

Title 40A.
Chapter 66 (New)
Municipal Shared
Services Energy
Authorities.
§§ 1-27, 30 -
C.40A:66-1 to
40A:66-28

P.L.2015, CHAPTER 129, *approved November 9, 2015*
Assembly, No. 2385 (*First Reprint*)

1 AN ACT authorizing the creation of a municipal shared services
2 energy authority to provide for shared facilities, powers and
3 services, amending P.L.1971, c.198 and supplementing Title 40A
4 of the ¹**[Revised]** New Jersey¹ 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 ¹**[Law]** Act¹."

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 ¹and
15 distribution¹ of electricity; that nine municipalities and one rural
16 electric cooperative presently own and operate electric utility
17 systems for the benefit of their residents and businesses; and that
18 the generation and distribution of electricity has evolved from a
19 local and statewide endeavor into a national marketplace and
20 ¹**[such]** this¹ evolution has resulted in a system where the size and
21 sophistication of the market participants influence the ability to
22 efficiently compete in the 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^{1,1} and efficient electrical power to local businesses
26 and residents is paramount in the present marketplace, and ¹**[such]**
27 the¹ ability is contingent on the power to contract for the generation
28 or delivery of a sufficient quantity of wholesale power and to act as
29 a contracting partner in long term, short term, and spot market
30 wholesale power supply contracts; ¹and¹ that given this evolution of
31 the electric supply marketplace, the municipal electric utilities

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:

¹Assembly ATU committee amendments adopted February 20, 2014.

1 operating in New Jersey ~~1[**must**]~~ should¹ be authorized to act
2 jointly to achieve greater efficiencies in the procurement and
3 generation of electric power at the wholesale level to benefit the
4 retail customers in the participating municipalities.

5 The Legislature further finds and declares that the operation of
6 electric utility systems by municipalities and the improvement of
7 these systems through joint action in the wholesale procurement of
8 electricity and transmission services, and in the generation,
9 transmission, and distribution of electric power and energy within
10 the corporate limits and franchise areas of the participating
11 municipalities, are in the public interest; ~~1¹and~~¹ that the
12 establishment of a municipal shared services energy authority by
13 municipalities that currently own or operate electric utility systems
14 will ensure the continued viability and stability of these systems, by
15 enabling ~~1[**the**]~~¹ municipalities to act jointly to develop coordinated
16 bulk power and fuel supply programs, ~~1[**and to**]~~¹ post collateral ^{1,1}
17 and act as a market participant in ~~1[**such**]~~ these¹ programs, thereby
18 providing the means to pursue efficiencies and savings for retail
19 customers within their corporate limits and franchise areas.

20 The Legislature therefore determines that it is in the public
21 interest to permit ~~1[**those**]~~¹ existing municipally-owned or operated
22 electric utility systems to act jointly through the voluntary creation
23 of a single municipal shared services energy authority, ~~1[**and**]~~¹ to
24 authorize the authority to perform according to standard electric
25 industry practices, in order to aid in promoting the stability and
26 viability of ~~1[**such**]~~ these¹ systems ^{1,1} and to achieve the
27 efficiencies and savings for the retail customers of these utility
28 systems located within the corporate limits and franchise areas of
29 the participating municipalities.

30

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

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

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

45 "Cost" means, in addition to the usual connotations thereof, the
46 cost of acquisition or construction of all or any part of an electric
47 supply project located within the corporate limits and franchise

1 areas of the members and of all or any property, rights, easements,
 2 privileges, agreements, and franchises deemed by the authority to
 3 be necessary or useful and convenient therefor ¹ or in connection
 4 therewith, including interest or discount on bonds, cost of issuance
 5 of bonds, engineering and inspection costs ¹ **["and"]** ¹ legal expenses,
 6 cost of financial, professional ¹ ¹ and other estimates and advice,
 7 organization, administrative, operating, and other expenses of the
 8 municipal shared services energy authority prior to and during
 9 **["such"]** acquisition or construction, and all **["such"]** other
 10 expenses as may be necessary or incident to the financing,
 11 acquisition, construction, and completion of an electric supply
 12 project or part thereof, and the placing of **["such"]** a project in
 13 operation, and **["also such"]** the provision or reserves for working
 14 capital, operating, maintenance **["or"]** ¹ replacement expenses **["or**
 15 **for"]** ¹ payment or security of principal of, or interest on, bonds
 16 during or after **["such"]** acquisition or construction as the authority
 17 may determine, and **["also"]** reimbursements to the authority or any
 18 county, municipality, or other person of any **["moneys"]** monies¹
 19 theretofore expended for the purposes of the authority or to any
 20 county or municipality of any **["moneys"]** monies¹ theretofore
 21 expended for or in connection with electric utility systems and
 22 facilities.

23 "Electric supply project" or "project" means **["(1)"]** a.¹ any
 24 plant, works, system, facility, and real and personal property of any
 25 nature whatsoever, together with all parts thereof and appurtenances
 26 thereto, located within the corporate limits and franchise areas of
 27 the members, that are used or useful in the generation, production,
 28 transmission, distribution, purchase, sale, exchange, or interchange
 29 of electric power and energy, in whole or in part **["(2)"]** b.¹ the
 30 acquisition or transportation of fuel of any kind for the generation
 31 or production of electric power and energy within the corporate
 32 limits and franchise areas of the members **["(3)"]** c.¹ the storage
 33 or reprocessing of **["such"]** that fuel within the corporate limits and
 34 franchise areas of the members for the generation or production of
 35 electric power and energy within **["those"]** the corporate limits and
 36 franchise areas of the members **["(4)"]** d.¹ any conservation
 37 measures, for the benefit of the members, including the utilization
 38 of renewable capacity and energy, or any interest therein or right to
 39 capacity thereof that occurs within the corporate limits and
 40 franchise areas of the members.

41 "Energy" means **["(1)"]** a.¹ the output of an electric supply
 42 project measured in megawatt hours or kilowatt hours **["(2)"]** b.¹
 43 that portion of a wholesale power supply contract
 44 measured in megawatt hours or kilowatt hours.

45 "Inter-municipal agreement" means an agreement as provided in
 46 section 5 of P.L. , c. (C.) (pending before the Legislature as

1 this bill), adopted by the members creating the municipal shared
 2 services energy authority and defining the rights and responsibilities
 3 of the authority and its members, as may be amended as provided
 4 herein ¹,¹ to, among other things, add a rural electric cooperative
 5 that exists in the State on the effective date of P.L. , c. (C.)
 6 (pending before the Legislature as this bill), as a member.

7 "Local Finance Board" means the Local Finance Board in the
 8 Division of Local Government Services in the Department of
 9 Community Affairs.

10 "Member" means a municipality or a rural electric cooperative
 11 that, on the effective date of P.L. , c. (C.) (pending before the
 12 Legislature as this bill), provides electric service to customers
 13 within the State and that enters into an initial or amended inter-
 14 municipal agreement of a municipal shared services energy
 15 authority.

16 "Member municipality" means a municipality that, on the
 17 effective date of P.L. , c. (C.) (pending before the Legislature
 18 as this bill), operates a retail electric distribution system pursuant to
 19 R.S.40:62-12 et seq., that joins with other member municipalities to
 20 create or join the municipal shared services energy authority
 21 pursuant to section 4 of P.L. , c. (C.) (pending before the
 22 Legislature as this bill).

23 "Municipal shared services energy authority" or "authority"
 24 means the authority created pursuant to section 4 of P.L. , c. (C.)
 25 (pending before the Legislature as this bill).

26 ¹["Person" means a natural person, a public agency, cooperative
 27 or private corporation, association, firm, statutory trust, partnership,
 28 or business trust of any nature whatsoever, organized and existing
 29 under the laws of any state.]"¹

30 "Power supply contract" means ¹["a contractual arrangement (1)
 31 : a. a contractual arrangement¹ between the authority and another
 32 person for the purchase of wholesale electric power and energy and
 33 component goods and services related thereto by the authority for
 34 its members; ¹["(2)"] b. a contractual arrangement¹ between the
 35 authority and its members for the wholesale sale of electric power
 36 and energy produced by the authority's generation facilities; or
 37 ¹["(3)"] c. a contractual arrangement¹ between the authority and any
 38 other person for the wholesale sale of excess electric power and
 39 energy purchased or produced by the authority that is not needed to
 40 serve the load within the corporate limits and franchise areas of the
 41 members ¹["], but] . A power supply contract¹ shall not include a
 42 contract for the sale of excess power by the authority to any other
 43 municipality.

