to read as follows: "All contracts and agreements shall be awarded to the lowest responsible bidder, whose bid, conforming to the invitation for bids and plans and

specifications, will be the most economically advantageous to the contracting unit, price and other factors considered".

We felt that by just saying "will be most advantageous" you could take other than economic factors in the advantageous part of the bid.

Lines 13 and 14 (b) Amend to read as follows: "be most economically advantageous to the contracting unit, price and other factors considered.

Page 11, section 15, add under number (9) "all other contracts shall be for not greater than a 12 month period", rather than a fiscal year.

Page 13, lines 13, 14 and 15, amend to read as follows: "All security delivered with the bids, except the check or bond of the 3 lowest bidders, shall be returned within 3 days thereafter". By holding only the low bidder, if something happens, if he defaults on the contract after the award is made, you have nothing to hold the other low bidders. In this way you have those until the contract is awarded and then the others would be returned.

That covers all of our recommendations.

SENATOR GREENBERG: Thank you very much.

Will the record please note that Senator Musto is present.

Senator Dunn, any questions?

SENATOR DUNN: Perhaps you can answer this for me. It has been a long time since I was involved in anything like this. Election expenses, you made a reference to that. Voting machines are leased by a county election board. Is that correct?

MR. JACKSON: I don't know. I don't know what the county does, whether they lease them or buy them. Even if they were leased, they would still be considered a purchase and it would come under this law.

SENATOR DUNN: Well, your main concern then on election expenses - you're talking about the printing of ballots?

MR. JACKSON: Right. I feel that could be done under public bid.

SENATOR DUNN: They're usually done under public bid, I think, aren't they?

MR. JACKSON: Well this way they wouldn't have to be.

SENATOR DUNN: What else, besides printing of ballots, can you think of that might be included in this?

MR. JACKSON: Well, supposing you had to furnish an office for their election, they have to buy furniture and other equipment and supplies for that. Furniture easily could amount to more than a limit, whether it's \$2500 or will be \$5000. It doesn't take too much furniture to add up to that amount.

SENATOR DUNN: What you're saying, I guess, is that the words "election expenses" could be all-inclusive to cover anything at all relative to the operation of an election board or board of election commissioners.

MR. JACKSON: Right.

SENATOR DUNN: Thank you.

SENATOR GREENBERG: Thank you very much. We appreciate the detailed description of the amendments you proposed and the reasons therefor. Thank you.

MR. JACKSON: Thank you.

SENATOR GREENBERG: Robert Belmonte, Purchasing Agent, Bergen County.

R O B E R T B E L M O N T E: Senator Greenberg, Senator and Mayor Dunn, Senator Musto: I would want to thank the Committee first for this opportunity to speak briefly with regard to the subject at hand. I am only going to speak with regard to any exceptions I have to S-3090. In general I support it. So, rather than be repetitious on what I support, I will just speak to what

I think might benefit the modification.

I am also assuming that there aren't too many major differences between 1322 and 3090. We just received a copy of 3090 about a week and a half ago and my review of it, scanty as it is, seemed to indicate that the major differences appear to be in not exempting motor vehicles from advertised bidding, which I endorse; not exempting snow and ice removal work from advertised bidding, which I endorse. In Bergen County the Department of Public Works has been advertising it for a number of years, and I will proceed accordingly.

On December 20th there was submitted to the Committee a set of notes, really, on what I thought could be changed and should be changed in 1322. I would like to make it clear that I do not speak and cannot speak for the Bergen County Board of Chosen Freeholders. I speak only in my capacity as the County Purchasing Agent for Bergen County.

I agree wholeheartedly with Mr. Laezza in that I do not endorse increasing the figure from \$2500 to \$5000 below which we do not have to go out and advertise for goods and services. Essentially, my thinking is the same as Mr. Laezza's. I think that that change unwittingly would create and enhance the illusion that we are interested in withholding from public view purchases which heretofore have been submitted to public view through the bidding process.

Secondly, in Bergen County, in our Purchasing Department which, in local government, is perhaps the largest in New Jersey, we have not found it onerous to live with the present figure of \$2500. And I think it would be good public policy not to change it to \$5000.

