

# SENATE, No. 2630

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 11, 2011

**Sponsored by:**

**Senator JAMES BEACH**

**District 6 (Camden)**

**Senator ANDREW R. CIESLA**

**District 10 (Monmouth and Ocean)**

**Co-Sponsored by:**

**Senators Van Drew, T.Kean and Pennacchio**

**SYNOPSIS**

Authorizes certain municipalities to establish the municipal shared services energy company.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/23/2011)**

1 AN ACT authorizing municipal electric utilities to create the  
2 municipal shared services energy company to provide for shared  
3 facilities, powers and services, amending P.L.1971, c.198 and  
4 supplementing Title 40A of the Revised Statutes.

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

8  
9 1. (New section) This act shall be known and may be cited as  
10 the "Municipal Shared Services Energy Company Law."

11  
12 2. (New section) The Legislature finds and declares that:

13 a. Since 1888, municipalities in New Jersey have had the  
14 power to construct and maintain facilities for the generation of  
15 electricity;

16 b. Under such statutory authority, nine municipalities and one  
17 rural electric cooperative presently utilize such power to own and  
18 operate municipal electric utility systems for the benefit of their  
19 residents and businesses;

20 c. Since 1888, the generation and distribution of electricity has  
21 evolved from a local and statewide endeavor into a national  
22 marketplace and such evolution has resulted in a system where the  
23 size and sophistication of the market participants influence the  
24 ability to efficiently compete in the marketplace;

25 d. Paramount in the present marketplace is the ability to reserve  
26 sufficient electric capacity at reasonable prices to ensure safe,  
27 reliable and efficient electrical power to local businesses and  
28 residents, and such ability is contingent on the power to contract for  
29 the generation or delivery of a sufficient quantity of power and to  
30 act as a contracting partner in long term, short term, and spot  
31 market power supply contracts;

32 e. Given this evolution of the electric supply marketplace, the  
33 municipal electric utilities operating in New Jersey desire to act  
34 jointly to achieve greater efficiencies in the procurement and  
35 generation of electric power;

36 f. The operation of electric utility systems by municipalities  
37 and the improvement of these systems through joint action in the  
38 wholesale procurement of electricity and transmission services, and  
39 in the generation, transmission and distribution of electric power  
40 and energy, is in the public interest;

41 g. The establishment of the municipal shared services energy  
42 company by municipalities which own or operate electric utility  
43 systems will ensure the continued viability and stability of these  
44 systems, by enabling these municipalities to act jointly to develop  
45 coordinated bulk power and fuel supply programs, and to post

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

Matter underlined thus is new matter.

1 collateral and act as a market participant in such programs, thereby  
2 providing the means to pursue efficiencies and savings for retail  
3 customers;

4 h. The Legislature has determined that it is therefore in the  
5 public interest to permit municipally owned or operated electric  
6 utility systems to act jointly through the voluntary creation of the  
7 municipal shared services energy company, and to empower the  
8 company to perform according to standard electric industry  
9 practices, in order to aid in promoting the stability and viability of  
10 such systems and to achieve the efficiencies and savings for the  
11 retail customers of these utility systems;

12 i. Thirty seven other states have enacted statutes to allow  
13 individual municipal electric utilities to act jointly to pursue such  
14 marketplace efficiencies, and the Legislature has resolved to follow  
15 the example developed by Delaware which enacted legislation in  
16 1978 to establish the Delaware Municipal Electric Corporation  
17 pursuant to 22 Del. C. s.1301 et seq. and to authorize its local  
18 governments to act as efficient market participants in the national  
19 electricity marketplace; and

20 j. It is therefore declared to be the policy of this State to  
21 promote the welfare of its residents by authorizing municipalities  
22 that operate municipal electric utilities to jointly establish a body  
23 corporate and politic to be known as the "municipal shared services  
24 energy company" which shall exist and operate for the purposes set  
25 forth in this act. Such purposes are declared to be public purposes  
26 for which public money may be spent and private property may be  
27 acquired by the exercise of the power of eminent domain.

28

29 3. (New section) As used in P.L. , c. (C. ) (pending  
30 before the Legislature as this bill), unless a different meaning  
31 clearly appears from the context:

32 "Bonds" means any bonds, interim certificates, notes,  
33 debentures, or other obligations issued by the municipal shared  
34 services energy company pursuant to P.L. , c. (C. )  
35 (pending before the Legislature as this bill);

36 "Collateral" means cash, letters of credit, or other security of a  
37 party to a power supply contract acceptable to the counterparty,  
38 which shall be valued in accordance with the terms of the applicable  
39 power supply contract and which shall be otherwise consistent with  
40 electric industry standards in the marketplace, and which shall  
41 secure the obligations of the municipal shared services energy  
42 company and its counterparty under a power supply contract;

43 "Cost" means, in addition to the usual connotations thereof, the  
44 cost of acquisition or construction of all or any part of an electric  
45 supply project and of all or any property, rights, easements,  
46 privileges, agreements, and franchises deemed by the company to  
47 be necessary or useful and convenient therefor or in connection  
48 therewith, including interest or discount on bonds, cost of issuance

1 of bonds, engineering and inspection costs and legal expenses, cost  
2 of financial, professional and other estimates and advice,  
3 organization, administrative, operating, and other expenses of the  
4 municipal shared services energy company prior to and during such  
5 acquisition or construction, and all such other expenses as may be  
6 necessary or incident to the financing, acquisition, construction, and  
7 completion of an electric supply project or part thereof, and the  
8 placing of such a project in operation, and also such provision or  
9 reserves for working capital, operating, maintenance or replacement  
10 expenses or for payment or security of principal of, or interest on,  
11 bonds during or after such acquisition or construction as the  
12 company may determine, and also reimbursements to the company  
13 or any county, municipality, or other person of any moneys  
14 theretofore expended for the purposes of the company or to any  
15 county or municipality of any moneys theretofore expended for or  
16 in connection with electric utility systems and facilities;

17 "Creation contract" means a contract executed by the member  
18 municipalities creating the municipal shared services energy  
19 company and defining the rights and responsibilities of the  
20 company and its members; as such creation contract may be  
21 amended as provided herein to, among other things, add one or  
22 more rural electric cooperatives as members;

23 "Electric supply project" or "project" means any plant, works,  
24 system, facilities, and real and personal property of any nature  
25 whatsoever, together with all parts thereof and appurtenances  
26 thereto, used or useful in the generation, production, transmission,  
27 distribution, purchase, sale, exchange, or interchange of electric  
28 power and energy, in whole or in part, for the benefit of the  
29 members including the utilization of renewable capacity and  
30 energy, or any interest therein or right to capacity thereof and the  
31 acquisition of fuel of any kind for any such purposes, including, but  
32 not limited to, the acquisition of fuel deposits and the acquisition or  
33 construction and operation of facilities for extracting fuel from  
34 natural deposits, for converting it for use in another form, for  
35 burning it in place, for transportation, storage and reprocessing or  
36 for any energy conservation measure which involves public  
37 education or the actual fitting and application of a device;

38 "Member municipality" means a municipality which joins with  
39 other members to create or join the municipal shared services  
40 energy company pursuant to section 4 of P.L. , c. (C. )  
41 (pending before the Legislature as this bill);

42 "Member" means a member municipality or a rural electric  
43 cooperative which joins in the initial or amended creation contract  
44 of the municipal shared services energy company;

45 "Municipal shared services energy company" or "company"  
46 means the public corporation created under P.L. , c. (C. )  
47 (pending before the Legislature as this bill) by contract between

1 three or more municipalities that operate retail electric distribution  
2 systems;

3 "Municipality" means a municipal corporation and includes  
4 cities, towns, townships, villages and boroughs, and any  
5 municipality governed by a board of commissioners or an  
6 improvement commission;

7 "Person" means a natural person, a public agency, cooperative or  
8 private corporation, association, firm, statutory trust, partnership, or  
9 business trust of any nature whatsoever, organized and existing  
10 under the laws of any state;

11 "Power supply contract" means a contractual arrangement  
12 between the company and another person relating to the purchase or  
13 sale of electrical power and component goods or services related  
14 thereto;

15 "Public agency" means any municipality or other municipal  
16 corporation, political subdivision, government unit or public  
17 corporation created under the laws of this State or of another state  
18 or of the United States, and any state, and the United States, and  
19 any person, board or other body declared by the laws of any state or  
20 the United States to be a department, agency or instrumentality  
21 thereof; and

22 "Rural electric cooperative" means a non-profit utility that is  
23 exclusively owned and controlled by the customers it serves, and  
24 which is exempt from Board of Public Utilities jurisdiction pursuant  
25 to section 1 of P.L.1983, c.78 (C.48:2-13.1).

26

27 4. (New section) a. Any combination of three or more  
28 municipalities that operate retail electric distribution systems  
29 pursuant to R.S.40:62-12 et seq., may, by adoption of parallel  
30 ordinances approving a creation contract, establish a separate legal  
31 entity to be known as the "municipal shared services energy  
32 company" to be used by its members to effect joint development of  
33 electric energy resources or production, distribution, and  
34 transmission of electric power and energy, including the utilization  
35 of renewable capacity and energy, in whole or in part, for the  
36 benefit of its members. Notwithstanding any other law to the  
37 contrary, following approval of the Local Finance Board within the  
38 Division of Local Government Services in the Department of  
39 Community Affairs pursuant to subsection b. of this section, the  
40 final adoption by the municipalities of the parallel ordinances, and  
41 due execution by the municipalities, the creation contract shall have  
42 such term as is provided by the contract. The members that enter  
43 into the creation contract may thereafter amend the contract in the  
44 manner set forth by P.L. , c. (C. ) (pending before the  
45 Legislature as this bill).

46 b. Upon the introduction of the parallel ordinances by each  
47 municipality seeking to create the company, but before final  
48 adoption of the ordinances, copies of the ordinances, together with

1 the proposed creation contract shall be submitted to the Local  
2 Finance Board for approval. The Local Finance Board shall not  
3 unreasonably withhold approval of the proposed creation contract,  
4 and if the Local Finance Board does not disapprove the contract  
5 within 60 days after receipt of the proposed creation contract, then  
6 the ordinances and proposed creation contract shall be deemed  
7 approved.