44 "Public agency" means any municipality or other municipal
 45 corporation, political subdivision, government unit ¹,¹ or public
 46 corporation created under the laws of this State ¹["or of"] ¹,¹ another
 47 state ¹,¹ or ¹["of the United States"] under federal law¹ , ¹["and"]¹ any

1 state, ¹**and**¹ the United States, and any person, board ¹,¹ or other
2 body declared by ¹**the laws of any state or the United States**¹ State
3 or federal law¹ to be a department, agency or instrumentality
4 thereof.

5 "Rural electric cooperative" means a non-profit ¹**utility**¹
6 cooperative¹ in existence on the effective date of P.L. , c. (C.)
7 (pending before the Legislature as this bill), that serves customers
8 within the State and that is exclusively owned and controlled by the
9 customers it serves, and which is exempt from ¹the jurisdiction of
10 the¹ Board of Public Utilities ¹**jurisdiction**¹ pursuant to section 1
11 of P.L.1983, c.78 (C.48:2-13.1).

12

13 4. (New section) a. Any combination of three or more
14 municipalities that, on the effective date of P.L. , c. (C.)
15 (pending before the Legislature as this bill), operate retail electric
16 distribution systems pursuant to R.S.40:62-12 et seq. may, by
17 adoption of parallel ordinances approving an inter-municipal
18 agreement, establish a separate legal entity to be known as the
19 "municipal shared services energy authority" to be used by its
20 members to effect joint development of electric energy resources or
21 production, distribution, and transmission of electric power and
22 energy, including the utilization of renewable capacity and energy,
23 in whole or in part, for the benefit of its members. Notwithstanding
24 any other law to the contrary, following approval by the Local
25 Finance Board ¹**within the Division of Local Government Services**¹
26 in the Department of Community Affairs¹ pursuant to subsection
27 b. of this section, the final adoption by the municipalities of the
28 parallel ordinances, and due execution by the municipalities, the
29 inter-municipal agreement shall have a term as provided by the
30 inter-municipal agreement. The member municipalities that enter
31 into the inter-municipal agreement may thereafter amend the inter-
32 municipal agreement as provided in subsection e. of this section.

33 Only one municipal shared services energy authority may be
34 established pursuant to P.L. , c. (C.) (pending before the
35 Legislature as this bill).

36 b. Upon the introduction of the parallel ordinances by each
37 municipality seeking to create the authority, but before final
38 adoption of the ordinances, copies of the ordinances, together with
39 the proposed inter-municipal agreement, shall be submitted to the
40 Local Finance Board for approval. If, upon submission of a
41 complete application for approval of the proposed inter-municipal
42 agreement, the Local Finance Board does not approve the
43 agreement, it shall specify the reason or reasons therefor, and shall
44 file its statement with the clerk of each member municipality. If the
45 Local Finance Board does not act upon the application for approval
46 of the proposed inter-municipal agreement within 60 days after
47 receipt of the submission of a complete application, then the

1 ordinances and proposed inter-municipal agreement shall be
2 deemed approved and the municipalities may proceed to adopt the
3 proposed ordinances.

4 c. Once the authority has been legally established pursuant to
5 the provisions of P.L. , c. (C.) (pending before the Legislature
6 as this bill), only those municipalities that operate a retail electric
7 distribution system pursuant to R.S.40:62-12 et seq. on the effective
8 date of P.L. , c. (C.) (pending before the Legislature as this bill)
9 may join the authority as provided ¹in paragraphs (1) and (2) of ¹
10 this subsection.

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

22 (2) The municipality requesting to become a member of the
23 authority shall introduce an ordinance approving the amended inter-
24 municipal agreement as approved by the board of commissioners of
25 the authority. Upon the introduction of the ordinance, but before
26 final adoption of ¹such ¹the ordinance, copies of the ordinance,
27 together with the proposed amended inter-municipal agreement,
28 shall be submitted to the Local Finance Board for approval. If,
29 upon submission of a complete application for approval of the
30 proposed amended inter-municipal agreement, the Local Finance
31 Board does not approve the agreement, it shall specify the reason or
32 reasons, therefor, and shall file its statement with the clerk of each
33 member municipality. If the Local Finance Board does not
34 disapprove the application for approval of the proposed amended
35 inter-municipal agreement within 60 days after receipt of a
36 complete application, then the ordinance and proposed amended
37 inter-municipal agreement shall be deemed approved and the
38 municipality may proceed to adopt the proposed ordinance.

39 d. Once the authority has been established, it may add a rural
40 electric cooperative that exists on the effective date of P.L. , c.
41 (C.) (pending before the Legislature as this bill) as a member as
42 provided in ¹paragraphs (1) and (2) of ¹this subsection.

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

1 inter-municipal agreement shall require approval by a two-thirds
2 majority vote of the full membership of the board of commissioners
3 and approval by ordinance of each member municipality as
4 provided in subsection e. of this section.

5 (2) The authority shall submit the proposed amended inter-
6 municipal agreement for approval to the Local Finance Board. If,
7 upon submission of a complete application for approval of the
8 proposed amended inter-municipal agreement, the Local Finance
9 Board does not approve the agreement, it shall specify the reason or
10 reasons, therefor, and shall file its statement with the clerk of each
11 member municipality. If the Local Finance Board does not act upon
12 the application for approval of the proposed amended inter-
13 municipal agreement within 60 days after receipt of a complete
14 application, then the proposed amended inter-municipal agreement
15 shall be deemed approved.

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

33

34 5. (New section) The inter-municipal agreement establishing
35 the municipal shared services energy authority pursuant to
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 shall provide:

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

40 b. The establishment and organization of a governing board for
41 the authority which shall be a board of commissioners in which the
42 powers of the authority are vested. The inter-municipal agreement
43 may provide for the creation by the board of commissioners of an
44 executive committee to which the power and duties may be
45 delegated as the board shall specify;

46 c. The number of commissioners, the manner of their
47 appointment, the terms of office, if any, and the procedure for
48 filling vacancies on the board. Commissioners shall receive no

- 1 compensation for their service on the board. Each member shall
2 have the power to appoint one member to the board of
3 commissioners and shall be entitled to remove that member at will;
- 4 d. The manner of selection of the executive director and staff
5 of the authority and their duties;
- 6 e. The voting requirements for action by the board; but, unless
7 specifically provided otherwise, a majority of commissioners shall
8 constitute a quorum and a majority of the quorum shall be necessary
9 for any action taken by the board;
- 10 f. The duties of the board, which shall include the obligation to
11 comply with the "Local Authorities Fiscal Control Law," P.L.1983,
12 c.313 (C.40A:5A-1 et seq.) except as otherwise provided in P.L. ,
13 c. (C.) (pending before the Legislature as this bill), and the laws
14 of this State and, in addition, with every provision in the inter-
15 municipal agreement creating the authority on its part to be kept or
16 performed;
- 17 g. The manner in which additional municipalities and rural
18 electric cooperatives as authorized pursuant to section 4 of P.L. , c.
19 (C.) (pending before the Legislature as this bill) may become
20 parties to the inter-municipal agreement by amendment;
- 21 h. The manner in which members may withdraw from
22 participation in the inter-municipal agreement, which shall include
23 a defeasance of ¹【such】 the¹ member's pro-rata share of any bonds
24 issued by the authority;
- 25 i. Provisions for the disposition, division ¹₂¹ or distribution of
26 any property or assets of the authority on dissolution;
- 27 j. The term of the inter-municipal agreement, which may be a
28 definite period or until rescinded or terminated, and the method, if
29 any, by which the inter-municipal agreement may be rescinded or
30 terminated, but the inter-municipal agreement may not be rescinded
31 or terminated so long as the authority has bonds outstanding, unless
32 provision for full payment of ¹【such】 the¹ bonds, by escrow or
33 otherwise, has been made pursuant to the terms of the bonds or the
34 resolution, trust indenture ¹₂¹ or security instrument securing the
35 bonds; and
- 36 k. The terms for payment to the authority of funds for
37 commodities to be procured and services to be rendered by the
38 authority, including ¹the¹ authority to enter into purchase
39 agreements between the members and the authority for the purchase
40 of wholesale electric power and energy whereby the member is
41 obligated to make payments or provide collateral in amounts which
42 shall be sufficient to enable the authority to meet its expenses,
43 interest ¹₂¹ and principal payments, whether at maturity or upon
44 sinking fund redemption, for its bonds, reasonable reserves for debt
45 service, operation ¹₂¹ and maintenance and renewals and
46 replacements and the requirements of any rate covenant with
47 respect to debt service coverage contained in any resolution, trust

