

[First Reprint]

## **ASSEMBLY, No. 2316**

# **STATE OF NEW JERSEY**

## **215th LEGISLATURE**

INTRODUCED FEBRUARY 6, 2012

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

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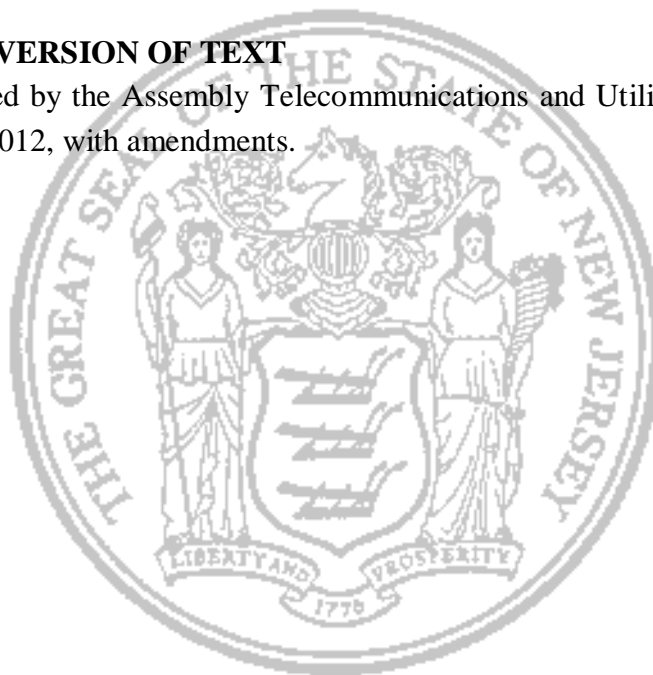
**Assemblymen Wolfe, McGuckin and Webber**

### **SYNOPSIS**

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

### **CURRENT VERSION OF TEXT**

As reported by the Assembly Telecommunications and Utilities Committee on May 10, 2012, with amendments.



**(Sponsorship Updated As Of: 5/25/2012)**

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

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

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

11  
12 2. (New section) The Legislature finds and declares that for  
13 many years, municipalities in the State have had the power to  
14 construct and maintain facilities for the generation of electricity;  
15 that nine municipalities and one rural electric cooperative presently  
16 own and operate '[municipal]' electric utility systems for the  
17 benefit of their residents and businesses; and that the generation and  
18 distribution of electricity has evolved from a local and statewide  
19 endeavor into a national marketplace and such evolution has  
20 resulted in a system where the size and sophistication of the market  
21 participants influence the ability to efficiently compete in the  
22 marketplace.

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ATU committee amendments adopted May 10, 2012.

1 such programs, thereby providing the means to pursue efficiencies  
2 and savings for retail customers within their <sup>1</sup>['territorial]  
3 corporate<sup>1</sup> limits <sup>1</sup>and franchise areas<sup>1</sup> .

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

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

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

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

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

1 "Electric supply project" or "project" means <sup>1</sup>(1)<sup>1</sup> any plant,  
2 works, system, facility, and real and personal property of any nature  
3 whatsoever, together with all parts thereof and appurtenances  
4 thereto, used or useful in the generation, production, transmission,  
5 distribution, purchase, sale, exchange, or interchange of electric  
6 power and energy, in whole or in part, <sup>1</sup>(2) the acquisition of fuel of  
7 any kind for the generation or production of electric power and  
8 energy, or (3) the transportation, storage, or reprocessing of such  
9 fuel, or for any conservation measures, <sup>1</sup> for the <sup>1</sup>[use] benefit<sup>1</sup> of  
10 the members <sup>1</sup>,<sup>1</sup> including the utilization of renewable capacity and  
11 energy, or any interest therein or right to capacity thereof.

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

19 "Local Finance Board" means the Local Finance Board in the  
20 Division of Local Government Services in the Department of  
21 Community Affairs.

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

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

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

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

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

43 "Public agency" means any municipality or other municipal  
44 corporation, political subdivision, government unit or public  
45 corporation created under the laws of this State or of another state  
46 or of the United States, and any state, and the United States, and  
47 any person, board or other body declared by the laws of any state or

1 the United States to be a department, agency or instrumentality  
2 thereof.

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

8  
9 4. (New section) a. Any combination of three or more  
10 municipalities that operate retail electric distribution systems  
11 pursuant to R.S.40:62-12 et seq. may, by adoption of parallel  
12 ordinances approving an inter-municipal agreement, establish a  
13 separate legal entity to be known as the "municipal shared services  
14 energy authority" to be used by its members to effect joint  
15 development of electric energy resources or production,  
16 distribution, and transmission of electric power and energy,  
17 including the utilization of renewable capacity and energy, in whole  
18 or in part, for the **'[use] benefit'** of its members. Notwithstanding  
19 any other law to the contrary, following approval by the Local  
20 Finance Board within the Division of Local Government Services in  
21 the Department of Community Affairs pursuant to subsection b. of  
22 this section, the final adoption by the municipalities of the parallel  
23 ordinances, and due execution by the municipalities, the inter-  
24 municipal agreement shall have a term as provided by the inter-  
25 municipal agreement. The member municipalities that enter into the  
26 inter-municipal agreement may thereafter amend the inter-  
27 municipal agreement **'[in the manner set forth in section 5 of**  
28 **P.L. , c. (C. ) (pending before the Legislature as this bill)]**  
29 **as provided in subsection e. of this section**<sup>1</sup>.

30 b. Upon the introduction of the parallel ordinances by each  
31 municipality seeking to create the authority, but before final  
32 adoption of the ordinances, copies of the ordinances, together with  
33 the proposed inter-municipal agreement, shall be submitted to the  
34 Local Finance Board for approval. **'[Upon] If, upon'** submission of  
35 a complete application for approval of the proposed inter-municipal  
36 agreement, the Local Finance Board **'[shall] does'** not  
37 **'[unreasonably withhold approval] approve the agreement, it shall**  
38 **specify the reason or reasons, therefor, and shall file its statement**  
39 **with the clerk of each member municipality**<sup>1</sup>. If the Local Finance  
40 Board does not **'[disapprove] act upon'** the application for  
41 approval of the proposed inter-municipal agreement within 60 days  
42 after receipt of the submission of a complete application, then the  
43 ordinances and proposed inter-municipal agreement shall be  
44 deemed approved **'and the municipalities may proceed to adopt the**  
45 **proposed ordinances**<sup>1</sup>.

46 c. Once an authority has been legally established pursuant to  
47 the provisions of P.L. , c. (C. ) (pending before the Legislature

1 as this bill), additional municipalities may join the authority as  
2 provided in paragraphs (1) and (2) of this subsection.

3 (1) A municipality requesting to become a member of the  
4 authority shall negotiate an amended inter-municipal agreement on  
5 terms and conditions acceptable to the members. Once an amended  
6 inter-municipal agreement has been agreed to, it shall be submitted  
7 for approval to the board of commissioners 'of the authority'.  
8 Adoption of an amended inter-municipal agreement shall require  
9 approval by a two-thirds majority vote of the full membership of the  
10 board 'of commissioners, approval by the Local Finance Board of  
11 the proposed amended agreement, and final adoption by each  
12 member municipality of an ordinance approving the proposed  
13 agreement, as provided in subsection e. of this section'.

