

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2313 and 2564

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED JUNE 21, 2012

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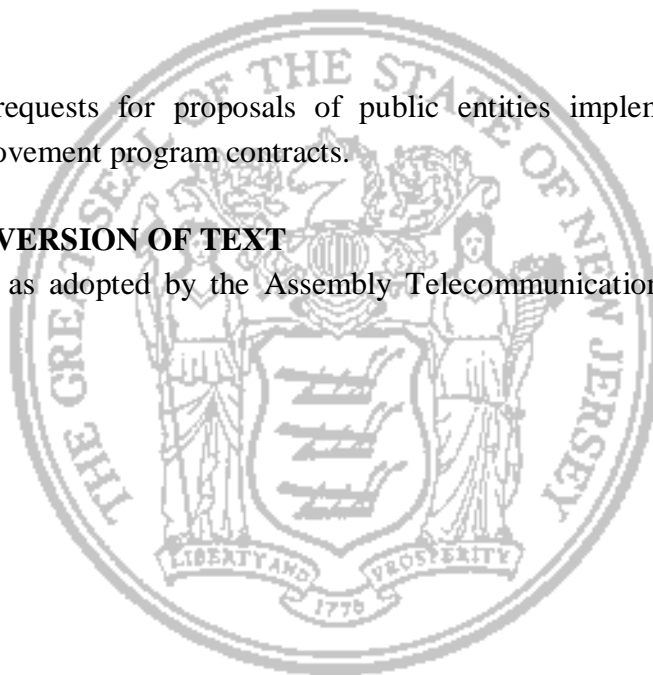
Senator Sarlo

SYNOPSIS

Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Telecommunications and Utilities Committee.



(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning energy savings improvement programs,
2 amending various parts of the statutory law, and supplementing
3 Title 52 of the Revised Statutes.

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

7
8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to
9 read as follows:

10 1. a. (1) A board of education, as defined in N.J.S.18A:18A-2,
11 may implement an energy savings improvement program in the
12 manner provided by this section whenever it determines that the
13 savings generated from reduced energy use from the program will
14 be sufficient to cover the cost of the program's energy conservation
15 measures as set forth in an energy savings plan. Under such a
16 program, a board of education may enter into an energy savings
17 services contract with an energy services company to implement the
18 program or the board may authorize separate contracts to implement
19 the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply
20 to any contracts awarded pursuant to this section to the extent that
21 the provisions of such law are not inconsistent with any provision
22 of this section.

23 (2) A board of education facility alteration required to properly
24 implement other energy efficiency or energy conservation
25 measures, or both, may be included as part of an energy savings
26 services contract, in which case, notwithstanding any other
27 provision of law, rule, regulation, or order to the contrary, the
28 facility alteration may be undertaken or supervised by the energy
29 services company performing the energy savings services contract
30 if:

31 (a) the total cost of the improvement does not exceed 15 percent
32 of the total cost of the work to be performed under the energy
33 savings services contract; and

34 (b) (i) the improvement is necessary to conform to a law, rule,
35 or regulation, or order, or (ii) an analysis within an approved
36 proposal, or the board of education, at the time of the award of the
37 proposal, demonstrates that there is an economic advantage to the
38 board of education implementing the improvement as part of the
39 energy savings services contract, and the savings rationale for the
40 improvement is documented and supported by reasonable
41 justification.

42 b. (1) To be eligible to enter into an energy savings services
43 contract, an energy services company shall be a commercial entity
44 that is qualified to provide energy savings services in accordance
45 with the provisions of this section. A board of education may

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 determine to enter into an energy savings services contract either
2 through public advertising for bids and the receipt of bids therefor
3 or through competitive contracting in lieu of public bidding in the
4 manner provided by sections 45 through 49 of P.L.1999, c.440
5 (C.18A:18A-4.1 et seq.).

6 (2) (a) Public works activities performed under an energy
7 savings improvement program shall be subject to all requirements
8 regarding public bidding, bid security, performance guarantees,
9 insurance and other public contracting requirements that are
10 applicable to public works contracts, to the extent not inconsistent
11 with this section. A general contractor, energy services company
12 serving as general contractor, or any subcontractor hired for the
13 furnishing of plumbing and gas fitting and all kindred work, and of
14 steam and hot water heating and ventilating apparatus, steam power
15 plants and kindred work, and electrical work, structural steel and
16 ornamental iron work, shall be classified by the Division of
17 Property Management and Construction in the Department of the
18 Treasury in order to perform public works activities under an
19 energy savings improvement program.

20 (b) Individuals or organizations performing energy audits,
21 acting as commissioning agents, or conducting verification of
22 energy savings plans, implementation of energy conservation
23 measures, or verifying guarantees shall be prequalified by the
24 Division of Property Management and Construction in the
25 Department of the Treasury to perform their work under an energy
26 savings improvement program.

27 (3) (a) An energy services company may be designated as the
28 general contractor for improvements to be made pursuant to an
29 energy savings plan, provided that the hiring of subcontractors that
30 are required to be classified pursuant to subparagraph (a) of
31 paragraph (2) of this subsection shall be performed in accordance
32 with the procedures and requirements set forth pursuant to the
33 public bidding requirements of the board of education. A contract
34 with an energy savings company shall include, but not be limited to:
35 preparation of an energy savings plan; the responsibilities of the
36 parties for project schedules, installations, performance and quality,
37 payment of subcontractors, project completion, commissioning,
38 savings implementation; a requirement that the savings to be
39 achieved by energy conservation measures be verified upon
40 commissioning of the improvements; allocation of State and federal
41 rebates and tax credits; and any other provisions deemed necessary
42 by the parties.

43 (b) All workers performing public works activities for
44 subcontractors awarded contracts by an energy services company
45 pursuant to this section shall be paid prevailing wages in
46 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
47 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with

1 the provisions of "The Public Works Contractor Registration Act,"
2 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
3 classified as contractors by the Division of Property Management
4 and Construction shall be eligible to be awarded a contract as a
5 subcontractor of an energy services company under this section for
6 performing public works activities pursuant to regulations adopted
7 by the Division of Property Management and Construction.

8 (c) In order to expedite communications with an energy services
9 company and facilitate the implementation of an energy savings
10 improvement program, a board of education may designate or
11 appoint an employee of the board of education with decision-
12 making authority to coordinate with the energy services company
13 and to address issues associated with the implementation of an
14 energy savings improvement program as they arise, provided that
15 any decision requiring a change order shall be made only upon the
16 approval of the board of education.

17 (4) Except as provided in paragraph (5) of this subsection, a
18 subsidiary or wholly-owned or partially-owned affiliate of the
19 energy services company shall not be an eligible contractor or
20 subcontractor under an energy savings services contract.

21 (5) When the energy services company is the manufacturer of
22 direct digital control systems and contracts with the board of
23 education to provide a guaranteed energy savings option pursuant to
24 subsection f. of this section, the specification of such direct digital
25 control systems may be treated as proprietary goods and if so
26 treated, the bid specification shall set forth an allowance price for
27 its supply by the energy services company which shall be used by
28 all bidders in the public bidding process. Direct digital controls
29 shall be open protocol format and shall meet the interoperability
30 guidelines established by the American Society of Heating,
31 Refrigerating and Air-Conditioning Engineers. Each contract to be
32 entered into pursuant to this section between a board of education
33 and an energy services company that is the manufacturer of direct
34 digital control systems where such direct digital control systems are
35 treated as proprietary goods as part of the contract, shall first be
36 reviewed and approved by the Board of Public Utilities for the
37 purpose of affirming the reasonableness of such allowance price. If
38 the board does not disapprove of the contract within 14 days of
39 receipt thereof, the contract shall be deemed approved.

40 c. An energy savings improvement program may be financed
41 through a lease-purchase agreement or through the issuance of
42 energy savings obligations pursuant to this subsection.

43 (1) An energy savings improvement program may be financed
44 through a lease-purchase agreement between a board of education
45 and an energy services company or other public or private entity.
46 Under a lease-purchase agreement, ownership of the energy savings
47 equipment or improved facilities shall pass to the board of

1 education when all lease payments have been made.
2 Notwithstanding the provisions of section 46 of P.L.1999, c.440
3 (C.18A:18A-4.2) or any other law to the contrary, the duration of
4 such a lease-purchase agreement shall not exceed 15 years, except
5 that the duration of a lease purchase agreement for a combined heat
6 and power or cogeneration project shall not exceed 20 years. For
7 the purposes of this paragraph, the duration of the repayment term
8 of a lease-purchase agreement shall commence on the date upon
9 which construction and installation of the energy savings
10 equipment, “combined heat and power facility” or “cogeneration
11 facility,” as those terms are defined pursuant to section 3 of
12 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures
13 undertaken pursuant to the energy savings plan, have been
14 completed.

15 (2) Any lease-purchase agreement entered into pursuant to this
16 subsection may contain: a clause making it subject to the
17 availability and appropriation annually of sufficient funds as may
18 be required to meet the extended obligation; and a non-substitution
19 clause maintaining that if the agreement is terminated for non-
20 appropriation, the board of education may not replace the leased
21 equipment or facilities with equipment or facilities that perform the
22 same or similar functions.

23 (3) A board of education may arrange for incurring energy
24 savings obligations to finance an energy savings improvement
25 program. Energy savings obligations may be funded through
26 appropriations for utility services in the annual budget of the board
27 and may be issued as refunding bonds pursuant to P.L.1969, c.130
28 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
29 notes as may be necessary, provided that all such bonds and notes
30 mature within the periods authorized for such energy savings
31 obligations. Energy savings obligations may be issued either
32 through the board of education or another public agency authorized
33 to undertake financing on behalf of the board.

34 (4) Lease-purchase agreements and energy savings obligations
35 shall not be used to finance maintenance, guarantees, or verification
36 of guarantees of energy conservation measures. Lease-purchase
37 agreements and energy savings obligations may be used to finance
38 the cost of an energy audit or the cost of verification of energy
39 savings as part of adopting an energy savings plan.
40 Notwithstanding any law to the contrary, lease-purchase agreements
41 and energy savings certificates shall not be excepted from any
42 budget or tax levy limitation otherwise provided by law. Maturity
43 schedules of lease-purchase agreements or energy savings
44 obligations **[must]** shall not exceed the estimated average useful
45 life of the **[individual]** energy conservation measures.

46 d. (1) The energy audit component of an energy savings
47 improvement program shall be conducted either by the board of

1 education or by a qualified third party retained by the board for that
2 purpose. It shall not be conducted by an energy services company
3 subsequently hired to develop an energy savings improvement
4 program. The energy audit shall identify the current energy use of
5 any or all facilities and energy conservation measures that can be
6 implemented in which the energy savings and energy efficiency
7 could be realized and maximized.

8 (2) To implement an energy savings improvement program, a
9 board of education shall develop an energy savings plan that
10 consists of one or more energy conservation measures. The plan
11 shall:

12 (a) contain the results of an energy audit;

13 (b) describe the energy conservation measures that will
14 comprise the program;

15 (c) estimate greenhouse gas reductions resulting from those
16 energy savings;

17 (d) identify all design and compliance issues that require the
18 professional services of an architect or engineer and identify who
19 will provide these services;

20 (e) include an assessment of risks involved in the successful
21 implementation of the plan;

22 (f) identify the eligibility for, and costs and revenues associated
23 with the PJM Independent System Operator for demand response
24 and curtailable service activities;

25 (g) include schedules showing calculations of all costs of
26 implementing the proposed energy conservation measures and the
27 projected energy savings;

28 (h) identify maintenance requirements necessary to ensure
29 continued energy savings, and describe how they will be fulfilled;
30 and

31 (i) if developed by an energy services company, a description
32 of, and cost estimates of an energy savings guarantee.

33 All professionals providing engineering services under the plan
34 shall have errors and omissions insurance.

35 (3) Prior to the adoption of the plan by the governing body, the
36 board of education shall contract with a qualified third party to
37 verify the projected energy savings to be realized from the proposed
38 program have been calculated as required by subsection e. of this
39 section.

40 (4) Upon adoption, the plan shall be submitted to the Board of
41 Public Utilities, which shall post it on the Internet on a public
42 webpage maintained for such purpose. If the board of education
43 maintains its own website, it shall also post the plan on that site.
44 The Board of Public Utilities may require periodic reporting
45 concerning the implementation of the plan.

46 (5) Verification by a qualified third party shall be required when
47 energy conservation measures are placed in service or

1 commissioned, to ensure the savings projected in the energy savings
2 plan shall be achieved.