1 indenture ^{1,1} or other security instrument. ¹~~Such~~ The¹ purchase
2 agreements between the members and the authority may contain
3 ¹~~such~~ other terms and conditions as the authority and the
4 members may determine, including provisions whereby a member is
5 obligated to pay for electric power and energy irrespective of
6 whether electric power and energy is produced or delivered to the
7 member or whether any electric supply project contemplated by
8 ¹~~any such~~ the¹ agreement is completed, operable or operating,
9 and notwithstanding suspension, interruption, interference,
10 reduction, or curtailment of the output of ¹~~such~~ the¹ electric
11 supply project. The inter-municipal agreement may further provide
12 that, if one or more of the members defaults in the payment of its
13 obligations under ¹~~any such~~ a¹ purchase agreement, the
14 remaining members, which also have ¹~~such~~ purchase¹
15 agreements, shall be required to accept and pay for, and shall be
16 entitled proportionately to use or otherwise dispose of, the power
17 and energy to be purchased by the defaulting purchaser. For ¹~~the~~¹
18 purposes of this section, "purchase of electric power and energy"
19 includes the purchase of any right to capacity, or interest in, any
20 electric supply project.

21

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

27

28 7. (New section) ¹~~No~~ A¹ commissioner, officer, or
29 employee of the municipal shared services energy authority shall
30 ¹~~not~~ have or acquire any interest, direct or indirect, in any contract
31 or proposed contract or property related to the provision of
32 wholesale electric power, transmission, generation, materials,
33 services ^{1,1} or supplies to be furnished ^{1,1} to or used by ^{1,1} the
34 authority or any of its members.

35

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

- 1 a. To adopt and have a common seal and to alter the same at
2 pleasure;
- 3 b. To sue and be sued;
- 4 c. To acquire, own, rent, hold, lease, as lessor or lessee, use
5 and sell or otherwise dispose of, mortgage, pledge, or grant a
6 security in, any real or personal property, commodity ¹/₂ or service
7 or interest therein;
- 8 d. To hold or place collateral with a counterparty to a
9 wholesale power supply contract and to account for ¹['**.,**'] value
10 ¹['**.,**'] and use ¹['**such**'] collateral as provided in the power supply
11 contract ¹/₂ notwithstanding any other law or regulation to the
12 contrary;
- 13 e. To plan, develop, acquire, construct, reconstruct, operate,
14 manage, dispose of, participate in, maintain, repair, extend, or
15 improve one or more electric supply projects within the corporate
16 limits and franchise areas of the members, and act as agent, or
17 designate one or more other persons participating in an electric
18 supply project to act as its agent, in connection with the planning,
19 acquisition, construction, operation, maintenance, repair, extension,
20 or improvement of ¹['**such**'] the¹ electric supply project for
21 generation, production, transmission, and provision to the members
22 of the authority of electrical power and energy at wholesale, to meet
23 the electric power or energy needs of the members, provided that
24 the authority shall not sell electric power or energy at the retail
25 level;
- 26 f. To enter into franchises, exchange, interchange, pooling,
27 wheeling, or transmission agreements with any person, firm, entity,
28 or public agency in order to purchase wholesale electric power and
29 energy for the members, or to sell excess power and energy
30 purchased or produced by the members' generation assets and not
31 needed to serve ¹the¹ load within the corporate limits and franchise
32 areas of the members, and to negotiate for, and buy fuels necessary
33 for the production of electric power and energy within the corporate
34 limits and franchise areas of the members, to develop bulk power
35 and fuel supply programs, and to implement energy conservation
36 measures within the corporate limits and franchise areas of the
37 members as necessary or appropriate, to meet the electric power or
38 energy needs of its members;
- 39 g. To negotiate and enter into power supply contracts pursuant
40 to section 19 of P.L. , c. (C.) (pending before the Legislature
41 as this bill) and to take ¹['**such**'] actions as are necessary to remain
42 in compliance with the terms of ¹['**such**'] those¹ contracts;
- 43 h. To make and execute ¹['**such**'] additional contracts and other
44 instruments necessary or convenient to the exercise of its powers;
- 45 i. To employ agents and employees;
- 46 j. To contract with any person, entity ¹/₂ or public agency
47 within or outside the State of New Jersey for the construction of any

1 electric supply project within the corporate limits and franchise area
2 of its members or for the purchase, sale ¹ or transmission of
3 electric power and energy generated by any electric supply project
4 located within the corporate limits and franchise area of its
5 members, in whole or in part, for the benefit of its members, or for
6 any interest or share therein, or any right to capacity thereof, on
7 **['such']** terms and for **['such'] a** period of time as its board shall
8 determine, provided that the authority shall not enter into any
9 contract that speculates in the energy markets and the authority
10 shall not construct or contract for the construction of any electric
11 supply project that, when added to the existing authority-owned or
12 co-owned generation assets, will produce more than **['105 %'] 105**
13 percent¹ of the power and energy requirements of the members;

14 k. To purchase and sell, exchange ¹ or transmit electric power
15 and energy at wholesale within and outside the State **['of New**
16 **Jersey']**¹, consistent with federal law, in **['such']** amounts as it
17 shall determine to be necessary or appropriate to make the most
18 effective use of its powers and to meet its responsibilities, to sell,
19 exchange, or transmit excess electric power purchased or produced
20 by electric generation facilities within the corporate limits and
21 franchise areas of its members that is not needed to serve ¹the¹ load
22 within those corporate limits and franchise areas;

23 l. To co-own an electric generating facility project initiated by
24 any person and constructed outside the corporate limits and
25 franchise area of the members, provided that **['.']**¹ (1) the share of
26 authority co-ownership shall be restricted to supply the electric and
27 power needs of the members of the authority **['.']**¹ and (2) when
28 added to the aggregate of existing authority-owned or member-
29 owned generation facilities together with co-ownership of facilities
30 outside of the corporate limits and franchise areas of the members,
31 the aggregate produces no more than **['105%'] 105 percent**¹ of the
32 power and energy needs of the members;

33 m. To provide for and secure the payment of any bonds and the
34 rights of the holders thereof, and to purchase, hold, and dispose of
35 any bonds;

36 n. To accept gifts or grants of real or personal property, money,
37 material, labor, or supplies solely for the purposes and exclusive use
38 and benefit of the municipal shared services energy authority, and
39 to make and perform **['such'] those**¹ agreements and contracts as
40 may be necessary or convenient in connection with the procuring,
41 acceptance, or disposition of the gifts or grants;

42 o. To make and enforce by-laws or rules and regulations for the
43 management and regulation of its business and affairs and for the
44 use, maintenance, and operation of its properties and to amend
45 **['the'] its**¹ by-laws;

46 p. To do and perform any acts and things authorized by P.L. ,
47 c. (C.) (pending before the Legislature as this bill), through or

1 by means of its own officers, agents, and employees, or by contract
2 with any person;

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

9 r. To exercise **'[such]'** powers **'[as] which'** are granted to
10 municipalities under R.S.40:62-12 et seq.;

11 s. To join organizations, including private or trade
12 organizations, which the board of commissioners has deemed to be
13 beneficial to the accomplishment of the authority's purposes;

14 t. To enter into a power supply contract, lease, operation
15 contract, or contract for management of electric generation within
16 the corporate limits and franchise areas of **'[the] its'** members, or
17 for the purchase of fuel for electric generation within the corporate
18 limits and franchise areas of the members, to meet the electric
19 power or energy needs of **'[the] its'** members, for a term not to
20 exceed 40 years; and

21 u. To invest any funds held in reserve or sinking funds, or any
22 funds not required for immediate disbursement, including the
23 proceeds from the sale of any bonds, in **'[such] those'** obligations,
24 securities, and other investments as the authority deems to be
25 proper and as the **'[constituent]'** members of the authority are
26 authorized pursuant to law.