14 (2) The municipality requesting to become a member of the  
15 authority shall introduce an ordinance approving the amended inter-  
16 municipal agreement as approved by the board of commissioners of  
17 the authority. Upon the introduction of the ordinance, but before  
18 final adoption of such ordinance, copies of the ordinance, together  
19 with the proposed amended inter-municipal agreement, shall be  
20 submitted to the Local Finance Board for approval. '[Upon] If,  
21 upon' submission of a complete application for approval of the  
22 proposed amended inter-municipal agreement, the Local Finance  
23 Board '[shall] does' not '[unreasonably withhold approval]  
24 approve the agreement, it shall specify the reason or reasons,  
25 therefor, and shall file its statement with the clerk of each member  
26 municipality'. If the Local Finance Board does not disapprove the  
27 application for approval of the proposed amended inter-municipal  
28 agreement within 60 days after receipt of a complete application,  
29 then the ordinance and proposed amended inter-municipal  
30 agreement shall be deemed approved 'and the municipality may  
31 proceed to adopt the proposed ordinance'.

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

35 (1) A rural electric cooperative requesting to become a member  
36 of the authority and the board of commissioners of the authority  
37 shall negotiate an amended inter-municipal agreement on terms and  
38 conditions acceptable to the parties. Once an amended inter-  
39 municipal agreement has been agreed to, it shall be submitted for  
40 approval by the board of commissioners. Adoption of an amended  
41 inter-municipal agreement shall require approval by a two-thirds  
42 majority vote of the full membership of the board 'of  
43 commissioners and approval by ordinance of each member  
44 municipality as provided in subsection e. of this section'.

45 (2) The authority shall submit the proposed amended inter-  
46 municipal agreement for approval to the Local Finance Board.  
47 '[Upon] If, upon' submission of a complete application for

1 approval of the proposed amended inter-municipal agreement, the  
2 Local Finance Board '~~["shall"]~~ does' not '~~["unreasonably withhold~~  
3 ~~approval"]~~ approve the agreement, it shall specify the reason or  
4 reasons, therefor, and shall file its statement with the clerk of each  
5 member municipality'. If the Local Finance Board does not  
6 '~~["disapprove"]~~ act upon' the application for approval of the  
7 proposed amended inter-municipal agreement within 60 days after  
8 receipt of a complete application, then the proposed amended inter-  
9 municipal agreement shall be deemed approved.

10 'e. Upon approval by the board of commissioners of an  
11 amended inter-municipal agreement, each member municipality  
12 shall introduce an ordinance approving the amended inter-municipal  
13 agreement. Before final adoption of the ordinances, copies of the  
14 ordinances, together with the proposed amended inter-municipal  
15 agreement, shall be submitted to the Local Finance Board for  
16 approval. If, upon submission of a complete application for  
17 approval of the proposed amended inter-municipal agreement, the  
18 Local Finance Board does not approve the agreement, it shall  
19 specify the reason or reasons, therefor, and shall file its statement  
20 with the clerk of each member municipality. If the Local Finance  
21 Board does not act upon the application for approval of the  
22 proposed amended inter-municipal agreement within 60 days after  
23 receipt of the submission of a complete application, then the  
24 ordinances and proposed amended inter-municipal agreement shall  
25 be deemed approved and the municipalities may proceed to adopt  
26 the proposed ordinances.'  
27

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

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

34 b. The establishment and organization of a governing board for  
35 the authority which shall be a board of commissioners in which the  
36 powers of the authority are vested. The inter-municipal agreement  
37 may provide for the creation by the board of commissioners of an  
38 executive committee to which the power and duties may be  
39 delegated as the board shall specify;

40 c. The number of commissioners, the manner of their  
41 appointment, the terms of office and compensation, if any, and the  
42 procedure for filling vacancies on the board. Each member  
43 municipality and cooperative shall have the power to appoint one  
44 member to the board of commissioners and shall be entitled to  
45 remove that member at will;

46 d. The manner of selection of the executive director and staff  
47 of the authority and their duties;

- 1 e. The voting requirements for action by the board; but, unless
- 2 specifically provided otherwise, a majority of commissioners shall
- 3 constitute a quorum and a majority of the quorum shall be necessary
- 4 for any action taken by the board;
- 5 f. The duties of the board, which shall include the obligation to
- 6 comply with the "Local Authorities Fiscal Control Law," P.L.1983,
- 7 c.313 (C.40A:5A-1 et seq.) except as otherwise provided in P.L. ,
- 8 c. (C. ) (pending before the Legislature as this bill), and the laws
- 9 of this State and, in addition, with every provision in the inter-
- 10 municipal agreement creating the authority on its part to be kept or
- 11 performed;
- 12 g. The manner in which additional municipalities and rural
- 13 electric cooperatives may become parties to the inter-municipal
- 14 agreement by amendment;
- 15 h. The manner in which members may withdraw from
- 16 participation in the inter-municipal agreement, which shall include
- 17 a defeasance of such member's pro-rata share of any bonds issued
- 18 by the authority;
- 19 i. Provisions for the disposition, division or distribution of any
- 20 property or assets of the authority on dissolution;
- 21 j. The term of the inter-municipal agreement, which may be a
- 22 definite period or until rescinded or terminated, and the method, if
- 23 any, by which the inter-municipal agreement may be rescinded or
- 24 terminated, but the inter-municipal agreement may not be rescinded
- 25 or terminated so long as the authority has bonds outstanding, unless
- 26 provision for full payment of such bonds, by escrow or otherwise,
- 27 has been made pursuant to the terms of the bonds or the resolution,
- 28 trust indenture or security instrument securing the bonds; and
- 29 k. The terms for payment to the authority of funds for
- 30 commodities to be procured and services to be rendered by the
- 31 authority, including authority to enter into purchase agreements
- 32 between the members and the authority for the purchase of electric
- 33 power and energy whereby the member is obligated to make
- 34 payments or provide collateral in amounts which shall be sufficient
- 35 to enable the authority to meet its expenses, interest and principal
- 36 payments, whether at maturity or upon sinking fund redemption, for
- 37 its bonds, reasonable reserves for debt service, operation and
- 38 maintenance and renewals and replacements and the requirements
- 39 of any rate covenant with respect to debt service coverage contained
- 40 in any resolution, trust indenture or other security instrument. Such
- 41 purchase agreements between the members and the authority may
- 42 contain such other terms and conditions as the authority and the
- 43 members may determine, including provisions whereby a member is
- 44 obligated to pay for power irrespective of whether energy is
- 45 produced or delivered to the member or whether any electric supply
- 46 project contemplated by any such agreement is completed, operable
- 47 or operating, and notwithstanding suspension, interruption,
- 48 interference, reduction, or curtailment of the output of such electric



1 supply project. The inter-municipal agreement may further provide  
2 that, if one or more of the members defaults in the payment of its  
3 obligations under any such purchase agreement, the remaining  
4 members, which also have such agreements, shall be required to  
5 accept and pay for, and shall be entitled proportionately to use or  
6 otherwise dispose of, the power and energy to be purchased by the  
7 defaulting purchaser. For purposes of this section, "purchase of  
8 electric power and energy" includes the purchase of any right to  
9 capacity, or interest in, any electric supply project.