8 c. Upon receipt of the creation contract duly executed by the  
9 member municipalities, the Department of the Treasury shall record  
10 the creation contract and issue a certificate of incorporation stating  
11 the name of the company and the date and fact of incorporation.  
12 The issuance of the certificate shall be conclusive proof that the  
13 company legally exists and such company shall have the powers set  
14 forth in section 8 of P.L. , c. (C. ) (pending before the  
15 Legislature as this bill).

16 d. Once the company has been legally established, it may add  
17 member municipalities as provided in paragraphs (1) and (2) of this  
18 subsection:

19 (1) A municipality requesting to become a member of the  
20 company and the staff and board of directors of the company shall  
21 negotiate an amended creation contract on terms and conditions  
22 acceptable to the parties. Once an amended creation contract has  
23 been agreed to, it shall be submitted for approval by the board of  
24 directors. Adoption of an amended creation contract shall require  
25 approval by a two-thirds majority vote of the full membership of the  
26 board.

27 (2) The municipality requesting to become a member of the  
28 company shall introduce an ordinance approving the amended  
29 creation contract as approved by the board of directors of the  
30 company. Upon the introduction of the ordinance, but before final  
31 adoption of such ordinance, copies of the ordinance, together with  
32 the proposed amended creation contract shall be submitted to the  
33 Local Finance Board within the Division of Local Government  
34 Services in the Department of Community Affairs, for approval.  
35 The Local Finance Board shall not unreasonably withhold approval,  
36 and if the Local Finance Board does not disapprove the proposed  
37 amended creation contract within 60 days after receipt of the  
38 proposed amended creation contract, then the ordinance and  
39 proposed amended creation contract shall be deemed approved.

40 e. Once the company has been legally established, it may add  
41 one or more rural electric cooperatives as a member as provided in  
42 paragraphs (1) and (2) of this subsection:

43 (1) A rural electric cooperative requesting to become a member  
44 of the company and the staff and board of directors of the company  
45 shall negotiate an amended creation contract on terms and  
46 conditions acceptable to the parties. Once an amended creation  
47 contract has been agreed to, it shall be submitted for approval by  
48 the board of directors. Adoption of an amended creation contract

1 shall require approval by a two-thirds majority vote of the full  
2 membership of the board.

3 (2) The company shall present the proposed amended creation  
4 contract for approval to the Local Finance Board within the  
5 Division of Local Government Services in the Department of  
6 Community Affairs. The Local Finance Board shall not  
7 unreasonably withhold approval, and if the Local Finance Board  
8 does not disapprove the proposed amended creation contract within  
9 60 days after receipt of the proposed amended creation contract,  
10 then the proposed amended creation contract shall be deemed  
11 approved.

12

13 5. (New section) Any creation contract establishing the  
14 municipal shared services energy company under P.L. ,  
15 c. (C. ) (pending before the Legislature as this bill) shall  
16 specify:

17 a. The name and purpose of the company and the functions or  
18 services to be provided by the company. The name may refer to the  
19 company as an agency, company, group, system or other descriptive  
20 title;

21 b. The establishment and organization of a governing board of  
22 the company which shall be a board of directors in which all powers  
23 of the company are vested. The creation contract may provide for  
24 the creation by the board of an executive committee of the board to  
25 which the power and duties may be delegated as the board shall  
26 specify;

27 c. The number of directors, the manner of their appointment,  
28 the terms of office and compensation, if any, and the procedure for  
29 filling vacancies on the board. Each member municipality and  
30 cooperative shall have the power to appoint one member to the  
31 board of directors and shall be entitled to remove that member at  
32 will;

33 d. The manner of selection of the officers of the company and  
34 their duties;

35 e. The voting requirements for action by the board; but, unless  
36 specifically provided otherwise, a majority of directors shall  
37 constitute a quorum and a majority of the quorum shall be necessary  
38 for any action taken by the board;

39 f. The duties of the board, which shall include the obligation to  
40 comply or to cause compliance with P.L. , c. (C. ) (pending  
41 before the Legislature as this bill) and the laws of this State and, in  
42 addition, with each and every term, provision and covenant in the  
43 creation contract creating the company on its part to be kept or  
44 performed;

45 g. The manner in which additional municipalities and rural  
46 electric cooperatives may become parties to the creation contract by  
47 amendment;

1       h. The manner in which members may withdraw from  
2 participation in the contract, which shall include a defeasance of  
3 such member's pro-rata share of any bonds issued by the company;

4       i. Provisions for the disposition, division or distribution of any  
5 property or assets of the company on dissolution;

6       j. The term of the creation contract, which may be a definite  
7 period or until rescinded or terminated, and the method, if any, by  
8 which the creation contract may be rescinded or terminated, but the  
9 creation contract may not be rescinded or terminated so long as the  
10 company has bonds outstanding, unless provision for full payment  
11 of such bonds, by escrow or otherwise, has been made pursuant to  
12 the terms of the bonds or the resolution, trust indenture or security  
13 instrument securing the bonds; and

14       k. The terms for payment to the company of funds for  
15 commodities to be procured and services to be rendered by the  
16 company, including authority to enter into purchase agreements  
17 between the members and the company for the purchase of electric  
18 power and energy whereby the member is obligated to make  
19 payments or provide collateral in amounts which shall be sufficient  
20 to enable the company to meet its expenses, interest and principal  
21 payments, whether at maturity or upon sinking fund redemption, for  
22 its bonds, reasonable reserves for debt service, operation and  
23 maintenance and renewals and replacements and the requirements  
24 of any rate covenant with respect to debt service coverage contained  
25 in any resolution, trust indenture or other security instrument. Such  
26 purchase agreements between the members and the company may  
27 contain such other terms and conditions as the company and the  
28 members may determine, including provisions whereby a member is  
29 obligated to pay for power irrespective of whether energy is  
30 produced or delivered to the member or whether any electric supply  
31 project contemplated by any such agreement is completed, operable  
32 or operating, and notwithstanding suspension, interruption,  
33 interference, reduction, or curtailment of the output of such electric  
34 supply project. The creation contract may further provide that, if  
35 one or more of the members defaults in the payment of its  
36 obligations under any such purchase agreement, the remaining  
37 members, which also have such agreements, shall be required to  
38 accept and pay for, and shall be entitled proportionately to use or  
39 otherwise dispose of, the power and energy to be purchased by the  
40 defaulting purchaser. For purposes of this section, the phrase  
41 "purchase of electric power and energy" includes any right to  
42 capacity or interest in any electric supply project.

43  
44       6. (New section) No provision of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill) shall be construed to limit, inhibit  
46 or in any way restrict the right of any municipality to form, own, or  
47 operate an electric utility, either directly, or as a department of that  
48 municipality.



1       7. (New section) No officer or employee of the municipal  
2 shared services energy company shall have or acquire any interest,  
3 direct or indirect, in any contract or proposed contract or property  
4 related to the provision of wholesale electric power, transmission,  
5 generation, materials, services or supplies to be furnished to or used  
6 by the company or any of its members.

7  
8       8. (New section) The municipal shared services energy  
9 company shall be a public body politic and corporate, established as  
10 an instrumentality exercising public and essential governmental  
11 functions to provide for the public health and welfare. The company  
12 shall have the duties, privileges, immunities, rights, liabilities, and  
13 disabilities of a public body politic and corporate but shall not have  
14 taxing power. The company shall be a "contracting unit" for  
15 purposes of the "Local Public Contracts Law," P.L.1971, c.198  
16 (C.40A:11-1 et seq.), shall have perpetual succession, and shall  
17 have the following powers:

18       a. To adopt and have a common seal and to alter the same at  
19 pleasure;

20       b. To sue and be sued;

21       c. To acquire, own, rent, hold, lease, as lessor or lessee, use  
22 and sell or otherwise dispose of, mortgage, pledge, or grant a  
23 security in, any real or personal property, commodity or service or  
24 interest therein;

25       d. To hold or place collateral with a counterparty to a power  
26 supply contract and to account for, value, and use such collateral as  
27 provided in the power supply contract notwithstanding any other  
28 law or regulation to the contrary;

29       e. To plan, develop, acquire, construct, reconstruct, operate,  
30 manage, dispose of, participate in, maintain, repair, extend, or  
31 improve one or more electric supply projects within or outside the  
32 State and act as agent, or designate one or more other persons  
33 participating in an electric supply project to act as its agent, in  
34 connection with the planning, acquisition, construction, operation,  
35 maintenance, repair, extension, or improvement of such electric  
36 supply project for generation, production, transmission, and  
37 provision of electrical power and energy at wholesale, in whole or  
38 in part, for the benefit of the members;

39       f. To negotiate for, exploit, produce, acquire, buy, sell,  
40 distribute and process fuels necessary or appropriate to the  
41 production of electric power and energy, the development of  
42 coordinated bulk power and fuel supply programs, and the  
43 implementation of energy conservation measures as necessary or  
44 appropriate to meet energy needs of the members and clients of the  
45 company;

46       g. To enter into franchises, exchange, interchange, pooling,  
47 wheeling, transmission, construction, and other agreements with  
48 any person, firm, entity, or public agency, notwithstanding the