27

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

36 b. The municipal shared services energy authority shall adopt a
37 bond resolution which shall:

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

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

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

46

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 ¹₂ 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 **1**[Such] **The**¹ bonds shall be authorized by the bond resolution and
8 may be issued in one or more series and shall bear **1**[such] **the**¹ date
9 or dates, mature at **1**[such] **a**¹ time or times not exceeding 40 years
10 from the date thereof, bear interest at a rate or rates within **1**[such]
11 **a**¹ maximum rate as permitted by law, be in **1**[such] **a**¹
12 denomination or denominations, be in **1**[such] **a**¹ form, either
13 coupon or registered, carry **1**[such] **a**¹ conversion or registration
14 privileges, have **1**[such] **a**¹ rank or priority, be executed in **1**[such]
15 **a**¹ manner, be payable from **1**[such]¹ sources in **1**[such] **a**¹ medium
16 of payment at **1**[such] **a**¹ place or places within or without the
17 State, and be subject to **1**[such] **the**¹ terms of redemption, with or
18 without a premium, as the bond resolution may provide.

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

26
27 12. (New section) The municipal shared services energy
28 authority may cause a copy of any bond resolution adopted by it to
29 be filed for public inspection in its office and in the office of the
30 clerk of the governing body of each member municipality, and may
31 thereupon cause to be published, in a newspaper published or
32 circulating in each member's community, a notice stating the fact
33 and date of this adoption and the places where the bond resolution
34 has been filed for public inspection **1**[and also] ¹₂ the date of the
35 first publication of the notice ¹₂ and **1**[also]¹ that any action or
36 proceeding **1**[of any kind or nature]¹ in any court questioning the
37 validity or proper authorization of bonds provided for by the bond
38 resolution, or the validity of any covenants, agreements ¹₂ or
39 contract provided for by the bond resolution ¹₂ shall be commenced
40 within 20 days after the first publication of the notice. If the notice
41 shall at any time be published and if no action or proceeding
42 questioning the validity of the establishment of the municipal
43 shared services energy authority or the validity or proper
44 authorization of bonds provided for by the bond resolution referred
45 to in the notice, or the validity of any covenants, agreements ¹₂ or
46 contract provided for by the bond resolution shall be commenced or

1 instituted within 20 days after the first publication of the notice,
 2 then all residents and taxpayers and owners of property in each of
 3 the member municipalities, and all other persons whatsoever, shall
 4 be forever barred and foreclosed from instituting or commencing
 5 any action or proceeding in any court, or from pleading any defense
 6 to any action or proceedings, questioning the validity of the
 7 establishment of the municipal shared services energy authority,
 8 **1[or]** the validity or proper authorization of the bonds, or the
 9 validity of the covenants, agreements ¹₂ or contracts, and the
 10 municipal shared services energy authority shall be conclusively
 11 deemed to have been validly established and to be authorized to
 12 transact business and exercise powers as an authority pursuant to
 13 P.L. , c. (C.) (pending before the Legislature as this bill),
 14 and the bonds, covenants, agreements ¹₂ and contracts shall be
 15 conclusively deemed to be valid and binding obligations in
 16 accordance with their terms and tenor.

17

18 13. (New section) **1[Any provision]** The provisions¹ of any law
 19 ¹, rule, or regulation¹ to the contrary notwithstanding, any bond or
 20 other obligation issued pursuant to P.L. , c. (C.) (pending
 21 before the Legislature as this bill) shall be fully negotiable **1[within**
 22 **the meaning and]**¹ for **1[all]** the¹ purposes of the negotiable
 23 instruments law **1[of this State]** under Title 12A of the New Jersey
 24 Statutes¹ , and each holder or owner of **1[such]**¹ a bond or other
 25 obligation, or of any coupon appurtenant thereto, by accepting
 26 **1[such]** the¹ bond or coupon shall be conclusively deemed to have
 27 agreed that **1[such]** the¹ bond, obligation ¹₂ or coupon is and shall
 28 be fully negotiable **1[within the meaning and]**¹ for **1[all]** the¹
 29 purposes of the **1[State's]**¹ negotiable instruments law under Title
 30 12A of the New Jersey Statutes.

31

32 14. (New section) Neither the members of the municipal shared
 33 services energy authority nor any person executing bonds issued
 34 pursuant to P.L. , c. (C.) (pending before the Legislature as
 35 this bill) shall be liable personally on the bonds by reason of the
 36 issuance thereof. Bonds or other obligations issued pursuant to
 37 P.L. , c. (C.) (pending before the Legislature as this bill)
 38 shall not be in any way a debt or liability of the State, and bonds or
 39 other obligations issued by the municipal shared services energy
 40 authority pursuant to P.L. , c. (C.) (pending before the
 41 Legislature as this bill) shall not be in any way a debt or liability of
 42 the State **1[or]** ¹₂ of any local unit **1[or]** ¹₂ of any county ¹₂ or ¹of
 43 any¹ municipality, except for member municipalities guaranteeing
 44 **1[such]** the¹ bonds in accordance with the provisions of section 18
 45 of P.L. , c. (C.) (pending before the Legislature as this bill),
 46 and shall not create or constitute any indebtedness, liability ¹₂ or

1 obligation of the State **1** ~~or~~ of **1** of any **1** ~~such~~ **1** local unit, of
2 any **1** county **1** ~~or~~ of any **1** municipality, either legal, moral, or
3 otherwise, and nothing in P.L. , c. (C.) (pending before the
4 Legislature as this bill) **1** ~~contained~~ **1** shall be construed to
5 authorize the municipal shared services energy authority to incur
6 any indebtedness on behalf of **1** ~~or~~ in any way **1** ~~to~~ obligate the
7 State or any county or municipality.

8
9 15. (New section) Any bond resolution of the municipal shared
10 services energy authority providing for or authorizing the issuance
11 of any bonds may contain provisions, and the municipal shared
12 services energy authority shall, in order to secure the payment of
13 the bonds in addition to its other powers, have the power by the
14 provisions in the bond resolution to covenant and agree with the
15 several holders of the bonds, as to:

16 a. The custody, security, use, expenditure, or application of the
17 proceeds of the bonds;

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

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

27 d. **1** ~~Payment~~ **1** The payment **1** of the principal of, or interest on,
28 the bonds, or any other obligations, and the sources and methods
29 thereof, the rank or priority of the bonds or obligations as to any
30 lien or security, or the acceleration of the maturity of the bonds or
31 obligations;

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

40 f. **1** ~~Pledging~~ **1** The pledging **1** , setting aside, depositing, or
41 acting as trustee for all or any part of the system revenues or other
42 monies of the municipal shared services energy authority to secure
43 the payment of the principal of, or interest on, the bonds or any
44 other obligations, or the payment of expenses of operation or
45 maintenance of one or more electric supply projects of the
46 municipal shared services energy authority or its system, and the
47 powers and duties of any trustee with regard thereto;

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

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

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

6 The provisions of the bond resolution and the covenants and
7 agreements relative thereto shall constitute valid and legally binding
8 contracts between the municipal shared services energy authority
9 and the several holders of the bonds, regardless of the time of
10 issuance of the bonds, and shall be enforceable by any holder or
11 holders by appropriate suit, action ¹,¹ or proceeding in any court of
12 competent jurisdiction, or by proceeding in lieu of prerogative writ.

