

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2630

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED DECEMBER 1, 2011

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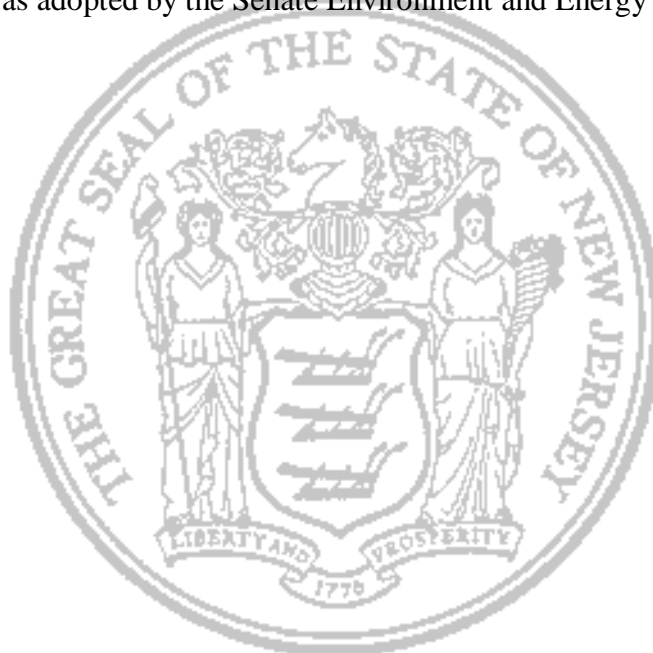
Senators Van Drew, T.Kean and Pennacchio

SYNOPSIS

Authorizes certain municipalities and rural electric cooperatives to establish a municipal shared services energy authority.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



1 **AN ACT** authorizing certain municipalities to create a municipal
2 shared services energy authority to provide for shared facilities,
3 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 Authority Law."

11

12 2. (New section) The Legislature finds and declares that for
13 many years, municipalities in the State have had the power to
14 construct and maintain facilities for the generation of electricity;
15 that nine municipalities and one rural electric cooperative presently
16 own and operate municipal electric utility systems for the benefit of
17 their residents and businesses; and that the generation and
18 distribution of electricity has evolved from a local and statewide
19 endeavor into a national marketplace and such evolution has
20 resulted in a system where the size and sophistication of the market
21 participants influence the ability to efficiently compete in the
22 marketplace.

23 The Legislature further finds and declares that the ability to
24 reserve sufficient electric capacity at reasonable prices to ensure
25 safe, reliable and efficient electrical power to local businesses and
26 residents is paramount in the present marketplace, and such ability
27 is contingent on the power to contract for the generation or delivery
28 of a sufficient quantity of wholesale power and to act as a
29 contracting partner in long term, short term, and spot market power
30 wholesale supply contracts; that given this evolution of the electric
31 supply marketplace, the municipal electric utilities operating in
32 New Jersey must be authorized to act jointly to achieve greater
33 efficiencies in the procurement and generation of electric power.

34 The Legislature further finds and declares that the operation of
35 electric utility systems by municipalities and the improvement of
36 these systems through joint action in the wholesale procurement of
37 electricity and transmission services, and in the generation,
38 transmission and distribution of electric power and energy, are in
39 the public interest; that the establishment of a municipal shared
40 services energy authority by municipalities that own or operate
41 electric utility systems will ensure the continued viability and
42 stability of these systems, by enabling the municipalities to act
43 jointly to develop coordinated bulk power and fuel supply
44 programs, and to post collateral and act as a market participant in

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 such programs, thereby providing the means to pursue efficiencies
2 and savings for retail customers within their territorial limits.

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

11
12 3. (New section) As used in P.L. , c. (C.) (pending
13 before the Legislature as this bill):

14 "Bonds" means any bonds, interim certificates, notes,
15 debentures, or other obligations issued by the municipal shared
16 services energy authority pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill).

18 "Collateral" means cash, letters of credit, or other security of a
19 party to a wholesale power supply contract acceptable to the
20 counterparty, which shall be valued in accordance with the terms of
21 the applicable wholesale power supply contract and which shall be
22 otherwise consistent with electric industry standards in the
23 marketplace, and which shall secure the obligations of the
24 municipal shared services energy authority and its counterparty
25 under a wholesale power supply contract.

26 "Cost" means, in addition to the usual connotations thereof, the
27 cost of acquisition or construction of all or any part of an electric
28 supply project and of all or any property, rights, easements,
29 privileges, agreements, and franchises deemed by the authority to
30 be necessary or useful and convenient therefor or in connection
31 therewith, including interest or discount on bonds, cost of issuance
32 of bonds, engineering and inspection costs and legal expenses, cost
33 of financial, professional and other estimates and advice,
34 organization, administrative, operating, and other expenses of the
35 municipal shared services energy authority prior to and during such
36 acquisition or construction, and all such other expenses as may be
37 necessary or incident to the financing, acquisition, construction, and
38 completion of an electric supply project or part thereof, and the
39 placing of such a project in operation, and also such provision or
40 reserves for working capital, operating, maintenance or replacement
41 expenses or for payment or security of principal of, or interest on,
42 bonds during or after such acquisition or construction as the
43 authority may determine, and also reimbursements to the authority
44 or any county, municipality, or other person of any moneys
45 theretofore expended for the purposes of the authority or to any
46 county or municipality of any moneys theretofore expended for or
47 in connection with electric utility systems and facilities.

1 "Electric supply project" or "project" means any plant, works,
2 system, facility, and real and personal property of any nature
3 whatsoever, together with all parts thereof and appurtenances
4 thereto, used or useful in the generation, production, transmission,
5 distribution, purchase, sale, exchange, or interchange of electric
6 power and energy, in whole or in part, for the use of the members
7 including the utilization of renewable capacity and energy, or any
8 interest therein or right to capacity thereof.

9 "Inter-municipal agreement" means an agreement as provided in
10 section 5 of P.L. , c. (C.) (pending before the Legislature as
11 this bill), adopted by the member municipalities creating the
12 municipal shared services energy authority and defining the rights
13 and responsibilities of the authority and its members, as may be
14 amended as provided herein to, among other things, add one or
15 more rural electric cooperatives as members.

16 "Local Finance Board" means the Local Finance Board in the
17 Division of Local Government Services in the Department of
18 Community Affairs.

19 "Member" means a municipality or a rural electric cooperative
20 that provides electric service to customers within the State and that
21 enters into an initial or amended inter-municipal agreement of a
22 municipal shared services energy authority.

23 "Member municipality" means a municipality which joins with
24 other members to create or join the municipal shared services
25 energy authority pursuant to section 4 of P.L. , c. (C.)
26 (pending before the Legislature as this bill).

27 "Municipal shared services energy authority" or "authority"
28 means an authority created under P.L. , c. (C.) (pending
29 before the Legislature as this bill) by inter-municipal agreement
30 between three or more municipalities that operate retail electric
31 distribution systems.

32 "Person" means a natural person, a public agency, cooperative or
33 private corporation, association, firm, statutory trust, partnership, or
34 business trust of any nature whatsoever, organized and existing
35 under the laws of any state.

36 "Power supply contract" means a contractual arrangement
37 between the authority and another person relating to the purchase or
38 sale of electric power and component goods or services related
39 thereto.

40 "Public agency" means any municipality or other municipal
41 corporation, political subdivision, government unit or public
42 corporation created under the laws of this State or of another state
43 or of the United States, and any state, and the United States, and
44 any person, board or other body declared by the laws of any state or
45 the United States to be a department, agency or instrumentality
46 thereof.

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

6
7 4. (New section) a. Any combination of three or more
8 municipalities that operate retail electric distribution systems
9 pursuant to R.S.40:62-12 et seq. may, by adoption of parallel
10 ordinances approving an inter-municipal agreement, establish a
11 separate legal entity to be known as the "municipal shared services
12 energy authority" to be used by its members to effect joint
13 development of electric energy resources or production,
14 distribution, and transmission of electric power and energy,
15 including the utilization of renewable capacity and energy, in whole
16 or in part, for the use of its members. Notwithstanding any other
17 law to the contrary, following approval by the Local Finance Board
18 within the Division of Local Government Services in the
19 Department of Community Affairs pursuant to subsection b. of this
20 section, the final adoption by the municipalities of the parallel
21 ordinances, and due execution by the municipalities, the inter-
22 municipal agreement, shall have a term as provided by the inter-
23 municipal agreement. The member municipalities that enter into the
24 inter-municipal agreement may thereafter amend the inter-
25 municipal agreement in the manner set forth in section 5 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).

27 b. Upon the introduction of the parallel ordinances by each
28 municipality seeking to create the authority, but before final
29 adoption of the ordinances, copies of the ordinances, together with
30 the proposed inter-municipal agreement shall be submitted to the
31 Local Finance Board for approval. Upon submission of a complete
32 application for approval of the proposed inter-municipal agreement,
33 the Local Finance Board shall not unreasonably withhold approval.
34 If the Local Finance Board does not disapprove the application for
35 approval of the proposed inter-municipal agreement within 60 days
36 after receipt of the submission of a complete application, then the
37 ordinances and proposed inter-municipal agreement shall be
38 deemed approved.