With regard to those sections which speak to what shall or shall not be advertised, I agree with the remarks of some of the speakers here to the effect that

clarity should be added with regard to the term "fiscal year". And in a supplementary letter to the Committee on January 9th I'm speaking about those forms of contract which are really in the nature of term price agreements which have a calendar life of 12 months and have starting and termination dates which may not coincide with the beginning and end of a fiscal year, which commits the buying agency to buy from the contractor and commits the contractor to sell at a price based not on a fixed quantity but on estimated quantities. And that clarification in the law, if it's agreeable to the Committee, ought also to say that purchases placed against such agreements are contingent upon the availability of budgeted funds within the budget year.

To repeat myself hopefully just once, I endorse the deletion of the exemption of motor vehicles from advertised bidding. I would recommend that the language on the exemption section revert to what it was in 1322 with regard to medical supplies.

In 1322 we spoke of prescription medical supplies, and 3090 I believe leaves out what is a critical and deciding adjective and I believe it is a significant difference. It may not appear to be to those units of local government which do not have to buy in large volumes for large hospitals. Bergen County happens to have the largest general hospital in the State of New Jersey and I think that exemption of prescription medical supplies is defensible. And I would say that Westchester County in New York recently enacted a local county law under its charter form of government exempting medical supplies without even restricting it to prescription supplies. And I would again endorse going back to the language in 1322.

With regard to the section on emergency purchases, I am of the personal opinion that the present language in

the Local Public Contracts Law is sufficient and adequate to protect the public interest. It provides for approval of the awards of contracts either prior to or after an emergent situation. And it provides, I believe, for a two-thirds vote of the governing body prior to taking the action and I think a three-quarters vote after the fact if approval is given at that point in time.

The present suggested language in 3090 is unclear to me and it may be very clear to others. I do not understand what a requisition under oath is. It's a strange animal in my experience. It is not defined in the statute. The mechanism for securing a requisition under oath in the face of a truly emergent situation is not spelled out. The language, certification by a superior in charge of a department wherein the emergency occurred, is also not defined as to procedure. I think that, if in fact there is a public exigency or an exigency of a public service in which time is of the essence, these strictures, which I do not believe exist in State law as it applies to the State purchasing function, will hinder the timely resolution of an emergent situation. I believe the present statute is sufficient. And I believe the best way to provide for the additional administrative control that we appear to be concerned with is to rely upon the good judgment and the good common sense of elected governing bodies in local governments to enact supplementary administrative rules and regulations. They are capable of doing it and they have done it.

There is a section which I believe speaks to purchases of less than \$500 requiring multiple quotations. In the County of Bergen we have a resolution which requires that the Purchasing Department attempt to secure competitive quotations if procurements are valued at \$100 or more. Also that all purchases of \$1000 or more must be first approved by resolution of the Board of Freeholders.

I don't know of any objective analytical rationale for deciding at what figure we shall seek three quotes or more. I believe, again, that this kind of administrative rule is not proper to a State statute and is better left to the good judgment of local governments to adopt in the nature of supplementary rules at that level. And the figure that they elect will not always be \$500 or \$1000 or \$100.

I think, myself, that the purpose of the Local Public Contracts Law, as amended, should be to permit flexibility within local governments, rather than to build in rigidity, and to rely upon the character and integrity, and to assume it, of local officials until proven otherwise.

In Title 40A:11-9, in providing for purchasing agents, departments or boards, I believe there is one expression that might be deleted, and it speaks to an agent acting at the direction of the governing body. I think the language as it now reads is sufficient without that added expression. This is only a personal opinion based on observation. There is quite a turnover in public purchasing officials in this and every state, county and municipality. The new man comes in and he is wary enough but if he feels that he must act in a way at the direction of as against being responsible to an elected governing body, no matter what that direction may be, I think he tends to inhibit his independent judgment. And that expression "at the direction of" I think is unnecessary and psychologically is an expression which we can do without.

With regard to the provisions on cooperative purchasing, inter-governmental cooperative purchasing, I think they could benefit by being clarified in distinguishing implicitly between an inter-governmental cooperative purchasing program and an inter-governmental buying service program. In one the sponsoring agency

actually functions as a buyer and in the other he really functions as the agent which establishes sources of supply, establishes prices which may be taken advantage of by other participants if they so desire. I would be glad to speak to the distinction later but there is a difference and it is not clear in the statute at the moment.