- 1 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) or any other law,  
2 provided, however, that any contract to provide for construction of  
3 a facility as a result of such arrangement shall be subject to  
4 P.L.1971, c.198 (C.40A:11-1 et seq.);
- 5 h. To negotiate and enter into power supply contracts pursuant  
6 to section 19 of P.L. , c. (C. ) (pending before the Legislature  
7 as this bill) and to take such actions as are necessary to remain in  
8 compliance with the terms of such contracts;
- 9 i. In addition to power supply contracts, to make and execute  
10 such additional contracts and other instruments necessary or  
11 convenient to the exercise of its powers;
- 12 j. To employ agents and employees;
- 13 k. To contract with any person, entity or public agency within  
14 or outside the State of New Jersey for the construction of any  
15 electric supply project or for the purchase, sale or transmission of  
16 electric power and energy generated by any electric supply project,  
17 in whole or in part, for the benefit of its members, or for any  
18 interest or share therein, or any right to capacity thereof, on such  
19 terms and for such period of time as its board shall determine;
- 20 l. To purchase and sell, exchange or transmit electric power  
21 and energy at wholesale within and outside the State of New Jersey,  
22 consistent with federal law, in such amounts as it shall determine to  
23 be necessary or appropriate to make the most effective use of its  
24 powers and to meet its responsibilities and to enter into agreements  
25 with any person, entity, or public agency with respect to the  
26 purchase, sale, exchange, or transmission on such terms and for  
27 such period of time as its board shall determine;
- 28 m. To provide for and secure the payment of any bonds and the  
29 rights of the holders thereof, and to purchase, hold, and dispose of  
30 any bonds;
- 31 n. To accept gifts or grants of real or personal property, money,  
32 material, labor, or supplies for the purposes of the municipal shared  
33 services energy company, and to make and perform such  
34 agreements and contracts as may be necessary or convenient in  
35 connection with the procuring, acceptance, or disposition of the  
36 gifts or grants;
- 37 o. To acquire, by condemnation, any land or building which is  
38 necessary for an electric supply project, pursuant to the provisions  
39 of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et  
40 seq.), and to enter on any lands, waters, or premises for the purpose  
41 of making surveys, borings, soundings and examinations for the  
42 purposes of the municipal shared services energy company;
- 43 p. To make and enforce by-laws or rules and regulations for the  
44 management and regulation of its business and affairs and for the  
45 use, maintenance, and operation of its properties and to amend the  
46 by-laws;

1 q. To do and perform any acts and things authorized by this  
2 act, through or by means of its own officers, agents, and employees,  
3 or by contract with any person;

4 r. To enter into any and all contracts, execute any and all  
5 instruments, and do and perform any and all things or acts  
6 necessary, convenient, or desirable for the purposes of the  
7 municipal shared services energy company, or to carry out any  
8 power expressly authorized under P.L. , c. (C. ) (pending  
9 before the Legislature as this bill);

10 s. To exercise such powers as are granted to municipalities  
11 under R.S.40:60-12 et seq.;

12 t. To join organizations, including private or trade  
13 organizations, which the board of directors has deemed to be  
14 beneficial to the accomplishment of the company's purposes;

15 u. To enter into a power supply contract, lease, operation  
16 contract, or contract for management of electric generation, or for  
17 the purchase of fuel for electric generation for a term not to exceed  
18 40 years, notwithstanding any durational limitation in section 15 of  
19 P.L.1971, c.198 (C.40A:11-15); and

20 v. Notwithstanding any other law to the contrary, to invest any  
21 funds held in reserve or sinking funds, or any funds not required for  
22 immediate disbursement, including the proceeds from the sale of  
23 any bonds, in such obligations, securities, and other investments as  
24 the company deems to be proper.

25  
26 9. (New section) a. The municipal shared services energy  
27 company shall have the power to authorize or provide for the  
28 issuance of bonds pursuant to P.L. , c. (C. ) (pending before  
29 the Legislature as this bill) for the purpose of raising funds to pay  
30 the cost of any part of an electric supply project, to fulfill the terms  
31 of a power supply contract, including any provision for collateral or  
32 related performance security measures, and to fund or refund any  
33 bonds.

34 b. The municipal shared services energy company shall adopt a  
35 bond resolution which shall:

36 (1) describe in brief and general terms sufficient for reasonable  
37 identification the electric supply project or part thereof, to be  
38 constructed or acquired, or describe the bonds which are to be  
39 funded or refunded, if any;

40 (2) state the cost or estimated cost of the project, if any; and

41 (3) provide for the issuance of the bonds in accordance with  
42 sections 10 through 18 of P.L. , c. (C. ) (pending before the  
43 Legislature as this bill).

44  
45 10. (New section) Upon adoption of a bond resolution, the  
46 municipal shared services energy company shall have power to  
47 incur indebtedness, borrow money and issue its bonds for the  
48 purpose of financing a project or of funding or refunding the bonds

1 issued pursuant to P.L. , c. (C. ) (pending before the  
2 Legislature as this bill). Such bonds shall be authorized by the  
3 bond resolution and may be issued in one or more series and shall  
4 bear such date or dates, mature at such time or times not exceeding  
5 40 years from the date thereof, bear interest at a rate or rates within  
6 such maximum rate as permitted by law, be in such denomination or  
7 denominations, be in such form, either coupon or registered, carry  
8 such conversion or registration privileges, have such rank or  
9 priority, be executed in such manner, be payable from such sources  
10 in such medium of payment at such place or places within or  
11 without the State, and be subject to such terms of redemption, with  
12 or without a premium, as the bond resolution may provide.

13

14 11. (New section) Bonds of the municipal shared services  
15 energy company may be sold by the municipal shared services  
16 energy company at public or private sale, and at such price or prices  
17 as the municipal shared services energy company shall determine.

18

19 12. (New section) The municipal shared services energy  
20 company may cause a copy of any bond resolution adopted by it to  
21 be filed for public inspection in its office and in the office of the  
22 clerk of the governing body of each member municipality, and may  
23 thereupon cause to be published, in a newspaper published or  
24 circulating in each member's community, a notice stating the fact  
25 and date of this adoption and the places where the bond resolution  
26 has been filed for public inspection and also the date of the first  
27 publication of the notice and also that any action or proceeding of  
28 any kind or nature in any court questioning the validity or proper  
29 authorization of bonds provided for by the bond resolution, or the  
30 validity of any covenants, agreements or contract provided for by  
31 the bond resolution shall be commenced within 20 days after the  
32 first publication of the notice. If the notice shall at any time be  
33 published and if no action or proceeding questioning the validity of  
34 the establishment of the municipal shared services energy company  
35 or the validity or proper authorization of bonds provided for by the  
36 bond resolution referred to in the notice, or the validity of any  
37 covenants, agreements or contract provided for by the bond  
38 resolution shall be commenced or instituted within 20 days after the  
39 first publication of the notice, then all residents and taxpayers and  
40 owners of property in each of the member municipalities, and all  
41 other persons whatsoever, shall be forever barred and foreclosed  
42 from instituting or commencing any action or proceeding in any  
43 court, or from pleading any defense to any action or proceedings,  
44 questioning the validity of the establishment of the municipal  
45 shared services energy company, or the validity or proper  
46 authorization of the bonds, or the validity of the covenants,  
47 agreements or contracts, and the municipal shared services energy  
48 company shall be conclusively deemed to have been validly

1 established and to be authorized to transact business and exercise  
2 powers under P.L. , c. (C. ) (pending before the Legislature  
3 as this bill), and the bonds, covenants, agreements and contracts  
4 shall be conclusively deemed to be valid and binding obligations in  
5 accordance with their terms and tenor.

6  
7 13. (New section) Any provision of any law to the contrary  
8 notwithstanding, any bond or other obligation issued pursuant to  
9 P.L. , c. (C. ) (pending before the Legislature as this bill),  
10 shall be fully negotiable within the meaning and for all purposes of  
11 the negotiable instruments law of this State, and each holder or  
12 owner of such a bond or other obligation, or of any coupon  
13 appurtenant thereto, by accepting such bond or coupon shall be  
14 conclusively deemed to have agreed that such bond, obligation or  
15 coupon is and shall be fully negotiable within the meaning and for  
16 all purposes of the State's negotiable instruments law under Title  
17 12A of the New Jersey Statutes.

18  
19 14. (New section) Neither the members nor any person  
20 executing bonds issued pursuant to P.L. , c. (C. ) (pending  
21 before the Legislature as this bill) shall be liable personally on the  
22 bonds by reason of the issuance thereof. Bonds or other obligations  
23 issued pursuant to P.L. , c. (C. ) (pending before the  
24 Legislature as this bill) shall not be in any way a debt or liability of  
25 the State, and bonds or other obligations issued by the municipal  
26 shared services energy company pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill) shall not be in any way  
28 a debt or liability of the State or of any local unit or of any county  
29 or municipality, except for member municipalities guarantying such  
30 bonds in accordance with the provisions of section 18 of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill), and shall  
32 not create or constitute any indebtedness, liability or obligation of  
33 the State or of any such local unit, county or municipality, either  
34 legal, moral, or otherwise, and nothing in P.L. , c. (C. )  
35 (pending before the Legislature as this bill) contained shall be  
36 construed to authorize the municipal shared services energy  
37 company to incur any indebtedness on behalf of or in any way to  
38 obligate the State or any county or municipality.