3 (6) Energy-related capital improvements that do not reduce
4 energy usage may be included in an energy savings improvement
5 program but the cost of such improvements shall not be financed as
6 a lease-purchase or through energy savings obligations authorized
7 by subsection c. of this section. Nothing herein is intended to
8 prevent financing of such capital improvements through otherwise
9 authorized means.

10 (7) A qualified third party when required by this subsection may
11 include an employee of the board of education who is properly
12 trained and qualified to perform such work.

13 e. (1) (a) The calculation of energy savings for the purposes of
14 determining that the energy savings resulting from the program will
15 be sufficient to cover the cost of the program's energy conservation
16 measures, as provided in subsection a. of this section, shall involve
17 determination of the dollar amount saved through implementation
18 of an energy savings improvement program using the guidelines of
19 the International Performance Measurement and Verification
20 Protocol or other protocols approved by the Board of Public
21 Utilities and standards adopted by the Board of Public Utilities
22 pursuant to this section. The calculation shall include all applicable
23 State and federal rebates and tax credits, but shall not include the
24 cost of an energy audit and the cost of verifying energy savings.
25 The calculation shall state which party has made application for
26 rebates and credits and how these applications translate into energy
27 savings.

28 (b) During the procurement phase of an energy savings
29 improvement program, an energy service company's proposal
30 submitted in response to a request for proposal shall not include a
31 savings calculation that assumes, includes, or references capital cost
32 avoidance savings, the current or projected value of a "solar
33 renewable energy certificate," as defined pursuant to section 3 of
34 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
35 attributes or benefits of whatever nature that derive from the
36 generation of renewable energy, and any costs or discounts
37 associated with maintenance services, an energy savings guarantee,
38 or third party verification of energy conservation measures and
39 energy savings. The calculation of energy savings shall utilize and
40 specifically reference as a benchmark the actual demand and energy
41 components of the public utility tariff rate applicable to the board of
42 education then in effect, and not a blended rate that aggregates,
43 combines, or restates in any manner the distinct demand and energy
44 components of the public utility tariff rate into a single combined or
45 restated tariff rate. If an energy services company submits a
46 proposal to a board of education that does not calculate projected

1 energy savings in the manner required by this subsection, such
2 proposal shall be rejected by the board of education.

3 (2) For the purposes of this section, the Board of Public Utilities
4 shall adopt standards and uniform values for interest rates and
5 escalation of labor, electricity, oil, and gas, as well as standards for
6 presenting these costs in a life cycle and net present value format,
7 standards for the presentation of obligations for carbon reductions,
8 and other standards that the board may determine necessary.

9 f. (1) When an energy services company is awarded an energy
10 savings services contract, it shall offer the board of education the
11 option to purchase, for an additional amount, an energy savings
12 guarantee. The guarantee, if accepted by a separate vote of the
13 board of education, shall insure that the energy savings resulting
14 from the energy savings improvement program, determined
15 periodically over the duration of the guarantee, will be sufficient to
16 defray all payments required to be made pursuant to the lease-
17 purchase agreement or energy savings obligation, and if the savings
18 are not sufficient, the energy services company will reimburse the
19 board for any additional amounts. Annual costs of a guarantee shall
20 not be financed or included as costs in an energy savings plan but
21 shall be fully disclosed in an energy savings plan.

22 (2) When a guaranteed energy savings option is purchased, the
23 contract shall require a qualified third party to verify the energy
24 savings at intervals established by the parties.

25 (3) When an energy services company is awarded an energy
26 savings services contract to provide or perform goods or services
27 for the purpose of enabling a board of education to conserve energy
28 through energy efficiency equipment, including a “combined heat
29 and power facility” as that term is defined pursuant to section 3 of
30 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
31 shall extend for a term of up to 15 years for energy efficiency
32 projects, and for up to 20 years for a combined heat and power
33 facility after construction completion. If a board of education shall
34 elect to contract with an energy services company for an energy
35 savings guarantee in connection with a contract awarded pursuant to
36 this section, such guarantee may extend for a term of up to 15 years
37 for energy efficiency projects, or up to 20 years for a combined heat
38 and power facility after construction completion.

39 g. As used in this section:

40 "direct digital control systems" means the devices and
41 computerized control equipment that contain software and computer
42 interfaces that perform the logic that control a building's heating,
43 ventilating, and air conditioning system. Direct digital controls
44 shall be open protocol format and shall meet the interoperability
45 guidelines established by the American Society of Heating,
46 Refrigerating and Air-Conditioning Engineers;

1 "energy conservation measure" means an improvement that
2 results in reduced energy use, including, but not limited to,
3 installation of energy efficient equipment; demand response
4 equipment; combined heat and power systems; facilities for the
5 production of renewable energy; water conservation measures,
6 fixtures or facilities; building envelope improvements that are part
7 of an energy savings improvement program; and related control
8 systems for each of the foregoing;

9 "energy related capital improvement" means a capital
10 improvement that uses energy but does not result in a reduction of
11 energy use;

12 "energy saving obligation" means a bond, note or other
13 agreement evidencing the obligation to repay borrowed funds
14 incurred in order to finance energy saving improvements;

15 "energy savings" means a measured reduction in fuel, energy,
16 operating or maintenance costs resulting from the implementation
17 of one or more energy conservation measures services when
18 compared with an established baseline of previous fuel, energy,
19 operating or maintenance costs, including, but not limited to, future
20 capital replacement expenditures avoided as a result of equipment
21 installed or services performed as part of an energy savings plan;

22 "energy savings improvement program" means an initiative of a
23 board of education to implement energy conservation measures in
24 existing facilities, provided that the value of the energy savings
25 resulting from the program will be sufficient to cover the cost of the
26 program's energy conservation measures;

27 "energy savings plan" means the document that describes the
28 actions to be taken to implement the energy savings improvement
29 program;

30 "energy savings services contract" means a contract with an
31 energy savings company to develop an energy savings plan, prepare
32 bid specifications, manage the performance, provision,
33 construction, and installation of energy conservation measures by
34 subcontractors, to offer a guarantee of energy savings derived from
35 the implementation of an energy savings plan, and may include a
36 provision to manage the bidding process;

37 "energy services company" means a commercial entity that is
38 qualified to develop and implement an energy savings plan in
39 accordance with the provisions of this section;

40 "public works activities" means any work subject to the
41 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

42 "water conservation measure" means an alteration to a facility or
43 equipment that reduces water consumption, maximizes the
44 efficiency of water use, or reduces water loss.

45 h. (1) The Director of the Division of Local Government
46 Services in the Department of Community Affairs, the State
47 Treasurer, and the Board of Public Utilities may take such action as

1 is deemed necessary and consistent with the intent of this section to
2 implement its provisions.

3 (2) The Director of the Division of Local Government Services
4 in the Department of Community Affairs, the State Treasurer and
5 the Board of Public Utilities may adopt implementation guidelines
6 or directives, and adopt such administrative rules, pursuant to the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), as are necessary for the implementation of those agencies'
9 respective responsibilities under this section, except that
10 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
11 seq.) to the contrary, the Director of the Division of Local
12 Government Services in the Department of Community Affairs, the
13 State Treasurer, and the Board of Public Utilities may adopt,
14 immediately upon filing with the Office of Administrative Law,
15 such rules and regulations as deemed necessary to implement the
16 provisions of this act which shall be effective for a period not to
17 exceed 12 months and shall thereafter be amended, adopted or re-
18 adopted in accordance with the provisions of P.L.1968, c.410
19 (C.52:14B-1 et seq.).
20 (cf: P.L.2009, c.4, s.1)

21

22 2. Section 4 of P.L.2009, c.4 (C.18A:65A-1) is amended to
23 read as follows:

24 4. a. (1) The board of trustees of a public institution of higher
25 education may implement an energy savings improvement program
26 in the manner provided by this section whenever it determines that
27 the savings generated from reduced energy use from the program
28 will be sufficient to cover the cost of the program's energy
29 conservation measures as set forth in an energy savings plan. Under
30 such a program, a board of trustees may enter into an energy
31 savings services contract with an energy services company to
32 implement the program or the board may authorize separate
33 contracts to implement the program. The provisions of:
34 N.J.S.18A:64-1 et seq., in the case of any State college; P.L.1995,
35 c.400 (C.18A:64E-12 et seq.), in the case of the New Jersey
36 Institute of Technology; N.J.S.18A:65-1 et seq., in the case of
37 Rutgers, the State University; P.L.1970, c.102 (C.18A:64G-1 et al.),
38 in the case of the University of Medicine and Dentistry of New
39 Jersey; and N.J.S.18A:64A-1 et seq., in the case of the county
40 colleges; shall apply to any contracts awarded pursuant to this
41 section to the extent that the provisions of such law are not
42 inconsistent with any provision of this section.

43 In the case of Rutgers, the State University, references in this
44 section to the board of trustees shall mean the Rutgers board of
45 governors.

46 (2) An educational facility alteration required to properly
47 implement other energy efficiency or energy conservation

1 measures, or both, may be included as part of an energy savings
2 services contract, in which case, notwithstanding any other
3 provision of law, rule, regulation, or order to the contrary, the
4 facility alteration may be undertaken or supervised by the energy
5 services company performing the energy savings services contract
6 if:

7 (a) the total cost of the improvement does not exceed 15 percent
8 of the total cost of the work to be performed under the energy
9 savings services contract; and

10 (b) (i) the improvement is necessary to conform to a law, rule,
11 or regulation, or order, or (ii) an analysis within an approved
12 proposal, or the board of trustees, at the time of the award of the
13 proposal, demonstrates that there is an economic advantage to the
14 board of trustees implementing the improvement as part of the
15 energy savings services contract, and the savings rationale for the
16 improvement is documented and supported by reasonable
17 justification.

18 b. (1) To be eligible to enter into an energy savings services
19 contract, an energy services company shall be a commercial entity
20 that is qualified to provide energy savings services in accordance
21 with the provisions of this section. A public institution of higher
22 education may enter into an energy savings services contract
23 through public advertising for bids and the receipt of bids therefor.

24 (2) (a) Public works activities performed under an energy
25 savings improvement program shall be subject to all requirements
26 regarding public bidding, bid security, performance guarantees,
27 insurance and other public contracting requirements that are
28 applicable to public works contracts, to the extent not inconsistent
29 with this section. A general contractor, energy services company
30 serving as general contractor, or any subcontractor hired for the
31 furnishing of plumbing and gas fitting and all kindred work, and of
32 steam and hot water heating and ventilating apparatus, steam power
33 plants and kindred work, and electrical work, structural steel and
34 ornamental iron work, shall be classified by the Division of
35 Property Management and Construction in the Department of the
36 Treasury in order to perform public works activities under an
37 energy savings improvement program.

38 (b) Individuals or organizations performing energy audits,
39 acting as commissioning agents, or conducting verification of
40 energy savings plans, implementation of energy conservation
41 measures, or verifying guarantees shall be prequalified by the
42 Division of Property Management and Construction in the
43 Department of the Treasury to perform their work under an energy
44 savings improvement program.

45 (c) Where there is a need for compatibility of a direct digital
46 control system with previously installed control systems and
47 equipment, the bid specifications may include a requirement for

1 proprietary goods, and if so included, the bid specification shall set
2 forth an allowance price for its supply which shall be used by all
3 bidders in the public bidding process.

4 (3) (a) An energy services company may be designated as the
5 general contractor for improvements to be made pursuant to an
6 energy savings plan, provided that the hiring of subcontractors that
7 are required to be classified pursuant to subparagraph (a) of
8 paragraph (2) of this subsection shall be performed in accordance
9 with the procedures and requirements set forth pursuant to the
10 public bidding requirements of the board of trustees. A contract
11 with an energy savings company shall include, but not be limited to:
12 preparation of an energy savings plan; the responsibilities of the
13 parties for project schedules, installations, performance and quality,
14 payment of subcontractors, project completion, commissioning,
15 savings implementation; a requirement that the savings to be
16 achieved by energy conservation measures be verified upon
17 commissioning of the improvements; allocation of State and federal
18 rebates and tax credits; and any other provisions deemed necessary
19 by the parties.

20 (b) All workers performing public works activities for
21 subcontractors awarded contracts by an energy services company
22 pursuant to this section shall be paid prevailing wages in
23 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
24 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
25 the provisions of "The Public Works Contractor Registration Act,"
26 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
27 classified as contractors by the Division of Property Management
28 and Construction shall be eligible to be awarded a contract as a
29 subcontractor of an energy services company under this section for
30 performing public works activities pursuant to regulations adopted
31 by the Division of Property Management and Construction.