39 c. Once an authority has been legally established pursuant to
40 the provisions of P.L. , c. (C.) (pending before the Legislature
41 as this bill), additional municipalities may join the authority as
42 provided in paragraphs (1) and (2) of this subsection.

43 (1) A municipality requesting to become a member of the
44 authority shall negotiate an amended inter-municipal agreement on
45 terms and conditions acceptable to the members. Once an amended
46 inter-municipal agreement has been agreed to, it shall be submitted
47 for approval to the board of commissioners. Adoption of an

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

3 (2) The municipality requesting to become a member of the
4 authority shall introduce an ordinance approving the amended inter-
5 municipal agreement as approved by the board of commissioners of
6 the authority. Upon the introduction of the ordinance, but before
7 final adoption of such ordinance, copies of the ordinance, together
8 with the proposed amended inter-municipal agreement, shall be
9 submitted to the Local Finance Board for approval. Upon
10 submission of a complete application for approval of the proposed
11 amended inter-municipal agreement, the Local Finance Board shall
12 not unreasonably withhold approval. If the Local Finance Board
13 does not disapprove the application for approval of the proposed
14 amended inter-municipal agreement within 60 days after receipt of
15 a complete application, then the ordinance and proposed amended
16 inter-municipal agreement shall be deemed approved.

17 d. Once the authority has been established, it may add one or
18 more rural electric cooperatives as a member as provided in
19 paragraphs (1) and (2) of this subsection.

20 (1) A rural electric cooperative requesting to become a member
21 of the authority and the board of commissioners of the authority
22 shall negotiate an amended inter-municipal agreement on terms and
23 conditions acceptable to the parties. Once an amended inter-
24 municipal agreement has been agreed to, it shall be submitted for
25 approval by the board of commissioners. Adoption of an amended
26 inter-municipal agreement shall require approval by a two-thirds
27 majority vote of the full membership of the board.

28 (2) The authority shall submit the proposed amended inter-
29 municipal agreement for approval to the Local Finance Board.
30 Upon submission of a complete application for approval of the
31 proposed amended inter-municipal agreement, the Local Finance
32 Board shall not unreasonably withhold approval. If the Local
33 Finance Board does not disapprove the application for approval of
34 the proposed amended inter-municipal agreement within 60 days
35 after receipt of a complete application, then the proposed amended
36 inter-municipal agreement shall be deemed approved.

37

38 5. (New section) An inter-municipal agreement establishing a
39 municipal shared services energy authority pursuant to P.L. ,
40 c. (C.) (pending before the Legislature as this bill) shall
41 provide:

42 a. The name and purpose of the authority and the functions or
43 services to be provided by the authority;

44 b. The establishment and organization of a governing board for
45 the authority which shall be a board of commissioners in which the
46 powers of the authority are vested. The inter-municipal agreement
47 may provide for the creation by the board of commissioners of an

- 1 executive committee to which the power and duties may be
2 delegated as the board shall specify;
- 3 c. The number of commissioners, the manner of their
4 appointment, the terms of office and compensation, if any, and the
5 procedure for filling vacancies on the board. Each member
6 municipality and cooperative shall have the power to appoint one
7 member to the board of commissioners and shall be entitled to
8 remove that member at will;
- 9 d. The manner of selection of the executive director and staff
10 of the authority and their duties;
- 11 e. The voting requirements for action by the board; but, unless
12 specifically provided otherwise, a majority of commissioners shall
13 constitute a quorum and a majority of the quorum shall be necessary
14 for any action taken by the board;
- 15 f. The duties of the board, which shall include the obligation to
16 comply with the "Local Authorities Fiscal Control Law," P.L.1983,
17 c.313 (C.40A:5A-1 et seq.) except as otherwise provided in P.L. ,
18 c. (C.) (pending before the Legislature as this bill), and the laws
19 of this State and, in addition, with every provision in the inter-
20 municipal agreement creating the authority on its part to be kept or
21 performed;
- 22 g. The manner in which additional municipalities and rural
23 electric cooperatives may become parties to the inter-municipal
24 agreement by amendment;
- 25 h. The manner in which members may withdraw from
26 participation in the inter-municipal agreement, which shall include
27 a defeasance of such member's pro-rata share of any bonds issued
28 by the authority;
- 29 i. Provisions for the disposition, division or distribution of any
30 property or assets of the authority on dissolution;
- 31 j. The term of the inter-municipal agreement, which may be a
32 definite period or until rescinded or terminated, and the method, if
33 any, by which the inter-municipal agreement may be rescinded or
34 terminated, but the inter-municipal agreement may not be rescinded
35 or terminated so long as the authority has bonds outstanding, unless
36 provision for full payment of such bonds, by escrow or otherwise,
37 has been made pursuant to the terms of the bonds or the resolution,
38 trust indenture or security instrument securing the bonds; and
- 39 k. The terms for payment to the authority of funds for
40 commodities to be procured and services to be rendered by the
41 authority, including authority to enter into purchase agreements
42 between the members and the authority for the purchase of electric
43 power and energy whereby the member is obligated to make
44 payments or provide collateral in amounts which shall be sufficient
45 to enable the authority to meet its expenses, interest and principal
46 payments, whether at maturity or upon sinking fund redemption, for
47 its bonds, reasonable reserves for debt service, operation and

1 maintenance and renewals and replacements and the requirements
2 of any rate covenant with respect to debt service coverage contained
3 in any resolution, trust indenture or other security instrument. Such
4 purchase agreements between the members and the authority may
5 contain such other terms and conditions as the authority and the
6 members may determine, including provisions whereby a member is
7 obligated to pay for power irrespective of whether energy is
8 produced or delivered to the member or whether any electric supply
9 project contemplated by any such agreement is completed, operable
10 or operating, and notwithstanding suspension, interruption,
11 interference, reduction, or curtailment of the output of such electric
12 supply project. The inter-municipal agreement may further provide
13 that, if one or more of the members defaults in the payment of its
14 obligations under any such purchase agreement, the remaining
15 members, which also have such agreements, shall be required to
16 accept and pay for, and shall be entitled proportionately to use or
17 otherwise dispose of, the power and energy to be purchased by the
18 defaulting purchaser. For purposes of this section, "purchase of
19 electric power and energy" includes the purchase of any right to
20 capacity, or interest in, any electric supply project.

21
22 6. (New section) Nothing in P.L. , c. (C.) (pending
23 before the Legislature as this bill) shall be construed to restrict the
24 right of a person to form a rural electric cooperative or a
25 municipality to engage in functions authorized pursuant to
26 R.S.40:62-12 et seq.

27
28 7. (New section) No commissioner, officer, or employee of the
29 municipal shared services energy authority shall have or acquire
30 any interest, direct or indirect, in any contract or proposed contract
31 or property related to the provision of wholesale electric power,
32 transmission, generation, materials, services or supplies to be
33 furnished to or used by the authority or any of its members.

34
35 8. (New section) A municipal shared services energy authority
36 shall be a public body politic and corporate, established as an
37 instrumentality exercising public and essential governmental
38 functions to provide for the public health and welfare. An authority
39 shall have the duties, privileges, immunities, rights, liabilities, and
40 disabilities of a public body politic and corporate but shall not have
41 taxing power. An authority shall be a "contracting unit" for
42 purposes of the "Local Public Contracts Law," P.L.1971, c.198
43 (C.40A:11-1 et seq.), shall have perpetual succession, and, to meet
44 the electric power needs of its members, shall have the following
45 powers:

46 a. To adopt and have a common seal and to alter the same at
47 pleasure;