39  
40 15. (New section) Any bond resolution of the municipal shared  
41 services energy company providing for or authorizing the issuance  
42 of any bonds may contain provisions, and the municipal shared  
43 services energy company shall, in order to secure the payment of  
44 the bonds in addition to its other powers, have the power by the  
45 provisions in the bond resolution to covenant and agree with the  
46 several holders of the bonds as to:

47 a. The custody, security, use, expenditure, or application of the  
48 proceeds of the bonds;

- 1       b. The construction and completion, or replacement, of all or  
2 any part of an electric supply project of the municipal shared  
3 services energy company or its system;
- 4       c. The use, regulation, operation, maintenance, insurance, or  
5 disposition of all or any part of an electric supply project of the  
6 municipal shared services energy company, or its system, or  
7 restrictions on the exercise of the powers of the municipal shared  
8 services energy company to dispose of, limit, or regulate the use of  
9 all or any part of the electric supply project or system;
- 10      d. Payment of the principal of, or interest on, the bonds, or any  
11 other obligations, and the sources and methods thereof, the rank or  
12 priority of the bonds or obligations as to any lien or security, or the  
13 acceleration of the maturity of the bonds or obligations;
- 14      e. The use and disposition of any monies of the municipal  
15 shared energy company, including any of the company's revenues,  
16 derived or to be derived from the operation of all or any part of one  
17 or more electric supply projects of the municipal shared services  
18 energy company or systems thereof, including any parts thereof that  
19 are thereafter constructed or acquired as any of the project's parts,  
20 extensions, replacements, or improvements thereafter constructed or  
21 acquired;
- 22      f. Pledging, setting aside, depositing, or acting as trustee for all  
23 or any part of the system revenues or other monies of the municipal  
24 shared services energy company to secure the payment of the  
25 principal of, or interest on, the bonds or any other obligations, or  
26 the payment of expenses of operation or maintenance of one or  
27 more electric supply projects of the municipal shared services  
28 energy company or its system, and the powers and duties of any  
29 trustee with regard thereto;
- 30      g. The setting aside out of the system revenues or other monies  
31 of the municipal shared services energy company including its  
32 reserves and sinking funds, and the source, custody, security,  
33 regulation, application, and disposition thereof;
- 34      h. Determination or definition of the system revenues or of the  
35 expenses of operation and maintenance of the system or one or  
36 more of its electric supply projects;
- 37      i. The rents, rates, fees or other charges in connection with the  
38 use, products, or services of one or more electric supply projects of  
39 the municipal shared services energy company or its system,  
40 including any of the parts, extensions, replacements, or  
41 improvements of the project or its system thereafter constructed or  
42 acquired, and the fixing, establishment, collection and enforcement  
43 of the same, the amount of electric supply project revenues or  
44 system revenues to be produced thereby, and the disposition and  
45 application of the amounts charged or collected;
- 46      j. The assumption or payment or discharge of any  
47 indebtedness, liens, or other claims relating to the whole or any part  
48 of one or more electric supply projects of the municipal shared

1 services energy company or of its system for any obligations having  
2 or which may have a lien on any part of the system of the municipal  
3 shared services energy company;

4 k. Limitations on the issuance of additional bonds or any other  
5 obligations or on the incurrence of indebtedness of the municipal  
6 shared services energy company;

7 1. Limitations on the powers of the municipal shared services  
8 energy company to construct, acquire or operate, or to permit the  
9 construction, acquisition or operation of any plants, structures,  
10 facilities or properties which may compete or tend to compete with  
11 one or more of the municipal shared services energy company's  
12 electric supply projects or any part of its system;

13 m. Vesting in a trustee or trustees within or without the State  
14 such property, rights, powers, and duties in trust as the municipal  
15 shared services energy company may determine, which may include  
16 any or all of the rights, powers, and duties of the trustee appointed  
17 by the holders of bonds, and limiting or abrogating the right of the  
18 holders to appoint a trustee or limiting the rights, duties, and powers  
19 of the trustee;

20 n. Payment of costs or expenses incident to the enforcement of  
21 the bonds or of the provisions of the bond resolutions or of any  
22 covenant or contract with the holders of the bonds;

23 o. The procedure, if any, by which the terms of any covenant or  
24 contract with, or duty to the holders of the bonds may be amended  
25 or abrogated, the amount of bonds that the holders of which must  
26 consent thereto, and the manner in which the consent may be given  
27 or evidenced; and

28 p. Any other matter or course of conduct which, by recital in  
29 the bond resolution, is declared to further secure the payment of the  
30 principal of, or interest on, the bonds.

31 The provisions of the bond resolution and the covenants and  
32 agreements relative thereto shall constitute valid and legally binding  
33 contracts between the municipal shared services energy company  
34 and the several holders of the bonds, regardless of the time of  
35 issuance of the bonds, and shall be enforceable by any holder or  
36 holders by appropriate suit, action or proceeding in any court of  
37 competent jurisdiction, or by proceeding in lieu of prerogative writ.

38  
39 16. (New section) a. If the bond resolution of the municipal  
40 shared services energy company authorizing or providing for the  
41 issuance of a series of its bonds shall provide in substance that the  
42 holders of the bonds of such series shall be entitled to the benefits  
43 of this section, then, in the event that there shall be a default in the  
44 payment of principal of, or interest on, any bonds of such series  
45 after the same shall become due, whether at maturity or upon call  
46 for redemption, and such default shall continue for a period of 30  
47 days, or in the event that the municipal shared services energy  
48 company shall fail or refuse to comply with the provisions of

1 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
2 shall fail or refuse to carry out and perform the terms of any  
3 contract with the holders of any such bonds, and such failure or  
4 refusal shall continue for a period of 30 days after written notice to  
5 the municipal shared services energy company of its existence and  
6 nature, the holders of 25 percent in aggregate principal amount of  
7 the bonds and such series then outstanding by instrument or  
8 instruments filed in the office of the Secretary of State and proved  
9 or acknowledged in the same manner as a deed to be recorded, may  
10 appoint a trustee to represent the holders of the bonds of such series  
11 for the purposes provided in this section.

12 b. Such trustee may and upon written request of the holders of  
13 25 percent in aggregate principal amount of the bonds of such series  
14 then outstanding shall, in the trustee's or its own name:

15 (1) by any action, writ, proceeding in lieu of prerogative writ, or  
16 other proceeding, enforce all rights of the holders of such bonds,  
17 including the right to require the municipal shared services energy  
18 company to charge and collect service charges adequate to carry out  
19 any contract as to, or pledge of, system revenues, and to require the  
20 municipal shared services energy company to carry out and perform  
21 the terms of any contract with the holders of such bonds or its  
22 duties under P.L. , c. (C. ) (pending before the Legislature  
23 as this bill);

24 (2) bring an action upon all or any part of such bonds or interest  
25 coupons or claims appurtenant thereto;

26 (3) by action, require the municipal shared services energy  
27 company to account as if it were the trustee of an express trust for  
28 the holders of such bonds;

29 (4) by action, enjoin any acts or things which may be unlawful  
30 or in violation of the rights of the holders of such bonds; and

31 (5) declare all such bonds due and payable, whether or not in  
32 advance of maturity, upon 30 days' prior notice in writing to the  
33 municipal shared services energy company and, if all defaults shall  
34 be made good, then with the consent of the holders of 25 percent of  
35 the principal amount of such bonds then outstanding, annul such  
36 declaration and its consequences.

37 c. The trustee shall, in addition to the powers set forth in  
38 subsections a. and b. of this section, have and possess all of the  
39 powers necessary or appropriate for the exercise of the functions  
40 specifically set forth herein or incident to the general representation  
41 of the holders of bonds of such series in the enforcement and  
42 protection of their rights.

43 d. In any action or proceeding by the trustee, the fees, counsel  
44 fees and expenses of the trustee and of the receiver, if any,  
45 appointed pursuant to P.L. , c. (C. ) (pending before the  
46 Legislature as this bill), shall constitute taxable costs and  
47 disbursements, and all costs and disbursements, allowed by the  
48 court, shall be a first charge upon any service charges and system



1 revenues of the municipal shared services energy company pledged  
2 for the payment or security of bonds of such series.

3  
4 17. (New section) If the bond resolution of the municipal shared  
5 services energy company authorizing or providing for the issuance  
6 of a series of its bonds shall provide in substance that the holders of  
7 the bonds of such series shall be entitled to the benefits of section  
8 15 of P.L. , c. (C. ) (pending before the Legislature as this  
9 bill), and shall further provide in substance that any trustee  
10 appointed pursuant to that section or having the powers of such a  
11 trustee shall have the powers provided by this section, then such  
12 trustee, whether or not all of the bonds of such series shall have  
13 been declared due and payable, shall be entitled as of right to the  
14 appointment of a receiver of the utility system, and the receiver may  
15 enter upon and take possession of the utility system and, subject to  
16 any pledge or contract with the holders of such bonds, shall take  
17 possession of all moneys and other property derived from or  
18 applicable to the acquisition, construction, operation, maintenance,  
19 or reconstruction of the utility system, and proceed with such  
20 acquisition, construction, operation, maintenance, or reconstruction  
21 which the municipal shared services energy company is under any  
22 obligation to do, and operate, maintain and reconstruct the utility  
23 system and fix, charge, collect, enforce, and receive the service  
24 charges and all system revenues thereafter arising subject to any  
25 pledge thereof or contract with the holders of the bonds relating  
26 thereto and perform the public duties and carry out the contracts  
27 and obligations of the municipal shared services energy company in  
28 the same manner as the municipal shared services energy company  
29 itself might do and under the direction of the court.

30  
31 18. (New section) For the purpose of aiding the municipal  
32 shared services energy company in the planning, undertaking,  
33 acquisition, construction, financing or operation of any electric  
34 supply project authorized pursuant to P.L. , c. (C. )  
35 (pending before the Legislature as this bill), a member municipality  
36 may, by ordinance of its governing body, in the manner provided  
37 for adoption of a bond ordinance as provided in any local bond law  
38 and with or without consideration and upon such terms and  
39 conditions as may be agreed to by and between the member  
40 municipality and the company, unconditionally guarantee the  
41 punctual payment of the principal of, and interest on, all or a  
42 portion of any bonds of the company. Any guaranty of the bonds of  
43 the company made pursuant to this section shall be evidenced by  
44 endorsement thereof on the bonds, executed in the name of the  
45 member municipality and on its behalf by such officer thereof as  
46 may be designated in the ordinance authorizing such guaranty, and  
47 the municipality shall thereupon and thereafter be obligated to pay  
48 the principal of, and interest on, said bonds in the same manner and

1 to the same extent as in the case of bonds issued by it. Any such  
2 guaranty of bonds of the company may be made, and any ordinance  
3 authorizing such guaranty may be adopted, notwithstanding any  
4 statutory debt or other limitations, including particularly any  
5 limitation or requirement under or pursuant to any local bond law,  
6 but the principal amount of the bonds so guaranteed, shall, after  
7 their issuance, be included in the gross debt of the member  
8 municipality for the purpose of determining the indebtedness of the  
9 municipality under or pursuant to any local bond law. The principal  
10 amount of the bonds so guaranteed and included in gross debt shall  
11 be deducted and is hereby declared to be and to constitute a  
12 deduction from the gross debt under and for all the purposes of any  
13 local bond law:

14 a. from and after the time of issuance of the bonds until the end  
15 of the fiscal year beginning next after the completion of acquisition  
16 or construction of the facility to be financed from the proceeds of  
17 the bonds; and

18 b. in any annual debt statement filed pursuant to any local bond  
19 law as of the end of the fiscal year or any subsequent fiscal year if  
20 the revenues or other receipts or moneys of the company in that  
21 year are sufficient to pay its expenses of operation and maintenance  
22 in the year and all amounts payable in the year on account of the  
23 principal of, and interest on, all the guaranteed bonds, and all bonds  
24 of the company issued under P.L. , c. (C. ) (pending before  
25 the Legislature as this bill).