32 (c) In order to expedite communications with an energy services
33 company and facilitate the implementation of an energy savings
34 improvement program, a board of trustees may designate or appoint
35 an employee of the public institution of higher education with
36 decision-making authority to coordinate with the energy services
37 company and to address issues associated with the implementation
38 of an energy savings improvement program as they arise, provided
39 that any decision requiring a change order shall be made only upon
40 the approval of the board of trustees of the public institution of
41 higher education.

42 (4) **【**Except as provided in paragraph (5) of this subsection, a
43 A subsidiary or wholly-owned or partially-owned affiliate of the
44 energy services company shall not be an eligible contractor or
45 subcontractor under an energy savings services contract.

46 **【**(5)When the energy services company is the manufacturer of
47 direct digital control systems and contracts with the board of

1 trustees to provide a guaranteed energy savings option pursuant to
2 subsection f. of this section, the specification of such direct digital
3 control systems may be treated as proprietary goods and if so
4 treated, the bid specification shall set forth an allowance price for
5 its supply by the energy services company which shall be used by
6 all bidders in the public bidding process. Direct digital controls
7 shall be open protocol format and shall meet the interoperability
8 guidelines established by the American Society of Heating,
9 Refrigerating and Air-Conditioning Engineers.】

10 c. An energy savings improvement program may be financed
11 through a lease-purchase agreement or through the issuance of
12 energy savings obligations pursuant to this subsection.

13 (1) An energy savings improvement program may be financed
14 through a lease-purchase agreement between a board of trustees and
15 an energy services company or other public or private entity. Under
16 a lease-purchase agreement, ownership of the energy savings
17 equipment or improved facilities shall pass to the board of trustees
18 when all lease payments have been made. Notwithstanding the
19 provisions of any other law to the contrary, the duration of such a
20 lease-purchase agreement shall not exceed 15 years, except that the
21 duration of a lease purchase agreement for a combined heat and
22 power or cogeneration project shall not exceed 20 years. For the
23 purposes of this paragraph, the duration of the repayment term of a
24 lease-purchase agreement shall commence on the date upon which
25 construction and installation of the energy savings equipment,
26 “combined heat and power facility” or “cogeneration facility,” as
27 those terms are defined pursuant to section 3 of P.L.1999, c.23
28 (C.48:3-51), or other energy conservation measures undertaken
29 pursuant to the energy savings plan, have been completed.

30 (2) Any lease-purchase or other agreement entered into in
31 connection with an energy savings improvement program may be a
32 general obligation of the public institution of higher education
33 pursuant to this subsection, and may contain: a clause making it
34 subject to the availability and appropriation annually of sufficient
35 funds as may be required to meet the extended obligation; and a
36 non-substitution clause maintaining that if the agreement is
37 terminated for non-appropriation, the board of trustees may not
38 replace the leased equipment or facilities with equipment or
39 facilities that perform the same or similar functions.

40 (3) A board of trustees may arrange for incurring energy savings
41 obligations to finance an energy savings improvement program and
42 may enter into any agreement with the New Jersey Educational
43 Facilities Authority or other persons in connection with the issuance
44 by the authority of its obligations on behalf of the public institution
45 of higher education in order to finance the institution's energy
46 savings improvement program. Energy savings obligations may be
47 funded through appropriations for utility services in the annual

1 budget of the board, or incurred as a general obligation of the public
2 institution of higher education in connection with the issuance by
3 the New Jersey Educational Facilities Authority of bonds or notes
4 pursuant to N.J.S.18A:72A-2 et seq., or, in the case of a county
5 college, by a sponsoring county as a refunding bond pursuant to
6 N.J.S.40A:2-52 et seq., including the issuance of bond anticipation
7 notes as may be necessary, provided that all such bonds and notes
8 mature within the periods authorized for such energy savings
9 obligations.

10 (4) Lease-purchase agreements and energy savings obligations
11 shall not be used to finance maintenance, guarantees, or verification
12 of guarantees of energy conservation measures. Lease-purchase
13 agreements and energy savings obligations may be used to finance
14 the cost of an energy audit or the cost of verification of energy
15 savings as part of adopting an energy savings plan. Maturity
16 schedules of lease-purchase agreements or energy savings
17 obligations **[must]** shall not exceed the estimated average useful
18 life of the **[individual]** energy conservation measures.

19 d. (1) The energy audit component of an energy savings
20 improvement program shall be conducted either by the board of
21 trustees or by a qualified third party retained by the board for that
22 purpose. It shall not be conducted by an energy services company
23 subsequently hired to develop an energy savings improvement
24 program. The energy audit shall identify the current energy use of
25 any or all facilities and energy conservation measures that can be
26 implemented in which the energy savings and energy efficiency
27 could be realized and maximized.

28 (2) To implement an energy savings improvement program, a
29 board of trustees shall develop an energy savings plan that consists
30 of one or more energy conservation measures. The plan shall:

31 (a) contain the results of an energy audit;

32 (b) describe the energy conservation measures that will
33 comprise the program;

34 (c) estimate greenhouse gas reductions resulting from those
35 energy savings;

36 (d) identify all design and compliance issues that require the
37 professional services of an architect or engineer and identify who
38 will provide these services;

39 (e) include an assessment of risks involved in the successful
40 implementation of the plan;

41 (f) identify the eligibility for, and costs and revenues associated
42 with the PJM Independent System Operator for demand response
43 and curtailable service activities;

44 (g) include schedules showing calculations of all costs of
45 implementing the proposed energy conservation measures and the
46 projected energy savings;

1 (h) identify maintenance requirements necessary to ensure
2 continued energy savings, and describe how they will be fulfilled;
3 and

4 (i) if developed by an energy services company, a description
5 of, and cost estimates of an energy savings guarantee.

6 All professionals providing engineering services under the plan
7 shall have errors and omissions insurance.

8 (3) Prior to the adoption of the plan, the board of trustees shall
9 contract with a qualified third party to verify the projected energy
10 savings to be realized from the proposed program have been
11 calculated as required by subsection e. of this section.

12 (4) Upon adoption, the plan shall be submitted to the Board of
13 Public Utilities, which shall post it on the Internet on a public
14 webpage maintained for such purpose. If the board of trustees
15 maintains its own website, it shall also post the plan on that site.
16 The Board of Public Utilities may require periodic reporting
17 concerning the implementation of the plan.

18 (5) Verification by a qualified third party shall be required when
19 energy conservation measures are placed in service or
20 commissioned, to ensure the savings projected in the energy savings
21 plan shall be achieved.

22 (6) Energy-related capital improvements that do not reduce
23 energy usage may be included in an energy savings improvement
24 program but the cost of such improvements shall not be financed as
25 a lease-purchase or through energy savings obligations authorized
26 by subsection c. of this section. Nothing herein is intended to
27 prevent the financing of such capital improvements through
28 otherwise authorized means.

29 (7) A qualified third party when required by this subsection may
30 include an employee of the public institution of higher education
31 who is properly trained and qualified to perform such work.

32 e. (1) (a) The calculation of energy savings for the purposes of
33 determining that the energy savings resulting from the program will
34 be sufficient to cover the cost of the program's energy conservation
35 measures, as provided in subsection a. of this section, shall involve
36 determination of the dollar amount saved through implementation
37 of an energy savings improvement program using the guidelines of
38 the International Performance Measurement and Verification
39 Protocol or other protocols approved by the Board of Public
40 Utilities and standards adopted by the Board of Public Utilities
41 pursuant to this section. The calculation shall include all applicable
42 State and federal rebates and tax credits, but shall not include the
43 cost of an energy audit and the cost of verifying energy savings.
44 The calculation shall state which party has made application for
45 rebates and credits and how these applications translate into energy
46 savings.

1 (b) During the procurement phase of an energy savings
2 improvement program, an energy service company’s proposal
3 submitted in response to a request for proposal shall not include a
4 savings calculation that assumes, includes, or references capital cost
5 avoidance savings, the current or projected value of a “solar
6 renewable energy certificate,” as defined pursuant to section 3 of
7 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
8 attributes or benefits of whatever nature that derive from the
9 generation of renewable energy, and any costs or discounts
10 associated with maintenance services, an energy savings guarantee,
11 or third party verification of energy conservation measures and
12 energy savings. The calculation of energy savings shall utilize and
13 specifically reference as a benchmark the actual demand and energy
14 components of the public utility tariff rate applicable to the board of
15 trustees then in effect, and not a blended rate that aggregates,
16 combines, or restates in any manner the distinct demand and energy
17 components of the public utility tariff rate into a single combined or
18 restated tariff rate. If an energy services company submits a
19 proposal to a board of trustees that does not calculate projected
20 energy savings in the manner required by this subsection, such
21 proposal shall be rejected by the board of trustees.

22 (2) For the purposes of this section, the Board of Public Utilities
23 shall adopt standards and uniform values for interest rates and
24 escalation of labor, electricity, oil, and gas, as well as standards for
25 presenting these costs in a life cycle and net present value format,
26 standards for the presentation of obligations for carbon reductions,
27 and other standards that the board may determine necessary.

28 f. (1) When an energy services company is awarded an energy
29 savings services contract, it shall offer the board of trustees the
30 option to purchase, for an additional amount, an energy savings
31 guarantee. The guarantee, if accepted by a separate vote of the
32 board of trustees, shall insure that the energy savings resulting from
33 the energy savings improvement program, determined periodically
34 over the duration of the guarantee, will be sufficient to defray all
35 payments required to be made pursuant to the lease-purchase
36 agreement or energy savings obligation, and if the savings are not
37 sufficient, the energy services company will reimburse the board of
38 trustees for any additional amounts. Annual costs of a guarantee
39 shall not be financed or included as costs in an energy savings plan
40 but shall be fully disclosed in an energy savings plan.

41 (2) When a guaranteed energy savings option is purchased, the
42 contract shall require a qualified third party to verify the energy
43 savings at intervals established by the parties.

44 (3) When an energy services company is awarded an energy
45 savings services contract to provide or perform goods or services
46 for the purpose of enabling a board of trustees to conserve energy
47 through energy efficiency equipment, including a “combined heat

1 and power facility” as that term is defined pursuant to section 3 of
2 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
3 shall extend for a term of up to 15 years for energy efficiency
4 projects, and for up to 20 years for a combined heat and power
5 facility after construction completion. If a board of trustees shall
6 elect to contract with an energy services company for an energy
7 savings guarantee in connection with a contract awarded pursuant to
8 this section, such guarantee may extend for a term of up to 15 years
9 for energy efficiency projects, or up to 20 years for a combined heat
10 and power facility after construction completion.