- 1 b. To sue and be sued;
- 2 c. To acquire, own, rent, hold, lease, as lessor or lessee, use
3 and sell or otherwise dispose of, mortgage, pledge, or grant a
4 security in, any real or personal property, commodity or service or
5 interest therein;
- 6 d. To hold or place collateral with a counterparty to a
7 wholesale power supply contract and to account for, value, and use
8 such collateral as provided in the power supply contract
9 notwithstanding any other law or regulation to the contrary;
- 10 e. To plan, develop, acquire, construct, reconstruct, operate,
11 manage, dispose of, participate in, maintain, repair, extend, or
12 improve one or more electric supply projects within or outside the
13 State and act as agent, or designate one or more other persons
14 participating in an electric supply project to act as its agent, in
15 connection with the planning, acquisition, construction, operation,
16 maintenance, repair, extension, or improvement of such electric
17 supply project for generation, production, transmission, and
18 provision of electrical power and energy at wholesale, in whole or
19 in part, to meet the electric power needs of the members, provided
20 that the authority shall not sell power or energy at the retail level;
- 21 f. To enter into franchises, exchange, interchange, pooling,
22 wheeling, or transmission agreements with any person, firm, entity,
23 or public agency to meet the electric power needs of its members;
- 24 g. To negotiate and enter into power supply contracts pursuant
25 to section 19 of P.L. , c. (C.) (pending before the Legislature
26 as this bill) and to take such actions as are necessary to remain in
27 compliance with the terms of such contracts;
- 28 h. To make and execute such additional contracts and other
29 instruments necessary or convenient to the exercise of its powers;
- 30 i. To employ agents and employees;
- 31 j. To contract with any person, entity or public agency within
32 or outside the State of New Jersey for the construction of any
33 electric supply project or for the purchase, sale or transmission of
34 electric power and energy generated by any electric supply project,
35 in whole or in part, for the use of its members, or for any interest or
36 share therein, or any right to capacity thereof, on such terms and for
37 such period of time as its board shall determine;
- 38 k. To purchase and sell, exchange or transmit electric power
39 and energy at wholesale within and outside the State of New Jersey,
40 consistent with federal law, in such amounts as it shall determine to
41 be necessary or appropriate to make the most effective use of its
42 powers and to meet its responsibilities and to enter into agreements
43 with any person, entity, or public agency with respect to the
44 purchase, sale, exchange, or transmission on such terms and for
45 such period of time as its board shall determine;

1 l. To provide for and secure the payment of any bonds and the
2 rights of the holders thereof, and to purchase, hold, and dispose of
3 any bonds;

4 m. To accept gifts or grants of real or personal property, money,
5 material, labor, or supplies solely for the purposes and exclusive use
6 and benefit of the municipal shared services energy authority, and
7 to make and perform such agreements and contracts as may be
8 necessary or convenient in connection with the procuring,
9 acceptance, or disposition of the gifts or grants;

10 n. To make and enforce by-laws or rules and regulations for the
11 management and regulation of its business and affairs and for the
12 use, maintenance, and operation of its properties and to amend the
13 by-laws;

14 o. To do and perform any acts and things authorized by P.L. ,
15 c. (C.) (pending before the Legislature as this bill), through or
16 by means of its own officers, agents, and employees, or by contract
17 with any person;

18 p. To enter into any and all contracts, execute any and all
19 instruments, and do and perform any and all things or acts
20 necessary, convenient, or desirable for the purposes of the
21 municipal shared services energy authority, or to carry out any
22 power expressly authorized under P.L. , c. (C.) (pending
23 before the Legislature as this bill);

24 q. To exercise such powers as are granted to municipalities
25 under R.S.40:62-12 et seq.;

26 r. To join organizations, including private or trade
27 organizations, which the board of commissioners has deemed to be
28 beneficial to the accomplishment of the authority's purposes;

29 s. To enter into a power supply contract, lease, operation
30 contract, or contract for management of electric generation, or for
31 the purchase of fuel for electric generation, to meet the electric
32 power needs of its members, for a term not to exceed 40 years; and

33 t. To invest any funds held in reserve or sinking funds, or any
34 funds not required for immediate disbursement, including the
35 proceeds from the sale of any bonds, in such obligations, securities,
36 and other investments as the authority deems to be proper and as the
37 constituent members of the authority are authorized pursuant to law.
38

39 9. (New section) a. In order to meet the electric power needs
40 of its members, the municipal shared services energy authority shall
41 have the power to authorize or provide for the issuance of bonds
42 pursuant to P.L. , c. (C.) (pending before the Legislature as
43 this bill) for the purpose of raising funds to pay the cost of any part
44 of an electric supply project, to fulfill the terms of a power supply
45 contract, including any provision for collateral or related
46 performance security measures, and to fund or refund any bonds.

1 b. The municipal shared services energy authority shall adopt a
2 bond resolution which shall:

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

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

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

11

12 10. (New section) Upon adoption of a bond resolution, the
13 municipal shared services energy authority shall have power to
14 incur indebtedness, borrow money and issue its bonds for the
15 purpose of financing a project to meet the electric power needs of
16 its members or of funding or refunding the bonds issued pursuant to
17 P.L. , c. (C.) (pending before the Legislature as this bill).
18 Such bonds shall be authorized by the bond resolution and may be
19 issued in one or more series and shall bear such date or dates,
20 mature at such time or times not exceeding 40 years from the date
21 thereof, bear interest at a rate or rates within such maximum rate as
22 permitted by law, be in such denomination or denominations, be in
23 such form, either coupon or registered, carry such conversion or
24 registration privileges, have such rank or priority, be executed in
25 such manner, be payable from such sources in such medium of
26 payment at such place or places within or without the State, and be
27 subject to such terms of redemption, with or without a premium, as
28 the bond resolution may provide.

29

30 11. (New section) Bonds of the municipal shared services
31 energy authority may be sold by the municipal shared services
32 energy authority at public or private sale, and at such price or prices
33 as the municipal shared services energy authority shall determine
34 subject to the provisions of P.L.1983, c. 313 (C.40A:5A-1 et seq.).

35

36 12. (New section) The municipal shared services energy
37 authority may cause a copy of any bond resolution adopted by it to
38 be filed for public inspection in its office and in the office of the
39 clerk of the governing body of each member municipality, and may
40 thereupon cause to be published, in a newspaper published or
41 circulating in each member's community, a notice stating the fact
42 and date of this adoption and the places where the bond resolution
43 has been filed for public inspection and also the date of the first
44 publication of the notice and also that any action or proceeding of
45 any kind or nature in any court questioning the validity or proper
46 authorization of bonds provided for by the bond resolution, or the
47 validity of any covenants, agreements or contract provided for by

1 the bond resolution shall be commenced within 20 days after the
2 first publication of the notice. If the notice shall at any time be
3 published and if no action or proceeding questioning the validity of
4 the establishment of the municipal shared services energy authority
5 or the validity or proper authorization of bonds provided for by the
6 bond resolution referred to in the notice, or the validity of any
7 covenants, agreements or contract provided for by the bond
8 resolution shall be commenced or instituted within 20 days after the
9 first publication of the notice, then all residents and taxpayers and
10 owners of property in each of the member municipalities, and all
11 other persons whatsoever, shall be forever barred and foreclosed
12 from instituting or commencing any action or proceeding in any
13 court, or from pleading any defense to any action or proceedings,
14 questioning the validity of the establishment of the municipal
15 shared services energy authority, or the validity or proper
16 authorization of the bonds, or the validity of the covenants,
17 agreements or contracts, and the municipal shared services energy
18 authority shall be conclusively deemed to have been validly
19 established and to be authorized to transact business and exercise
20 powers as an authority pursuant to P.L. , c. (C.) (pending
21 before the Legislature as this bill), and the bonds, covenants,
22 agreements and contracts shall be conclusively deemed to be valid
23 and binding obligations in accordance with their terms and tenor.

24
25 13. (New section) Any provision of any law to the contrary
26 notwithstanding, any bond or other obligation issued pursuant to
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 shall be fully negotiable within the meaning and for all purposes of
29 the negotiable instruments law of this State, and each holder or
30 owner of such a bond or other obligation, or of any coupon
31 appurtenant thereto, by accepting such bond or coupon shall be
32 conclusively deemed to have agreed that such bond, obligation or
33 coupon is and shall be fully negotiable within the meaning and for
34 all purposes of the State's negotiable instruments law under Title
35 12A of the New Jersey Statutes.

36
37 14. (New section) Neither the members of the municipal shared
38 services energy authority nor any person executing bonds issued
39 pursuant to P.L. , c. (C.) (pending before the Legislature as
40 this bill) shall be liable personally on the bonds by reason of the
41 issuance thereof. Bonds or other obligations issued pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 shall not be in any way a debt or liability of the State, and bonds or
44 other obligations issued by the municipal shared services energy
45 authority pursuant to P.L. , c. (C.) (pending before the
46 Legislature as this bill) shall not be in any way a debt or liability of
47 the State or of any local unit or of any county or municipality,

1 except for member municipalities guaranteeing such bonds in
2 accordance with the provisions of section 18 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill), and shall
4 not create or constitute any indebtedness, liability or obligation of
5 the State or of any such local unit, county or municipality, either
6 legal, moral, or otherwise, and nothing in P.L. , c. (C.)
7 (pending before the Legislature as this bill) contained shall be
8 construed to authorize the municipal shared services energy
9 authority to incur any indebtedness on behalf of or in any way to
10 obligate the State or any county or municipality.