13
14 16. (New section) a. If the bond resolution of the municipal
15 shared services energy authority authorizing or providing for the
16 issuance of a series of its bonds shall provide in substance that the
17 holders of the bonds of ¹~~the~~ ¹series shall be entitled to the
18 benefits of this section, then, in the event that there shall be a
19 default in the payment of ¹~~the~~ ¹principal of, or interest on, any
20 bonds of ¹~~the~~ ¹series after the ¹~~same~~ ¹bonds shall become
21 due, whether at maturity or upon call for redemption, and ¹~~the~~ ¹
22 default shall continue for a period of 30 days, or in the event
23 that the municipal shared services energy authority shall fail or
24 refuse to comply with the provisions of P.L. , c. (C.)
25 (pending before the Legislature as this bill) or shall fail or refuse to
26 carry out and perform the terms of any contract with the holders of
27 ¹~~any such~~ ¹those bonds, and ¹~~such~~ ¹that failure or refusal shall
28 continue for a period of 30 days after written notice to the
29 municipal shared services energy authority of its existence and
30 nature, the holders of 25 percent in aggregate principal amount of
31 the bonds and ¹~~the~~ ¹series then outstanding by instrument or
32 instruments filed in the office of the Secretary of State and proved
33 or acknowledged in the same manner as a deed to be recorded, may
34 appoint a trustee to represent the holders of the bonds of ¹~~the~~ ¹
35 series for the purposes provided in this section.

36 b. ¹~~Such~~ ¹The trustee ¹, appointed pursuant to subsection a.
37 of this section, ¹ may and upon written request of the holders of 25
38 percent in aggregate principal amount of the bonds of ¹~~the~~ ¹
39 series then outstanding shall, in the trustee's or its own name:

40 (1) by any action, writ, proceeding in lieu of prerogative writ, or
41 other proceeding, enforce all rights of the holders of ¹~~the~~ ¹
42 bonds, including the right to require the municipal shared services
43 energy authority to charge and collect service charges adequate to
44 carry out any contract as to, or pledge of, system revenues, and to
45 require the municipal shared services energy authority to carry out
46 and perform the terms of any contract with the holders of ¹~~the~~ ¹

1 the¹ bonds or its duties under P.L. , c. (C.) (pending before
2 the Legislature as this bill);

3 (2) bring an action upon all or any part of ¹**[such]** the¹ bonds or
4 interest coupons or claims appurtenant thereto;

5 (3) by action, require the municipal shared services energy
6 authority to account as if it were the trustee of an express trust for
7 the holders of ¹**[such]** the¹ bonds;

8 (4) by action, enjoin any acts or things which may be unlawful
9 or in violation of the rights of the holders of ¹**[such]** the¹ bonds;
10 and

11 (5) declare all ¹**[such]** the¹ bonds due and payable, whether or
12 not in advance of maturity, upon 30 days' prior notice in writing to
13 the municipal shared services energy authority and, if all defaults
14 shall be made good, then with the consent of the holders of 25
15 percent of the principal amount of ¹**[such]** the¹ bonds then
16 outstanding, annul ¹**[such]** the¹ declaration and its consequences.

17 c. The trustee shall, in addition to the powers set forth in
18 subsections a. and b. of this section, ¹**[have and]**¹ possess all of the
19 powers necessary ¹**[or appropriate]**¹ for the exercise of the
20 functions specifically set forth herein or incident to the general
21 representation of the holders of bonds of ¹**[such]** the¹ series in the
22 enforcement and protection of their rights.

23 d. In any action or proceeding by the trustee, the fees, counsel
24 fees and expenses of the trustee and of the receiver, if any,
25 appointed pursuant to P.L. , c. (C.) (pending before the
26 Legislature as this bill), shall constitute taxable costs and
27 disbursements, and all costs and disbursements, allowed by the
28 court, shall be a first charge upon any service charges and system
29 revenues of the municipal shared services energy authority pledged
30 for the payment or security of bonds of ¹**[such]** the¹ series.
31

32 17. (New section) If the bond resolution of the municipal shared
33 services energy authority authorizing or providing for the issuance
34 of a series of its bonds shall provide ¹**[in substance]**¹ that the
35 holders of the bonds of ¹**[such]** the¹ series shall be entitled to the
36 benefits of section 15 of P.L. , c. (C.) (pending before the
37 Legislature as this bill), and shall further provide ¹**[in substance]**¹
38 that any trustee appointed pursuant to that section or having the
39 powers of **[such]** a trustee shall have the powers provided by this
40 section, then ¹**[such]** the¹ trustee, whether or not all of the bonds of
41 ¹**[such]** the¹ series ¹**[shall]**¹ have been declared due and payable,
42 shall be entitled as of right to the appointment of a receiver of the
43 assets of the authority, and the receiver may enter upon and take
44 possession of the assets of the authority and, subject to any pledge
45 or contract with the holders of ¹**[such]** the¹ bonds, shall take
46 possession of all ¹**[moneys]** monies¹ and other property derived

1 from or applicable to the acquisition, construction, operation,
2 maintenance, or reconstruction of the assets of the authority, and
3 proceed with ¹[such] the¹ acquisition, construction, operation,
4 maintenance, or reconstruction which the municipal shared services
5 energy authority is under any obligation to do, and operate,
6 maintain ¹,¹ and reconstruct the utility system and fix, charge,
7 collect, enforce, and receive the service charges and all system
8 revenues thereafter arising subject to any pledge thereof or contract
9 with the holders of the bonds relating thereto and perform the
10 public duties and carry out the contracts and obligations of the
11 municipal shared services energy authority in the same manner as
12 the municipal shared services energy authority itself might do ¹,¹
13 and under the direction of the court.

14
15 18. (New section) For the purpose of aiding the municipal
16 shared services energy authority in the planning, undertaking,
17 acquisition, construction, financing ¹,¹ or operation of any electric
18 supply project authorized pursuant to P.L. , c. (C.)
19 (pending before the Legislature as this bill), a member municipality
20 may, by ordinance of its governing body, in the manner provided
21 for adoption of a bond ordinance as provided in ¹[any local bond
22 law] the “Local Bond Law,” N.J.S.40A:2-1 et seq.¹ and with or
23 without consideration and upon ¹[such] those¹ terms and
24 conditions as may be agreed to by and between the member
25 municipality and the authority, unconditionally guaranty the
26 punctual payment of the principal of, and interest on, all or a
27 portion of any bonds of the authority. Any guaranty of the bonds of
28 the authority made pursuant to this section shall be evidenced by
29 endorsement thereof on the bonds, executed in the name of the
30 member municipality and on its behalf by ¹[such] the¹ officer
31 thereof as may be designated in the ordinance authorizing ¹[such]
32 the¹ guaranty, and the municipality shall ¹[thereupon and
33 thereafter]¹ be obligated to pay the principal of, and interest on,
34 ¹[said] the¹ bonds in the same manner and ¹[to the same]¹ extent
35 as in the case of bonds issued by it. Any ordinance authorizing
36 ¹[such] the¹ guaranty shall be treated as a security agreement and
37 shall be subject to the provisions of ¹the “Local Authorities Fiscal
38 Control Law,”¹ P.L.1983, c.313 (C.40A:5A-1 et seq.). Any
39 ¹[such]¹ guaranty of bonds of the authority may be made, and any
40 ordinance authorizing ¹[such] the¹ guaranty may be adopted,
41 notwithstanding any statutory debt or other limitations, including
42 particularly any limitation or requirement under or pursuant to
43 ¹[any local bond law] the “Local Bond Law,” N.J.S.40A:2-1 et
44 seq.¹ , but the principal amount of the bonds so guaranteed, shall,
45 after their issuance, be included in the gross debt of the member
46 municipality for the purpose of determining the indebtedness of the