10  
11 6. (New section) Nothing in P.L. , c. (C. ) (pending  
12 before the Legislature as this bill) shall be construed to restrict the  
13 right of a person to form a rural electric cooperative or a  
14 municipality to engage in functions authorized pursuant to  
15 R.S.40:62-12 et seq.

16  
17 7. (New section) No commissioner, officer, or employee of the  
18 municipal shared services energy authority shall have or acquire  
19 any interest, direct or indirect, in any contract or proposed contract  
20 or property related to the provision of wholesale electric power,  
21 transmission, generation, materials, services or supplies to be  
22 furnished to or used by the authority or any of its members.

23  
24 8. (New section) A municipal shared services energy authority  
25 shall be a public body politic and corporate, established as an  
26 instrumentality exercising public and essential governmental  
27 functions to provide for the public health and welfare. An authority  
28 shall have the duties, privileges, immunities, rights, liabilities, and  
29 disabilities of a public body politic and corporate but shall not have  
30 taxing power. An authority shall be a "contracting unit" for  
31 purposes of the "Local Public Contracts Law," P.L.1971, c.198  
32 (C.40A:11-1 et seq.), shall have perpetual succession, and, to meet  
33 the electric power <sup>1</sup>or energy<sup>1</sup> needs of its members, shall have the  
34 following powers:

35 a. To adopt and have a common seal and to alter the same at  
36 pleasure;

37 b. To sue and be sued;

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

42 d. To hold or place collateral with a counterparty to a  
43 wholesale power supply contract and to account for, value, and use  
44 such collateral as provided in the power supply contract  
45 notwithstanding any other law or regulation to the contrary;

46 e. To plan, develop, acquire, construct, reconstruct, operate,  
47 manage, dispose of, participate in, maintain, repair, extend, or  
48 improve one or more electric supply projects within or outside the

- 1 State and act as agent, or designate one or more other persons  
2 participating in an electric supply project to act as its agent, in  
3 connection with the planning, acquisition, construction, operation,  
4 maintenance, repair, extension, or improvement of such electric  
5 supply project for generation, production, transmission, and  
6 provision of electrical power and energy at wholesale, in whole or  
7 in part, to meet the electric power 'or energy' needs of the  
8 members, provided that the authority shall not sell 'electric' power  
9 or energy at the retail level;
- 10 f. To enter into franchises, exchange, interchange, pooling,  
11 wheeling, or transmission agreements with any person, firm, entity,  
12 or public agency 'and to negotiate for, and buy fuels necessary for  
13 the production of electric power and energy, to develop bulk power  
14 and fuel supply programs, and to implement energy conservation  
15 measures as necessary or appropriate,' to meet the electric power  
16 'or energy' needs of its members;
- 17 g. To negotiate and enter into power supply contracts pursuant  
18 to section 19 of P.L. , c. (C. ) (pending before the Legislature  
19 as this bill) and to take such actions as are necessary to remain in  
20 compliance with the terms of such contracts;
- 21 h. To make and execute such additional contracts and other  
22 instruments necessary or convenient to the exercise of its powers;
- 23 i. To employ agents and employees;
- 24 j. To contract with any person, entity or public agency within  
25 or outside the State of New Jersey for the construction of any  
26 electric supply project or for the purchase, sale or transmission of  
27 electric power and energy generated by any electric supply project,  
28 in whole or in part, for the 'use benefit' of its members, or for  
29 any interest or share therein, or any right to capacity thereof, on  
30 such terms and for such period of time as its board shall determine;
- 31 k. To purchase and sell, exchange or transmit electric power  
32 and energy at wholesale within and outside the State of New Jersey,  
33 consistent with federal law, in such amounts as it shall determine to  
34 be necessary or appropriate to make the most effective use of its  
35 powers and to meet its responsibilities and to enter into agreements  
36 with any person, entity, or public agency with respect to the  
37 purchase, sale, exchange, or transmission on such terms and for  
38 such period of time as its board shall determine;
- 39 l. To provide for and secure the payment of any bonds and the  
40 rights of the holders thereof, and to purchase, hold, and dispose of  
41 any bonds;
- 42 m. To accept gifts or grants of real or personal property, money,  
43 material, labor, or supplies solely for the purposes and exclusive use  
44 and benefit of the municipal shared services energy authority, and  
45 to make and perform such agreements and contracts as may be  
46 necessary or convenient in connection with the procuring,  
47 acceptance, or disposition of the gifts or grants;

- 1 n. To make and enforce by-laws or rules and regulations for the
- 2 management and regulation of its business and affairs and for the
- 3 use, maintenance, and operation of its properties and to amend the
- 4 by-laws;
- 5 o. To do and perform any acts and things authorized by P.L. ,
- 6 c. (C. ) (pending before the Legislature as this bill), through or
- 7 by means of its own officers, agents, and employees, or by contract
- 8 with any person;
- 9 p. To enter into any and all contracts, execute any and all
- 10 instruments, and do and perform any and all things or acts
- 11 necessary, convenient, or desirable for the purposes of the
- 12 municipal shared services energy authority, or to carry out any
- 13 power expressly authorized under P.L. , c. (C. ) (pending
- 14 before the Legislature as this bill);
- 15 q. To exercise such powers as are granted to municipalities
- 16 under R.S.40:62-12 et seq.;
- 17 r. To join organizations, including private or trade
- 18 organizations, which the board of commissioners has deemed to be
- 19 beneficial to the accomplishment of the authority's purposes;
- 20 s. To enter into a power supply contract, lease, operation
- 21 contract, or contract for management of electric generation, or for
- 22 the purchase of fuel for electric generation, to meet the electric
- 23 power 'or energy' needs of its members, for a term not to exceed 40
- 24 years; and
- 25 t. To invest any funds held in reserve or sinking funds, or any
- 26 funds not required for immediate disbursement, including the
- 27 proceeds from the sale of any bonds, in such obligations, securities,
- 28 and other investments as the authority deems to be proper and as the
- 29 constituent members of the authority are authorized pursuant to law.
- 30
- 31 9. (New section) a. In order to meet the electric power needs
- 32 of its members, the municipal shared services energy authority shall
- 33 have the power to authorize or provide for the issuance of bonds
- 34 pursuant to P.L. , c. (C. ) (pending before the Legislature as
- 35 this bill) for the purpose of raising funds to pay the cost of any part
- 36 of an electric supply project, to fulfill the terms of a power supply
- 37 contract, including any provision for collateral or related
- 38 performance security measures, and to fund or refund any bonds.
- 39 b. The municipal shared services energy authority shall adopt a
- 40 bond resolution which shall:
- 41 (1) describe in brief and general terms sufficient for reasonable
- 42 identification the electric supply project or part thereof, to be
- 43 constructed or acquired, or describe the bonds which are to be
- 44 funded or refunded, if any;
- 45 (2) state the cost or estimated cost of the project, if any; and
- 46 (3) provide for the issuance of the bonds in accordance with
- 47 sections 10 through 18 of P.L. , c. (C. ) (pending before the
- 48 Legislature as this bill).