11

12 15. (New section) Any bond resolution of the municipal shared
13 services energy authority providing for or authorizing the issuance
14 of any bonds may contain provisions, and the municipal shared
15 services energy authority shall, in order to secure the payment of
16 the bonds in addition to its other powers, have the power by the
17 provisions in the bond resolution to covenant and agree with the
18 several holders of the bonds, as to:

19 a. The custody, security, use, expenditure, or application of the
20 proceeds of the bonds;

21 b. The construction and completion, or replacement, of all or
22 any part of an electric supply project of the municipal shared
23 services energy authority or its system;

24 c. The use, regulation, operation, maintenance, insurance, or
25 disposition of all or any part of an electric supply project of the
26 municipal shared services energy authority, or its system, or
27 restrictions on the exercise of the powers of the municipal shared
28 services energy authority to dispose of, limit, or regulate the use of
29 all or any part of the electric supply project or system;

30 d. Payment of the principal of, or interest on, the bonds, or any
31 other obligations, and the sources and methods thereof, the rank or
32 priority of the bonds or obligations as to any lien or security, or the
33 acceleration of the maturity of the bonds or obligations;

34 e. The use and disposition of any monies of the municipal
35 shared energy services authority, including any of the authority's
36 revenues, derived or to be derived from the operation of all or any
37 part of one or more electric supply projects of the municipal shared
38 services energy authority or systems thereof, including any parts
39 thereof that are thereafter constructed or acquired as any of the
40 project's parts, extensions, replacements, or improvements
41 thereafter constructed or acquired;

42 f. Pledging, setting aside, depositing, or acting as trustee for all
43 or any part of the system revenues or other monies of the municipal
44 shared services energy authority to secure the payment of the
45 principal of, or interest on, the bonds or any other obligations, or
46 the payment of expenses of operation or maintenance of one or
47 more electric supply projects of the municipal shared services

- 1 energy authority or its system, and the powers and duties of any
2 trustee with regard thereto;
- 3 g. The setting aside out of the system revenues or other monies
4 of the municipal shared services energy authority including its
5 reserves and sinking funds, and the source, custody, security,
6 regulation, application, and disposition thereof;
- 7 h. Determination or definition of the system revenues or of the
8 expenses of operation and maintenance of the system or one or
9 more of its electric supply projects;
- 10 i. The rents, rates, fees or other charges in connection with the
11 use, products, or services of one or more electric supply projects of
12 the municipal shared services energy authority or its system,
13 including any of the parts, extensions, replacements, or
14 improvements of the project or its system thereafter constructed or
15 acquired, and the fixing, establishment, collection and enforcement
16 of the same, the amount of electric supply project revenues or
17 system revenues to be produced thereby, and the disposition and
18 application of the amounts charged or collected;
- 19 j. The assumption or payment or discharge of any
20 indebtedness, liens, or other claims relating to the whole or any part
21 of one or more electric supply projects of the municipal shared
22 services energy authority or of its system for any obligations having
23 or which may have a lien on any part of the system of the municipal
24 shared services energy authority;
- 25 k. Limitations on the issuance of additional bonds or any other
26 obligations or on the incurrence of indebtedness of the municipal
27 shared services energy authority;
- 28 1. Limitations on the powers of the municipal shared services
29 energy authority to construct, acquire or operate, or to permit the
30 construction, acquisition or operation of, any plants, structures,
31 facilities or properties which may compete or tend to compete with
32 one or more of the municipal shared services energy authority's
33 electric supply projects or any part of its system;
- 34 m. Vesting in a trustee or trustees within or without the State
35 such property, rights, powers, and duties in trust as the municipal
36 shared services energy authority may determine, which may include
37 any or all of the rights, powers, and duties of the trustee appointed
38 by the holders of bonds, and limiting or abrogating the right of the
39 holders to appoint a trustee or limiting the rights, duties, and powers
40 of the trustee;
- 41 n. Payment of costs or expenses incident to the enforcement of
42 the bonds or of the provisions of the bond resolutions or of any
43 covenant or contract with the holders of the bonds;
- 44 o. The procedure, if any, by which the terms of any covenant or
45 contract with, or duty to, the holders of the bonds may be amended
46 or abrogated, the amount of bonds that the holders of which must

1 consent thereto, and the manner in which the consent may be given
2 or evidenced; and

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

6 The provisions of the bond resolution and the covenants and
7 agreements relative thereto shall constitute valid and legally binding
8 contracts between the municipal shared services energy authority
9 and the several holders of the bonds, regardless of the time of
10 issuance of the bonds, and shall be enforceable by any holder or
11 holders by appropriate suit, action or proceeding in any court of
12 competent jurisdiction, or by proceeding in lieu of prerogative writ.

13
14 16. (New section) a. If the bond resolution of the municipal
15 shared services energy authority authorizing or providing for the
16 issuance of a series of its bonds shall provide in substance that the
17 holders of the bonds of such series shall be entitled to the benefits
18 of this section, then, in the event that there shall be a default in the
19 payment of principal of, or interest on, any bonds of such series
20 after the same shall become due, whether at maturity or upon call
21 for redemption, and such default shall continue for a period of 30
22 days, or in the event that the municipal shared services energy
23 authority shall fail or refuse to comply with the provisions of
24 P.L. , c. (C.) (pending before the Legislature as this bill) or
25 shall fail or refuse to carry out and perform the terms of any
26 contract with the holders of any such bonds, and such failure or
27 refusal shall continue for a period of 30 days after written notice to
28 the municipal shared services energy authority of its existence and
29 nature, the holders of 25 percent in aggregate principal amount of
30 the bonds and such series then outstanding by instrument or
31 instruments filed in the office of the Secretary of State and proved
32 or acknowledged in the same manner as a deed to be recorded, may
33 appoint a trustee to represent the holders of the bonds of such series
34 for the purposes provided in this section.

35 b. Such trustee may and upon written request of the holders of
36 25 percent in aggregate principal amount of the bonds of such series
37 then outstanding shall, in the trustee's or its own name:

38 (1) by any action, writ, proceeding in lieu of prerogative writ, or
39 other proceeding, enforce all rights of the holders of such bonds,
40 including the right to require the municipal shared services energy
41 authority to charge and collect service charges adequate to carry out
42 any contract as to, or pledge of, system revenues, and to require the
43 municipal shared services energy authority to carry out and perform
44 the terms of any contract with the holders of such bonds or its
45 duties under P.L. , c. (C.) (pending before the Legislature
46 as this bill);

- 1 (2) bring an action upon all or any part of such bonds or interest
2 coupons or claims appurtenant thereto;
- 3 (3) by action, require the municipal shared services energy
4 authority to account as if it were the trustee of an express trust for
5 the holders of such bonds;
- 6 (4) by action, enjoin any acts or things which may be unlawful
7 or in violation of the rights of the holders of such bonds; and
- 8 (5) declare all such bonds due and payable, whether or not in
9 advance of maturity, upon 30 days' prior notice in writing to the
10 municipal shared services energy authority and, if all defaults shall
11 be made good, then with the consent of the holders of 25 percent of
12 the principal amount of such bonds then outstanding, annul such
13 declaration and its consequences.
- 14 c. The trustee shall, in addition to the powers set forth in
15 subsections a. and b. of this section, have and possess all of the
16 powers necessary or appropriate for the exercise of the functions
17 specifically set forth herein or incident to the general representation
18 of the holders of bonds of such series in the enforcement and
19 protection of their rights.
- 20 d. In any action or proceeding by the trustee, the fees, counsel
21 fees and expenses of the trustee and of the receiver, if any,
22 appointed pursuant to P.L. , c. (C.) (pending before the
23 Legislature as this bill), shall constitute taxable costs and
24 disbursements, and all costs and disbursements, allowed by the
25 court, shall be a first charge upon any service charges and system
26 revenues of the municipal shared services energy authority pledged
27 for the payment or security of bonds of such series.
- 28
- 29 17. (New section) If the bond resolution of the municipal shared
30 services energy authority authorizing or providing for the issuance
31 of a series of its bonds shall provide in substance that the holders of
32 the bonds of such series shall be entitled to the benefits of section
33 15 of P.L. , c. (C.) (pending before the Legislature as this
34 bill), and shall further provide in substance that any trustee
35 appointed pursuant to that section or having the powers of such a
36 trustee shall have the powers provided by this section, then such
37 trustee, whether or not all of the bonds of such series shall have
38 been declared due and payable, shall be entitled as of right to the
39 appointment of a receiver of the assets of the authority, and the
40 receiver may enter upon and take possession of the assets of the
41 authority and, subject to any pledge or contract with the holders of
42 such bonds, shall take possession of all moneys and other property
43 derived from or applicable to the acquisition, construction,
44 operation, maintenance, or reconstruction of the assets of the
45 authority, and proceed with such acquisition, construction,
46 operation, maintenance, or reconstruction which the municipal
47 shared services energy authority is under any obligation to do, and

1 operate, maintain and reconstruct the utility system and fix, charge,
2 collect, enforce, and receive the service charges and all system
3 revenues thereafter arising subject to any pledge thereof or contract
4 with the holders of the bonds relating thereto and perform the
5 public duties and carry out the contracts and obligations of the
6 municipal shared services energy authority in the same manner as
7 the municipal shared services energy authority itself might do and
8 under the direction of the court.