11 g. As used in this section:

12 "direct digital control systems" means the devices and
13 computerized control equipment that contain software and computer
14 interfaces that perform the logic that control a building's heating,
15 ventilating, and air conditioning system. Direct digital controls
16 shall be open protocol format and shall meet the interoperability
17 guidelines established by the American Society of Heating,
18 Refrigerating and Air-Conditioning Engineers;

19 "educational facility" means a structure suitable for use as a
20 dormitory, dining hall, student union, administrative building,
21 academic building, library, laboratory, research facility, classroom,
22 athletic facility, health care facility, teaching hospital, and parking,
23 maintenance, storage or utility facility or energy conservation
24 measures and other structures or facilities related thereto or required
25 or useful for the instruction of students or the conducting of
26 research or the operation of an institution for higher education, and
27 public libraries, and the necessary and usual attendant and related
28 facilities and equipment, but shall not include any facility used or to
29 be used for sectarian instruction or as a place for religious worship;

30 "energy conservation measure" means an improvement that
31 results in reduced energy use, including, but not limited to,
32 installation of energy efficient equipment; demand response
33 equipment; combined heat and power systems; facilities for the
34 production of renewable energy; water conservation measures,
35 fixtures or facilities; building envelope improvements that are part
36 of an energy savings improvement program; and related control
37 systems for each of the foregoing;

38 "energy related capital improvement" means a capital
39 improvement that uses energy but does not result in a reduction of
40 energy use;

41 "energy saving obligation" means a bond, note or other
42 agreement evidencing the obligation to repay borrowed funds
43 incurred in order to finance energy saving improvements;

44 "energy savings" means a measured reduction in fuel, energy,
45 operating or maintenance costs resulting from the implementation
46 of one or more energy conservation measures services when
47 compared with an established baseline of previous fuel, energy,

1 operating or maintenance costs, including, but not limited to, future
2 capital replacement expenditures avoided as a result of equipment
3 installed or services performed as part of an energy savings plan;
4 "energy savings improvement program" means an initiative of a
5 public institution of higher education to implement energy
6 conservation measures in existing facilities, provided that the value
7 of the energy savings resulting from the program will be sufficient
8 to cover the cost of the program's energy conservation measures;
9 "energy savings plan" means the document that describes the
10 actions to be taken to implement the energy savings improvement
11 program;
12 "energy savings services contract" means a contract with an
13 energy savings company to develop an energy savings plan, prepare
14 bid specifications, manage the performance, provision,
15 construction, and installation of energy conservation measures by
16 subcontractors, to offer a guarantee of energy savings derived from
17 the implementation of an energy savings plan, and may include a
18 provision to manage the bidding process;
19 "energy services company" means a commercial entity that is
20 qualified to develop and implement an energy savings plan in
21 accordance with the provisions of this section;
22 "public works activities" means any work subject to the
23 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and
24 "water conservation measure" means an alteration to a facility or
25 equipment that reduces water consumption, maximizes the
26 efficiency of water use, or reduces water loss.
27 h. (1) The State Treasurer and the Board of Public Utilities
28 may take such action as is deemed necessary and consistent with the
29 intent of this section to implement its provisions.
30 (2) The State Treasurer and the Board of Public Utilities may
31 adopt implementation guidelines or directives, and adopt such
32 administrative rules, pursuant to the "Administrative Procedure
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
34 implementation of those agencies' respective responsibilities under
35 this section, except that notwithstanding any provision of P.L.1968,
36 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer and
37 the Board of Public Utilities may adopt, immediately upon filing
38 with the Office of Administrative Law, such rules and regulations
39 as deemed necessary to implement the provisions of this act which
40 shall be effective for a period not to exceed 12 months and shall
41 thereafter be amended, adopted or re-adopted in accordance with
42 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
43 (cf: P.L.2009, c.4, s.4)
44
45 3. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to
46 read as follows:

1 6. a. (1) A contracting unit, as defined in P.L.1971, c.198
2 (C.40A:11-1 et seq.), may implement an energy savings
3 improvement program in the manner provided by this section
4 whenever it determines that the savings generated from reduced
5 energy use from the program will be sufficient to cover the cost of
6 the program's energy conservation measures as set forth in an
7 energy savings plan. Under such a program, a contracting unit may
8 enter into an energy savings services contract with an energy
9 services company to implement the program or the contracting unit
10 may authorize separate contracts to implement the program. The
11 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
12 any contracts awarded pursuant to this section to the extent that the
13 provisions of such law are not inconsistent with any provision of
14 this section.

15 (2) A contracting unit facility alteration required to properly
16 implement other energy efficiency or energy conservation
17 measures, or both, may be included as part of an energy savings
18 services contract, in which case, notwithstanding any other
19 provision of law, rule, regulation, or order to the contrary, the
20 facility alteration may be undertaken or supervised by the energy
21 services company performing the energy savings services contract
22 if:

23 (a) the total cost of the improvement does not exceed 15 percent
24 of the total cost of the work to be performed under the energy
25 savings services contract; and

26 (b) (i) the improvement is necessary to conform to a law, rule,
27 or regulation, or order, or (ii) an analysis within an approved
28 proposal, or the contracting unit, at the time of the award of the
29 proposal, demonstrates that there is an economic advantage to the
30 contracting unit implementing the improvement as part of the
31 energy savings services contract, and the savings rationale for the
32 improvement is documented and supported by reasonable
33 justification.

34 b. (1) To be eligible to enter into an energy savings services
35 contract, an energy services company shall be a commercial entity
36 that is qualified to provide energy savings services in accordance
37 with the provisions of this section. A contracting unit may
38 determine to enter into an energy savings services contract either
39 through public advertising for bids and the receipt of bids therefor
40 or through competitive contracting in lieu of public bidding in the
41 manner provided by sections 1 through 5 of P.L.1999, c.440
42 (C.40A:11-4.1 et seq.).

43 (2) (a) Public works activities performed under an energy
44 savings improvement program shall be subject to all requirements
45 regarding public bidding, bid security, performance guarantees,
46 insurance and other public contracting requirements that are
47 applicable to public works contracts, to the extent not inconsistent

1 with this section. A general contractor, energy services company
2 serving as general contractor, or any subcontractor hired for the
3 furnishing of plumbing and gas fitting and all kindred work, and of
4 steam and hot water heating and ventilating apparatus, steam power
5 plants and kindred work, and electrical work, structural steel and
6 ornamental iron work, shall be classified by the Division of
7 Property Management and Construction in the Department of the
8 Treasury in order to perform public works activities under an
9 energy savings improvement program.

10 (b) Individuals or organizations performing energy audits,
11 acting as commissioning agents, or conducting verification of
12 energy savings plans, implementation of energy conservation
13 measures, or verifying guarantees shall be prequalified by the
14 Division of Property Management and Construction in the
15 Department of the Treasury to perform their work under an energy
16 savings improvement program.

17 (3) (a) An energy services company may be designated as the
18 general contractor for improvements to be made pursuant to an
19 energy savings plan, provided that the hiring of subcontractors that
20 are required to be classified pursuant to subparagraph (a) of
21 paragraph (2) of this subsection shall be performed in accordance
22 with the procedures and requirements set forth pursuant to the
23 public bidding requirements of the contracting unit. A contract
24 with an energy savings company shall include, but not be limited to:
25 preparation of an energy savings plan; the responsibilities of the
26 parties for project schedules, installations, performance and quality,
27 payment of subcontractors, project completion, commissioning,
28 savings implementation; a requirement that the savings to be
29 achieved by energy conservation measures be verified upon
30 commissioning of the improvements; allocation of State and federal
31 rebates and tax credits; and any other provisions deemed necessary
32 by the parties.

33 (b) All workers performing public works activities for
34 subcontractors awarded contracts by an energy services company
35 pursuant to this section shall be paid prevailing wages in
36 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
37 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
38 the provisions of "The Public Works Contractor Registration Act,"
39 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
40 classified as contractors by the Division of Property Management
41 and Construction shall be eligible to be awarded a contract as a
42 subcontractor of an energy services company under this section for
43 performing public works activities pursuant to regulations adopted
44 by the Division of Property Management and Construction.

45 (c) In order to expedite communications with an energy services
46 company and facilitate the implementation of an energy savings
47 improvement program, a contracting unit may designate or appoint

1 an employee of the contracting unit with decision-making authority
2 to coordinate with the energy services company and to address
3 issues associated with the implementation of an energy savings
4 improvement program as they arise, provided that any decision
5 requiring a change order shall be made only upon the approval of
6 the contracting unit.

7 (4) Except as provided in paragraph (5) of this subsection, a
8 subsidiary or wholly-owned or partially-owned affiliate of the
9 energy services company shall not be an eligible contractor or
10 subcontractor under an energy savings services contract.

11 (5) When the energy services company is the manufacturer of
12 direct digital control systems and contracts with the contracting unit
13 to provide a guaranteed energy savings option pursuant to
14 subsection f. of this section, the specification of such direct digital
15 control systems may be treated as proprietary goods and if so
16 treated, the bid specification shall set forth an allowance price for
17 its supply by the energy services company which shall be used by
18 all bidders in the public bidding process. Direct digital controls
19 shall be open protocol format and shall meet the interoperability
20 guidelines established by the American Society of Heating,
21 Refrigerating and Air-Conditioning Engineers. Each contract to be
22 entered into pursuant to this section between a contracting unit and
23 an energy services company that is the manufacturer of direct
24 digital control systems where such direct digital control systems are
25 treated as proprietary goods as part of the contract, shall first be
26 reviewed and approved by the Board of Public Utilities for the
27 purpose of affirming the reasonableness of such allowance price. If
28 the board does not disapprove of the contract within 14 days of
29 receipt thereof, the contract shall be deemed approved.

30 c. An energy savings improvement program may be financed
31 through a lease-purchase agreement or through the issuance of
32 energy savings obligations pursuant to this subsection.

33 (1) An energy savings improvement program may be financed
34 through a lease-purchase agreement between a contracting unit and
35 an energy services company or other public or private entity. Under
36 a lease-purchase agreement, ownership of the energy savings
37 equipment or improved facilities shall pass to the contracting unit
38 when all lease payments have been made. Notwithstanding the
39 provisions of any other law to the contrary, the duration of such a
40 lease-purchase agreement shall not exceed 15 years, except that the
41 duration of a lease purchase agreement for a combined heat and
42 power or cogeneration project shall not exceed 20 years. For the
43 purposes of this paragraph, the duration of the repayment term of a
44 lease-purchase agreement shall commence on the date upon which
45 construction and installation of the energy savings equipment,
46 “combined heat and power facility” or “cogeneration facility,” as
47 those terms are defined pursuant to section 3 of P.L.1999, c.23

1 (C.48:3-51), or other energy conservation measures undertaken
2 pursuant to the energy savings plan, have been completed.

3 (2) Any lease-purchase agreement entered into pursuant to this
4 subsection, may contain: a clause making it subject to the
5 availability and appropriation annually of sufficient funds as may
6 be required to meet the extended obligation; and a non-substitution
7 clause maintaining that if the agreement is terminated for non-
8 appropriation, the contracting unit may not replace the leased
9 equipment or facilities with equipment or facilities that perform the
10 same or similar functions.

11 (3) A contracting unit may arrange for incurring energy savings
12 obligations to finance an energy savings improvement program.
13 Energy savings obligations may be funded through appropriations
14 for utility services in the annual budget of the contracting unit and
15 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et
16 seq., including the issuance of bond anticipation notes as may be
17 necessary, provided that all such bonds and notes mature within the
18 periods authorized for such energy savings obligations. Energy
19 savings obligations may be issued either through the contracting
20 unit or another public agency authorized to undertake financing on
21 behalf of the unit.

22 (4) Lease-purchase agreements and energy savings obligations
23 shall not be used to finance maintenance, guarantees, or verification
24 of guarantees of energy conservation measures. Lease-purchase
25 agreements and energy savings obligations may be used to finance
26 the cost of an energy audit or the cost of verification of energy
27 savings as part of adopting an energy savings plan.
28 Notwithstanding any law to the contrary, lease-purchase agreements
29 and energy savings certificates shall not be excepted from any
30 budget or tax levy limitation otherwise provided by law. Maturity
31 schedules of lease-purchase agreements or energy savings
32 obligations **[must]** shall not exceed the estimated average useful
33 life of the **[individual]** energy conservation measures.

34 d. (1) The energy audit component of an energy savings
35 improvement program shall be conducted either by the contracting
36 unit or by a qualified independent third party retained by the
37 governing body for that purpose. It shall not be conducted by an
38 energy services company subsequently hired to develop an energy
39 savings improvement program. The energy audit shall identify the
40 current energy use of any or all facilities and energy conservation
41 measures that can be implemented in which the energy savings and
42 energy efficiency could be realized and maximized.

43 (2) To implement an energy savings improvement program, a
44 contracting unit shall develop a plan that consists of one or more
45 energy conservation measures. The plan shall:

46 (a) contain the results of an energy audit;

- 1 (b) describe the energy conservation measures that will
2 comprise the program;
- 3 (c) estimate greenhouse gas reductions resulting from those
4 energy savings;
- 5 (d) identify all design and compliance issues that require the
6 professional services of an architect or engineer and identify who
7 will provide these services;
- 8 (e) include an assessment of risks involved in the successful
9 implementation of the plan;
- 10 (f) identify the eligibility for, and costs and revenues associated
11 with the PJM Independent System Operator for demand response
12 and curtailable service activities;
- 13 (g) include schedules showing calculations of all costs of
14 implementing the proposed energy conservation measures and the
15 projected energy savings;
- 16 (h) identify maintenance requirements necessary to ensure
17 continued energy savings, and describe how they will be fulfilled;
18 and
- 19 (i) if developed by an energy services company, a description
20 of, and cost estimates of an energy savings guarantee.
- 21 All professionals providing engineering services under the plan
22 shall have errors and omissions insurance.
- 23 (3) Prior to the adoption of the plan, the contracting unit shall
24 contract with a qualified third party to verify the projected energy
25 savings to be realized from the proposed program have been
26 calculated as required by subsection e. of this section.
- 27 (4) Upon adoption, the plan shall be submitted to the Board of
28 Public Utilities, which shall post it on the Internet on a public
29 webpage maintained for such purpose. If the contracting unit
30 maintains its own website, it shall also post the plan on that site.
31 The board may require periodic reporting concerning the
32 implementation of the plan.
- 33 (5) Verification by a qualified third party shall be required when
34 energy conservation measures are placed in service or
35 commissioned, to ensure the savings projected in the energy savings
36 plan shall be achieved.
- 37 (6) Energy-related capital improvements that do not reduce
38 energy usage may be included in an energy savings improvement
39 program but the cost of such improvements shall not be financed as
40 a lease-purchase or through energy savings obligations authorized
41 by subsection c. of this section. Nothing herein is intended to
42 prevent financing of such capital improvements through otherwise
43 authorized means.
- 44 (7) A qualified third party when required by this subsection may
45 include an employee of the contracting unit who is properly trained
46 and qualified to perform such work.