26

27 19. (New section) a. The municipal shared services energy  
28 company may enter into power supply contracts with any person,  
29 entity, or public agency within or outside the State of New Jersey  
30 for the purchase or sale of electric power and energy, or for both the  
31 purchase and sale of electric power and energy. The power supply  
32 contracts shall be for a term not to exceed 40 years and shall  
33 provide for payment to or from the municipal shared services  
34 energy company of funds for commodities to be procured, and  
35 services to be rendered by or to the municipal shared services  
36 energy company. The municipal shared services energy company  
37 may enter into power supply contracts with these customers for the  
38 purchase or sale of electric power and energy, or for both the  
39 purchase and sale of electric power and energy, whereby the  
40 purchaser is obligated to make payments in amounts which shall be  
41 sufficient to enable the municipal shared services energy company  
42 to meet its expenses, interest and principal payments, whether at  
43 maturity or upon sinking fund redemption, for its bonds, reasonable  
44 reserves for debt service, operation and maintenance, renewals and  
45 replacements, and the requirements of any rate covenant with  
46 respect to debt service coverage contained in any resolution, trust  
47 indenture, or other security instrument. Power supply contracts  
48 may contain such other terms and conditions as the municipal

1 shared services energy company and the purchasers may determine,  
2 including provisions whereby the purchaser is obligated to pay for  
3 power irrespective of whether energy is produced or delivered to  
4 the purchaser, or whether any electric supply project contemplated  
5 by the agreement is completed, operable, or operating, and  
6 notwithstanding suspension, interruption, interference, reduction, or  
7 curtailment of the output of the electric supply project. The power  
8 purchase agreement may provide that if one or more of the  
9 purchasers defaults in the payment of its obligations under the  
10 purchase agreement, the remaining purchasers which also have such  
11 agreements shall be required to accept and pay for the power and  
12 energy to be purchased by the defaulting purchaser, and shall be  
13 entitled proportionately to use or otherwise dispose of the power  
14 and energy to be purchased by the defaulting purchaser. For  
15 purposes of this section the phrase "purchase of electric power and  
16 energy" includes any right to capacity or interest in any electric  
17 supply project.

18 b. The obligations of a municipality that is eligible to be, but  
19 that is not, a member municipality under a power supply contract  
20 with the municipal shared services energy company, or arising out  
21 of the default by any other purchaser with respect to such an  
22 agreement, shall not be construed to constitute a debt of the  
23 municipality. To the extent provided in the purchase agreement,  
24 these obligations shall constitute special obligations of the  
25 municipality, payable solely from the revenues and other moneys  
26 derived by the municipality from its municipal electric utility and  
27 shall be treated as expenses of operating a municipal electric utility.

28 c. The contract may also provide for payments in the form of  
29 collateral, contributions to defray the cost of any purpose set forth  
30 in the contract and as advances for any such purpose subject to  
31 repayment by the municipal shared services energy company.

32 d. Such agreements may be for a term covering the life of an  
33 electric supply project, for the anticipated output period of the  
34 electric supply project, or for any other term not exceeding 40  
35 years. If a power supply contract is entered into with a municipality  
36 other than a member municipality, the contracts shall be subject to  
37 the "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-1 et  
38 seq.).

39

40 20. (New section) The Board of Public Utilities shall have no  
41 supervision or regulatory authority over the municipal shared  
42 services energy company formed pursuant to P.L. , c. (C. )  
43 (pending before the Legislature as this bill), or over the budget,  
44 operations, rates, property, property rights, equipment, or facilities  
45 of the municipal shared services energy company formed pursuant  
46 to P.L. , c. (C. ) (pending before the Legislature as this  
47 bill).

1       21. (New section) All property of the municipal shared services  
2 energy company shall be exempt from levy and sale by virtue of an  
3 execution of a court of competent jurisdiction and no execution or  
4 other judicial process shall issue against the same nor shall any  
5 judgment against the municipal shared services energy company be  
6 a charge or lien upon its property, provided, however, that nothing  
7 in this section shall apply to or limit the rights of the holder of any  
8 bonds to pursue any remedy for the enforcement of any pledge or  
9 lien given by the municipal shared services energy company on its  
10 system, revenues, or other monies.

11  
12       22. (New section) Notwithstanding any restriction contained in  
13 any other law, the State and all public officers, municipalities,  
14 counties, political subdivisions of public bodies, and agencies  
15 thereof, all banks, bankers, trust companies, savings banks and  
16 institutions, building and loan associations, savings and loan  
17 associations, investment companies, and other persons carrying on a  
18 banking business, all insurance companies, insurance associations,  
19 and other persons carrying on an insurance business, and all  
20 executors, administrators, guardians, trustees and other fiduciaries,  
21 may legally invest any sinking funds, monies, or other funds  
22 belonging to them or within their control, in any bonds of the  
23 municipal shared services energy company, and the bonds shall be  
24 authorized security for any and all public deposits.

25  
26       23. (New section) Every electric supply project, facility, or item  
27 of utility plant owned by the municipal shared services energy  
28 company, including any pro rata share of any property owned by the  
29 municipal shared services energy company in conjunction with any  
30 other person or public agency and used in connection with the  
31 generation, transmission and production of electrical power and  
32 energy, and all other property of the municipal shared services  
33 energy company, is hereby declared to be public property and  
34 devoted to an essential public and governmental function and  
35 purpose and, the property, the municipal shared services energy  
36 company and its income shall be exempt from all taxes and special  
37 assessments of the State or any subdivision of the State. All bonds  
38 of the municipal shared services energy company are hereby  
39 declared to be issued by a political subdivision of the State and for  
40 an essential public and governmental purpose and to be a public  
41 instrumentality in the bonds, and the interest thereon and the  
42 income therefrom and all service charges, funds, revenues, and  
43 other monies pledged or available to pay or secure the payment of  
44 the bonds, or interest thereon, shall at all times be exempt from  
45 taxation except for transfer, inheritance and estate taxes, and taxes  
46 on transfers by or in contemplation of death.

1       24. (New section) The State of New Jersey does hereby pledge  
2 to and covenant and agree with the holders of any bonds issued  
3 pursuant to a bond resolution of the municipal shared services  
4 energy company, that the State will not limit or alter the rights  
5 hereby vested in the municipal shared services energy company to  
6 acquire, construct, operate, and participate in one or more electric  
7 supply projects and facilities for the generation, production, and  
8 transmission of electric power and energy at wholesale, to fix,  
9 establish, charge, and collect charges, fees, and payments, and to  
10 fulfill the terms of any agreement made with the holders of the  
11 bonds or other obligations, and will not in any way impair the rights  
12 or remedies of these holders, and will not modify in any way the  
13 exemptions from taxation provided for in P.L.     , c.     (C.     )  
14 (pending before the Legislature as this bill) until the bonds, together  
15 with interest thereon, with interest on any unpaid installments of  
16 interest, and all costs and expenses in connection with any action or  
17 proceeding by or on behalf of these holders, are fully met and  
18 discharged.

19  
20       25. (New section) All banks, bankers, trust companies, savings  
21 banks, investment companies, and other persons carrying on a  
22 banking business are hereby authorized to give to the municipal  
23 shared services energy company a good and sufficient undertaking  
24 with such sureties as shall be approved by the municipal shared  
25 services energy company to the effect that this bank or banking  
26 institution shall faithfully keep and pay over to the order of or upon  
27 the warrant of the municipal shared services energy company or its  
28 authorized agent, all such funds as may be deposited with it by the  
29 municipal shared services energy company and agreed interest  
30 thereon, at such times or upon such demands as may be agreed with  
31 the municipal shared services energy company or in lieu of these  
32 sureties, deposit with the municipal shared services energy  
33 company or its agent or any trustee therefor or for the holders of  
34 any bonds, as collateral, such securities as the municipal shared  
35 services energy company may approve. The deposits of the  
36 municipal shared services energy company may be evidenced or  
37 secured by a depository collateral agreement in such form and upon  
38 such terms and conditions as may be agreed upon by the municipal  
39 shared services energy company and the bank or banking  
40 institution.

41  
42       26. (New section) The municipal shared services energy  
43 company shall cause an annual audit of its accounts to be made, and  
44 for this purpose shall employ a registered municipal accountant  
45 registered pursuant to the laws of the State of New Jersey or a  
46 certified public accountant licensed pursuant to the laws of the State  
47 of New Jersey. The audit shall be completed and filed with the  
48 municipal shared services energy company within four months after

1 the close of its fiscal year and a certified duplicate thereof shall be  
2 filed with the Director of the Division of Local Government  
3 Services in the Department of Community Affairs within five days  
4 after the original report is filed with the municipal shared services  
5 energy company.

6  
7 27. (New section) The municipal shared services energy  
8 company shall file a copy of each bond resolution adopted by it  
9 with the Director of the Division of Local Government Services in  
10 the Department of Community Affairs, together with a summary of  
11 the dates, amounts, maturities, and interest rates of all bonds issued  
12 pursuant thereto.