With regard to leases and rentals and installment purchases - Mr. Laezza raised a concern with regard to the bonding laws. I don't think the leases we're talking about here relate to capital improvement projects, such as buildings. What we're talking about here is leasing material - automobiles, computer equipment and that sort of thing. And while there may still be a problem with the bonding law, I'm not aware of it personally and I am delighted to see that the statute does speak to the point of permitting such leases explicitly. The only proviso I think that any such lease should have is that again it is subject to the availability of funding as each fiscal year, each budget year comes into the picture during the course of the lease.

I don't think the statute yet explicitly speaks to the admissibility of local government using annual bid bonds. The State does it. It's a good practice. County councils are reluctant to rule on it, in my experience, and probably the ruling is variable from county to county. And if the law could explicitly express itself to the admissibility or inadmissibility of annual bid bonds it would really enhance that section in the interest of more efficient administration.

Now there is one section that I would really urge the Committee to give favorable consideration to. It is in the notes that the Committee has and it speaks of this. At the present time counties and municipalities

are empowered to take advantage of state contracts which are part of the state cooperative purchasing program. I would like to see municipalities and counties in this State empowered to do what the County of Westchester empowered itself to do about a year ago, and that was to take advantage of federal contracts which do result from annual advertised bids under the auspices of the Federal Supplies Services, a major division of the U. S. General Services Administration, in so far as the general contractors themselves are willing to extend those prices. If they are not willing, then you can't take advantage of it. If they are willing to do so and if those prices are better than those available competitively, I think it is in the public interest to permit local governments and counties to take advantage of those contracts.

As to conflicts of interest, there is nothing in 1322 or 3090 or the existing Local Contracts Law that speaks to that subject. It's a delicate one but I would like to speak to it briefly.

I think that the existing statute, as it relates to local public contracts and as distinguished from a general statute on the subject - I think a provision on conflicts of interest would enhance this bill greatly. I think that it is appropriate to this bill and I think it would manifest to the people of the State and to our critics outside the State a willingness by those who work in public purchasing and supply to put themselves under the provision of that kind of a section and to demonstrate that they have no fear of their ability to live with it and that they can, and in fact never run afoul of it. The language that is suggested, and it is simply suggested, is quite frankly plagiarized - it comes out of the Illinois Municipal Purchasing Act and the amendments I have made in it are very few. I offer it for your consideration.

In closing, there is one last suggestion I would offer to the Committee for its consideration and it is in regard to county government more than municipal government. I am not familiar with municipal government.

I do not believe in the statute there is a provision for a statutory municipal agent. Mayor Dunn would know better than I on that. But there certainly is one for county purchasing agents. It's statutory and it's permissive. Mayor Musto has studied, and studied well, county government throughout New Jersey and he knows, and he knows the role it can play and someday will play. Every one of these counties and we have 21 of them, are growing. Every one of them are in an ideal position to provide services which municipalities themselves are not now equipped to provide and may not ever be equipped to provide. It happens that inter-governmental purchasing services are an ideal practical application of that.

Every one of our counties are undoubtedly going to continue to grow and I would recommend that the Committee consider making mandatory the position of county purchasing agent and, secondly, putting it in the classified competitive Civil Service for two reasons. One, we would hope - and I myself would anticipate - that it would further increase the level of professionalism in that job; and, secondly, it would tend to take it, as we say, out of politics.

Senator, I think that brings me to the end of my remarks. Thank you.

SENATOR GREENBERG: I thank you. You've given us a great deal to think about. We appreciate your taking the time to come down and do that.

Senator Dunn, do you have any questions?

SENATOR DUNN: No. There were so many good suggestions and so many things that caused me to think about. Are you a classified purchasing agent for the county?

MR. BELMONTE: No, Senator. By definition all statutory employees are unclassified Civil Service. That's a three year term.

SENATOR DUNN: You go out with the Freeholders or a majority of the Freeholders.

MR. BELMONTE: Generally that's the case.