1 e. (1) (a) The calculation of energy savings for the purposes of
2 determining that the energy savings resulting from the program will
3 be sufficient to cover the cost of the program's energy conservation
4 measures, as provided in subsection a. of this section, shall involve
5 determination of the dollar amount saved through implementation
6 of an energy savings improvement program using the guidelines of
7 the International Performance Measurement and Verification
8 Protocol or other protocols approved by the Board of Public
9 Utilities and standards adopted by the Board of Public Utilities
10 pursuant to this section. The calculation shall include all applicable
11 State and federal rebates and tax credits, but shall not include the
12 cost of an energy audit and the cost of verifying energy savings.
13 The calculation shall state which party has made application for
14 rebates and credits and how these applications translate into energy
15 savings.

16 (b) During the procurement phase of an energy savings
17 improvement program, an energy service company's proposal
18 submitted in response to a request for proposal shall not include a
19 savings calculation that assumes, includes, or references capital cost
20 avoidance savings, the current or projected value of a "solar
21 renewable energy certificate," as defined pursuant to section 3 of
22 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
23 attributes or benefits of whatever nature that derive from the
24 generation of renewable energy, and any costs or discounts
25 associated with maintenance services, an energy savings guarantee,
26 or third party verification of energy conservation measures and
27 energy savings. The calculation of energy savings shall utilize and
28 specifically reference as a benchmark the actual demand and energy
29 components of the public utility tariff rate applicable to the
30 contracting unit then in effect, and not a blended rate that
31 aggregates, combines, or restates in any manner the distinct demand
32 and energy components of the public utility tariff rate into a single
33 combined or restated tariff rate. If an energy services company
34 submits a proposal to a contracting unit that does not calculate
35 projected energy savings in the manner required by this subsection,
36 such proposal shall be rejected by the contracting unit.

37 (2) For the purposes of this section, the Board of Public Utilities
38 shall adopt standards and uniform values for interest rates and
39 escalation of labor, electricity, oil, and gas, as well as standards for
40 presenting these costs in a life cycle and net present value format,
41 standards for the presentation of obligations for carbon reductions,
42 and other standards that the board may determine necessary.

43 f. (1) When an energy services company is awarded an energy
44 savings services contract, it shall offer the contracting unit the
45 option to purchase, for an additional amount, an energy savings
46 guarantee. The guarantee, if accepted by a separate vote of the
47 governing body of the contracting unit, shall insure that the energy

1 savings resulting from the energy savings improvement program,
2 determined periodically over the duration of the guarantee, will be
3 sufficient to defray all payments required to be made pursuant to
4 the lease-purchase agreement or energy savings obligation, and if
5 the savings are not sufficient, the energy services company will
6 reimburse the contracting unit for any additional amounts. Annual
7 costs of a guarantee shall not be financed or included as costs in an
8 energy savings plan but shall be fully disclosed in an energy
9 savings plan.

10 (2) When a guaranteed energy savings option is purchased, the
11 contract shall require a qualified third party to verify the energy
12 savings at intervals established by the parties.

13 (3) When an energy services company is awarded an energy
14 savings services contract to provide or perform goods or services
15 for the purpose of enabling a contracting unit to conserve energy
16 through energy efficiency equipment, including a “combined heat
17 and power facility” as that term is defined pursuant to section 3 of
18 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract
19 shall extend for a term of up to 15 years for energy efficiency
20 projects, and for up to 20 years for a combined heat and power
21 facility after construction completion. If a contracting unit shall
22 elect to contract with an energy services company for an energy
23 savings guarantee in connection with a contract awarded pursuant to
24 this section, such guarantee may extend for a term of up to 15 years
25 for energy efficiency projects, or up to 20 years for a combined heat
26 and power facility after construction completion.

27 g. As used in this section:

28 "direct digital control systems" means the devices and
29 computerized control equipment that contain software and computer
30 interfaces that perform the logic that control a building's heating,
31 ventilating, and air conditioning system. Direct digital controls
32 shall be open protocol format and shall meet the interoperability
33 guidelines established by the American Society of Heating,
34 Refrigerating and Air-Conditioning Engineers;

35 "energy conservation measure" means an improvement that
36 results in reduced energy use, including, but not limited to,
37 installation of energy efficient equipment; demand response
38 equipment; combined heat and power systems; facilities for the
39 production of renewable energy; water conservation measures,
40 fixtures or facilities; building envelope improvements that are part
41 of an energy savings improvement program; and related control
42 systems for each of the foregoing;

43 "energy related capital improvement" means a capital
44 improvement that uses energy but does not result in a reduction of
45 energy use;

1 "energy saving obligation" means a bond, note or other
2 agreement evidencing the obligation to repay borrowed funds
3 incurred in order to finance energy saving improvements;

4 "energy savings" means a measured reduction in fuel, energy,
5 operating or maintenance costs resulting from the implementation
6 of one or more energy conservation measures services when
7 compared with an established baseline of previous fuel, energy,
8 operating or maintenance costs, including, but not limited to, future
9 capital replacement expenditures avoided as a result of equipment
10 installed or services performed as part of an energy savings plan;

11 "energy savings improvement program" means an initiative of a
12 contracting unit to implement energy conservation measures in
13 existing facilities, provided that the value of the energy savings
14 resulting from the program will be sufficient to cover the cost of the
15 program's energy conservation measures;

16 "energy savings plan" means the document that describes the
17 actions to be taken to implement the energy savings improvement
18 program;

19 "energy savings services contract" means a contract with an
20 energy savings company to develop an energy savings plan, prepare
21 bid specifications, manage the performance, provision,
22 construction, and installation of energy conservation measures by
23 subcontractors, to offer a guarantee of energy savings derived from
24 the implementation of an energy savings plan, and may include a
25 provision to manage the bidding process;

26 "energy services company" means a commercial entity that is
27 qualified to develop and implement an energy savings plan in
28 accordance with the provisions of this section;

29 "public works activities" means any work subject to the
30 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

31 "water conservation measure" means an alteration to a facility or
32 equipment that reduces water consumption, maximizes the
33 efficiency of water use, or reduces water loss.

34 h. (1) The Director of the Division of Local Government
35 Services in the Department of Community Affairs, the State
36 Treasurer, and the Board of Public Utilities may take such action as
37 is deemed necessary and consistent with the intent of this section to
38 implement its provisions.

39 (2) The Director of the Division of Local Government Services
40 in the Department of Community Affairs, the State Treasurer, and
41 the Board of Public Utilities may adopt implementation guidelines
42 or directives, and adopt such administrative rules, pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), as are necessary for the implementation of those agencies'
45 respective responsibilities under this section, except that
46 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
47 seq.) to the contrary, the Director of the Division of Local

1 Government Services in the Department of Community Affairs, the
2 State Treasurer, and the Board of Public Utilities may adopt,
3 immediately upon filing with the Office of Administrative Law,
4 such rules and regulations as deemed necessary to implement the
5 provisions of this act which shall be effective for a period not to
6 exceed 12 months and shall thereafter be amended, adopted or re-
7 adopted in accordance with the provisions of P.L.1968, c.410
8 (C.52:14B-1 et seq.).
9 (cf: P.L.2009, c.4, s.6)

10
11 4. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read
12 as follows:

13 9. a. (1) A State contracting agency, as defined in this section,
14 may implement an energy savings improvement program in the
15 manner provided by this section whenever it determines that the
16 savings generated from reduced energy use from the program will
17 be sufficient to cover the cost of the program's energy conservation
18 measures as set forth in an energy savings plan. Under such a
19 program, a contracting agency may enter into an energy savings
20 services contract with an energy services company to implement the
21 program or the contracting agency may authorize separate contracts
22 to implement the program. The provisions of Title 52 of the
23 Revised Statutes shall apply to any contracts awarded pursuant to
24 this section to the extent that the provisions of such law are not
25 inconsistent with any provision of this section.

26 (2) A State contracting agency facility alteration required to
27 properly implement other energy efficiency or energy conservation
28 measures, or both, may be included as part of an energy savings
29 services contract, in which case, notwithstanding any other
30 provision of law, rule, regulation, or order to the contrary, the
31 facility alteration may be undertaken or supervised by the energy
32 services company performing the energy savings services contract
33 if:

34 (a) the total cost of the improvement does not exceed 15 percent
35 of the total cost of the work to be performed under the energy
36 savings services contract; and

37 (b) (i) the improvement is necessary to conform to a law, rule,
38 or regulation, or order, or (ii) an analysis within an approved
39 proposal, or the State contracting agency, at the time of the award
40 of the proposal, demonstrates that there is an economic advantage to
41 the State contracting agency implementing the improvement as part
42 of the energy savings services contract, and the savings rationale for
43 the improvement is documented and supported by reasonable
44 justification.

45 b. (1) To be eligible to enter into an energy savings services
46 contract, an energy services company shall be a commercial entity
47 that is qualified to provide energy savings services in accordance

1 with the provisions of this section. A State contracting agency may
2 determine to enter into an energy savings services contract through
3 public advertising for bids and the receipt of bids therefor.

4 (2) (a) Public works activities performed under an energy
5 savings improvement program shall be subject to all requirements
6 regarding public bidding, bid security, performance guarantees,
7 insurance and other public contracting requirements that are
8 applicable to public works contracts, to the extent not inconsistent
9 with this section. A general contractor, energy services company
10 serving as general contractor, or any subcontractor hired for the
11 furnishing of plumbing and gas fitting and all kindred work, and of
12 steam and hot water heating and ventilating apparatus, steam power
13 plants and kindred work, and electrical work, structural steel and
14 ornamental iron work, shall be classified by the Division of
15 Property Management and Construction in the Department of the
16 Treasury in order to perform public works activities under an
17 energy savings improvement program. A general contractor, energy
18 services company serving as general contractor, or any
19 subcontractor hired for the furnishing of electrical work shall use
20 only electrical contractors licensed by the State, pursuant to
21 P.L.1962, c.162 (C.45:5A-1 et seq.), to perform electrical work
22 under an energy savings improvement program. Electrical work
23 shall include, but not be limited to, the wiring of temperature and
24 energy management controls, the installation of control systems,
25 and the retrofitting of any lighting equipment.

26 (b) Individuals or organizations performing energy audits,
27 acting as commissioning agents, or conducting verification of
28 energy savings plans, implementation of energy conservation
29 measures, or verifying guarantees shall be prequalified by the
30 Division of Property Management and Construction in the
31 Department of the Treasury to perform their work under an energy
32 savings improvement program.

33 (3) (a) An energy services company may be designated as the
34 general contractor for improvements to be made pursuant to an
35 energy savings plan, provided that the hiring of subcontractors that
36 are required to be classified pursuant to subparagraph (a) of
37 paragraph (2) of this subsection shall be performed in accordance
38 with the procedures and requirements set forth pursuant to **[the**
39 **public bidding requirements of the State contracting agency]**
40 subparagraph (b) of this paragraph. A contract with an energy
41 savings company shall include, but not be limited to: preparation of
42 an energy savings plan, the responsibilities of the parties for project
43 schedules, installations, performance and quality, payment of
44 subcontractors, project completion, commissioning, savings
45 implementation; a requirement that the savings to be achieved by
46 energy conservation measures be verified upon commissioning of

1 the improvements; allocation of State and federal rebates and tax
2 credits; and any other provisions deemed necessary by the parties.