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

18  
19        11. (New section) Bonds of the municipal shared services  
20 energy authority may be sold by the municipal shared services  
21 energy authority at public or private sale, and at such price or prices  
22 as the municipal shared services energy authority shall determine  
23 subject to the provisions of P.L.1983, c. 313 (C.40A:5A-1 et seq.).  
24

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

1 court, or from pleading any defense to any action or proceedings,  
2 questioning the validity of the establishment of the municipal  
3 shared services energy authority, or the validity or proper  
4 authorization of the bonds, or the validity of the covenants,  
5 agreements or contracts, and the municipal shared services energy  
6 authority shall be conclusively deemed to have been validly  
7 established and to be authorized to transact business and exercise  
8 powers as an authority pursuant to P.L. , c. (C. ) (pending  
9 before the Legislature as this bill), and the bonds, covenants,  
10 agreements and contracts shall be conclusively deemed to be valid  
11 and binding obligations in accordance with their terms and tenor.  
12

13 13. (New section) Any provision of any law to the contrary  
14 notwithstanding, any bond or other obligation issued pursuant to  
15 P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 shall be fully negotiable within the meaning and for all purposes of  
17 the negotiable instruments law of this State, and each holder or  
18 owner of such a bond or other obligation, or of any coupon  
19 appurtenant thereto, by accepting such bond or coupon shall be  
20 conclusively deemed to have agreed that such bond, obligation or  
21 coupon is and shall be fully negotiable within the meaning and for  
22 all purposes of the State's negotiable instruments law under Title  
23 12A of the New Jersey Statutes.  
24

25 14. (New section) Neither the members of the municipal shared  
26 services energy authority nor any person executing bonds issued  
27 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
28 this bill) shall be liable personally on the bonds by reason of the  
29 issuance thereof. Bonds or other obligations issued pursuant to  
30 P.L. , c. (C. ) (pending before the Legislature as this bill)  
31 shall not be in any way a debt or liability of the State, and bonds or  
32 other obligations issued by the municipal shared services energy  
33 authority pursuant to P.L. , c. (C. ) (pending before the  
34 Legislature as this bill) shall not be in any way a debt or liability of  
35 the State or of any local unit or of any county or municipality,  
36 except for member municipalities guaranteeing such bonds in  
37 accordance with the provisions of section 18 of P.L. ,  
38 c. (C. ) (pending before the Legislature as this bill), and shall  
39 not create or constitute any indebtedness, liability or obligation of  
40 the State or of any such local unit, county or municipality, either  
41 legal, moral, or otherwise, and nothing in P.L. , c. (C. )  
42 (pending before the Legislature as this bill) contained shall be  
43 construed to authorize the municipal shared services energy  
44 authority to incur any indebtedness on behalf of or in any way to  
45 obligate the State or any county or municipality.  
46

47 15. (New section) Any bond resolution of the municipal shared  
48 services energy authority providing for or authorizing the issuance

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

1 acquired, and the fixing, establishment, collection and enforcement  
2 of the same, the amount of electric supply project revenues or  
3 system revenues to be produced thereby, and the disposition and  
4 application of the amounts charged or collected;

5 j. The assumption or payment or discharge of any  
6 indebtedness, liens, or other claims relating to the whole or any part  
7 of one or more electric supply projects of the municipal shared  
8 services energy authority or of its system for any obligations having  
9 or which may have a lien on any part of the system of the municipal  
10 shared services energy authority;

11 k. Limitations on the issuance of additional bonds or any other  
12 obligations or on the incurrence of indebtedness of the municipal  
13 shared services energy authority;

14 1. Limitations on the powers of the municipal shared services  
15 energy authority to construct, acquire or operate, or to permit the  
16 construction, acquisition or operation of, any plants, structures,  
17 facilities or properties which may compete or tend to compete with  
18 one or more of the municipal shared services energy authority's  
19 electric supply projects or any part of its system;

20 m. Vesting in a trustee or trustees within or without the State  
21 such property, rights, powers, and duties in trust as the municipal  
22 shared services energy authority may determine, which may include  
23 any or all of the rights, powers, and duties of the trustee appointed  
24 by the holders of bonds, and limiting or abrogating the right of the  
25 holders to appoint a trustee or limiting the rights, duties, and powers  
26 of the trustee;

27 n. Payment of costs or expenses incident to the enforcement of  
28 the bonds or of the provisions of the bond resolutions or of any  
29 covenant or contract with the holders of the bonds;

30 o. The procedure, if any, by which the terms of any covenant or  
31 contract with, or duty to, the holders of the bonds may be amended  
32 or abrogated, the amount of bonds that the holders of which must  
33 consent thereto, and the manner in which the consent may be given  
34 or evidenced; and

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

38 The provisions of the bond resolution and the covenants and  
39 agreements relative thereto shall constitute valid and legally binding  
40 contracts between the municipal shared services energy authority  
41 and the several holders of the bonds, regardless of the time of  
42 issuance of the bonds, and shall be enforceable by any holder or  
43 holders by appropriate suit, action or proceeding in any court of  
44 competent jurisdiction, or by proceeding in lieu of prerogative writ.

45

46 16. (New section) a. If the bond resolution of the municipal  
47 shared services energy authority authorizing or providing for the  
48 issuance of a series of its bonds shall provide in substance that the

holders of the bonds of such series shall be entitled to the benefits of this section, then, in the event that there shall be a default in the payment of principal of, or interest on, any bonds of such series after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the municipal shared services energy authority shall fail or refuse to comply with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) or shall fail or refuse to carry out and perform the terms of any contract with the holders of any such bonds, and such failure or refusal shall continue for a period of 30 days after written notice to the municipal shared services energy authority of its existence and nature, the holders of 25 percent in aggregate principal amount of the bonds and such series then outstanding by instrument or instruments filed in the office of the Secretary of State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds of such series for the purposes provided in this section.

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

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

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

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

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

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

c. The trustee shall, in addition to the powers set forth in subsections a. and b. of this section, have and possess all of the powers necessary or appropriate for the exercise of the functions specifically set forth herein or incident to the general representation



1 of the holders of bonds of such series in the enforcement and  
2 protection of their rights.

3 d. In any action or proceeding by the trustee, the fees, counsel  
4 fees and expenses of the trustee and of the receiver, if any,  
5 appointed pursuant to P.L. , c. (C. ) (pending before the  
6 Legislature as this bill), shall constitute taxable costs and  
7 disbursements, and all costs and disbursements, allowed by the  
8 court, shall be a first charge upon any service charges and system  
9 revenues of the municipal shared services energy authority pledged  
10 for the payment or security of bonds of such series.

11

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

39

40 18. (New section) For the purpose of aiding the municipal  
41 shared services energy authority in the planning, undertaking,  
42 acquisition, construction, financing or operation of any electric  
43 supply project authorized pursuant to P.L. , c. (C. )  
44 (pending before the Legislature as this bill), a member municipality  
45 may, by ordinance of its governing body, in the manner provided  
46 for adoption of a bond ordinance as provided in any local bond law  
47 and with or without consideration and upon such terms and  
48 conditions as may be agreed to by and between the member