SENATOR DUNN: Do you do the purchasing for the hospital that you made reference to?

MR. BELMONTE: Yes, we do. It's a thousand bed hospital. I think down in your County there is a county hospital too, Runnells.

SENATOR DUNN: John Runnells, that's right.

MR. BELMONTE: We do the purchasing for that hospital.

SENATOR GREENBERG: The section that you made reference to, dealing with the obtaining of bids where three bids were practicable, over \$500, that doesn't solve the problem in your mind, I assume, with regard to the rise from \$2500 to \$5000 for bidding, does it?

MR. BELMONTE: No, not at all. I think, with regard to single purchases or the development of annual contracts or semi-annual contracts for supplies where the expenditures will equal or exceed \$2500 the State statute covers that; below that figure, I am of the opinion and it has been my position that administrative rules and regulations should govern what the purchasing function should do below \$2500 and they should be adopted by resolution or ordinance of the governing body. And I think, closing it out again, that our elective officers and their professional appointees are certainly capable for developing that kind of policy.

SENATOR GREENBERG: Thank you very much. We appreciate your appearance.

MR. BELMONTE: Thank you.

SENATOR GREENBERG: Mayor Holland.

A R T H U R J. H O L L A N D: Senator Greenberg, Senators Musto and Dunn. I have a rather detailed commentary on the sections of 3090 that we feel are of

importance.

SENATOR GREENBERG: Yes. If you have extra copies, we would appreciate receiving them. (See p. 1 X)

Before you start, Mayor, how many other individuals wish to be heard today on this bill, who are present?

Two. Mr. Bonin and Mr. Ayers. We have a Senate session scheduled at noon, and at the conclusion of Mayor Holland's testimony we will break for that session which will be a short session, probably lasting no more than a half hour to an hour. I would like your indulgence. We will reconvene at a time which I will set as soon as Mayor Holland has finished and we can, in effect, break for lunch. You gentlemen can return, if you will, and we will be happy to hear you when we reconvene.

Mayor Holland.

MAYOR HOLLAND: How much time, Senator, would you want me to take. I appreciate your own time.

SENATOR GREENBERG: We have about 30 seconds but I would --

MAYOR HOLLAND: In that case I would like to use that in behalf of an income tax.

SENATOR GREENBERG: You take your time and make your presentation.

MAYOR HOLLAND: All right.

Most importantly, I think it's essential that we not change from \$2500 to \$5000 the maximum for non-bid contracts. I think \$2500 is still a realistic figure. And also not even consider exempting the purchase of medical supplies.

When I entered government, believe it or not, Donnelly Memorial Hospital - 250 beds at the time - obtained its medical supplies from corner drugstores on a rotating and not always rotating basis. I proposed instead that we purchase from a regional medical supply house. We saved a lot of money. Then I said, let's

go right to the drug manufacturers. We saved tens of thousands of dollars. So I would not exempt medical supplies. Donnelly Memorial Hospital is now operated by the county government. We do have a Health Center in Trenton which has, as indicated in my written comments, a budget of approximately \$125,000 annually for such supplies.

There is a Trenton request provision in 3090 which grew out of our creation of a Trenton Museum and we think artifacts and items of that nature ought to be excluded.

We would like to have three year data processing contracts because, as indicated, we could save as much as \$10,000 a year, if we are able to extend that contract.

And with regard to an only source of supply items, our Purchasing Agent, Anthony Frascella, a former State President of the Association of Purchasing Agents, points out that in 16 years he has encountered only one such instance and that the inconvenience of such almost sole basis would be more than outvalued by the importance of not exposing to abuse with regard to that particular point.

I can, if you would like, go over - they're the highlights of my comments on each of the items. I am glad to see that the same policy will be applied to school board purchasing as will be applied to general purpose government.

I just want to say, in substance, that there is no more sensitive area of government than purchasing and I think it's essential that it be really regulated if the public is to have confidence in its government. And I think this is a good bill, generally.

SENATOR GREENBERG: Thank you, Mayor. We have your comments in written form and I have been following them as you have highlighted them. I appreciate your

making your presentation as concise as you have. We will take your comments and study them and we thank you very much for appearing.