13  
14 28. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to  
15 read as follows:

16 5. Any contract the amount of which exceeds the bid threshold,  
17 may be negotiated and awarded by the governing body without  
18 public advertising for bids and bidding therefor and shall be  
19 awarded by resolution of the governing body if:

20 (1) The subject matter thereof consists of:

21 (a) (i) Professional services. The governing body shall in each  
22 instance state supporting reasons for its action in the resolution  
23 awarding each contract and shall forthwith cause to be printed once,  
24 in the official newspaper, a brief notice stating the nature, duration,  
25 service and amount of the contract, and that the resolution and  
26 contract are on file and available for public inspection in the office  
27 of the clerk of the county or municipality, or, in the case of a  
28 contracting unit created by more than one county or municipality, of  
29 the counties or municipalities creating such contracting unit; or (ii)  
30 Extraordinary unspecifiable services. The application of this  
31 exception shall be construed narrowly in favor of open competitive  
32 bidding, whenever possible, and the Division of Local Government  
33 Services is authorized to adopt and promulgate rules and regulations  
34 after consultation with the Commissioner of Education limiting the  
35 use of this exception in accordance with the intention herein  
36 expressed. The governing body shall in each instance state  
37 supporting reasons for its action in the resolution awarding each  
38 contract and shall forthwith cause to be printed, in the manner set  
39 forth in subsection (1) (a) (i) of this section, a brief notice of the  
40 award of such contract;

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

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

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

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

47 (f) The supplying of any product or the rendering of any service  
48 by a public utility, which is subject to the jurisdiction of the Board

- 1 of Public Utilities or the Federal Energy Regulatory Commission or  
2 its successor, in accordance with tariffs and schedules of charges  
3 made, charged or exacted, filed with the board or commission;
- 4 (g) The acquisition, subject to prior approval of the Attorney  
5 General, of special equipment for confidential investigation;
- 6 (h) The printing of bonds and documents necessary to the  
7 issuance and sale thereof by a contracting unit;
- 8 (i) Equipment repair service if in the nature of an extraordinary  
9 unspecifiable service and necessary parts furnished in connection  
10 with such service, which exception shall be in accordance with the  
11 requirements for extraordinary unspecifiable services;
- 12 (j) The publishing of legal notices in newspapers as required by  
13 law;
- 14 (k) The acquisition of artifacts or other items of unique intrinsic,  
15 artistic or historical character;
- 16 (l) Those goods and services necessary or required to prepare  
17 and conduct an election;
- 18 (m) Insurance, including the purchase of insurance coverage and  
19 consultant services, which exception shall be in accordance with the  
20 requirements for extraordinary unspecifiable services;
- 21 (n) The doing of any work by handicapped persons employed by  
22 a sheltered workshop;
- 23 (o) The provision of any goods or services including those of a  
24 commercial nature, attendant upon the operation of a restaurant by  
25 any nonprofit, duly incorporated, historical society at or on any  
26 historical preservation site;
- 27 (p) (Deleted by amendment, P.L.1999, c.440.)
- 28 (q) Library and educational goods and services;
- 29 (r) (Deleted by amendment, P.L.2005, c.212).
- 30 (s) The marketing of recyclable materials recovered through a  
31 recycling program, or the marketing of any product intentionally  
32 produced or derived from solid waste received at a resource  
33 recovery facility or recovered through a resource recovery program,  
34 including, but not limited to, refuse-derived fuel, compost materials,  
35 methane gas, and other similar products;
- 36 (t) (Deleted by amendment, P.L.1999, c.440.)
- 37 (u) Contracting unit towing and storage contracts, provided that  
38 all such contracts shall be pursuant to reasonable non-exclusionary  
39 and non-discriminatory terms and conditions, which may include  
40 the provision of such services on a rotating basis, at the rates and  
41 charges set by the municipality pursuant to section 1 of P.L.1979,  
42 c.101 (C.40:48-2.49). All contracting unit towing and storage  
43 contracts for services to be provided at rates and charges other than  
44 those established pursuant to the terms of this paragraph shall only  
45 be awarded to the lowest responsible bidder in accordance with the  
46 provisions of the "Local Public Contracts Law" and without regard  
47 for the value of the contract therefor;

- 1 (v) The purchase of steam or electricity from, or the rendering  
2 of services directly related to the purchase of such steam or  
3 electricity from a qualifying small power production facility or a  
4 qualifying cogeneration facility as defined pursuant to 16  
5 U.S.C.s.796;
- 6 (w) The purchase of electricity or administrative or dispatching  
7 services directly related to the transmission of such purchased  
8 electricity by a contracting unit engaged in the generation of  
9 electricity;
- 10 (x) The printing of municipal ordinances or other services  
11 necessarily incurred in connection with the revision and  
12 codification of municipal ordinances;
- 13 (y) An agreement for the purchase of an equitable interest in a  
14 water supply facility or for the provision of water supply services  
15 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
16 an agreement entered into pursuant to P.L.1989, c.109  
17 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
18 later than six months after the effective date of P.L.1993, c.381;
- 19 (z) A contract for the provision of water supply services entered  
20 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 21 (aa) The cooperative marketing of recyclable materials recovered  
22 through a recycling program;
- 23 (bb) A contract for the provision of wastewater treatment  
24 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et  
25 al.);
- 26 (cc) Expenses for travel and conferences;
- 27 (dd) The provision or performance of goods or services for the  
28 support or maintenance of proprietary computer hardware and  
29 software, except that this provision shall not be utilized to acquire  
30 or upgrade non-proprietary hardware or to acquire or update non-  
31 proprietary software;
- 32 (ee) The management or operation of an airport owned by the  
33 contracting unit pursuant to R.S.40:8-1 et seq.;
- 34 (ff) Purchases of goods and services at rates set by the Universal  
35 Service Fund administered by the Federal Communications  
36 Commission;
- 37 (gg) A contract for the provision of water supply services or  
38 wastewater treatment services entered into pursuant to section 2 of  
39 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,  
40 construction, operation, or maintenance, or any combination  
41 thereof, of a water supply facility as defined in subsection (16) of  
42 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater  
43 treatment system as defined in subsection (19) of section 15 of  
44 P.L.1971, c.198 (C.40A:11-15), or any component part or parts  
45 thereof, including a water filtration system as defined in subsection  
46 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);



1 (hh) The purchase of electricity generated from a power  
2 production facility that is fueled by methane gas extracted from a  
3 landfill in the county of the contracting unit.

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

8 (3) Bids have been advertised pursuant to section 4 of P.L.1971,  
9 c.198 (C.40A:11-4) on two occasions and (a) no bids have been  
10 received on both occasions in response to the advertisement, or (b)  
11 the governing body has rejected such bids on two occasions because  
12 it has determined that they are not reasonable as to price, on the  
13 basis of cost estimates prepared for or by the contracting agent prior  
14 to the advertising therefor, or have not been independently arrived  
15 at in open competition, or (c) on one occasion no bids were received  
16 pursuant to (a) and on one occasion all bids were rejected pursuant  
17 to (b), in whatever sequence; any such contract may then be  
18 negotiated and may be awarded upon adoption of a resolution by a  
19 two-thirds affirmative vote of the authorized membership of the  
20 governing body authorizing such contract; provided, however, that:

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

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

31 (iii) Any minor amendment or modification of any of the terms,  
32 conditions, restrictions and specifications, which were the subject of  
33 competitive bidding pursuant to section 4 of P.L.1971, c.198  
34 (C.40A:11-4), shall be stated in the resolution awarding such  
35 contract; provided further, however, that if on the second occasion  
36 the bids received are rejected as unreasonable as to price, the  
37 contracting agent shall notify each responsible bidder submitting  
38 bids on the second occasion of its intention to negotiate, and afford  
39 each bidder a reasonable opportunity to negotiate, but the governing  
40 body shall not award such contract unless the negotiated price is  
41 lower than the lowest rejected bid price submitted on the second  
42 occasion by a responsible bidder, is the lowest negotiated price  
43 offered by any responsible vendor, and is a reasonable price for  
44 such goods or services.

45 Whenever a contracting unit shall determine that a bid was not  
46 arrived at independently in open competition pursuant to subsection  
47 (3) of this section it shall thereupon notify the county prosecutor of  
48 the county in which the contracting unit is located and the Attorney

1 General of the facts upon which its determination is based, and  
2 when appropriate, it may institute appropriate proceedings in any  
3 State or federal court of competent jurisdiction for a violation of  
4 any State or federal antitrust law or laws relating to the unlawful  
5 restraint of trade.

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

39 (5) Notwithstanding any provision of law, rule or regulation to  
40 the contrary, the subject matter consists of the combined collection  
41 and marketing, or the cooperative combined collection and  
42 marketing of recycled material recovered through a recycling  
43 program, or any product intentionally produced or derived from  
44 solid waste received at a resource recovery facility or recovered  
45 through a resource recovery program including, but not limited to,  
46 refuse-derived fuel, compost materials, methane gas, and other  
47 similar products, provided that in lieu of engaging in such public  
48 advertising for bids and the bidding therefor, the contracting unit

1 shall, prior to commencing the procurement process, submit for  
2 approval to the Director of the Division of Local Government  
3 Services, a written detailed description of the process to be  
4 followed in securing said services. Within 30 days after receipt of  
5 the written description the director shall, if the director finds that  
6 the process provides for fair competition and integrity in the  
7 negotiation process, approve, in writing, the description submitted  
8 by the contracting unit. If the director finds that the process does  
9 not provide for fair competition and integrity in the negotiation  
10 process, the director shall advise the contracting unit of the  
11 deficiencies that must be remedied. If the director fails to respond  
12 in writing to the contracting unit within 30 days, the procurement  
13 process as described shall be deemed approved. As used in this  
14 section, "collection" means the physical removal of recyclable  
15 materials from curbside or any other location selected by the  
16 contracting unit.