1 municipality under or pursuant to **1** ~~any local bond law~~ **1** the “Local
 2 Bond Law,” N.J.S.40A:2-1 et seq.¹ . The principal amount of the
 3 bonds **1** ~~so~~ **1** guaranteed and included in gross debt shall be
 4 deducted and **1** ~~is hereby~~ **1** declared to be **1** ~~and to constitute~~ **1** a
 5 deduction from **1** ~~the~~ **1** gross debt under **1** ~~and for all the purposes~~
 6 of any local bond law **1** the “Local Bond Law,” N.J.S.40A:2-1 et
 7 seq.¹ :

8 a. **1** ~~from and after the time of~~ **1** after the **1** issuance of the bonds
 9 until the end of the fiscal year beginning next after the completion
 10 of acquisition or construction of the facility to be financed from the
 11 proceeds of the bonds; and

12 b. in any annual debt statement filed pursuant to **1** ~~any local~~
 13 bond law **1** the “Local Bond Law,” N.J.S.40A:2-1 et seq.¹ as of the
 14 end of the fiscal year or any subsequent fiscal year if the revenues
 15 or other receipts or **1** ~~moneys~~ **1** monies **1** of the authority in that year
 16 are sufficient to pay its expenses of operation and maintenance in
 17 the year ¹,¹ and all amounts payable in the year on account of the
 18 principal of, and interest on, all **1** ~~the~~ **1** guaranteed bonds, and all
 19 bonds of the authority issued under P.L. , c. (C.) (pending
 20 before the Legislature as this bill).

21
 22 19. (New section) a. The municipal shared services energy
 23 authority may enter into ¹a¹ wholesale power supply **1** ~~contracts~~
 24 contract¹ with any person **1** ~~within or outside the State of New~~
 25 Jersey **1** to meet the electric power or energy needs of its members,
 26 for the purchase or sale of electric power or energy, or **1** ~~for~~ **1** both
 27 **1** ~~the purchase and sale of electric power and energy to supply~~
 28 electric power or energy to its members ¹,¹ and for the wholesale
 29 sale of any excess electric power or energy. **1** ~~The~~ **1** A¹ power
 30 supply **1** ~~contracts~~ **1** contract¹ shall be for a term not to exceed 40
 31 years and shall provide for payment to or from the **1** ~~municipal~~
 32 shared services energy **1** authority of funds for commodities to be
 33 procured, and services to be rendered by or to the **1** ~~municipal~~
 34 shared services energy **1** authority. The **1** ~~municipal shared~~
 35 services energy **1** authority may enter into ¹a¹ power supply
 36 **1** ~~contracts~~ **1** contract¹ with persons for the purchase or sale of
 37 electric power and energy, or **1** ~~for~~ **1** both **1** ~~the purchase and sale~~
 38 of electric power and energy **1**, whereby the purchaser is obligated
 39 to make payments in amounts which shall be sufficient to enable the
 40 **1** ~~municipal shared services energy~~ **1** authority to meet its expenses,
 41 interest ¹,¹ and principal payments, whether at maturity or upon
 42 sinking fund redemption, for its bonds, reasonable reserves for debt
 43 service, operation and maintenance, renewals and replacements, and
 44 the requirements of any rate covenant with respect to debt service
 45 coverage contained in any resolution, trust indenture, or other

1 security instrument. ¹**[Power]** A power¹ supply ¹**[contracts]**
 2 contract¹ may contain ¹**[such]**¹ other terms and conditions as the
 3 municipal shared services energy authority and the purchasers may
 4 determine, including provisions whereby the purchaser is obligated
 5 to pay for ¹electric¹ power irrespective of whether energy is
 6 produced or delivered to the purchaser, or whether any electric
 7 supply project contemplated by the ¹**[agreement]** power supply
 8 contract¹ is completed, operable, or operating, and notwithstanding
 9 suspension, interruption, interference, reduction, or curtailment of
 10 the output of the electric supply project. The power ¹**[purchase**
 11 **agreement]** supply contract¹ may provide that if one or more of the
 12 purchasers defaults in the payment of its obligations under the
 13 ¹**[purchase agreement]** power supply contract¹, the remaining
 14 purchasers which also have ¹**[such agreements]** a power supply
 15 contract¹ shall be required to accept and pay for the electric power
 16 and energy to be purchased by the defaulting purchaser, and shall
 17 be entitled proportionately to use or otherwise dispose of the
 18 electric power and energy to be purchased by the defaulting
 19 purchaser. For purposes of this subsection ¹₂ the ¹**[phrase]** term¹
 20 “purchase ¹or sale¹ of electric power and energy” includes the
 21 purchase of any right to capacity of, or interest in, any electric
 22 supply project located within the corporate limits and franchise
 23 areas of the members.

24 b. The obligations of a member municipality under a power
 25 supply contract with the ¹**[municipal shared services energy]**¹
 26 authority, or arising out of the default by any other member with
 27 respect to a power supply contract, shall not be construed to
 28 constitute a debt of the municipality. To the extent provided in the
 29 ¹**[purchase agreement]** power supply contract¹, these obligations
 30 shall constitute special obligations of the municipality, payable
 31 solely from the revenues and other ¹**[moneys]** monies¹ derived by
 32 the municipality from its municipal electric utility and shall be
 33 treated as expenses of operating a municipal electric utility.

34 c. The ¹power supply¹ contract may also provide for payments
 35 in the form of collateral, contributions to defray the cost of any
 36 purpose set forth in the contract ¹₂ and as advances for ¹**[any such]**
 37 a¹ purpose subject to repayment by the municipal shared services
 38 energy authority.

39 d. ¹**[Such agreements]** A power supply contract¹ may be for a
 40 term covering the life of an electric supply project, for the
 41 anticipated output period of the electric supply project, or for any
 42 other term not exceeding 40 years.

43

44 20. (New section) The ¹**[municipal shared services energy]**
 45 authority formed pursuant to P.L. , c. (C.) (pending before
 46 the Legislature as this bill) shall comply with the provisions of

1 P.L. , c. (C.) (pending before the Legislature as this bill) and
2 all applicable federal and State laws. Nothing in P.L. , c. (C.)
3 (pending before the Legislature as this bill) shall be construed to
4 require regulation of **1**【a municipal shared services energy】 an¹
5 authority or its members as an electric public utility as defined
6 under R.S.48:2-13. Wholesale sales and purchases by the
7 **1**【municipal shared services energy】 authority shall not subject the
8 **1**【municipal shared services energy】¹ authority or its members to
9 the jurisdiction of the Board of Public Utilities as a public utility
10 **1**【as set forth in R.S.48:2-13 et seq】 pursuant to Title 48 of the
11 Revised Statutes¹. A municipality that is a member of the
12 **1**【municipal shared services energy】 authority shall continue to be
13 subject to all laws of the State.
14

15 21. (New section) All property of the **1**【municipal shared
16 services energy】¹ authority within the corporate limits and
17 franchise areas of the members shall be exempt from levy and sale
18 by virtue of an execution of a court of competent jurisdiction and no
19 execution or other judicial process shall issue against the **1**【same】
20 authority¹ nor shall any judgment against the **1**【municipal shared
21 services energy】¹ authority be a charge or lien upon its property,
22 provided, however, that nothing in this section shall apply to or
23 limit the rights of the holder of any bonds to pursue any remedy for
24 the enforcement of any pledge or lien given by the **1**【municipal
25 shared services energy】¹ authority on its system, revenues, or other
26 monies.
27

28 22. (New section) Notwithstanding any restriction contained in
29 any other law, the State and all public officers, municipalities,
30 counties, political subdivisions of public bodies, and agencies
31 thereof, all banks, bankers, trust companies, savings banks and
32 institutions, building and loan associations, savings and loan
33 associations, investment companies, and other persons carrying on a
34 banking business, all insurance companies, insurance associations,
35 and other persons carrying on an insurance business, and all
36 executors, administrators, guardians, trustees ^{1,1} and other
37 fiduciaries, may legally invest any sinking funds, monies, or other
38 funds belonging to them or within their control, in any bonds of the
39 **1**【municipal shared services energy】¹ authority, and the bonds shall
40 be authorized security for any and all public deposits.
41