Are there any questions of the Mayor?

SENATOR DUNN: Mayor, you're opposed to raising the \$2500 to \$5000. How does your purchasing agent feel about it?

MAYOR HOLLAND: He and I agree. When I entered government it was \$1000 then it was moved to \$2500. Even allowing for inflation, I think \$2500 is a desirable maximum because we want to, to the fullest extent possible, require competition to assure that every prospective bidder will have equality of opportunity. And Tony Frascella is, I gather, almost alone in his insistence on this, among his colleagues, but I not only believe that myself I have tremendous respect for and confidence in Anthony Frascella. I should tell you, when I entered City Government also, we had a kind of informal purchasing agent for the City; if you wanted anything, you saw him, which is an informal building around the purchasing agent. And Anthony Frascella has been responsible for cooperation with policy makers among the elected officials for doing away with that and establishing a system which is trusted by the people of our City and I think respected throughout the State.

SENATOR DUNN: Well, I would like to pit my purchasing agent against yours any day of the week.

MAYOR HOLLAND: I was excepting present company.

SENATOR DUNN: And she feels very strongly that it should be increased.

MAYOR HOLLAND: She's a woman?

SENATOR DUNN: Right. We don't tolerate any form of discrimination in our city. But she feels that the advertising costs alone sometimes wipes out any savings that might be made.

MAYOR HOLLAND: I think that at times we have to suffer a small loss in the interest of assuring the ultimate in competition. I remember items like gooseneck flanges, the Waterworks always had to get these gooseneck flanges from one particular firm and I said, let's add or equal. We were able to get them. It was always the Elgin Sweeper because if you got Wain as well as the Elgin then you would always have a problem with parts and so on. But we worked out all of those things.

SENATOR DUNN: Except, if you want to buy some gooseneck flanges, we have an oversupply of them from a previous administration.

MAYOR HOLLAND: It's sort of a symbol but, by the way, we have a number of excess deer in our park.

SENATOR DUNN: Thank you. Good luck on the income tax.

MAYOR HOLLAND: Is that an invitation to talk some more?

SENATOR GREENBERG: Thank you, Mayor. Perhaps we can continue if you gentlemen will not be too long we will be happy to take you now.

Mr. Ayers. Hubert B. Ayers, Passaic County Purchasing Agent.

H U B E R T B. A Y E R S: Senator Musto, Senator Greenberg and Senator Dunn. I have been associated with County Government since 1948. My current title is Director of Purchasing under the classified service of Civil Service since 1971.

Since 1953 until 1971 I worked under Title 40. I think it suffices to say that that included six terms of teams of horses, livestock, etc.

Chapter 198, Laws of 1971, went into effect July 1, 1971. Speaking only as Director of Purchasing of the County of Passaic and not representing the official government, I think this is a great step in the right

direction toward professional purchasing. Not 54 years but within 4 years since the passage of that legislation, we now have 3090. With the 7 or 8 exceptions which were noted by John Jackson, I am in complete agreement with the new bill with his exceptions and the \$5,000 limit and I hope to see it made into law for the benefit of all the taxpayers, not only in Passaic County but in the State of New Jersey.

I believe it to be a further step toward the goal of professionalism and excellence in county purchasing.

Any questions?

SENATOR GREENBERG: Thank you.

SENATOR DUNN: Thank you.

SENATOR GREENBERG: Thank you very much.

MR. AYERS: I might just add one thing - my 5 minutes aren't up - the Committee that worked on this bill worked on it diligently since 1971, since it first came out. This is the law which happens to be 21 pages; this is the guidelines that were issued by the Department of Community Affairs. I feel that if this is passed, with or without any changes, there will not be the same number of pages to explain this legislation if it becomes law.

SENATOR GREENBERG: Thank you.

Mr. Bonin. Joseph W. Bonin.

J O S E P H W. B O N I N: I am Joseph W. Bonin. I am the Comptroller-Purchasing Agent, Township of Maplewood. I do not represent the Township of Maplewood here.

I would like to qualify myself. I am an Instructor of Public Purchasing for the Extension Division of Rutgers University and have been so for the last four years and, therefore, have been quite close to these matters, I believe, and some of these matters I haven't understood in four years. For the first time I see an amendment come through which seems to clear up many, many things.