17 (6) Notwithstanding any provision of law, rule or regulation to  
18 the contrary, the contract is for the provision of electricity by a  
19 contracting unit engaged in the generation, transmission, or  
20 distribution of electricity for wholesale or retail sale, or for the  
21 provision of administrative or dispatching services related to the  
22 transmission of such electricity, provided that in lieu of engaging in  
23 public advertising for bids and the bidding therefor, the contracting  
24 unit shall, prior to commencing the procurement process, submit for  
25 approval to the Director of the Division of Local Government  
26 Services, a written detailed description of the process to be  
27 followed in securing such services. Such process shall be designed  
28 in a way that is appropriate to and commensurate with industry  
29 practices, and the integrity of the government contracting process.  
30 Within 30 days after receipt of the written description, the director  
31 shall, if the director finds that the process provides for fair  
32 competition and integrity in the negotiation process, approve, in  
33 writing, the description submitted by the contracting unit. If the  
34 director finds that the process does not provide for fair competition  
35 and integrity in the negotiation process, the director shall advise the  
36 contracting unit of the deficiencies that must be remedied. If the  
37 director fails to respond in writing to the contracting unit within 30  
38 days, the procurement process, as submitted to the director pursuant  
39 to this section, shall be deemed approved.

40 (cf: P.L.2005, c.296, s.1)

41  
42 29. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
43 read as follows:

44 15. All contracts for the provision or performance of goods or  
45 services shall be awarded for a period not to exceed 24 consecutive  
46 months, except that contracts for professional services pursuant to  
47 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of  
48 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to

1 exceed 12 consecutive months. Contracts may be awarded for  
2 longer periods of time as follows:

3 (1) Supplying of:

4 (a) (Deleted by amendment, P.L.1996, c.113.)

5 (b) (Deleted by amendment, P.L.1996, c.113.)

6 (c) Thermal energy produced by a cogeneration facility, for use  
7 for heating or air conditioning or both, for any term not exceeding  
8 40 years, when the contract is approved by the Board of Public  
9 Utilities. For the purposes of this paragraph, "cogeneration" means  
10 the simultaneous production in one facility of electric power and  
11 other forms of useful energy such as heating or process steam;

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

13 (3) The collection and disposal of municipal solid waste, the  
14 collection and disposition of recyclable material, or the disposal of  
15 sewage sludge, for any term not exceeding in the aggregate, five  
16 years;

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

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

34 (6) Insurance, including the purchase of insurance coverages,  
35 insurance consulting or administrative services, claims  
36 administration services and including participation in a joint self-  
37 insurance fund, risk management program or related services  
38 provided by a contracting unit insurance group, or participation in  
39 an insurance fund established by a local unit pursuant to  
40 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
41 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more  
42 than three years;

43 (7) Leasing or servicing of (a) automobiles, motor vehicles,  
44 machinery and equipment of every nature and kind, for a period not  
45 to exceed five years, or (b) machinery and equipment used in the  
46 generation of electricity by a contracting unit engaged in the  
47 generation of electricity, for a period not to exceed 20 years;  
48 provided, however, such contracts shall be awarded only subject to

1 and in accordance with the rules and regulations promulgated by the  
2 Director of the Division of Local Government Services in the  
3 Department of Community Affairs;

4 (8) The supplying of any product or the rendering of any service  
5 by a company providing voice, data, transmission or switching  
6 services for a term not exceeding five years;

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

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

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

19 (12) (Deleted by amendment, P.L.2009, c.4).

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

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

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

28 (16) The provision of water supply services or the designing,  
29 financing, construction, operation, or maintenance, or any  
30 combination thereof, of a water supply facility, or any component  
31 part or parts thereof, including a water filtration system, for a period  
32 not to exceed 40 years, when the contract for these services is  
33 approved by the Division of Local Government Services in the  
34 Department of Community Affairs, the Board of Public Utilities,  
35 and the Department of Environmental Protection pursuant to  
36 P.L.1985, c.37 (C.58:26-1 et al.), except that no such approvals  
37 shall be required for those contracts otherwise exempted pursuant to  
38 subsection (30), (31), (34), (35) or (43) of this section. For the  
39 purposes of this subsection, "water supply services" means any  
40 service provided by a water supply facility; "water filtration  
41 system" means any equipment, plants, structures, machinery,  
42 apparatus, or land, or any combination thereof, acquired, used,  
43 constructed, rehabilitated, or operated for the collection,  
44 impoundment, storage, improvement, filtration, or other treatment  
45 of drinking water for the purposes of purifying and enhancing water  
46 quality and insuring its portability prior to the distribution of the  
47 drinking water to the general public for human consumption,  
48 including plants and works, and other personal property and

1 appurtenances necessary for their use or operation; and "water  
2 supply facility" means and refers to the real property and the plants,  
3 structures, interconnections between existing water supply facilities,  
4 machinery and equipment and other property, real, personal and  
5 mixed, acquired, constructed or operated, or to be acquired,  
6 constructed or operated, in whole or in part by or on behalf of a  
7 political subdivision of the State or any agency thereof, for the  
8 purpose of augmenting the natural water resources of the State and  
9 making available an increased supply of water for all uses, or of  
10 conserving existing water resources, and any and all appurtenances  
11 necessary, useful or convenient for the collecting, impounding,  
12 storing, improving, treating, filtering, conserving or transmitting of  
13 water and for the preservation and protection of these resources and  
14 facilities and providing for the conservation and development of  
15 future water supply resources;

16 (17) The provision of resource recovery services by a qualified  
17 vendor, the disposal of the solid waste delivered for disposal which  
18 cannot be processed by a resource recovery facility or the residual  
19 ash generated at a resource recovery facility, including hazardous  
20 waste and recovered metals and other materials for reuse, or the  
21 design, financing, construction, operation or maintenance of a  
22 resource recovery facility for a period not to exceed 40 years when  
23 the contract is approved by the Division of Local Government  
24 Services in the Department of Community Affairs, and the  
25 Department of Environmental Protection pursuant to P.L.1985, c.38  
26 (C.13:1E-136 et al.); and when the resource recovery facility is in  
27 conformance with a district solid waste management plan approved  
28 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of  
29 this subsection, "resource recovery facility" means a solid waste  
30 facility constructed and operated for the incineration of solid waste  
31 for energy production and the recovery of metals and other  
32 materials for reuse; or a mechanized composting facility, or any  
33 other facility constructed or operated for the collection, separation,  
34 recycling, and recovery of metals, glass, paper, and other materials  
35 for reuse or for energy production; and "residual ash" means the  
36 bottom ash, fly ash, or any combination thereof, resulting from the  
37 combustion of solid waste at a resource recovery facility;

38 (18) The sale of electricity or thermal energy, or both, produced  
39 by a resource recovery facility for a period not to exceed 40 years  
40 when the contract is approved by the Board of Public Utilities, and  
41 when the resource recovery facility is in conformance with a district  
42 solid waste management plan approved pursuant to P.L.1970, c.39  
43 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource  
44 recovery facility" means a solid waste facility constructed and  
45 operated for the incineration of solid waste for energy production  
46 and the recovery of metals and other materials for reuse; or a  
47 mechanized composting facility, or any other facility constructed or  
48 operated for the collection, separation, recycling, and recovery of

1 metals, glass, paper, and other materials for reuse or for energy  
2 production;

3 (19) The provision of wastewater treatment services or the  
4 designing, financing, construction, operation, or maintenance, or  
5 any combination thereof, of a wastewater treatment system, or any  
6 component part or parts thereof, for a period not to exceed 40 years,  
7 when the contract for these services is approved by the Division of  
8 Local Government Services in the Department of Community  
9 Affairs and the Department of Environmental Protection pursuant to  
10 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals  
11 shall be required for those contracts otherwise exempted pursuant to  
12 subsection (36) or (43) of this section. For the purposes of this  
13 subsection, "wastewater treatment services" means any services  
14 provided by a wastewater treatment system, and "wastewater  
15 treatment system" means equipment, plants, structures, machinery,  
16 apparatus, or land, or any combination thereof, acquired, used,  
17 constructed, or operated for the storage, collection, reduction,  
18 recycling, reclamation, disposal, separation, or other treatment of  
19 wastewater or sewage sludge, or for the final disposal of residues  
20 resulting from the treatment of wastewater, including, but not  
21 limited to, pumping and ventilating stations, facilities, plants and  
22 works, connections, outfall sewers, interceptors, trunk lines, and  
23 other personal property and appurtenances necessary for their  
24 operation;

25 (20) The supplying of goods or services for the purpose of  
26 lighting public streets, for a term not to exceed five years;

27 (21) The provision of emergency medical services for a term not  
28 to exceed five years;

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

32 (23) Fuel for the purpose of generating electricity for a term not  
33 to exceed eight years;

34 (24) The purchase of electricity or administrative or dispatching  
35 services related to the transmission of such electricity, from a  
36 supplier of electricity subject to the jurisdiction of a federal  
37 regulatory agency, from a qualifying small power producing facility  
38 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or  
39 from any supplier of electricity within any regional transmission  
40 organization or independent system operator or from such  
41 organization or operator or their successors, by a contracting unit  
42 engaged in the generation of electricity for retail sale, as of May 24,  
43 1991, for a term not to exceed 40 years, or by a contracting unit  
44 engaged solely in the distribution of electricity for retail sale for a  
45 term not to exceed ten years, except that a contract with a  
46 contracting unit, engaged solely in the distribution of electricity for  
47 retail sale, in excess of ten years, shall require the written approval  
48 of the Director of the Division of Local Government Services. If

1 the director fails to respond in writing to the contracting unit within  
2 10 business days, the contract shall be deemed approved;

3 (25) Basic life support services, for a period not to exceed five  
4 years. For the purposes of this subsection, "basic life support"  
5 means a basic level of prehospital care, which includes but need not  
6 be limited to patient stabilization, airway clearance,  
7 cardiopulmonary resuscitation, hemorrhage control, initial wound  
8 care and fracture stabilization;