3 (b) Notwithstanding any other law or regulation to the contrary,
4 an energy services company shall select, in accordance with the
5 procedures and requirements set forth pursuant to the public bidding
6 process of the State contracting agency, only those subcontractors
7 that have been pre-qualified by the Division of Property
8 Management and Construction as eligible to submit bids. In pre-
9 qualifying subcontractors for eligibility, the division shall create
10 one or more pools of subcontractors based on the value and
11 complexity of the work to be undertaken under an energy savings
12 improvement program. The pre-qualification pools shall include
13 subcontractors having the following qualifications:

14 (i) the financial means and ability to complete the required work;

15 (ii) the experience, capability, and skills necessary to complete
16 the work required of energy savings improvement program projects;
17 and

18 (iii) a record of experience conducting similar work in a timely
19 fashion.

20 Each subcontractor chosen by the energy services company shall
21 certify that all employees have completed a registered
22 apprenticeship program that provided each trainee with combined
23 classroom and on-the-job training under the direct and close
24 supervision of a highly skilled worker in an occupation recognized
25 as an apprenticeable trade, registered by the Office of
26 Apprenticeship of the United States Department of Labor and
27 meeting the standards established by the office, or registered by a
28 State apprenticeship agency recognized by the office. The energy
29 services company shall then select from the eligible pools of
30 prequalified subcontractors. All workers performing public works
31 activities for subcontractors awarded contracts by an energy
32 services company pursuant to this section shall be paid prevailing
33 wages in accordance with the "New Jersey Prevailing Wage Act,"
34 P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall
35 comply with the provisions of "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only
37 firms appropriately classified as contractors by the Division of
38 Property Management and Construction shall be eligible to be
39 awarded a contract as a subcontractor of an energy services
40 company under this section for performing public works activities
41 pursuant to regulations adopted by the Division of Property
42 Management and Construction.

43 (c) In order to expedite communications with an energy services
44 company and facilitate the implementation of an energy savings
45 improvement program, a State contracting agency may designate or
46 appoint an employee of the State contracting agency with decision-
47 making authority to coordinate with the energy services company

1 and to address issues associated with the implementation of an
2 energy savings improvement program as they arise, provided that
3 any decision requiring a change order shall be made only upon the
4 approval of the State contracting agency.

5 (4) **【**Except as provided in paragraph (5) of this subsection, a**】**
6 A subsidiary or wholly-owned or partially-owned affiliate of the
7 energy services company shall not be an eligible contractor or
8 subcontractor under an energy savings services contract.

9 **【**(5)When the energy services company is the manufacturer of
10 direct digital control systems and contracts with the contracting
11 agency to provide a guaranteed energy savings option pursuant to
12 subsection f. of this section, the specification of such direct digital
13 control systems may be treated as proprietary goods and if so
14 treated, the bid specification shall set forth an allowance price for
15 its supply by the energy services company which shall be used by
16 all bidders in the public bidding process. Direct digital controls
17 shall be open protocol format and shall meet the interoperability
18 guidelines established by the American Society of Heating,
19 Refrigerating and Air-Conditioning Engineers.**】**

20 c. In addition to existing authorization of a State agency to
21 enter into lease-purchase agreements or to issue obligations to
22 finance the costs of an energy savings improvement program, a
23 contracting agency is hereby authorized to finance the costs of an
24 energy savings improvement program by entering into a lease
25 purchase agreement. Any financing mechanism shall be
26 administered in a manner consistent with this subsection insofar as
27 it does not conflict with the provisions of other law that applies to
28 the contracting agency.

29 (1) An energy savings improvement program may be financed
30 through a lease-purchase agreement between a State contracting
31 agency and an energy services company or other public or private
32 entity. Under a lease-purchase agreement, ownership of the energy
33 savings equipment or improved facilities shall pass to the
34 contracting agency or the client agency responsible for the facility
35 when all lease payments have been made. Notwithstanding the
36 provisions of any other law to the contrary, the duration of such a
37 lease-purchase agreement shall not exceed 15 years, except that the
38 duration of a lease purchase agreement for a combined heat and
39 power or cogeneration project shall not exceed 20 years. For the
40 purposes of this paragraph, the duration of the repayment term of a
41 lease-purchase agreement shall commence on the date upon which
42 construction and installation of the energy savings equipment,
43 “combined heat and power facility” or “cogeneration facility,” as
44 those terms are defined pursuant to section 3 of P.L.1999, c.23
45 (C.48:3-51), or other energy conservation measures undertaken
46 pursuant to the energy savings plan, have been completed.

1 (2) Lease-purchase agreements and energy savings obligations
2 shall not be used to finance maintenance, guarantees, or verification
3 of guarantees of energy conservation measures. Lease-purchase
4 agreements may be used to finance the cost of an energy audit or
5 the cost of verification of energy savings as part of adopting an
6 energy savings plan. Maturity schedules of lease-purchase
7 agreements **[must]** shall not exceed the estimated average useful
8 life of the **[individual]** energy conservation measures.

9 d. (1) The energy audit component of an energy savings
10 improvement program shall be conducted either by the contracting
11 agency or by a qualified independent third party retained by the
12 contracting agency for that purpose. It shall not be conducted by an
13 energy services company subsequently hired to develop an energy
14 savings improvement program. The energy audit shall identify the
15 current energy use of any or all facilities and energy conservation
16 measures that can be implemented in which the energy savings and
17 energy efficiency could be realized and maximized.

18 (2) To implement an energy savings improvement program, a
19 contracting agency shall develop an energy savings plan that
20 consists of one or more energy conservation measures. The plan
21 shall:

22 (a) contain the results of an energy audit;

23 (b) describe the energy conservation measures that will
24 comprise the program;

25 (c) estimate greenhouse gas reductions resulting from those
26 energy savings;

27 (d) identify all design and compliance issues that require the
28 professional services of an architect or engineer and identify who
29 will provide these services;

30 (e) include an assessment of risks involved in the successful
31 implementation of the plan;

32 (f) identify the eligibility for, and costs and revenues associated
33 with the PJM Independent System Operator for demand response
34 and curtailable service activities;

35 (g) include schedules showing calculations of all costs of
36 implementing the proposed energy conservation measures and the
37 projected energy savings;

38 (h) identify maintenance requirements necessary to ensure
39 continued energy savings, and describe how they will be fulfilled;
40 and

41 (i) if developed by an energy services company, a description
42 of, and cost estimates of an energy savings guarantee.

43 All professionals providing engineering services under the plan
44 shall have errors and omissions insurance.

45 (3) Prior to the adoption of the plan, the contracting agency
46 shall contract with a qualified third party to verify the projected

1 energy savings to be realized from the proposed program have been
2 calculated as required by subsection e. of this section.

3 (4) Upon adoption, the plan shall be submitted to the Board of
4 Public Utilities, which shall post it on the Internet on a public
5 webpage maintained for such purpose. If the contracting agency
6 maintains its own website, it shall also post the plan on that site.
7 The Board of Public Utilities may require periodic reporting
8 concerning the implementation of the plan.

9 (5) Verification by a qualified third party shall be required when
10 energy conservation measures are placed in service or
11 commissioned, to ensure the savings projected in the energy savings
12 plan shall be achieved.

13 (6) Energy-related capital improvements that do not reduce
14 energy usage may be included in an energy savings improvement
15 program but the cost of such improvements shall not be financed as
16 a lease-purchase or through energy savings obligations authorized
17 by subsection c. of this section. Nothing herein is intended to
18 prevent financing of such capital improvements through otherwise
19 authorized means.

20 (7) A qualified third party when required by this subsection may
21 include an employee of the State contracting agency who is
22 properly trained and qualified to perform such work.

23 e. (1) (a) The calculation of energy savings for the purposes of
24 determining that the energy savings resulting from the program will
25 be sufficient to cover the cost of the program's energy conservation
26 measures, as provided in subsection a. of this section, shall involve
27 determination of the dollar amount saved through implementation
28 of an energy savings improvement program using the guidelines of
29 the International Performance Measurement and Verification
30 Protocol or other protocols approved by the Board of Public
31 Utilities and standards adopted by the Board of Public Utilities
32 pursuant to this section. The calculation shall include all applicable
33 State and federal rebates and tax credits, but shall not include the
34 cost of an energy audit and the cost of verifying energy savings.
35 The calculation shall state which party has made application for
36 rebates and credits and how these applications translate into energy
37 savings.

38 (b) During the procurement phase of an energy savings
39 improvement program, an energy service company's proposal
40 submitted in response to a request for proposal shall not include a
41 savings calculation that assumes, includes, or references capital cost
42 avoidance savings, the current or projected value of a "solar
43 renewable energy certificate," as defined pursuant to section 3 of
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
45 attributes or benefits of whatever nature that derive from the
46 generation of renewable energy, and any costs or discounts
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and
2 energy savings. The calculation of energy savings shall utilize and
3 specifically reference as a benchmark the actual demand and energy
4 components of the public utility tariff rate applicable to the State
5 contracting agency then in effect, and not a blended rate that
6 aggregates, combines, or restates in any manner the distinct demand
7 and energy components of the public utility tariff rate into a single
8 combined or restated tariff rate. If an energy services company
9 submits a proposal to a State contracting agency that does not
10 calculate projected energy savings in the manner required by this
11 subsection, such proposal shall be rejected by the State contracting
12 agency.

13 (2) For the purposes of this section, the Board of Public Utilities
14 shall adopt standards and uniform values for interest rates and
15 escalation of labor, electricity, oil, and gas, as well as standards for
16 presenting these costs in a life cycle and net present value format,
17 standards for the presentation of obligations for carbon reductions,
18 and other standards that the board may determine necessary.

19 f. (1) When an energy services company is awarded an energy
20 savings services contract, it shall offer the contracting agency the
21 option to purchase, for an additional amount, an energy savings
22 guarantee. The guarantee, if accepted by the contracting agency,
23 shall insure that the energy savings resulting from the energy
24 savings improvement program, determined periodically over the
25 duration of the guarantee, will be sufficient to defray all payments
26 required to be made pursuant to the lease-purchase agreement or
27 energy savings obligation, and if the savings are not sufficient, the
28 energy services company will reimburse the contracting agency for
29 any additional amounts. Annual costs of a guarantee shall not be
30 financed or included as costs in an energy savings plan but shall be
31 fully disclosed in an energy savings plan.

32 (2) When a guaranteed energy savings option is purchased, the
33 contract shall require a qualified third party to verify the energy
34 savings at intervals established by the parties.

35 (3) When an energy services company is awarded an energy
36 savings services contract to provide or perform goods or services
37 for the purpose of enabling a State contracting agency to conserve
38 energy through energy efficiency equipment, including a “combined
39 heat and power facility” as that term is defined pursuant to section 3
40 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
41 shall extend for a term of up to 15 years for energy efficiency
42 projects, and for up to 20 years for a combined heat and power
43 facility after construction completion. If a State contracting agency
44 shall elect to contract with an energy services company for an
45 energy savings guarantee in connection with a contract awarded
46 pursuant to this section, such guarantee may extend for a term of up

1 to 15 years for energy efficiency projects, or up to 20 years for a
2 combined heat and power facility after construction completion.

3 g. As used in this section:

4 ["direct digital control systems" means the devices and
5 computerized control equipment that contain software and computer
6 interfaces that perform the logic that control a building's heating,
7 ventilating, and air conditioning system. Direct digital controls
8 shall be open protocol format and shall meet the interoperability
9 guidelines established by the American Society of Heating,
10 Refrigerating and Air-Conditioning Engineers;]

11 "energy conservation measure" means an improvement that
12 results in reduced energy use, including, but not limited to,
13 installation of energy efficient equipment; demand response
14 equipment; combined heat and power systems; facilities for the
15 production of renewable energy; water conservation measures,
16 fixtures or facilities; building envelope improvements that are part
17 of an energy savings improvement program; and related control
18 systems for each of the foregoing;

19 "energy related capital improvement" means a capital
20 improvement that uses energy but does not result in a reduction of
21 energy use;

22 "energy savings" means a measured reduction in fuel, energy,
23 operating or maintenance costs resulting from the implementation
24 of one or more energy conservation measures services when
25 compared with an established baseline of previous fuel, energy,
26 operating or maintenance costs, including, but not limited to, future
27 capital replacement expenditures avoided as a result of equipment
28 installed or services performed as part of an energy savings plan;

29 "energy savings improvement program" means an initiative of a
30 State contracting agency to implement energy conservation
31 measures in existing facilities, provided that the value of the energy
32 savings resulting from the program will be sufficient to cover the
33 cost of the program's energy conservation measures;

34 "energy savings plan" means the document that describes the
35 actions to be taken to implement the energy savings improvement
36 program;

37 "energy savings services contract" means a contract with an
38 energy savings company to develop an energy savings plan, prepare
39 bid specifications, manage the performance, provision,
40 construction, and installation of energy conservation measures by
41 subcontractors, to offer a guarantee of energy savings derived from
42 the implementation of an energy savings plan, and may include a
43 provision to manage the bidding process;

44 "energy services company" means a commercial entity that is
45 qualified to develop and implement an energy savings plan in
46 accordance with the provisions of this section;

1 "public works activities" means any work subject to the
2 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

3 "State contracting agency" or "contracting agency" means any of
4 the principal departments in the Executive Branch of State
5 Government, and any division, board, bureau, office, commission or
6 other instrumentality created by a principal department; and

7 "water conservation measure" means an alteration to a facility or
8 equipment that reduces water consumption, maximizes the
9 efficiency of water use, or reduces water loss.