1 municipality and the authority, unconditionally guaranty the  
2 punctual payment of the principal of, and interest on, all or a  
3 portion of any bonds of the authority. Any guaranty of the bonds of  
4 the authority made pursuant to this section shall be evidenced by  
5 endorsement thereof on the bonds, executed in the name of the  
6 member municipality and on its behalf by such officer thereof as  
7 may be designated in the ordinance authorizing such guaranty, and  
8 the municipality shall thereupon and thereafter be obligated to pay  
9 the principal of, and interest on, said bonds in the same manner and  
10 to the same extent as in the case of bonds issued by it. Any  
11 ordinance authorizing such guaranty shall be treated as a security  
12 agreement and shall be subject to the provisions of P.L.1983, c.313  
13 (C.40A:5A-1 et seq.). Any such guaranty of bonds of the authority  
14 may be made, and any ordinance authorizing such guaranty may be  
15 adopted, notwithstanding any statutory debt or other limitations,  
16 including particularly any limitation or requirement under or  
17 pursuant to any local bond law, but the principal amount of the  
18 bonds so guaranteed, shall, after their issuance, be included in the  
19 gross debt of the member municipality for the purpose of  
20 determining the indebtedness of the municipality under or pursuant  
21 to any local bond law. The principal amount of the bonds so  
22 guaranteed and included in gross debt shall be deducted and is  
23 hereby declared to be and to constitute a deduction from the gross  
24 debt under and for all the purposes of any local bond law:

25 a. from and after the time of issuance of the bonds until the end  
26 of the fiscal year beginning next after the completion of acquisition  
27 or construction of the facility to be financed from the proceeds of  
28 the bonds; and

29 b. in any annual debt statement filed pursuant to any local bond  
30 law as of the end of the fiscal year or any subsequent fiscal year if  
31 the revenues or other receipts or moneys of the authority in that  
32 year are sufficient to pay its expenses of operation and maintenance  
33 in the year and all amounts payable in the year on account of the  
34 principal of, and interest on, all the guaranteed bonds, and all bonds  
35 of the authority issued under P.L. , c. (C. ) (pending before  
36 the Legislature as this bill).

37

38 19. (New section) a. The municipal shared services energy  
39 authority may enter into wholesale power supply contracts with any  
40 person within or outside the State of New Jersey to meet the electric  
41 power or energy needs of its members, for the purchase or sale of  
42 electric power or energy, or for both the purchase and sale of  
43 electric power and energy to supply 'electric' power 'or energy' to  
44 its members and for the wholesale sale of any excess 'electric'  
45 power 'or energy'. The power supply contracts shall be for a term  
46 not to exceed 40 years and shall provide for payment to or from the  
47 municipal shared services energy authority of funds for  
48 commodities to be procured, and services to be rendered by or to

1 the municipal shared services energy authority. The municipal  
2 shared services energy authority may enter into power supply  
3 contracts with persons for the purchase or sale of electric power and  
4 energy, or for both the purchase and sale of electric power and  
5 energy, whereby the purchaser is obligated to make payments in  
6 amounts which shall be sufficient to enable the municipal shared  
7 services energy authority to meet its expenses, interest and principal  
8 payments, whether at maturity or upon sinking fund redemption, for  
9 its bonds, reasonable reserves for debt service, operation and  
10 maintenance, renewals and replacements, and the requirements of  
11 any rate covenant with respect to debt service coverage contained in  
12 any resolution, trust indenture, or other security instrument. Power  
13 supply contracts may contain such other terms and conditions as the  
14 municipal shared services energy authority and the purchasers may  
15 determine, including provisions whereby the purchaser is obligated  
16 to pay for power irrespective of whether energy is produced or  
17 delivered to the purchaser, or whether any electric supply project  
18 contemplated by the agreement is completed, operable, or  
19 operating, and notwithstanding suspension, interruption,  
20 interference, reduction, or curtailment of the output of the electric  
21 supply project. The power purchase agreement may provide that if  
22 one or more of the purchasers defaults in the payment of its  
23 obligations under the purchase agreement, the remaining purchasers  
24 which also have such agreements shall be required to accept and  
25 pay for the 'electric' power and energy to be purchased by the  
26 defaulting purchaser, and shall be entitled proportionately to use or  
27 otherwise dispose of the 'electric' power and energy to be  
28 purchased by the defaulting purchaser. For purposes of this  
29 subsection the phrase "purchase of electric power and energy"  
30 includes the purchase of any right to capacity 'of', or interest in,  
31 any electric supply project.

32 b. The obligations of a municipality that is eligible to be, but  
33 that is not, a member municipality under a power supply contract  
34 with the municipal shared services energy authority, or arising out  
35 of the default by any other purchaser with respect to such an  
36 agreement, shall not be construed to constitute a debt of the  
37 municipality. To the extent provided in the purchase agreement,  
38 these obligations shall constitute special obligations of the  
39 municipality, payable solely from the revenues and other moneys  
40 derived by the municipality from its municipal electric utility and  
41 shall be treated as expenses of operating a municipal electric utility.

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

46 d. Such agreements may be for a term covering the life of an  
47 electric supply project, for the anticipated output period of the  
48 electric supply project, or for any other term not exceeding 40

1 years. If a power supply contract is entered into with a municipality  
2 other than a member municipality, the contracts shall be subject to  
3 the "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-1 et  
4 seq.).

5  
6 20. (New section) The municipal shared services energy  
7 authority formed pursuant to P.L. , c. (C. ) (pending before  
8 the Legislature as this bill) shall comply with the provisions of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
10 all applicable federal and State laws. Nothing in P.L. , c. (C. )  
11 (pending before the Legislature as this bill) shall be construed to  
12 require regulation of a municipal shared services energy authority  
13 or its members as an electric public utility as defined under  
14 R.S.48:2-13. Wholesale sales and purchases by the municipal  
15 shared services energy authority shall not subject the municipal  
16 shared services energy authority or its members to the jurisdiction  
17 of the Board of Public Utilities as a public utility as set forth in  
18 R.S.48:2-13 et seq.

19  
20 21. (New section) All property of the municipal shared services  
21 energy authority shall be exempt from levy and sale by virtue of an  
22 execution of a court of competent jurisdiction and no execution or  
23 other judicial process shall issue against the same nor shall any  
24 judgment against the municipal shared services energy authority be  
25 a charge or lien upon its property, provided, however, that nothing  
26 in this section shall apply to or limit the rights of the holder of any  
27 bonds to pursue any remedy for the enforcement of any pledge or  
28 lien given by the municipal shared services energy authority on its  
29 system, revenues, or other monies.

30  
31 22. (New section) Notwithstanding any restriction contained in  
32 any other law, the State and all public officers, municipalities,  
33 counties, political subdivisions of public bodies, and agencies  
34 thereof, all banks, bankers, trust companies, savings banks and  
35 institutions, building and loan associations, savings and loan  
36 associations, investment companies, and other persons carrying on a  
37 banking business, all insurance companies, insurance associations,  
38 and other persons carrying on an insurance business, and all  
39 executors, administrators, guardians, trustees and other fiduciaries,  
40 may legally invest any sinking funds, monies, or other funds  
41 belonging to them or within their control, in any bonds of the  
42 municipal shared services energy authority, and the bonds shall be  
43 authorized security for any and all public deposits.

44  
45 23. (New section) Every electric supply project or facility  
46 owned by the municipal shared services energy authority, including  
47 any pro rata share of any property owned by the municipal shared  
48 services energy authority in conjunction with any other person or

1 public agency and used in connection with the generation,  
2 transmission and production of electric power and energy, and all  
3 other property of the municipal shared services energy authority, is  
4 hereby declared to be public property and devoted to an essential  
5 public and governmental function and purpose, and the property,  
6 the municipal shared services energy authority and its income shall  
7 be exempt from all taxes and special assessments of the State or any  
8 subdivision of the State. All bonds of the municipal shared services  
9 energy authority are hereby declared to be issued by a political  
10 subdivision of the State and for an essential public and  
11 governmental purpose and to be a public instrumentality in the  
12 bonds, and the interest thereon and the income therefrom and all  
13 service charges, funds, revenues, and other monies pledged or  
14 available to pay or secure the payment of the bonds, or interest  
15 thereon, shall at all times be exempt from taxation except for  
16 transfer, inheritance and estate taxes, and taxes on transfers by or in  
17 contemplation of death.