However, we have lived with the original laws of 1971 and those of us that have been able to classify ourselves as professional purchasing agents have been able to live within it, including the \$2500. It's my personal opinion that the increase to \$5000 will virtually wipe out 65%, perhaps, of the public purchasing contracts in the State of New Jersey. And I believe the original intent of the Contract Law was to bring before the public matters pertaining to buying for public units, and I believe this would be hurt to some extent.

However, I have worked on the Committee of the Purchasing Agents Association to suggest the revisions that are included in 3090. I concur with most of them and I believe it is a good bill.

I would offer one suggestion and that is that teeth be given to the Division of Local Government Services to possibly interpret for the local communities and the other local units various things that would come up that would be of question which are now being determined by local attorneys.

In my course I have had at least a hundred and some students and I have asked them to take particular problems back to their local attorneys for interpretation and, gentlemen, you can't believe the interpretations that came back. We are all human beings and, therefore, we interpret things differently. And I think if a central source of interpretation is established within the Department of Community Affairs that a lot of our problems in the State would be eliminated.

Thank you.

SENATOR GREENBERG: I thank you.

Senator Dunn?

SENATOR DUNN: I just want to dwell on that point. Were you here earlier when Mr. Laezza testified?

MR. BONIN: Yes, I was.

SENATOR DUNN: And he mentioned that there is no enforcement power given to the Department of Community Affairs over purchasing. Are you suggesting that perhaps legislation be enacted that would give some monitoring and enforcement powers to that Department over local purchasing agents and governing bodies?

MR. BONIN: That's correct. I would suggest that perhaps all interpretations on these statutes only come through the Department of Community Affairs whose resources, of course, for interpretation are the Attorney General. And then we would have a common interpretation for all governmental units under the Act.

SENATOR DUNN: I would just like to give an editorial opinion that I, as a Mayor, would like to see something like that rather than any time a purchasing issue is referred to the Attorney General it immediately implies corruption of some sort when in many instances it is a matter of judgment on the part of the purchasing agent and/or the governing body. And it seems to me that that would be worthwhile giving serious consideration to.

Thank you, sir.

SENATOR GREENBERG: Thank you very much.

There being no further witnesses desiring to be heard on this matter today, this public hearing will stand adjourned subject to the record being kept open for an additional period of two weeks for the receipt of any additional materials anyone wishes to furnish.

Thank you very much.

(Hearing adjourned)

ARTHUR J. HOLLAND
MAYOR OF TRENTON

MARCH 24, 1975

1. Section 1. Eliminates school districts from the provisions of Local Public Contracts Law while noting in the Statement that a comparison bill is being drafted to place control of school district purchasing in Chapter 18.

The Legislature must enact concurrently the necessary amendments to Chapter 18 so that school districts are not left without controls. The strictures contained therein should be just as tight as those on municipal budgets because they are larger in most municipalities in the State.

2. Sections 6 and 7. Changes definition of "professional services" and provides definition of "nonprofessional technical services" both of which are to be exempted from the bidding requirement.

Frees purchasing agents from the cumbersome procedures required to hire individuals to provide nonprofessional technical services while requiring that such waivers be accompanied by a resolution of the governing body stating supporting reasons which are to be published in a newspaper. It is a good improvement which contains the necessary safeguards.

3. Sections 2 and 3. Raises from \$2,500 to \$5,000 the maximum contract for which formal bidding is not required. Later sections include a provision that informal quotations must be sought for items over \$500.

The \$2,500 limitation is the heart of the Local Public Contracts Law. It should not be loosened in this fashion.

- Section 4. Exceptions to the bidding requirement.