9
10 18. (New section) For the purpose of aiding the municipal
11 shared services energy authority in the planning, undertaking,
12 acquisition, construction, financing or operation of any electric
13 supply project authorized pursuant to P.L. , c. (C.)
14 (pending before the Legislature as this bill), a member municipality
15 may, by ordinance of its governing body, in the manner provided
16 for adoption of a bond ordinance as provided in any local bond law
17 and with or without consideration and upon such terms and
18 conditions as may be agreed to by and between the member
19 municipality and the authority, unconditionally guaranty the
20 punctual payment of the principal of, and interest on, all or a
21 portion of any bonds of the authority. Any guaranty of the bonds of
22 the authority made pursuant to this section shall be evidenced by
23 endorsement thereof on the bonds, executed in the name of the
24 member municipality and on its behalf by such officer thereof as
25 may be designated in the ordinance authorizing such guaranty, and
26 the municipality shall thereupon and thereafter be obligated to pay
27 the principal of, and interest on, said bonds in the same manner and
28 to the same extent as in the case of bonds issued by it. Any
29 ordinance authorizing such guaranty shall be treated as a security
30 agreement and shall be subject to the provisions of P.L.1983, c.313
31 (C.40A:5A-1 et seq.). Any such guaranty of bonds of the authority
32 may be made, and any ordinance authorizing such guaranty may be
33 adopted, notwithstanding any statutory debt or other limitations,
34 including particularly any limitation or requirement under or
35 pursuant to any local bond law, but the principal amount of the
36 bonds so guaranteed, shall, after their issuance, be included in the
37 gross debt of the member municipality for the purpose of
38 determining the indebtedness of the municipality under or pursuant
39 to any local bond law. The principal amount of the bonds so
40 guaranteed and included in gross debt shall be deducted and is
41 hereby declared to be and to constitute a deduction from the gross
42 debt under and for all the purposes of any local bond law:

43 a. from and after the time of issuance of the bonds until the end
44 of the fiscal year beginning next after the completion of acquisition
45 or construction of the facility to be financed from the proceeds of
46 the bonds; and

1 b. in any annual debt statement filed pursuant to any local bond
2 law as of the end of the fiscal year or any subsequent fiscal year if
3 the revenues or other receipts or moneys of the authority in that
4 year are sufficient to pay its expenses of operation and maintenance
5 in the year and all amounts payable in the year on account of the
6 principal of, and interest on, all the guaranteed bonds, and all bonds
7 of the authority issued under P.L. , c. (C.) (pending before
8 the Legislature as this bill).

9
10 19. (New section) a. The municipal shared services energy
11 authority may enter into wholesale power supply contracts with any
12 person within or outside the State of New Jersey to meet the electric
13 power needs of its members, for the purchase or sale of electric
14 power or energy, or for both the purchase and sale of electric power
15 and energy to supply power to its members and for the wholesale
16 sale of any excess power. The power supply contracts shall be for a
17 term not to exceed 40 years and shall provide for payment to or
18 from the municipal shared services energy authority of funds for
19 commodities to be procured, and services to be rendered by or to
20 the municipal shared services energy authority. The municipal
21 shared services energy authority may enter into power supply
22 contracts with persons for the purchase or sale of electric power and
23 energy, or for both the purchase and sale of electric power and
24 energy, whereby the purchaser is obligated to make payments in
25 amounts which shall be sufficient to enable the municipal shared
26 services energy authority to meet its expenses, interest and principal
27 payments, whether at maturity or upon sinking fund redemption, for
28 its bonds, reasonable reserves for debt service, operation and
29 maintenance, renewals and replacements, and the requirements of
30 any rate covenant with respect to debt service coverage contained in
31 any resolution, trust indenture, or other security instrument. Power
32 supply contracts may contain such other terms and conditions as the
33 municipal shared services energy authority and the purchasers may
34 determine, including provisions whereby the purchaser is obligated
35 to pay for power irrespective of whether energy is produced or
36 delivered to the purchaser, or whether any electric supply project
37 contemplated by the agreement is completed, operable, or
38 operating, and notwithstanding suspension, interruption,
39 interference, reduction, or curtailment of the output of the electric
40 supply project. The power purchase agreement may provide that if
41 one or more of the purchasers defaults in the payment of its
42 obligations under the purchase agreement, the remaining purchasers
43 which also have such agreements shall be required to accept and
44 pay for the power and energy to be purchased by the defaulting
45 purchaser, and shall be entitled proportionately to use or otherwise
46 dispose of the power and energy to be purchased by the defaulting
47 purchaser. For purposes of this subsection the phrase “purchase of

1 electric power and energy” includes the purchase of any right to
2 capacity, or interest in, any electric supply project.

3 b. The obligations of a municipality that is eligible to be, but
4 that is not, a member municipality under a power supply contract
5 with the municipal shared services energy authority, or arising out
6 of the default by any other purchaser with respect to such an
7 agreement, shall not be construed to constitute a debt of the
8 municipality. To the extent provided in the purchase agreement,
9 these obligations shall constitute special obligations of the
10 municipality, payable solely from the revenues and other moneys
11 derived by the municipality from its municipal electric utility and
12 shall be treated as expenses of operating a municipal electric utility.

13 c. The contract may also provide for payments in the form of
14 collateral, contributions to defray the cost of any purpose set forth
15 in the contract and as advances for any such purpose subject to
16 repayment by the municipal shared services energy authority.

17 d. Such agreements may be for a term covering the life of an
18 electric supply project, for the anticipated output period of the
19 electric supply project, or for any other term not exceeding 40
20 years. If a power supply contract is entered into with a municipality
21 other than a member municipality, the contracts shall be subject to
22 the "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-1 et
23 seq.).
24

25 20. (New section) The municipal shared services energy
26 authority formed pursuant to P.L. , c. (C.) (pending before the
27 Legislature as this bill) shall comply with the provisions of P.L. ,
28 c. (C.) (pending before the Legislature as this bill) and all
29 applicable federal and State laws. Nothing in P.L. , c. (C.)
30 (pending before the Legislature as this bill) shall be construed to
31 require regulation of a municipal shared services energy authority
32 or its members as an electric public utility as defined under
33 R.S.48:2-13. Wholesale sales and purchases by the municipal
34 shared services energy authority shall not subject the municipal
35 shared services energy authority or its members to the jurisdiction
36 of the Board of Public Utilities as a public utility as set forth in
37 R.S.48:2-13 et seq.
38

39 21. (New section) All property of the municipal shared services
40 energy authority shall be exempt from levy and sale by virtue of an
41 execution of a court of competent jurisdiction and no execution or
42 other judicial process shall issue against the same nor shall any
43 judgment against the municipal shared services energy authority be
44 a charge or lien upon its property, provided, however, that nothing
45 in this section shall apply to or limit the rights of the holder of any
46 bonds to pursue any remedy for the enforcement of any pledge or

1 lien given by the municipal shared services energy authority on its
2 system, revenues, or other monies.

3
4 22. (New section) Notwithstanding any restriction contained in
5 any other law, the State and all public officers, municipalities,
6 counties, political subdivisions of public bodies, and agencies
7 thereof, all banks, bankers, trust companies, savings banks and
8 institutions, building and loan associations, savings and loan
9 associations, investment companies, and other persons carrying on a
10 banking business, all insurance companies, insurance associations,
11 and other persons carrying on an insurance business, and all
12 executors, administrators, guardians, trustees and other fiduciaries,
13 may legally invest any sinking funds, monies, or other funds
14 belonging to them or within their control, in any bonds of the
15 municipal shared services energy authority, and the bonds shall be
16 authorized security for any and all public deposits.

17
18 23. (New section) Every electric supply project or facility
19 owned by the municipal shared services energy authority, including
20 any pro rata share of any property owned by the municipal shared
21 services energy authority in conjunction with any other person or
22 public agency and used in connection with the generation,
23 transmission and production of electric power and energy, and all
24 other property of the municipal shared services energy authority, is
25 hereby declared to be public property and devoted to an essential
26 public and governmental function and purpose, and the property,
27 the municipal shared services energy authority and its income shall
28 be exempt from all taxes and special assessments of the State or any
29 subdivision of the State. All bonds of the municipal shared services
30 energy authority are hereby declared to be issued by a political
31 subdivision of the State and for an essential public and
32 governmental purpose and to be a public instrumentality in the
33 bonds, and the interest thereon and the income therefrom and all
34 service charges, funds, revenues, and other monies pledged or
35 available to pay or secure the payment of the bonds, or interest
36 thereon, shall at all times be exempt from taxation except for
37 transfer, inheritance and estate taxes, and taxes on transfers by or in
38 contemplation of death.