18  
19 '24. (New section) The State of New Jersey does hereby pledge  
20 to and covenant and agree with the holders of any bonds issued  
21 pursuant to a bond resolution of the municipal shared services  
22 energy authority, that the State will not limit or alter the rights  
23 hereby vested in the municipal shared services energy authority to  
24 acquire, construct, operate, and participate in one or more electric  
25 supply projects and facilities for the generation, production, and  
26 transmission of electric power and energy at wholesale, to fix,  
27 establish, charge, and collect charges, fees, and payments, and to  
28 fulfill the terms of any agreement made with the holders of the  
29 bonds or other obligations, and will not in any way impair the rights  
30 or remedies of these holders, and will not modify in any way the  
31 exemptions from taxation provided for in P.L. , c. (C. )  
32 (pending before the Legislature as this bill) until the bonds, together  
33 with interest thereon, with interest on any unpaid installments of  
34 interest, and all costs and expenses in connection with any action or  
35 proceeding by or on behalf of these holders, are fully met and  
36 discharged.'

37  
38 '[24.] 25.' (New section) All banks, bankers, trust companies,  
39 savings banks, investment companies, and other persons carrying on  
40 a banking business are hereby authorized to give to the municipal  
41 shared services energy authority a good and sufficient undertaking  
42 with such sureties as shall be approved by the municipal shared  
43 services energy authority to the effect that this bank or banking  
44 institution shall faithfully keep and pay over to the order of or upon  
45 the warrant of the municipal shared services energy authority or its  
46 authorized agent, all such funds as may be deposited with it by the  
47 municipal shared services energy authority and agreed interest  
48 thereon, at such times or upon such demands as may be agreed with

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

11

12 ' [25.] 26.' (New section) The municipal shared services  
13 energy authority shall cause an annual audit of its accounts to be  
14 made, and for this purpose shall employ a certified public  
15 accountant licensed pursuant to the laws of the State of New Jersey.  
16 The audit shall be completed and filed with the municipal shared  
17 services energy authority within four months after the close of its  
18 fiscal year and a certified duplicate thereof shall be filed with the  
19 Director of the Division of Local Government Services in the  
20 Department of Community Affairs within five days after the  
21 original report is filed with the municipal shared services energy  
22 authority.

23

24 ' [26.] 27.' (New section) The municipal shared services energy  
25 authority shall file a copy of each bond resolution adopted by it  
26 with the Director of the Division of Local Government Services in  
27 the Department of Community Affairs, together with a summary of  
28 the dates, amounts, maturities, and interest rates of all bonds issued  
29 pursuant thereto.

30

31 ' [27.] 28.' Section 5 of P.L.1971, c.198 (C.40A:11-5) is  
32 amended to read as follows:

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

37 (1) The subject matter thereof consists of:

38 (a) (i) Professional services. The governing body shall in each  
39 instance state supporting reasons for its action in the resolution  
40 awarding each contract and shall forthwith cause to be printed once,  
41 in the official newspaper, a brief notice stating the nature, duration,  
42 service and amount of the contract, and that the resolution and  
43 contract are on file and available for public inspection in the office  
44 of the clerk of the county or municipality, or, in the case of a  
45 contracting unit created by more than one county or municipality, of  
46 the counties or municipalities creating such contracting unit; or (ii)  
47 Extraordinary unspecifiable services. The application of this  
48 exception shall be construed narrowly in favor of open competitive

1 bidding, whenever possible, and the Division of Local Government  
2 Services is authorized to adopt and promulgate rules and regulations  
3 after consultation with the Commissioner of Education limiting the  
4 use of this exception in accordance with the intention herein  
5 expressed. The governing body shall in each instance state  
6 supporting reasons for its action in the resolution awarding each  
7 contract and shall forthwith cause to be printed, in the manner set  
8 forth in subsection (1) (a) (i) of this section, a brief notice of the  
9 award of such contract;

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

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

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

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

16 (f) The supplying of any product or the rendering of any service  
17 by a public utility, which is subject to the jurisdiction of the Board  
18 of Public Utilities or the Federal Energy Regulatory Commission or  
19 its successor, in accordance with tariffs and schedules of charges  
20 made, charged or exacted, filed with the board or commission;

21 (g) The acquisition, subject to prior approval of the Attorney  
22 General, of special equipment for confidential investigation;

23 (h) The printing of bonds and documents necessary to the  
24 issuance and sale thereof by a contracting unit;

25 (i) Equipment repair service if in the nature of an extraordinary  
26 unspecifiable service and necessary parts furnished in connection  
27 with such service, which exception shall be in accordance with the  
28 requirements for extraordinary unspecifiable services;

29 (j) The publishing of legal notices in newspapers as required by  
30 law;

31 (k) The acquisition of artifacts or other items of unique intrinsic,  
32 artistic or historical character;

33 (l) Those goods and services necessary or required to prepare  
34 and conduct an election;

35 (m) Insurance, including the purchase of insurance coverage and  
36 consultant services, which exception shall be in accordance with the  
37 requirements for extraordinary unspecifiable services;

38 (n) The doing of any work by handicapped persons employed by  
39 a sheltered workshop;

40 (o) The provision of any goods or services including those of a  
41 commercial nature, attendant upon the operation of a restaurant by  
42 any nonprofit, duly incorporated, historical society at or on any  
43 historical preservation site;

44 (p) (Deleted by amendment, P.L.1999, c.440.)

45 (q) Library and educational goods and services;

46 (r) (Deleted by amendment, P.L.2005, c.212).

47 (s) The marketing of recyclable materials recovered through a  
48 recycling program, or the marketing of any product intentionally

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



1 (ee) The management or operation of an airport owned by the  
2 contracting unit pursuant to R.S.40:8-1 et seq.;

3 (ff) Purchases of goods and services at rates set by the Universal  
4 Service Fund administered by the Federal Communications  
5 Commission;

6 (gg) A contract for the provision of water supply services or  
7 wastewater treatment services entered into pursuant to section 2 of  
8 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,  
9 construction, operation, or maintenance, or any combination  
10 thereof, of a water supply facility as defined in subsection (16) of  
11 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater  
12 treatment system as defined in subsection (19) of section 15 of  
13 P.L.1971, c.198 (C.40A:11-15), or any component part or parts  
14 thereof, including a water filtration system as defined in subsection  
15 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

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

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

23 (3) Bids have been advertised pursuant to section 4 of P.L.1971,  
24 c.198 (C.40A:11-4) on two occasions and (a) no bids have been  
25 received on both occasions in response to the advertisement, or (b)  
26 the governing body has rejected such bids on two occasions because  
27 it has determined that they are not reasonable as to price, on the  
28 basis of cost estimates prepared for or by the contracting agent prior  
29 to the advertising therefor, or have not been independently arrived  
30 at in open competition, or (c) on one occasion no bids were received  
31 pursuant to (a) and on one occasion all bids were rejected pursuant  
32 to (b), in whatever sequence; any such contract may then be  
33 negotiated and may be awarded upon adoption of a resolution by a  
34 two-thirds affirmative vote of the authorized membership of the  
35 governing body authorizing such contract; provided, however, that:

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

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

46 (iii) Any minor amendment or modification of any of the terms,  
47 conditions, restrictions and specifications, which were the subject of  
48 competitive bidding pursuant to section 4 of P.L.1971, c.198

1 (C.40A:11-4), shall be stated in the resolution awarding such  
2 contract; provided further, however, that if on the second occasion  
3 the bids received are rejected as unreasonable as to price, the  
4 contracting agent shall notify each responsible bidder submitting  
5 bids on the second occasion of its intention to negotiate, and afford  
6 each bidder a reasonable opportunity to negotiate, but the governing  
7 body shall not award such contract unless the negotiated price is  
8 lower than the lowest rejected bid price submitted on the second  
9 occasion by a responsible bidder, is the lowest negotiated price  
10 offered by any responsible vendor, and is a reasonable price for  
11 such goods or services.