10 h. (1) The State Treasurer and the Board of Public Utilities
11 may take such action as is deemed necessary and consistent with the
12 intent of this section to implement its provisions.

13 (2) The State Treasurer and the Board of Public Utilities may
14 adopt implementation guidelines or directives, and adopt such
15 administrative rules, pursuant to the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
17 implementation of those agencies' respective responsibilities under
18 this section, except that notwithstanding any provision of P.L.1968,
19 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
20 the Board of Public Utilities may adopt, immediately upon filing
21 with the Office of Administrative Law, such rules and regulations
22 as deemed necessary to implement the provisions of this act which
23 shall be effective for a period not to exceed 12 months and shall
24 thereafter be amended, adopted or re-adopted in accordance with
25 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

26 (cf: P.L.2009, c.4, s.9)

27
28 5. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to read
29 as follows:

30 10. a. (1) A public agency, as defined in this section, may
31 implement an energy savings improvement program in the manner
32 provided by this section whenever it determines that the savings
33 generated from reduced energy use from the program will be
34 sufficient to cover the cost of the program's energy conservation
35 measures as set forth in an energy savings plan. Under such a
36 program, a public agency may enter into an energy savings services
37 contract with an energy services company to implement the
38 program or the public agency may authorize separate contracts to
39 implement the program. The provisions of any other law applicable
40 to a public agency shall apply to any contracts awarded pursuant to
41 this section to the extent that the provisions of such law are not
42 inconsistent with any provision of this section.

43 (2) A public agency facility alteration required to properly
44 implement other energy efficiency or energy conservation
45 measures, or both, may be included as part of an energy savings
46 services contract, in which case, notwithstanding any other
47 provision of law, rule, regulation, or order to the contrary, the

1 facility alteration may be undertaken or supervised by the energy
2 services company performing the energy savings services contract
3 if:

4 (a) the total cost of the improvement does not exceed 15 percent
5 of the total cost of the work to be performed under the energy
6 savings services contract; and

7 (b) (i) the improvement is necessary to conform to a law, rule,
8 or regulation, or order, or (ii) an analysis within an approved
9 proposal, or the public agency, at the time of the award of the
10 proposal, demonstrates that there is an economic advantage to the
11 public agency implementing the improvement as part of the energy
12 savings services contract, and the savings rationale for the
13 improvement is documented and supported by reasonable
14 justification.

15 b. (1) To be eligible to enter into an energy savings services
16 contract, an energy services company shall be a commercial entity
17 that is qualified to provide public agencies with energy savings
18 services in accordance with the provisions of this section. A public
19 agency may determine to enter into an energy savings services
20 contract which shall be awarded through a procedure that results in
21 the award of a contract to a vendor determined by the public agency
22 to be the most advantageous, price and other factors considered.

23 (2) (a) Public works activities performed under an energy
24 savings improvement program shall be subject to all requirements
25 regarding public bidding, bid security, performance guarantees,
26 insurance and other public contracting requirements that are
27 applicable to public works contracts, to the extent not inconsistent
28 with this section. A general contractor, energy services company
29 serving as general contractor, or any subcontractor hired for the
30 furnishing of plumbing and gas fitting and all kindred work, and of
31 steam and hot water heating and ventilating apparatus, steam power
32 plants and kindred work, and electrical work, structural steel and
33 ornamental iron work shall be classified by the Division of Property
34 Management and Construction in the Department of the Treasury in
35 order to perform public works activities under an energy savings
36 improvement program.

37 (b) Individuals or organizations performing energy audits,
38 acting as commissioning agents, or conducting verification of
39 energy savings plans, implementation of energy conservation
40 measures, or verifying guarantees shall be prequalified by the
41 Division of Property Management and Construction in the
42 Department of the Treasury to perform their work under an energy
43 savings improvement program.

44 (3) (a) An energy services company may be designated as the
45 general contractor for improvements to be made pursuant to an
46 energy savings plan, provided that the hiring of subcontractors that
47 are required to be classified pursuant to subparagraph (a) of

1 paragraph (2) of this subsection shall be performed in accordance
2 with the procedures and requirements set forth pursuant to the
3 public bidding requirements of the public agency. A contract with
4 an energy savings company shall include, but not be limited to:
5 preparation of an energy savings plan; the responsibilities of the
6 parties for project schedules, installations, performance and quality,
7 payment of subcontractors, project completion, commissioning,
8 savings implementation; a requirement that the savings to be
9 achieved by energy conservation measures be verified upon
10 commissioning of the improvements; allocation of State and federal
11 rebates and tax credits; and any other provisions deemed necessary
12 by the parties.

13 (b) All workers performing public works activities for
14 subcontractors awarded contracts by an energy services company
15 pursuant to this section shall be paid prevailing wages in
16 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
17 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
18 the provisions of "The Public Works Contractor Registration Act,"
19 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
20 classified as contractors by the Division of Property Management
21 and Construction shall be eligible to be awarded a contract as a
22 subcontractor of an energy services company under this section for
23 performing public works activities pursuant to regulations adopted
24 by the Division of Property Management and Construction.

25 (c) In order to expedite communications with an energy services
26 company and facilitate the implementation of an energy savings
27 improvement program, a public agency may designate or appoint an
28 employee of the public agency with decision-making authority to
29 coordinate with the energy services company and to address issues
30 associated with the implementation of an energy savings
31 improvement program as they arise, provided that any decision
32 requiring a change order shall be made only upon the approval of
33 the public agency.

34 (4) Except as provided in paragraph (5) of this subsection, a
35 subsidiary or wholly-owned or partially-owned affiliate of the
36 energy services company shall not be an eligible contractor or
37 subcontractor under an energy savings services contract.

38 (5) When the energy services company is the manufacturer of
39 direct digital control systems and contracts with the public agency
40 to provide a guaranteed energy savings option pursuant to
41 subsection f. of this section, the specification of such direct digital
42 control systems may be treated as proprietary goods and if so
43 treated, the bid specification shall set forth an allowance price for
44 its supply by the energy services company which shall be used by
45 all bidders in the public bidding process. Direct digital controls
46 shall be open protocol format and shall meet the interoperability
47 guidelines established by the American Society of Heating,

1 Refrigerating and Air-Conditioning Engineers. Each contract to be
2 entered into pursuant to this section between a public agency and an
3 energy services company that is the manufacturer of direct digital
4 control systems where such direct digital control systems are treated
5 as proprietary goods as part of the contract, shall first be reviewed
6 and approved by the Board of Public Utilities for the purpose of
7 affirming the reasonableness of such allowance price. If the board
8 does not disapprove of the contract within 14 days of receipt
9 thereof, the contract shall be deemed approved.

10 c. In addition to existing authorization of a public agency to
11 enter into lease-purchase agreements or to issue obligations to
12 finance the costs of an energy savings improvement program, a
13 public agency is hereby authorized to finance the costs of an energy
14 savings improvement program by entering into a lease purchase
15 agreement or by issuing energy savings obligations pursuant to this
16 subsection. Any financing mechanism shall be administered in a
17 manner consistent with this subsection insofar as it does not conflict
18 with the provisions of other law that applies to the public agency.

19 (1) An energy savings improvement program may be financed
20 through a lease-purchase agreement between a public agency and an
21 energy services company or other public or private entity. Under a
22 lease-purchase agreement, ownership of the energy savings
23 equipment or improved facilities shall pass to the public agency
24 when all lease payments have been made. Notwithstanding the
25 provisions of any other law to the contrary, the duration of such a
26 lease-purchase agreement shall not exceed 15 years, except that the
27 duration of a lease purchase agreement for a combined heat and
28 power or cogeneration project shall not exceed 20 years. For the
29 purposes of this paragraph, the duration of the repayment term of a
30 lease-purchase agreement shall commence on the date upon which
31 construction and installation of the energy savings equipment,
32 “combined heat and power facility” or “cogeneration facility,” as
33 those terms are defined pursuant to section 3 of P.L.1999, c.23
34 (C.48:3-51), or other energy conservation measures undertaken
35 pursuant to the energy savings plan, have been completed.

36 (2) A public agency may arrange for incurring energy savings
37 obligations to finance an energy savings improvement program.
38 Energy savings obligations may be funded through appropriations
39 for utility services in the annual budget of the public agency and
40 may be issued as refunding bonds, including the issuance of bond
41 anticipation notes as may be necessary, provided that all such bonds
42 and notes mature within the periods authorized for such energy
43 savings obligations. Energy savings obligations may be issued
44 either through the public agency or another public agency
45 authorized to undertake financing on behalf of the public agency.

46 (3) Lease-purchase agreements and energy savings obligations
47 shall not be used to finance maintenance, guarantees, or verification

1 of guarantees of energy conservation measures. Lease-purchase
2 agreements and energy savings obligations may be used to finance
3 the cost of an energy audit or the cost of verification of energy
4 savings as part of adopting an energy savings plan.
5 Notwithstanding any law to the contrary, lease-purchase agreements
6 and energy savings certificates shall not be excepted from any
7 budget or tax levy limitation otherwise provided by law. Maturity
8 schedules of lease-purchase agreements or energy savings
9 obligations **[must]** shall not exceed the estimated average useful
10 life of the **[individual]** energy conservation measures.

11 d. (1) The energy audit component of an energy savings
12 improvement program shall be conducted either by the public
13 agency or by a qualified independent third party retained by the
14 board for that purpose. It shall not be conducted by an energy
15 services company subsequently hired to develop an energy savings
16 improvement program. The energy audit shall identify the current
17 energy use of any or all facilities and energy conservation measures
18 that can be implemented in which the energy savings and energy
19 efficiency could be realized and maximized.

20 (2) To implement a program, a public agency shall develop an
21 energy savings plan that consists of one or more energy
22 conservation measures. The plan shall: (a) contain the results of an
23 energy audit;

24 (b) describe the energy conservation measures that will
25 comprise the program;

26 (c) estimate greenhouse gas reductions resulting from those
27 energy savings;

28 (d) identify all design and compliance issues that require the
29 professional services of an architect or engineer and identify who
30 will provide these services;

31 (e) include an assessment of risks involved in the successful
32 implementation of the plan;

33 (f) identify the eligibility for, and costs and revenues associated
34 with the PJM Independent System Operator for demand response
35 and curtailable service activities;

36 (g) include schedules showing calculations of all costs of
37 implementing the proposed energy conservation measures and the
38 projected energy savings;

39 (h) identify maintenance requirements necessary to ensure
40 continued energy savings, and describe how they will be fulfilled;
41 and

42 (i) if developed by an energy services company, a description
43 of, and cost estimates of an energy savings guarantee.

44 All professionals providing engineering services under the plan
45 shall have errors and omissions insurance.

46 (3) Prior to the adoption of the plan, the public agency shall
47 contract with a qualified third party to verify the projected energy

1 savings to be realized from the proposed program have been
2 calculated as required by subsection e. of this section.

3 (4) Upon adoption, the plan shall be submitted to the Board of
4 Public Utilities, which shall post it on the Internet on a public
5 webpage maintained for such purpose. If the public agency
6 maintains its own website, it shall also post the plan on that site.
7 The board may require periodic reporting concerning the
8 implementation of the plan.

9 (5) Verification by a qualified third party shall be required when
10 energy conservation measures are placed in service or
11 commissioned, to ensure the savings projected in the energy savings
12 plan shall be achieved.

13 (6) Energy-related capital improvements that do not reduce
14 energy usage may be included in an energy savings improvement
15 program but the cost of such improvements shall not be financed as
16 a lease-purchase or through energy savings obligations authorized
17 by subsection c. of this section. Nothing herein is intended to
18 prevent financing of such capital improvements through otherwise
19 authorized means.