39
40 24. (New section) All banks, bankers, trust companies, savings
41 banks, investment companies, and other persons carrying on a
42 banking business are hereby authorized to give to the municipal
43 shared services energy authority a good and sufficient undertaking
44 with such sureties as shall be approved by the municipal shared
45 services energy authority to the effect that this bank or banking
46 institution shall faithfully keep and pay over to the order of or upon
47 the warrant of the municipal shared services energy authority or its

1 authorized agent, all such funds as may be deposited with it by the
2 municipal shared services energy authority and agreed interest
3 thereon, at such times or upon such demands as may be agreed with
4 the municipal shared services energy authority or in lieu of these
5 sureties, deposit with the municipal shared services energy
6 authority or its agent or any trustee therefor or for the holders of
7 any bonds, as collateral, such securities as the municipal shared
8 services energy authority may approve. The deposits of the
9 municipal shared services energy authority may be evidenced or
10 secured by a depository collateral agreement in such form and upon
11 such terms and conditions as may be agreed upon by the municipal
12 shared services energy authority and the bank or banking
13 institution.

14

15 25. (New section) The municipal shared services energy
16 authority shall cause an annual audit of its accounts to be made, and
17 for this purpose shall employ a certified public accountant licensed
18 pursuant to the laws of the State of New Jersey. The audit shall be
19 completed and filed with the municipal shared services energy
20 authority within four months after the close of its fiscal year and a
21 certified duplicate thereof shall be filed with the Director of the
22 Division of Local Government Services in the Department of
23 Community Affairs within five days after the original report is filed
24 with the municipal shared services energy authority.

25

26 26. (New section) The municipal shared services energy
27 authority shall file a copy of each bond resolution adopted by it
28 with the Director of the Division of Local Government Services in
29 the Department of Community Affairs, together with a summary of
30 the dates, amounts, maturities, and interest rates of all bonds issued
31 pursuant thereto.

32

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

35 5. Any contract the amount of which exceeds the bid threshold,
36 may be negotiated and awarded by the governing body without
37 public advertising for bids and bidding therefor and shall be
38 awarded by resolution of the governing body if:

39 (1) The subject matter thereof consists of:

40 (a) (i) Professional services. The governing body shall in each
41 instance state supporting reasons for its action in the resolution
42 awarding each contract and shall forthwith cause to be printed once,
43 in the official newspaper, a brief notice stating the nature, duration,
44 service and amount of the contract, and that the resolution and
45 contract are on file and available for public inspection in the office
46 of the clerk of the county or municipality, or, in the case of a
47 contracting unit created by more than one county or municipality, of

- 1 the counties or municipalities creating such contracting unit; or (ii)
2 Extraordinary unspecifiable services. The application of this
3 exception shall be construed narrowly in favor of open competitive
4 bidding, whenever possible, and the Division of Local Government
5 Services is authorized to adopt and promulgate rules and regulations
6 after consultation with the Commissioner of Education limiting the
7 use of this exception in accordance with the intention herein
8 expressed. The governing body shall in each instance state
9 supporting reasons for its action in the resolution awarding each
10 contract and shall forthwith cause to be printed, in the manner set
11 forth in subsection (1) (a) (i) of this section, a brief notice of the
12 award of such contract;
- 13 (b) The doing of any work by employees of the contracting unit;
- 14 (c) The printing of legal briefs, records and appendices to be
15 used in any legal proceeding in which the contracting unit may be a
16 party;
- 17 (d) The furnishing of a tax map or maps for the contracting unit;
- 18 (e) The purchase of perishable foods as a subsistence supply;
- 19 (f) The supplying of any product or the rendering of any service
20 by a public utility, which is subject to the jurisdiction of the Board
21 of Public Utilities or the Federal Energy Regulatory Commission or
22 its successor, in accordance with tariffs and schedules of charges
23 made, charged or exacted, filed with the board or commission;
- 24 (g) The acquisition, subject to prior approval of the Attorney
25 General, of special equipment for confidential investigation;
- 26 (h) The printing of bonds and documents necessary to the
27 issuance and sale thereof by a contracting unit;
- 28 (i) Equipment repair service if in the nature of an extraordinary
29 unspecifiable service and necessary parts furnished in connection
30 with such service, which exception shall be in accordance with the
31 requirements for extraordinary unspecifiable services;
- 32 (j) The publishing of legal notices in newspapers as required by
33 law;
- 34 (k) The acquisition of artifacts or other items of unique intrinsic,
35 artistic or historical character;
- 36 (l) Those goods and services necessary or required to prepare
37 and conduct an election;
- 38 (m) Insurance, including the purchase of insurance coverage and
39 consultant services, which exception shall be in accordance with the
40 requirements for extraordinary unspecifiable services;
- 41 (n) The doing of any work by handicapped persons employed by
42 a sheltered workshop;
- 43 (o) The provision of any goods or services including those of a
44 commercial nature, attendant upon the operation of a restaurant by
45 any nonprofit, duly incorporated, historical society at or on any
46 historical preservation site;
- 47 (p) (Deleted by amendment, P.L.1999, c.440.)

- 1 (q) Library and educational goods and services;
- 2 (r) (Deleted by amendment, P.L.2005, c.212).
- 3 (s) The marketing of recyclable materials recovered through a
4 recycling program, or the marketing of any product intentionally
5 produced or derived from solid waste received at a resource
6 recovery facility or recovered through a resource recovery program,
7 including, but not limited to, refuse-derived fuel, compost materials,
8 methane gas, and other similar products;
- 9 (t) (Deleted by amendment, P.L.1999, c.440.)
- 10 (u) Contracting unit towing and storage contracts, provided that
11 all such contracts shall be pursuant to reasonable non-exclusionary
12 and non-discriminatory terms and conditions, which may include
13 the provision of such services on a rotating basis, at the rates and
14 charges set by the municipality pursuant to section 1 of P.L.1979,
15 c.101 (C.40:48-2.49). All contracting unit towing and storage
16 contracts for services to be provided at rates and charges other than
17 those established pursuant to the terms of this paragraph shall only
18 be awarded to the lowest responsible bidder in accordance with the
19 provisions of the "Local Public Contracts Law" and without regard
20 for the value of the contract therefor;
- 21 (v) The purchase of steam or electricity from, or the rendering
22 of services directly related to the purchase of such steam or
23 electricity from a qualifying small power production facility or a
24 qualifying cogeneration facility as defined pursuant to 16
25 U.S.C.s.796;
- 26 (w) The purchase of electricity or administrative or dispatching
27 services directly related to the transmission of such purchased
28 electricity by a contracting unit engaged in the generation of
29 electricity;
- 30 (x) The printing of municipal ordinances or other services
31 necessarily incurred in connection with the revision and
32 codification of municipal ordinances;
- 33 (y) An agreement for the purchase of an equitable interest in a
34 water supply facility or for the provision of water supply services
35 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
36 an agreement entered into pursuant to P.L.1989, c.109
37 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
38 later than six months after the effective date of P.L.1993, c.381;
- 39 (z) A contract for the provision of water supply services entered
40 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 41 (aa) The cooperative marketing of recyclable materials recovered
42 through a recycling program;
- 43 (bb) A contract for the provision of wastewater treatment
44 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
45 al.);
- 46 (cc) Expenses for travel and conferences;

- 1 (dd) The provision or performance of goods or services for the
2 support or maintenance of proprietary computer hardware and
3 software, except that this provision shall not be utilized to acquire
4 or upgrade non-proprietary hardware or to acquire or update non-
5 proprietary software;
- 6 (ee) The management or operation of an airport owned by the
7 contracting unit pursuant to R.S.40:8-1 et seq.;
- 8 (ff) Purchases of goods and services at rates set by the Universal
9 Service Fund administered by the Federal Communications
10 Commission;
- 11 (gg) A contract for the provision of water supply services or
12 wastewater treatment services entered into pursuant to section 2 of
13 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
14 construction, operation, or maintenance, or any combination
15 thereof, of a water supply facility as defined in subsection (16) of
16 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
17 treatment system as defined in subsection (19) of section 15 of
18 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
19 thereof, including a water filtration system as defined in subsection
20 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);
- 21 (hh) The purchase of electricity generated from a power
22 production facility that is fueled by methane gas extracted from a
23 landfill in the county of the contracting unit.
- 24 (2) It is to be made or entered into with the United States of
25 America, the State of New Jersey, county or municipality or any
26 board, body, officer, agency or authority thereof or any other state
27 or subdivision thereof.
- 28 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
29 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
30 received on both occasions in response to the advertisement, or (b)
31 the governing body has rejected such bids on two occasions because
32 it has determined that they are not reasonable as to price, on the
33 basis of cost estimates prepared for or by the contracting agent prior
34 to the advertising therefor, or have not been independently arrived
35 at in open competition, or (c) on one occasion no bids were received
36 pursuant to (a) and on one occasion all bids were rejected pursuant
37 to (b), in whatever sequence; any such contract may then be
38 negotiated and may be awarded upon adoption of a resolution by a
39 two-thirds affirmative vote of the authorized membership of the
40 governing body authorizing such contract; provided, however, that:
- 41 (i) A reasonable effort is first made by the contracting agent to
42 determine that the same or equivalent goods or services, at a cost
43 which is lower than the negotiated price, are not available from an
44 agency or authority of the United States, the State of New Jersey or
45 of the county in which the contracting unit is located, or any
46 municipality in close proximity to the contracting unit;

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

5 (iii) Any minor amendment or modification of any of the terms,
6 conditions, restrictions and specifications, which were the subject of
7 competitive bidding pursuant to section 4 of P.L.1971, c.198
8 (C.40A:11-4), shall be stated in the resolution awarding such
9 contract; provided further, however, that if on the second occasion
10 the bids received are rejected as unreasonable as to price, the
11 contracting agent shall notify each responsible bidder submitting
12 bids on the second occasion of its intention to negotiate, and afford
13 each bidder a reasonable opportunity to negotiate, but the governing
14 body shall not award such contract unless the negotiated price is
15 lower than the lowest rejected bid price submitted on the second
16 occasion by a responsible bidder, is the lowest negotiated price
17 offered by any responsible vendor, and is a reasonable price for
18 such goods or services.