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

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

1 use of this subsection, after considering the impact of contracts  
2 awarded under this subsection on State and local contracting, or  
3 after considering the extent to which the award of contracts  
4 pursuant to this subsection is consistent with and in furtherance of  
5 the purposes of the public contracting laws.

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

32 (6) Notwithstanding any provision of law, rule or regulation to  
33 the contrary, the contract is for the provision of electricity by a  
34 municipal shared services energy authority as defined pursuant to  
35 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
36 this bill), or by a contracting unit engaged in the distribution of  
37 electricity for retail sale, or for the provision of administrative or  
38 dispatching services related to the transmission of such electricity,  
39 provided that in lieu of engaging in public advertising for bids and  
40 the bidding therefor, the contracting unit shall, prior to commencing  
41 the procurement process, submit for approval to the Director of the  
42 Division of Local Government Services, a written detailed  
43 description of the process to be followed in securing such services.  
44 Such process shall be designed in a way that is appropriate to and  
45 commensurate with industry practices, and the integrity of the  
46 government contracting process. Within 30 days after receipt of the  
47 written description, the director shall, if the director finds that the  
48 process provides for fair competition and integrity in the

1 negotiation process, approve, in writing, the description submitted  
2 by the contracting unit. If the director finds that the process does  
3 not provide for fair competition and integrity in the negotiation  
4 process, the director shall advise the contracting unit of the  
5 deficiencies that must be remedied. If the director fails to respond  
6 in writing to the contracting unit within 30 days, the procurement  
7 process, as submitted to the director pursuant to this section, shall  
8 be deemed approved.

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

10  
11 '[28.] 29.' Section 15 of P.L.1971, c.198 (C.40A:11-15) is  
12 amended to read as follows:

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

20 (1) Supplying of:

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

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

23 (c) Thermal energy produced by a cogeneration facility, for use  
24 for heating or air conditioning or both, for any term not exceeding  
25 40 years, when the contract is approved by the Board of Public  
26 Utilities. For the purposes of this paragraph, "cogeneration" means  
27 the simultaneous production in one facility of electric power and  
28 other forms of useful energy such as heating or process steam;

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

30 (3) The collection and disposal of municipal solid waste, the  
31 collection and disposition of recyclable material, or the disposal of  
32 sewage sludge, for any term not exceeding in the aggregate, five  
33 years;

34 (4) The collection and recycling of methane gas from a sanitary  
35 landfill facility, for any term not exceeding 25 years, when such  
36 contract is in conformance with a district solid waste management  
37 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and  
38 with the approval of the Division of Local Government Services in  
39 the Department of Community Affairs and the Department of  
40 Environmental Protection. The contracting unit shall award the  
41 contract to the highest responsible bidder, notwithstanding that the  
42 contract price may be in excess of the amount of any necessarily  
43 related administrative expenses; except that if the contract requires  
44 the contracting unit to expend funds only, the contracting unit shall  
45 award the contract to the lowest responsible bidder. The approval  
46 by the Division of Local Government Services of public bidding  
47 requirements shall not be required for those contracts exempted  
48 therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

- 1 (5) Data processing service, for any term of not more than seven  
2 years;
- 3 (6) Insurance, including the purchase of insurance coverages,  
4 insurance consulting or administrative services, claims  
5 administration services and including participation in a joint self-  
6 insurance fund, risk management program or related services  
7 provided by a contracting unit insurance group, or participation in  
8 an insurance fund established by a local unit pursuant to  
9 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
10 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more  
11 than three years;
- 12 (7) Leasing or servicing of (a) automobiles, motor vehicles,  
13 machinery and equipment of every nature and kind, for a period not  
14 to exceed five years, or (b) machinery and equipment used in the  
15 generation of electricity by a contracting unit engaged in the  
16 generation of electricity, for a period not to exceed 20 years;  
17 provided, however, such contracts shall be awarded only subject to  
18 and in accordance with the rules and regulations promulgated by the  
19 Director of the Division of Local Government Services in the  
20 Department of Community Affairs;
- 21 (8) The supplying of any product or the rendering of any service  
22 by a company providing voice, data, transmission or switching  
23 services for a term not exceeding five years;
- 24 (9) Any single project for the construction, reconstruction or  
25 rehabilitation of any public building, structure or facility, or any  
26 public works project, including the retention of the services of any  
27 architect or engineer in connection therewith, for the length of time  
28 authorized and necessary for the completion of the actual  
29 construction;
- 30 (10) The providing of food services for any term not exceeding  
31 three years;
- 32 (11) On-site inspections and plan review services undertaken by  
33 private agencies pursuant to the "State Uniform Construction Code  
34 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not  
35 more than three years;
- 36 (12) (Deleted by amendment, P.L.2009, c.4).
- 37 (13) (Deleted by amendment, P.L.1999, c.440.)
- 38 (14) (Deleted by amendment, P.L.1999, c.440.)
- 39 (15) Leasing of motor vehicles, machinery and other equipment  
40 primarily used to fight fires, for a term not to exceed ten years,  
41 when the contract includes an option to purchase, subject to and in  
42 accordance with rules and regulations promulgated by the Director  
43 of the Division of Local Government Services in the Department of  
44 Community Affairs;
- 45 (16) The provision of water supply services or the designing,  
46 financing, construction, operation, or maintenance, or any  
47 combination thereof, of a water supply facility, or any component  
48 part or parts thereof, including a water filtration system, for a period

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

33 (17) The provision of resource recovery services by a qualified  
34 vendor, the disposal of the solid waste delivered for disposal which  
35 cannot be processed by a resource recovery facility or the residual  
36 ash generated at a resource recovery facility, including hazardous  
37 waste and recovered metals and other materials for reuse, or the  
38 design, financing, construction, operation or maintenance of a  
39 resource recovery facility for a period not to exceed 40 years when  
40 the contract is approved by the Division of Local Government  
41 Services in the Department of Community Affairs, and the  
42 Department of Environmental Protection pursuant to P.L.1985, c.38  
43 (C.13:1E-136 et al.); and when the resource recovery facility is in  
44 conformance with a district solid waste management plan approved  
45 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of  
46 this subsection, "resource recovery facility" means a solid waste  
47 facility constructed and operated for the incineration of solid waste  
48 for energy production and the recovery of metals and other