42 23. (New section) Every electric supply project or facility
43 within the corporate limits and franchise areas of the members that
44 **1**【are】 is¹ owned by the **1**【municipal shared services energy】¹
45 authority, including any pro rata share of any property within the
46 corporate limits and franchise areas of the members that **1**【are】 is¹

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

21

22 24. (New section) The State of New Jersey does hereby pledge
23 to and covenant and agree with the holders of any bonds issued
24 pursuant to a bond resolution of the ¹【municipal shared services
25 energy】¹ authority, that the State will not limit or alter the rights
26 hereby vested in the municipal shared services energy authority to
27 acquire, construct, operate, and participate in one or more electric
28 supply projects and facilities for the generation, production, and
29 transmission of electric power and energy at wholesale, to fix,
30 establish, charge, and collect charges, fees, and payments, and to
31 fulfill the terms of any agreement made with the holders of the
32 bonds or other obligations, ¹【and】¹ will not in any way impair the
33 rights or remedies of these holders, and will not modify in any way
34 the exemptions from taxation provided for in P.L. , c. (C.)
35 (pending before the Legislature as this bill) until the bonds, together
36 with interest thereon, with interest on any unpaid installments of
37 interest, and all costs and expenses in connection with any action or
38 proceeding by or on behalf of these holders, are fully met and
39 discharged.

40

41 25. (New section) All banks, bankers, trust companies, savings
42 banks, investment companies, and other persons carrying on a
43 banking business are hereby authorized to give to the municipal
44 shared services energy authority a good and sufficient undertaking
45 with ¹【such】 those¹ sureties as shall be approved by the
46 ¹【municipal shared services energy】¹ authority to the effect that
47 ¹【this】 the¹ bank or banking institution shall faithfully keep and

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

16

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

27

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

34

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

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

41 (1) The subject matter thereof consists of:

42 (a) (i) Professional services. The governing body shall in each
43 instance state supporting reasons for its action in the resolution
44 awarding each contract and shall forthwith cause to be printed once,
45 in the official newspaper, a brief notice stating the nature, duration,
46 service and amount of the contract, and that the resolution and

1 contract are on file and available for public inspection in the office
2 of the clerk of the county or municipality, or, in the case of a
3 contracting unit created by more than one county or municipality, of
4 the counties or municipalities creating ¹ **["such"]** the¹ contracting
5 unit; or (ii) Extraordinary unspecifiable services. The application
6 of this exception shall be construed narrowly in favor of open
7 competitive bidding, whenever possible, and the Division of Local
8 Government Services is authorized to adopt and promulgate rules
9 and regulations after consultation with the Commissioner of
10 Education limiting the use of this exception in accordance with the
11 intention herein expressed. The governing body shall in each
12 instance state supporting reasons for its action in the resolution
13 awarding each contract and shall forthwith cause to be printed, in
14 the manner set forth in subsection (1) (a) (i) of this section, a brief
15 notice of the award of ¹ **["such"]** the¹ contract;

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

17 (c) The printing of legal briefs, records ^{1,1} and appendices to be
18 used in any legal proceeding in which the contracting unit may be a
19 party;

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

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

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

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

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

31 (i) Equipment repair service if in the nature of an extraordinary
32 unspecifiable service and necessary parts furnished in connection
33 with ¹ **["such"]** the¹ service, which exception shall be in accordance
34 with the requirements for extraordinary unspecifiable services;

35 (j) The publishing of legal notices in newspapers as required by
36 law;

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

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

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

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

46 (o) The provision of any goods or services including those of a
47 commercial nature, attendant upon the operation of a restaurant by

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

- 1 (bb) A contract for the provision of wastewater treatment
2 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
3 al.);
- 4 (cc) Expenses for travel and conferences;
- 5 (dd) The provision or performance of goods or services for the
6 support or maintenance of proprietary computer hardware and
7 software, except that this provision shall not be utilized to acquire
8 or upgrade non-proprietary hardware or to acquire or update non-
9 proprietary software;
- 10 (ee) The management or operation of an airport owned by the
11 contracting unit pursuant to R.S.40:8-1 et seq.;
- 12 (ff) Purchases of goods and services at rates set by the Universal
13 Service Fund administered by the Federal Communications
14 Commission;
- 15 (gg) A contract for the provision of water supply services or
16 wastewater treatment services entered into pursuant to section 2 of
17 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
18 construction, operation, or maintenance, or any combination
19 thereof, of a water supply facility as defined in subsection (16) of
20 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
21 treatment system as defined in subsection (19) of section 15 of
22 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
23 thereof, including a water filtration system as defined in subsection
24 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); ¹or¹
- 25 (hh) The purchase of electricity generated from a power
26 production facility that is fueled by methane gas extracted from a
27 landfill in the county of the contracting unit.
- 28 (2) It is to be made or entered into with the United States of
29 America, the State of New Jersey, county ¹₂¹ or municipality ¹₂¹ or
30 any board, body, officer, agency ¹₂¹ or authority thereof ¹₂¹ or any
31 other state or subdivision thereof.
- 32 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
33 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
34 received on both occasions in response to the advertisement, or (b)
35 the governing body has rejected ¹**[such]** the¹ bids on two occasions
36 because it has determined that they are not reasonable as to price,
37 on the basis of cost estimates prepared for or by the contracting
38 agent prior to the advertising therefor, or have not been
39 independently arrived at in open competition, or (c) on one occasion
40 no bids were received pursuant to (a) and on one occasion all bids
41 were rejected pursuant to (b), in whatever sequence; ¹**[any such]** a¹
42 contract may then be negotiated and may be awarded upon adoption
43 of a resolution by a two-thirds affirmative vote of the authorized
44 membership of the governing body authorizing ¹**[such]** the¹
45 contract; provided, however, that:
- 46 (i) A reasonable effort is first made by the contracting agent to
47 determine that the same or equivalent goods or services, at a cost

1 which is lower than the negotiated price, are not available from an
2 agency or authority of the United States, the State of New Jersey or
3 of the county in which the contracting unit is located, or any
4 municipality in close proximity to the contracting unit;

5 (ii) The terms, conditions, restrictions ¹₂ and specifications set
6 forth in the negotiated contract are not substantially different from
7 those which were the subject of competitive bidding pursuant to
8 section 4 of P.L.1971, c.198 (C.40A:11-4); and

9 (iii) Any minor amendment or modification of any of the terms,
10 conditions, restrictions ¹₂ and specifications, which were the
11 subject of competitive bidding pursuant to section 4 of P.L.1971,
12 c.198 (C.40A:11-4), shall be stated in the resolution awarding
13 ¹**["such] the** contract; provided further, however, that if on the
14 second occasion the bids received are rejected as unreasonable as to
15 price, the contracting agent shall notify each responsible bidder
16 submitting bids on the second occasion of its intention to negotiate,
17 and afford each bidder a reasonable opportunity to negotiate, but
18 the governing body shall not award ¹**["such] the** contract unless the
19 negotiated price is lower than the lowest rejected bid price
20 submitted on the second occasion by a responsible bidder, is the
21 lowest negotiated price offered by any responsible vendor, and is a
22 reasonable price for ¹**["such"]** goods or services.

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

32 (4) The contracting unit has solicited and received at least three
33 quotations on materials, supplies ¹₂ or equipment for which a State
34 contract has been issued pursuant to section 12 of P.L.1971, c.198
35 (C.40A:11-12), and the lowest responsible quotation is at least
36 ¹**["10%"] 10 percent** less than the price the contracting unit would
37 be charged for the identical materials, supplies ¹₂ or equipment, in
38 the same quantities, under the State contract. ¹**["Any such] A**
39 contract entered into pursuant to this subsection may be awarded
40 only upon adoption of a resolution by the affirmative vote of two-
41 thirds of the full membership of the governing body of the
42 contracting unit at a meeting thereof authorizing ¹**["such a] the**
43 contract. A copy of the purchase order relating to ¹**["any such] the**
44 contract, the requisition for purchase order, if applicable, and
45 documentation identifying the price of the materials, supplies or
46 equipment under the State contract and the State contract number
47 shall be filed with the director within five working days of the

1 award of ¹["any such"] the¹ contract by the contracting unit. The
2 director shall notify the contracting unit of receipt of the material
3 and shall make the material available to the State Treasurer. The
4 contracting unit shall make available to the director upon request
5 any other documents relating to the solicitation and award of the
6 contract, including, but not limited to, quotations, requests for
7 quotations, and resolutions. The director periodically shall review
8 material submitted by contracting units to determine the impact of
9 ¹["such"] the¹ contracts on local contracting and shall consult with
10 the State Treasurer on the impact of ¹["such"] the¹ contracts on the
11 State procurement process. The director may, after consultation
12 with the State Treasurer, adopt rules in accordance with the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.) to limit the use of this subsection, after considering the impact
15 of contracts awarded under this subsection on State and local
16 contracting, or after considering the extent to which the award of
17 contracts pursuant to this subsection is consistent with and in
18 furtherance of the purposes of the public contracting laws.