19 Whenever a contracting unit shall determine that a bid was not
20 arrived at independently in open competition pursuant to subsection
21 (3) of this section it shall thereupon notify the county prosecutor of
22 the county in which the contracting unit is located and the Attorney
23 General of the facts upon which its determination is based, and
24 when appropriate, it may institute appropriate proceedings in any
25 State or federal court of competent jurisdiction for a violation of
26 any State or federal antitrust law or laws relating to the unlawful
27 restraint of trade.

28 (4) The contracting unit has solicited and received at least three
29 quotations on materials, supplies or equipment for which a State
30 contract has been issued pursuant to section 12 of P.L.1971, c.198
31 (C.40A:11-12), and the lowest responsible quotation is at least 10%
32 less than the price the contracting unit would be charged for the
33 identical materials, supplies or equipment, in the same quantities,
34 under the State contract. Any such contract entered into pursuant to
35 this subsection may be awarded only upon adoption of a resolution
36 by the affirmative vote of two-thirds of the full membership of the
37 governing body of the contracting unit at a meeting thereof
38 authorizing such a contract. A copy of the purchase order relating
39 to any such contract, the requisition for purchase order, if
40 applicable, and documentation identifying the price of the materials,
41 supplies or equipment under the State contract and the State
42 contract number shall be filed with the director within five working
43 days of the award of any such contract by the contracting unit. The
44 director shall notify the contracting unit of receipt of the material
45 and shall make the material available to the State Treasurer. The
46 contracting unit shall make available to the director upon request
47 any other documents relating to the solicitation and award of the

1 contract, including, but not limited to, quotations, requests for
2 quotations, and resolutions. The director periodically shall review
3 material submitted by contracting units to determine the impact of
4 such contracts on local contracting and shall consult with the State
5 Treasurer on the impact of such contracts on the State procurement
6 process. The director may, after consultation with the State
7 Treasurer, adopt rules in accordance with the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the
9 use of this subsection, after considering the impact of contracts
10 awarded under this subsection on State and local contracting, or
11 after considering the extent to which the award of contracts
12 pursuant to this subsection is consistent with and in furtherance of
13 the purposes of the public contracting laws.

14 (5) Notwithstanding any provision of law, rule or regulation to
15 the contrary, the subject matter consists of the combined collection
16 and marketing, or the cooperative combined collection and
17 marketing of recycled material recovered through a recycling
18 program, or any product intentionally produced or derived from
19 solid waste received at a resource recovery facility or recovered
20 through a resource recovery program including, but not limited to,
21 refuse-derived fuel, compost materials, methane gas, and other
22 similar products, provided that in lieu of engaging in such public
23 advertising for bids and the bidding therefor, the contracting unit
24 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 said services. Within 30 days after receipt of
28 the written description the director shall, if the director finds that
29 the process provides for fair competition and integrity in the
30 negotiation process, approve, in writing, the description submitted
31 by the contracting unit. If the director finds that the process does
32 not provide for fair competition and integrity in the negotiation
33 process, the director shall advise the contracting unit of the
34 deficiencies that must be remedied. If the director fails to respond
35 in writing to the contracting unit within 30 days, the procurement
36 process as described shall be deemed approved. As used in this
37 section, "collection" means the physical removal of recyclable
38 materials from curbside or any other location selected by the
39 contracting unit.

40 (6) Notwithstanding any provision of law, rule or regulation to
41 the contrary, the contract is for the provision of electricity by a
42 municipal shared services energy authority as defined pursuant to
43 section 3 of P.L. , c. (C.) (pending before the Legislature as this
44 bill), or by a contracting unit engaged in the distribution of
45 electricity for retail sale, or for the provision of administrative or
46 dispatching services related to the transmission of such electricity,
47 provided that in lieu of engaging in public advertising for bids and

1 the bidding therefor, the contracting unit shall, prior to commencing
2 the procurement process, submit for approval to the Director of the
3 Division of Local Government Services, a written detailed
4 description of the process to be followed in securing such services.
5 Such process shall be designed in a way that is appropriate to and
6 commensurate with industry practices, and the integrity of the
7 government contracting process. Within 30 days after receipt of the
8 written description, the director shall, if the director finds that the
9 process provides for fair competition and integrity in the
10 negotiation process, approve, in writing, the description submitted
11 by the contracting unit. If the director finds that the process does
12 not provide for fair competition and integrity in the negotiation
13 process, the director shall advise the contracting unit of the
14 deficiencies that must be remedied. If the director fails to respond
15 in writing to the contracting unit within 30 days, the procurement
16 process, as submitted to the director pursuant to this section, shall
17 be deemed approved.

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

19

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

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

29 (1) Supplying of:

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

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

32 (c) Thermal energy produced by a cogeneration facility, for use
33 for heating or air conditioning or both, for any term not exceeding
34 40 years, when the contract is approved by the Board of Public
35 Utilities. For the purposes of this paragraph, "cogeneration" means
36 the simultaneous production in one facility of electric power and
37 other forms of useful energy such as heating or process steam;

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

39 (3) The collection and disposal of municipal solid waste, the
40 collection and disposition of recyclable material, or the disposal of
41 sewage sludge, for any term not exceeding in the aggregate, five
42 years;

43 (4) The collection and recycling of methane gas from a sanitary
44 landfill facility, for any term not exceeding 25 years, when such
45 contract is in conformance with a district solid waste management
46 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and
47 with the approval of the Division of Local Government Services in

1 the Department of Community Affairs and the Department of
2 Environmental Protection. The contracting unit shall award the
3 contract to the highest responsible bidder, notwithstanding that the
4 contract price may be in excess of the amount of any necessarily
5 related administrative expenses; except that if the contract requires
6 the contracting unit to expend funds only, the contracting unit shall
7 award the contract to the lowest responsible bidder. The approval
8 by the Division of Local Government Services of public bidding
9 requirements shall not be required for those contracts exempted
10 therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

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

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

22 (7) Leasing or servicing of (a) automobiles, motor vehicles,
23 machinery and equipment of every nature and kind, for a period not
24 to exceed five years, or (b) machinery and equipment used in the
25 generation of electricity by a contracting unit engaged in the
26 generation of electricity, for a period not to exceed 20 years;
27 provided, however, such contracts shall be awarded only subject to
28 and in accordance with the rules and regulations promulgated by the
29 Director of the Division of Local Government Services in the
30 Department of Community Affairs;

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

34 (9) Any single project for the construction, reconstruction or
35 rehabilitation of any public building, structure or facility, or any
36 public works project, including the retention of the services of any
37 architect or engineer in connection therewith, for the length of time
38 authorized and necessary for the completion of the actual
39 construction;

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

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

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

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

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

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

8 (16) The provision of water supply services or the designing,
9 financing, construction, operation, or maintenance, or any
10 combination thereof, of a water supply facility, or any component
11 part or parts thereof, including a water filtration system, for a period
12 not to exceed 40 years, when the contract for these services is
13 approved by the Division of Local Government Services in the
14 Department of Community Affairs, the Board of Public Utilities,
15 and the Department of Environmental Protection pursuant to
16 P.L.1985, c.37 (C.58:26-1 et al.), except that no such approvals
17 shall be required for those contracts otherwise exempted pursuant to
18 subsection (30), (31), (34), (35) or (43) of this section. For the
19 purposes of this subsection, "water supply services" means any
20 service provided by a water supply facility; "water filtration
21 system" means any equipment, plants, structures, machinery,
22 apparatus, or land, or any combination thereof, acquired, used,
23 constructed, rehabilitated, or operated for the collection,
24 impoundment, storage, improvement, filtration, or other treatment
25 of drinking water for the purposes of purifying and enhancing water
26 quality and insuring its portability prior to the distribution of the
27 drinking water to the general public for human consumption,
28 including plants and works, and other personal property and
29 appurtenances necessary for their use or operation; and "water
30 supply facility" means and refers to the real property and the plants,
31 structures, interconnections between existing water supply facilities,
32 machinery and equipment and other property, real, personal and
33 mixed, acquired, constructed or operated, or to be acquired,
34 constructed or operated, in whole or in part by or on behalf of a
35 political subdivision of the State or any agency thereof, for the
36 purpose of augmenting the natural water resources of the State and
37 making available an increased supply of water for all uses, or of
38 conserving existing water resources, and any and all appurtenances
39 necessary, useful or convenient for the collecting, impounding,
40 storing, improving, treating, filtering, conserving or transmitting of
41 water and for the preservation and protection of these resources and
42 facilities and providing for the conservation and development of
43 future water supply resources;