Subsection (1)

- (c.) Election expenses -- This exemption should be eliminated. These expenditures should be subject to competitive bidding.
- (d.) Furnishing of tax maps -- Present provision gives special status. Can be covered by new "nonprofessional technical

- services" provision. It is, therefore, unnecessary.
- (h.) Acquisition of special equipment for confidential investigations -- A good step.
 - (i.) Medical supplies -- Bidding should be required on such items because of the large volume of purchases made in many public hospitals, clinics and health centers. Significant savings can be realized through bidding of these items, as the City of Trenton and the State of New Jersey now do. The volume of such purchases is great, approximately \$125,000 at the Trenton Neighborhood Health Center in 1974 and budgeted for \$166,000 in 1975.
 - (j.) Printing of bonds and documents -- A good step.
 - (k.) Equipment of a technical nature -- Opens the door to abuse. Contractual language calling for the purchase of a specific item "or its equivalent" will better serve to protect the public.
 - (l.) Repair services -- This exemption is required, as stated, "to assure standardization and quality of equipment repair services." The highly technical nature of some modern equipment makes this exemption necessary.
 - (m.) specialized machinery or equipment such as this will not permit the drawing of specifications -- Much too broad. Language providing for an item "or its equivalent" can likewise be utilized to address this problem.
 - (n.) Plowing and removal of snow -- 40A:11-4 (i) permits exemption from bidding for emergency removal of snow or ice when the need for hiring is not foreseeable. This amendment opens the door completely by permitting anyone to be hired to perform this duty for the entire year. Retention of the existing language is advisable.
 - (p.) Acquisition of artifacts or other items of unique intrinsic artistic or historical character -- This amendment would permit a museum commission, for example, to purchase a rare painting without the unworkable bidding requirement. The unusual character of the market for such goods makes the provision advisable.

Subsection (2.) Only one source of supply.

Much too broad. City Purchasing Agent, Anthony Frascella, a veteran of 16 years of public purchasing, has encountered such a situation only once during that time. Language calling for a specific item or "its equivalent" can again be used to deal with this problem.

Subsection (5.) The following is a proposed change in the present language of the bill designed to clarify the meaning of subsection (5):

" (4) (5) The contracting unit has advertised for bids pursuant to section 4 on two occasions and received no response, or the governing body thereof has rejected such bids on each occasion because the contracting unit has determined that they are were non-conforming, or were not reasonable as to price on the basis of cost estimates prepared for the contracting unit prior to the advertising therefore or have were not been independently arrived at in open competition, but no such contract or agreement may be entered into after such rejection of bids, unless..."

Subsection (5.), lines 108-112

I question the intent of these lines in which it is stated that "any such contract" (for the waiving of bids) shall be passed by 2/3 vote of the governing body. A question exists as to whether this pertains to all exemptions in 40A:11-4 or only to those listed in 40A:11-4 (5). The question has been before the State Attorney General for over a year. This bill should clarify this matter once and for all.

5. Section 6. Statement of bid acceptance criteria.

I believe this section should read as follows: "...shall be awarded to the lowest responsible bidder whose bid conforms to the specifications." All of the other language should be eliminated to prevent the inclusion of a substantial loophole.

6. New Section after Section 9. Amendment to 40A:11-12 to permit purchasing through G.S.A.

This change would permit municipalities to take advantage of the benefits of large Federal purchases.

7. Sections 10 and 11. Permits leasing and/or servicing of a variety of items.

List seems complete. A good step.

8. Section 14. Provides that all contracts shall be in writing.

A good safeguard against loose verbal agreements.

9. Section 15. Provides for leasing of a larger number of items and for some presently permitted items to be leased for a longer period of time.

List seems reasonable. A good step. Attached is a memorandum showing potential savings from multi-year data processing contracts totalling \$10,000 annually for Trenton.

10. Section 18. Provides that where possible New Jersey goods and products are to be used, thus permitting the low bid requirement to be superceded.

I have two questions concerning this provision: (1) Is it constitutional? (2) Do other states have such requirements?

11. Section 16. Increases from 30 days to 60 days the time in which contract must be awarded.

Due to the length of time needed to process bids, this change is needed. An additional problem in the awarding of bids arises due to the requirement that all checks or bonds except that of the bidder to whom the contract is awarded, must be returned within 3 days of the awarding of the contract. Should the successful bidder choose not to sign the contract, the municipality is left in the lurch and must reinstitute the bidding process. An amendment providing that checks or bonds of the three lowest acceptable bidders may be retained until a contract is executed and any required performance bond or other security is submitted or until the deadline for awarding contracts is reached would address this problem.