1 materials for reuse; or a mechanized composting facility, or any  
2 other facility constructed or operated for the collection, separation,  
3 recycling, and recovery of metals, glass, paper, and other materials  
4 for reuse or for energy production; and "residual ash" means the  
5 bottom ash, fly ash, or any combination thereof, resulting from the  
6 combustion of solid waste at a resource recovery facility;

7 (18) The sale of electricity or thermal energy, or both, produced  
8 by a resource recovery facility for a period not to exceed 40 years  
9 when the contract is approved by the Board of Public Utilities, and  
10 when the resource recovery facility is in conformance with a district  
11 solid waste management plan approved pursuant to P.L.1970, c.39  
12 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource  
13 recovery facility" means a solid waste facility constructed and  
14 operated for the incineration of solid waste for energy production  
15 and the recovery of metals and other materials for reuse; or a  
16 mechanized composting facility, or any other facility constructed or  
17 operated for the collection, separation, recycling, and recovery of  
18 metals, glass, paper, and other materials for reuse or for energy  
19 production;

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

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

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

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

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

3       (24) The purchase of electricity or administrative or dispatching  
4 services related to the transmission of such electricity, from a  
5 supplier of electricity subject to the jurisdiction of a federal  
6 regulatory agency, from a qualifying small power producing facility  
7 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or  
8 from any supplier of electricity within any regional transmission  
9 organization or independent system operator or from such  
10 organization or operator or their successors, by a contracting unit  
11 engaged in the generation of electricity for retail sale, as of May 24,  
12 1991, for a term not to exceed 40 years, or by a contracting unit  
13 engaged solely in the distribution of electricity for retail sale for a  
14 term not to exceed ten years, except that a contract with a  
15 contracting unit, engaged solely in the distribution of electricity for  
16 retail sale, in excess of ten years, shall require the written approval  
17 of the Director of the Division of Local Government Services. If  
18 the director fails to respond in writing to the contracting unit within  
19 10 business days, the contract shall be deemed approved;

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

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

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

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

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

47       (30) The acquisition of an equitable interest in a water supply  
48 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a



1 contract entered into pursuant to the "County and Municipal Water  
2 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into  
3 no later than January 7, 1995, for any term of not more than forty  
4 years;

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

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

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

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

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

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

32 (37) The operation and management of a facility under a license  
33 issued or permit approved by the Department of Environmental  
34 Protection, including a wastewater treatment system or a water  
35 supply or distribution facility, as the case may be, for any term of  
36 not more than ten years. For the purposes of this subsection,  
37 "wastewater treatment system" refers to facilities operated or  
38 maintained for the storage, collection, reduction, disposal, or other  
39 treatment of wastewater or sewage sludge, remediation of  
40 groundwater contamination, stormwater runoff, or the final disposal  
41 of residues resulting from the treatment of wastewater; and "water  
42 supply or distribution facility" refers to facilities operated or  
43 maintained for augmenting the natural water resources of the State,  
44 increasing the supply of water, conserving existing water resources,  
45 or distributing water to users;

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

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

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

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

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

12 (43) A contract between the governing body of a city of the first  
13 class and a duly incorporated nonprofit association for the provision  
14 of water supply services as defined in subsection (16) of this  
15 section, or wastewater treatment services as defined in subsection  
16 (19) of this section, may be entered into for a period not to exceed  
17 40 years;

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

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

33 (46) A power supply contract, as defined pursuant to section  
34 3 of P.L. , c. (C. ) (pending before the Legislature as this  
35 bill), between a contracting unit and the municipal shared services  
36 energy authority established pursuant to the provisions of P.L. ,  
37 c. (C. ) (pending before the Legislature as this bill) to meet the  
38 electric power needs of its members, for the lease, operation, or  
39 management of electric generation or the purchase of electricity, or  
40 the purchase of fuel for generating units for a term not to exceed 40  
41 years.

42 Any contract for services other than professional services, the  
43 statutory length of which contract is for three years or less, may  
44 include provisions for no more than one two-year, or two one-year,  
45 extensions, subject to the following limitations: a. The contract  
46 shall be awarded by resolution of the governing body upon a  
47 finding by the governing body that the services are being performed  
48 in an effective and efficient manner; b. No such contract shall be

1 extended so that it runs for more than a total of five consecutive  
2 years; c. Any price change included as part of an extension shall be  
3 based upon the price of the original contract as cumulatively  
4 adjusted pursuant to any previous adjustment or extension and shall  
5 not exceed the change in the index rate for the 12 months preceding  
6 the most recent quarterly calculation available at the time the  
7 contract is renewed; and d. The terms and conditions of the  
8 contract remain substantially the same.

9 All multiyear leases and contracts entered into pursuant to this  
10 section, including any two-year or one-year extensions, except  
11 contracts involving the supplying of electricity for the purpose of  
12 lighting public streets and contracts for thermal energy authorized  
13 pursuant to subsection (1) above, construction contracts authorized  
14 pursuant to subsection (9) above, contracts for the provision or  
15 performance of goods or services or the supplying of equipment to  
16 promote energy conservation through the production of class I  
17 renewable energy or class II renewable energy authorized pursuant  
18 to subsection (45) above, contracts for water supply services or for  
19 a water supply facility, or any component part or parts thereof  
20 authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or  
21 (43) above, contracts for resource recovery services or a resource  
22 recovery facility authorized pursuant to subsection (17) above,  
23 contracts for the sale of energy produced by a resource recovery  
24 facility authorized pursuant to subsection (18) above, contracts for  
25 wastewater treatment services or for a wastewater treatment system  
26 or any component part or parts thereof authorized pursuant to  
27 subsection (19), (36), (37) or (43) above, and contracts for the  
28 purchase of electricity or administrative or dispatching services  
29 related to the transmission of such electricity authorized pursuant to  
30 subsection (24) above **[and]**, contracts for the purchase of  
31 electricity generated from a power production facility that is fueled  
32 by methane gas authorized pursuant to subsection (44) above, and  
33 power supply contracts authorized pursuant to subsection (46)  
34 respectively, shall contain a clause making them subject to the  
35 availability and appropriation annually of sufficient funds as may  
36 be required to meet the extended obligation, or contain an annual  
37 cancellation clause.

38 The Division of Local Government Services in the Department  
39 of Community Affairs shall adopt and promulgate rules and  
40 regulations concerning the methods of accounting for all contracts  
41 that do not coincide with the fiscal year.

42 All contracts shall cease to have effect at the end of the  
43 contracted period and shall not be extended by any mechanism or  
44 provision, unless in conformance with the "Local Public Contracts  
45 Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract  
46 may be extended by mutual agreement of the parties to the contract  
47 when a contracting unit has commenced rebidding prior to the time

1 the contract expires or when the awarding of a contract is pending  
2 at the time the contract expires.  
3 (cf: P.L.2009, c.4, s.8)

4  
5 '【29.】 30.<sup>1</sup> (New section) The powers granted under P.L. ,  
6 c. (C. ) (pending before the Legislature as this bill) shall not  
7 limit the powers of municipalities to enter into shared service  
8 agreements or contracts, or to establish separate legal entities  
9 pursuant to State law or otherwise to carry out their powers under  
10 applicable statutory provisions, nor shall the powers granted under  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 limit the powers reserved to municipalities by State law.

13  
14 '【30.】 31.<sup>1</sup> This act shall take effect immediately.