44 (17) The provision of resource recovery services by a qualified
45 vendor, the disposal of the solid waste delivered for disposal which
46 cannot be processed by a resource recovery facility or the residual
47 ash generated at a resource recovery facility, including hazardous

1 waste and recovered metals and other materials for reuse, or the
2 design, financing, construction, operation or maintenance of a
3 resource recovery facility for a period not to exceed 40 years when
4 the contract is approved by the Division of Local Government
5 Services in the Department of Community Affairs, and the
6 Department of Environmental Protection pursuant to P.L.1985, c.38
7 (C.13:1E-136 et al.); and when the resource recovery facility is in
8 conformance with a district solid waste management plan approved
9 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
10 this subsection, "resource recovery facility" means a solid waste
11 facility constructed and operated for the incineration of solid waste
12 for energy production and the recovery of metals and other
13 materials for reuse; or a mechanized composting facility, or any
14 other facility constructed or operated for the collection, separation,
15 recycling, and recovery of metals, glass, paper, and other materials
16 for reuse or for energy production; and "residual ash" means the
17 bottom ash, fly ash, or any combination thereof, resulting from the
18 combustion of solid waste at a resource recovery facility;

19 (18) The sale of electricity or thermal energy, or both, produced
20 by a resource recovery facility for a period not to exceed 40 years
21 when the contract is approved by the Board of Public Utilities, and
22 when the resource recovery facility is in conformance with a district
23 solid waste management plan approved pursuant to P.L.1970, c.39
24 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource
25 recovery facility" means a solid waste facility constructed and
26 operated for the incineration of solid waste for energy production
27 and the recovery of metals and other materials for reuse; or a
28 mechanized composting facility, or any other facility constructed or
29 operated for the collection, separation, recycling, and recovery of
30 metals, glass, paper, and other materials for reuse or for energy
31 production;

32 (19) The provision of wastewater treatment services or the
33 designing, financing, construction, operation, or maintenance, or
34 any combination thereof, of a wastewater treatment system, or any
35 component part or parts thereof, for a period not to exceed 40 years,
36 when the contract for these services is approved by the Division of
37 Local Government Services in the Department of Community
38 Affairs and the Department of Environmental Protection pursuant to
39 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals
40 shall be required for those contracts otherwise exempted pursuant to
41 subsection (36) or (43) of this section. For the purposes of this
42 subsection, "wastewater treatment services" means any services
43 provided by a wastewater treatment system, and "wastewater
44 treatment system" means equipment, plants, structures, machinery,
45 apparatus, or land, or any combination thereof, acquired, used,
46 constructed, or operated for the storage, collection, reduction,
47 recycling, reclamation, disposal, separation, or other treatment of

1 wastewater or sewage sludge, or for the final disposal of residues
2 resulting from the treatment of wastewater, including, but not
3 limited to, pumping and ventilating stations, facilities, plants and
4 works, connections, outfall sewers, interceptors, trunk lines, and
5 other personal property and appurtenances necessary for their
6 operation;

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

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

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

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

16 (24) The purchase of electricity or administrative or dispatching
17 services related to the transmission of such electricity, from a
18 supplier of electricity subject to the jurisdiction of a federal
19 regulatory agency, from a qualifying small power producing facility
20 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or
21 from any supplier of electricity within any regional transmission
22 organization or independent system operator or from such
23 organization or operator or their successors, by a contracting unit
24 engaged in the generation of electricity for retail sale, as of May 24,
25 1991, for a term not to exceed 40 years, or by a contracting unit
26 engaged solely in the distribution of electricity for retail sale for a
27 term not to exceed ten years, except that a contract with a
28 contracting unit, engaged solely in the distribution of electricity for
29 retail sale, in excess of ten years, shall require the written approval
30 of the Director of the Division of Local Government Services. If
31 the director fails to respond in writing to the contracting unit within
32 10 business days, the contract shall be deemed approved;

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

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

40 (27) The provision of transportation services to elderly, disabled
41 or indigent persons for any term of not more than three years. For
42 the purposes of this subsection, "elderly persons" means persons
43 who are 60 years of age or older. "Disabled persons" means
44 persons of any age who, by reason of illness, injury, age, congenital
45 malfunction, or other permanent or temporary incapacity or
46 disability, are unable, without special facilities or special planning
47 or design to utilize mass transportation facilities and services as

1 effectively as persons who are not so affected. "Indigent persons"
2 means persons of any age whose income does not exceed 100
3 percent of the poverty level, adjusted for family size, established
4 and adjusted under section 673(2) of subtitle B, the "Community
5 Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

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

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

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

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

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

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

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

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

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

46 (37) The operation and management of a facility under a license
47 issued or permit approved by the Department of Environmental

1 Protection, including a wastewater treatment system or a water
2 supply or distribution facility, as the case may be, for any term of
3 not more than ten years. For the purposes of this subsection,
4 "wastewater treatment system" refers to facilities operated or
5 maintained for the storage, collection, reduction, disposal, or other
6 treatment of wastewater or sewage sludge, remediation of
7 groundwater contamination, stormwater runoff, or the final disposal
8 of residues resulting from the treatment of wastewater; and "water
9 supply or distribution facility" refers to facilities operated or
10 maintained for augmenting the natural water resources of the State,
11 increasing the supply of water, conserving existing water resources,
12 or distributing water to users;

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

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

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

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

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

26 (43) A contract between the governing body of a city of the first
27 class and a duly incorporated nonprofit association for the provision
28 of water supply services as defined in subsection (16) of this
29 section, or wastewater treatment services as defined in subsection
30 (19) of this section, may be entered into for a period not to exceed
31 40 years;

32 (44) The purchase of electricity generated through class I
33 renewable energy or from a power production facility that is fueled
34 by methane gas extracted from a landfill in the county of the
35 contacting unit for any term not exceeding 25 years;

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

1 (46) A power supply contract, as defined pursuant to section
2 3 of P.L. , c. (C.) (pending before the Legislature as this
3 bill) between a contracting unit and the municipal shared services
4 energy authority established pursuant to the provisions of P.L. , c.
5 (C.) (pending before the Legislature as this bill) to meet the
6 electric power needs of its members, for the lease, operation, or
7 management of electric generation or the purchase of electricity, or
8 the purchase of fuel for generating units for a term not to exceed 40
9 years.

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

25 All multiyear leases and contracts entered into pursuant to this
26 section, including any two-year or one-year extensions, except
27 contracts involving the supplying of electricity for the purpose of
28 lighting public streets and contracts for thermal energy authorized
29 pursuant to subsection (1) above, construction contracts authorized
30 pursuant to subsection (9) above, contracts for the provision or
31 performance of goods or services or the supplying of equipment to
32 promote energy conservation through the production of class I
33 renewable energy or class II renewable energy authorized pursuant
34 to subsection (45) above, contracts for water supply services or for
35 a water supply facility, or any component part or parts thereof
36 authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or
37 (43) above, contracts for resource recovery services or a resource
38 recovery facility authorized pursuant to subsection (17) above,
39 contracts for the sale of energy produced by a resource recovery
40 facility authorized pursuant to subsection (18) above, contracts for
41 wastewater treatment services or for a wastewater treatment system
42 or any component part or parts thereof authorized pursuant to
43 subsection (19), (36), (37) or (43) above, and contracts for the
44 purchase of electricity or administrative or dispatching services
45 related to the transmission of such electricity authorized pursuant to
46 subsection (24) above **[and]**, contracts for the purchase of
47 electricity generated from a power production facility that is fueled

1 by methane gas authorized pursuant to subsection (44) above, and
2 power supply contracts authorized pursuant to subsection (46)
3 respectively, shall contain a clause making them subject to the
4 availability and appropriation annually of sufficient funds as may
5 be required to meet the extended obligation, or contain an annual
6 cancellation clause.

7 The Division of Local Government Services in the Department
8 of Community Affairs shall adopt and promulgate rules and
9 regulations concerning the methods of accounting for all contracts
10 that do not coincide with the fiscal year.

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

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

20
21 29. (New section) The powers granted under P.L. , c. (C.)
22 (pending before the Legislature as this bill) shall not limit the
23 powers of municipalities to enter into shared service agreements or
24 contracts, or to establish separate legal entities pursuant to State law
25 or otherwise to carry out their powers under applicable statutory
26 provisions, nor shall the powers granted under P.L. , c. (C.)
27 (pending before the Legislature as this bill) limit the powers
28 reserved to municipalities by State law.

29
30 30. This act shall take effect immediately.