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

10 (27) The provision of transportation services to elderly, disabled  
11 or indigent persons for any term of not more than three years. For  
12 the purposes of this subsection, "elderly persons" means persons  
13 who are 60 years of age or older. "Disabled persons" means  
14 persons of any age who, by reason of illness, injury, age, congenital  
15 malfunction, or other permanent or temporary incapacity or  
16 disability, are unable, without special facilities or special planning  
17 or design to utilize mass transportation facilities and services as  
18 effectively as persons who are not so affected. "Indigent persons"  
19 means persons of any age whose income does not exceed 100  
20 percent of the poverty level, adjusted for family size, established  
21 and adjusted under section 673(2) of subtitle B, the "Community  
22 Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

23 (28) The supplying of liquid oxygen or other chemicals, for a  
24 term not to exceed five years, when the contract includes the  
25 installation of tanks or other storage facilities by the supplier, on or  
26 near the premises of the contracting unit;

27 (29) The performance of patient care services by contracted  
28 medical staff at county hospitals, correction facilities and long term  
29 care facilities, for any term of not more than three years;

30 (30) The acquisition of an equitable interest in a water supply  
31 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a  
32 contract entered into pursuant to the "County and Municipal Water  
33 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into  
34 no later than January 7, 1995, for any term of not more than forty  
35 years;

36 (31) The provision of water supply services or the financing,  
37 construction, operation or maintenance or any combination thereof,  
38 of a water supply facility or any component part or parts thereof, by  
39 a partnership or copartnership established pursuant to a contract  
40 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
41 period not to exceed 40 years;

42 (32) Laundry service and the rental, supply and cleaning of  
43 uniforms for any term of not more than three years;

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



- 1       (34) A contract between a public entity and a private firm  
2 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of  
3 water supply services may be entered into for any term which, when  
4 all optional extension periods are added, may not exceed 40 years;
- 5       (35) A contract for the purchase of a supply of water from a  
6 public utility company subject to the jurisdiction of the Board of  
7 Public Utilities in accordance with tariffs and schedules of charges  
8 made, charged or exacted or contracts filed with the Board of Public  
9 Utilities, for any term of not more than 40 years;
- 10       (36) A contract between a public entity and a private firm or  
11 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for  
12 the provision of wastewater treatment services may be entered into  
13 for any term of not more than 40 years, including all optional  
14 extension periods;
- 15       (37) The operation and management of a facility under a license  
16 issued or permit approved by the Department of Environmental  
17 Protection, including a wastewater treatment system or a water  
18 supply or distribution facility, as the case may be, for any term of  
19 not more than ten years. For the purposes of this subsection,  
20 "wastewater treatment system" refers to facilities operated or  
21 maintained for the storage, collection, reduction, disposal, or other  
22 treatment of wastewater or sewage sludge, remediation of  
23 groundwater contamination, stormwater runoff, or the final disposal  
24 of residues resulting from the treatment of wastewater; and "water  
25 supply or distribution facility" refers to facilities operated or  
26 maintained for augmenting the natural water resources of the State,  
27 increasing the supply of water, conserving existing water resources,  
28 or distributing water to users;
- 29       (38) Municipal solid waste collection from facilities owned by a  
30 contracting unit, for any term of not more than three years;
- 31       (39) Fuel for heating purposes, for any term of not more than  
32 three years;
- 33       (40) Fuel or oil for use in motor vehicles for any term of not  
34 more than three years;
- 35       (41) Plowing and removal of snow and ice for any term of not  
36 more than three years;
- 37       (42) Purchases made under a contract awarded by the Director of  
38 the Division of Purchase and Property in the Department of the  
39 Treasury for use by counties, municipalities or other contracting  
40 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a  
41 term not to exceed the term of that contract;
- 42       (43) A contract between the governing body of a city of the first  
43 class and a duly incorporated nonprofit association for the provision  
44 of water supply services as defined in subsection (16) of this  
45 section, or wastewater treatment services as defined in subsection  
46 (19) of this section, may be entered into for a period not to exceed  
47 40 years;

1 (44) The purchase of electricity generated through class I  
2 renewable energy or from a power production facility that is fueled  
3 by methane gas extracted from a landfill in the county of the  
4 contracting unit for any term not exceeding 25 years;

5 (45) The provision or performance of goods or services for the  
6 purpose of producing class I renewable energy or class II renewable  
7 energy, as those terms are defined in section 3 of P.L.1999, c.23  
8 (C.48:3-51), at, or adjacent to, buildings owned by, or operations  
9 conducted by, the contracting unit, the entire price of which is to be  
10 established as a percentage of the resultant savings in energy costs,  
11 for a term not to exceed 15 years; provided, however, that such  
12 contracts shall be entered into only subject to and in accordance  
13 with guidelines promulgated by the Board of Public Utilities  
14 establishing a methodology for computing energy cost savings and  
15 energy generation costs[.]; and

16 (46) A power supply contract as that term is defined in section  
17 3 of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill) between a contracting unit and the municipal shared services  
19 energy company, established pursuant to the provisions of P.L. ,  
20 c. (C. ) (pending before the Legislature as this bill), for the  
21 lease, operation, or management of electric generation or the  
22 purchase of electricity, or the purchase of fuel for generating units  
23 for a term not to exceed 40 years.

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

39 All multiyear leases and contracts entered into pursuant to this  
40 section, including any two-year or one-year extensions, except  
41 contracts involving the supplying of electricity for the purpose of  
42 lighting public streets and contracts for thermal energy authorized  
43 pursuant to subsection (1) above, construction contracts authorized  
44 pursuant to subsection (9) above, contracts for the provision or  
45 performance of goods or services or the supplying of equipment to  
46 promote energy conservation through the production of class I  
47 renewable energy or class II renewable energy authorized pursuant  
48 to subsection (45) above, contracts for water supply services or for

1 a water supply facility, or any component part or parts thereof  
2 authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or  
3 (43) above, contracts for resource recovery services or a resource  
4 recovery facility authorized pursuant to subsection (17) above,  
5 contracts for the sale of energy produced by a resource recovery  
6 facility authorized pursuant to subsection (18) above, contracts for  
7 wastewater treatment services or for a wastewater treatment system  
8 or any component part or parts thereof authorized pursuant to  
9 subsection (19), (36), (37) or (43) above, and contracts for the  
10 purchase of electricity or administrative or dispatching services  
11 related to the transmission of such electricity authorized pursuant to  
12 subsection (24) above **[and]**, contracts for the purchase of  
13 electricity generated from a power production facility that is fueled  
14 by methane gas authorized pursuant to subsection (44) above, and  
15 power supply contracts authorized pursuant to subsection (46)  
16 respectively, shall contain a clause making them subject to the  
17 availability and appropriation annually of sufficient funds as may  
18 be required to meet the extended obligation, or contain an annual  
19 cancellation clause.

20 The Division of Local Government Services in the Department  
21 of Community Affairs shall adopt and promulgate rules and  
22 regulations concerning the methods of accounting for all contracts  
23 that do not coincide with the fiscal year.

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

32 (cf: P.L.2009, c.4, s.8)

33

34 30. (New section) P.L. , c. (C. ) (pending before the  
35 Legislature as this bill) shall be construed liberally to effectuate the  
36 legislative intent and as complete and independent authority for the  
37 performance of each and every act and thing that is authorized by  
38 P.L. , c. (C. ) (pending before the Legislature as this bill).  
39 The powers granted under P.L. , c. (C. ) (pending before the  
40 Legislature as this bill) do not limit the powers of municipalities to  
41 enter into intergovernmental cooperation agreements or contracts,  
42 or to establish separate legal entities under municipal charters or  
43 any other applicable law or otherwise to carry out their powers  
44 under applicable statutory provisions, nor shall the powers granted  
45 under P.L. , c. (C. ) (pending before the Legislature as this  
46 bill) limit the powers reserved to municipalities by State law. By  
47 enacting P.L. , c. (C. ) (pending before the Legislature as  
48 this bill), the Legislature contemplates that activities by

1 municipalities or municipal agencies pursuant to P.L. ,  
2 c. (C. ) (pending before the Legislature as this bill) are not  
3 subject to the antitrust laws of the United States.  
4

5 31. This act shall take effect immediately.  
6  
7

#### 8 STATEMENT 9

10 This bill would authorize three or more municipalities that  
11 operate retail electric distribution systems to establish the municipal  
12 shared services energy company (the “company”). The bill  
13 authorizes the company to enter into contracts with municipal  
14 electric utilities, other public agencies, and private entities for the  
15 purchase and sale at wholesale of electricity inside and outside of  
16 New Jersey, consistent with federal law. Under current law, the  
17 joint operation of such facilities under such a joint meeting  
18 arrangement is not permitted under the “Uniform Shared Services  
19 and Consolidation Act,” P.L.2007, c.63 (C.40A:65-1 through  
20 C.40A:65-35).

21 The purpose of the company is to develop safe, reliable electric  
22 energy resources for the generation and transmission of electric  
23 power and energy, including the utilization of renewable capacity  
24 and energy, at wholesale for the benefit of the customers of  
25 municipally owned or operated electric utility systems in New  
26 Jersey.

27 The company would have the power to plan, finance, develop,  
28 acquire, construct, reconstruct, improve, own, operate, and  
29 participate in, as joint or sole owner, electric supply projects, and  
30 would be able to purchase, sell, lease, and make other  
31 arrangements, contractual and otherwise, of every kind and  
32 description, with respect to generation, transmission, pooling, and  
33 provision of electric power and energy at wholesale. The company  
34 would be able to develop generation projects using fuel sources  
35 generated by other public agencies such as garbage, trash and other  
36 waste materials, and using renewable resources such as solar  
37 energy, wind power, geothermal energy, as well as traditional fossil  
38 fuel resources.

39 The bill also provides for the company to have bonding powers,  
40 and other general powers related to that of an independent legal  
41 entity. The company would be considered a “contracting unit” with  
42 respect to the "Local Public Contracts Law," P.L.1971, c.198  
43 (C.40A:11-1 et seq.). In addition, the length of contract and  
44 competitive bidding aspects of that law would apply in order to  
45 allow for longer terms and special procurement rules as determined  
46 by the Director of the Division of Local Government Services in the  
47 Department of Community Affairs.