20 (7) A qualified third party when required by this subsection may
21 include an employee of the public agency who is properly trained
22 and qualified to perform such work.

23 e. (1) (a) The calculation of energy savings for the purposes of
24 determining that the energy savings resulting from the program will
25 be sufficient to cover the cost of the program's energy conservation
26 measures, as provided in subsection a. of this section, shall involve
27 determination of the dollar amount saved through implementation
28 of an energy savings improvement program using the guidelines of
29 the International Performance Measurement and Verification
30 Protocol or other protocols approved by the Board of Public
31 Utilities and standards adopted by the Board of Public Utilities
32 pursuant to this section. The calculation shall include all applicable
33 State and federal rebates and tax credits, but shall not include the
34 cost of an energy audit and the cost of verifying energy savings.
35 The calculation shall state which party has made application for
36 rebates and credits and how these applications translate into energy
37 savings.

38 (b) During the procurement phase of an energy savings
39 improvement program, an energy service company's proposal
40 submitted in response to a request for proposal shall not include a
41 savings calculation that assumes, includes, or references capital cost
42 avoidance savings, the current or projected value of a "solar
43 renewable energy certificate," as defined pursuant to section 3 of
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
45 attributes or benefits of whatever nature that derive from the
46 generation of renewable energy, and any costs or discounts
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and
2 energy savings. The calculation of energy savings shall utilize and
3 specifically reference as a benchmark the actual demand and energy
4 components of the public utility tariff rate applicable to the public
5 agency then in effect, and not a blended rate that aggregates,
6 combines, or restates in any manner the distinct demand and energy
7 components of the public utility tariff rate into a single combined or
8 restated tariff rate. If an energy services company submits a
9 proposal to a public agency that does not calculate projected energy
10 savings in the manner required by this subsection, such proposal
11 shall be rejected by the public agency.

12 (2) For the purposes of this section, the Board of Public Utilities
13 shall adopt standards and uniform values for interest rates and
14 escalation of labor, electricity, oil, and gas, as well as standards for
15 presenting these costs in a life cycle and net present value format,
16 standards for the presentation of obligations for carbon reductions,
17 and other standards that the board may determine necessary.

18 f. (1) When an energy services company is awarded an energy
19 savings services contract, it shall offer the public agency the option
20 to purchase, for an additional amount, an energy savings guarantee.
21 The guarantee, if accepted by a separate vote of the governing body
22 of the public agency, shall insure that the energy savings of the
23 public agency resulting from the energy savings improvement
24 program, determined periodically over the duration of the
25 guarantee, will be sufficient to defray all payments required to be
26 made pursuant to the lease-purchase agreement or energy savings
27 obligation, and if the savings are not sufficient, the energy services
28 company will reimburse the public agency for any additional
29 amounts. Annual costs of a guarantee shall not be financed or
30 included as costs in an energy savings plan but shall be fully
31 disclosed in an energy savings plan.

32 (2) When a guaranteed energy savings option is purchased, the
33 contract shall require a qualified third party to verify the energy
34 savings at intervals established by the parties.

35 (3) When a guaranteed energy savings option is not purchased,
36 the energy savings services contract shall not include maintenance
37 services provided by the energy services company.

38 (4) When an energy services company is awarded an energy
39 savings services contract to provide or perform goods or services
40 for the purpose of enabling a public agency to conserve energy
41 through energy efficiency equipment, including a “combined heat
42 and power facility” as that term is defined pursuant to section 3 of
43 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
44 shall extend for a term of up to 15 years for energy efficiency
45 projects, and for up to 20 years for a combined heat and power
46 facility after construction completion. If a public agency shall elect
47 to contract with an energy services company for an energy savings

1 guarantee in connection with a contract awarded pursuant to this
2 section, such guarantee may extend for a term of up to 15 years for
3 energy efficiency projects, or up to 20 years for a combined heat
4 and power facility after construction completion.

5 g. As used in this section:

6 "direct digital control systems" means the devices and
7 computerized control equipment that contain software and computer
8 interfaces that perform the logic that control a building's heating,
9 ventilating, and air conditioning system. Direct digital controls
10 shall be open protocol format and shall meet the interoperability
11 guidelines established by the American Society of Heating,
12 Refrigerating and Air-Conditioning Engineers;

13 "energy conservation measure" means an improvement that
14 results in reduced energy use, including, but not limited to,
15 installation of energy efficient equipment; demand response
16 equipment; combined heat and power systems; facilities for the
17 production of renewable energy; water conservation measures,
18 fixtures or facilities; building envelope improvements that are part
19 of an energy savings improvement program; and related control
20 systems for each of the foregoing;

21 "energy related capital improvement" means a capital
22 improvement that uses energy but does not result in a reduction of
23 energy use;

24 "energy saving obligation" means a bond, note or other
25 agreement evidencing the obligation to repay borrowed funds
26 incurred in order to finance energy saving improvements;

27 "energy savings" means a measured reduction in fuel, energy,
28 operating or maintenance costs resulting from the implementation
29 of one or more energy conservation measures services when
30 compared with an established baseline of previous fuel, energy,
31 operating or maintenance costs, including, but not limited to, future
32 capital replacement expenditures avoided as a result of equipment
33 installed or services performed as part of an energy savings plan;

34 "energy savings improvement program" means an initiative of a
35 public agency to implement energy conservation measures in
36 existing facilities, provided that the value of the energy savings
37 resulting from the program will be sufficient to cover the cost of the
38 program's energy conservation measures;

39 "energy savings plan" means the document that describes the
40 actions to be taken to implement the energy savings improvement
41 program;

42 "energy savings services contract" means a contract with an
43 energy savings company to develop an energy savings plan, prepare
44 bid specifications, manage the performance, provision,
45 construction, and installation of energy conservation measures by
46 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is
4 qualified to develop and implement an energy savings plan in
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized
7 to expend public funds and enter into contracts which is not
8 otherwise authorized to implement an energy savings improvement
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

11 "public works activities" means any work subject to the
12 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

13 "water conservation measure" means an alteration to a facility or
14 equipment that reduces water consumption, maximizes the
15 efficiency of water use, or reduces water loss.

16 h. (1) The State Treasurer and the Board of Public Utilities
17 may take such action as is deemed necessary and consistent with the
18 intent of this section to implement its provisions.

19 (2) The State Treasurer and the Board of Public Utilities may
20 adopt implementation guidelines or directives, and adopt such
21 administrative rules, pursuant to the "Administrative Procedure
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
23 implementation of those agencies' respective responsibilities under
24 this section, except that notwithstanding any provision of P.L.1968,
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
26 Division of Local Government Services in the Department of
27 Community Affairs, the State Treasurer, and the Board of Public
28 Utilities may adopt, immediately upon filing with the Office of
29 Administrative Law, such rules and regulations as deemed
30 necessary to implement the provisions of this act which shall be
31 effective for a period not to exceed 12 months and shall thereafter
32 be amended, adopted or re-adopted in accordance with the
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
34 (cf: P.L.2009, c.4, s.10)

35
36 6. (New section) a. Notwithstanding the provisions to the
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation
38 adopted pursuant thereto, where a State contracting agency
39 implements an energy savings improvement program pursuant to
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting
41 agency, prior to entering into an energy savings services contract,
42 shall use a competitive selection process that ensures that the award
43 is made to the responsible bidder whose proposal is determined to
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting
46 agency from using procurement processes other than those
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if

1 those processes have been approved by the federal government
2 under section 801 of the “National Energy Conservation Policy
3 Act” (42 U.S.C. s.8287).

4 c. The Division of Property Management and Construction in
5 the Department of the Treasury shall not charge any fee for the
6 review or approval of an energy savings improvement program
7 implemented by a State contracting agency pursuant to section 9 of
8 P.L.2009, c.4 (C.52:34-25).

9
10 7. (New section) a. The Board of Public Utilities, in
11 consultation with the State Treasurer and the Commissioner of the
12 Department of Community Affairs, shall establish, in a form similar
13 to that prescribed by the "Local Public Contracts Law," P.L.1971,
14 c.198 (C.40A:11-1 et seq.), a standard request for proposal to be
15 used for all energy savings improvement program projects to be
16 undertaken by any State contracting agency or public agency
17 authorized to implement an energy savings improvement program
18 pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.),
19 provided, however, that a State contracting agency or public agency
20 may use its own request for proposal upon the submission of the
21 request for proposal to the board. Unless the board disapproves the
22 request for proposal within 14 days of its receipt from a State
23 contracting agency or public agency, the request for proposal shall
24 be deemed approved. No single category contained in the
25 evaluation criteria of a request for proposal shall weigh more than
26 25 percent.

27 b. Within 90 days after the effective date of P.L. ,
28 c. (C.) (pending before the Legislature as this bill), the Board
29 of Public Utilities, in consultation with the State Treasurer and the
30 Commissioner of the Department of Community Affairs, shall
31 establish, in a form similar to that prescribed by the "Local Public
32 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard
33 request for proposal to be used for all energy savings improvement
34 program projects to be undertaken by any board of education, board
35 of trustees, or contracting unit authorized to implement an energy
36 savings improvement program pursuant to the provisions of
37 P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a
38 board of education, board of trustees, or contracting unit may use its
39 own request for proposal upon the submission of the request for
40 proposal to the Board of Public Utilities. Unless the board
41 disapproves the request for proposal within 14 days of its receipt
42 from a board of education, board of trustees, or contracting unit, the
43 request for proposal shall be deemed approved. No single category
44 contained in the evaluation criteria of a request for proposal shall
45 weigh more than 25 percent.

- 1 8. (New section) a. The Board of Public Utilities is designated
2 as the agency of the State Government responsible for
3 implementing and enforcing the provisions of P.L.2009, c.4
4 (C.18A:18A-4.6 et al.) and for responding to requests for assistance
5 from public entities, including boards of education, boards of
6 trustees of public institutions of higher education, contracting units,
7 and public agencies, authorized to implement an energy savings
8 improvement program pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et
9 al.).
- 10 b. The board is authorized to investigate, review and take
11 appropriate action with respect to procurements for energy savings
12 projects conducted by public agencies, other than State contracting
13 agencies, pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).
- 14 c. The board shall take such actions as it deems necessary and
15 appropriate, consistent with the purposes of this section, to
16 implement and enforce the provisions of P.L.2009, c.4 (C.18A:18A-
17 4.6 et al.). The authority granted to the board pursuant to this
18 section to enforce compliance with P.L.2009, c.4 shall include, but
19 not be limited to:
- 20 (1) modifying a non-conforming request for proposal and any
21 attachment thereto, whereby the board shall provide written
22 comments to the public entity when it chooses to modify a non-
23 conforming request for proposal, outlining any issues and providing
24 the opportunity for the issues to be remedied;
- 25 (2) (a) modifying or canceling a procurement by a public entity
26 for an energy savings project, whereby the board, within 14 days of
27 its receipt of a procurement by a public entity after the procurement
28 award, may modify or cancel the procurement, otherwise the
29 procurement shall be deemed approved, and (b) if modifying a
30 procurement, the board shall provide written comments to the
31 public entity when it chooses to do so, outlining any issues and
32 providing the opportunity for the issues to be remedied; and
- 33 (3) withholding State and federal renewable energy and energy
34 efficiency incentives from an energy savings project.
- 35 d. The board may grant limited exceptions to a local housing
36 authority, established pursuant to the "Local Housing Authorities
37 Law," P.L.1938, c.19 or the "Local Redevelopment and Housing
38 Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy
39 performance contracting process developed by the United States
40 Department of Housing and Urban Development for selecting an
41 energy service company subject to United States Department of
42 Housing and Urban Development and board review and approval.
43 The exception shall permit such process to be followed for the
44 selection of an energy service company, the preparation of the
45 energy savings improvement program, the selection of energy
46 savings projects, and third party verification requirements. All
47 other requirements for bidding and construction shall be consistent

- 1 with the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). This
2 limited exception shall permit the preparation of an investment
3 grade energy savings improvement program audit to replace the
4 requirement for the traditional energy audit component performed
5 in advance.
- 6 e. The board shall undertake a study of the effectiveness of
7 energy savings improvement programs implemented pursuant to
8 P.L.2009, c.4 (C.18A:18A-4.6 et al.). Within three years after the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill), the board shall prepare a report of its study
11 and shall provide a copy thereof to the Governor and, pursuant to
12 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.
- 13
- 14 9. This act shall take effect immediately.