19 (5) Notwithstanding any provision of law, rule ¹₁ or regulation
20 to the contrary, the subject matter consists of the combined
21 collection and marketing, or the cooperative combined collection
22 and marketing of recycled material recovered through a recycling
23 program, or any product intentionally produced or derived from
24 solid waste received at a resource recovery facility or recovered
25 through a resource recovery program including, but not limited to,
26 refuse-derived fuel, compost materials, methane gas, and other
27 similar products, provided that in lieu of engaging in ¹["such"]¹
28 public advertising for bids and the bidding therefor, the contracting
29 unit shall, prior to commencing the procurement process, submit for
30 approval to the Director of the Division of Local Government
31 Services, a written detailed description of the process to be
32 followed in securing ¹["said"] the¹ services. Within 30 days after
33 receipt of the written description the director shall, if the director
34 finds that the process provides for fair competition and integrity in
35 the negotiation process, approve, in writing, the description
36 submitted by the contracting unit. If the director finds that the
37 process does not provide for fair competition and integrity in the
38 negotiation process, the director shall advise the contracting unit of
39 the deficiencies that must be remedied. If the director fails to
40 respond in writing to the contracting unit within 30 days, the
41 procurement process as described shall be deemed approved. As
42 used in this section, "collection" means the physical removal of
43 recyclable materials from curbside or any other location selected by
44 the contracting unit.

45 (6) Notwithstanding any provision of law, rule ¹₁ or regulation
46 to the contrary, the contract is for the provision of electricity by a
47 contracting unit engaged in the distribution of electricity for retail

1 sale, for the provision of wholesale electricity by a municipal
2 shared services energy authority as defined pursuant to section 3 of
3 P.L. , c. (C.) (pending before the Legislature as this bill), or
4 for the provision of administrative or dispatching services related to
5 the transmission of '【such】' electricity, provided that in lieu of
6 engaging in public advertising for bids and the bidding therefor, the
7 contracting unit shall, prior to commencing the procurement
8 process, submit for approval to the Director of the Division of Local
9 Government Services, a written detailed description of the process
10 to be followed in securing '【such】 these' services. '【Such】 The'
11 process shall be designed in a way that is appropriate to and
12 commensurate with industry practices, and the integrity of the
13 government contracting process. Within 30 days after receipt of the
14 written description, the director shall, if the director finds that the
15 process provides for fair competition and integrity in the
16 negotiation process, approve, in writing, the description submitted
17 by the contracting unit. If the director finds that the process does
18 not provide for fair competition and integrity in the negotiation
19 process, the director shall advise the contracting unit of the
20 deficiencies that must be remedied. If the director fails to respond
21 in writing to the contracting unit within 30 days, the procurement
22 process, as submitted to the director pursuant to this section, shall
23 be deemed approved.

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

25

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

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

35 (1) Supplying of:

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

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

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

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

45 (3) The collection and disposal of municipal solid waste, the
46 collection and disposition of recyclable material, or the disposal of
47 sewage sludge, for any term not exceeding in the aggregate, five
48 years;

1 (4) The collection and recycling of methane gas from a sanitary
2 landfill facility, for any term not exceeding 25 years, when ¹**[such]**
3 the¹ contract is in conformance with a district solid waste
4 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1
5 et seq.), and with the approval of the Division of Local Government
6 Services in the Department of Community Affairs and the
7 Department of Environmental Protection. The contracting unit shall
8 award the contract to the highest responsible bidder,
9 notwithstanding that the contract price may be in excess of the
10 amount of any necessarily related administrative expenses; except
11 that if the contract requires the contracting unit to expend funds
12 only, the contracting unit shall award the contract to the lowest
13 responsible bidder. The approval by the Division of Local
14 Government Services of public bidding requirements shall not be
15 required for those contracts exempted therefrom pursuant to section
16 5 of P.L.1971, c.198 (C.40A:11-5);

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

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

28 (7) Leasing or servicing of (a) automobiles, motor vehicles,
29 machinery ^{1,1} and equipment of every nature and kind, for a period
30 not to exceed five years, or (b) machinery and equipment used in
31 the generation of electricity by a municipal shared services energy
32 authority established pursuant to section 4 of P.L. , c. (C.)
33 (pending before the Legislature as this bill), or a contracting unit
34 engaged in the generation of electricity, for a period not to exceed
35 20 years; provided, however, ¹**[such contracts]** a contract¹ shall be
36 awarded only subject to and in accordance with the rules and
37 regulations promulgated by the Director of the Division of Local
38 Government Services in the Department of Community Affairs;

39 (8) The supplying of any product or the rendering of any service
40 by a company providing voice, data, transmission ^{1,1} or switching
41 services for a term not exceeding five years;

42 (9) Any single project for the construction, reconstruction ^{1,1}
43 rehabilitation of any public building, structure ^{1,1} or facility, or any
44 public works project, including the retention of the services of any
45 architect or engineer in connection therewith, for the length of time
46 authorized and necessary for the completion of the actual
47 construction;

- 1 (10) The providing of food services for any term not exceeding
2 three years;
- 3 (11) On-site inspections and plan review services undertaken by
4 private agencies pursuant to the "State Uniform Construction Code
5 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
6 more than three years;
- 7 (12) (Deleted by amendment, P.L.2009, c.4).
- 8 (13) (Deleted by amendment, P.L.1999, c.440.)
- 9 (14) (Deleted by amendment, P.L.1999, c.440.)
- 10 (15) Leasing of motor vehicles, machinery ^{1,1} and other
11 equipment primarily used to fight fires, for a term not to exceed ten
12 years, when the contract includes an option to purchase, subject to
13 and in accordance with rules and regulations promulgated by the
14 Director of the Division of Local Government Services in the
15 Department of Community Affairs;
- 16 (16) The provision of water supply services or the designing,
17 financing, construction, operation, or maintenance, or any
18 combination thereof, of a water supply facility, or any component
19 part or parts thereof, including a water filtration system, for a period
20 not to exceed 40 years, when the contract for these services is
21 approved by the Division of Local Government Services in the
22 Department of Community Affairs, the Board of Public Utilities,
23 and the Department of Environmental Protection pursuant to
24 P.L.1985, c.37 (C.58:26-1 et al.), except that no ¹["such"]¹ approvals
25 shall be required for those contracts otherwise exempted pursuant to
26 subsection (30), (31), (34), (35) or (43) of this section. For the
27 purposes of this subsection, "water supply services" means any
28 service provided by a water supply facility; "water filtration
29 system" means any equipment, plants, structures, machinery,
30 apparatus, or land, or any combination thereof, acquired, used,
31 constructed, rehabilitated, or operated for the collection,
32 impoundment, storage, improvement, filtration, or other treatment
33 of drinking water for the purposes of purifying and enhancing water
34 quality and insuring its portability prior to the distribution of the
35 drinking water to the general public for human consumption,
36 including plants and works, and other personal property and
37 appurtenances necessary for their use or operation; and "water
38 supply facility" means and refers to the real property and the plants,
39 structures, ¹or¹ interconnections between existing water supply
40 facilities, machinery and equipment and other property, real,
41 personal ^{1,1} and mixed, acquired, constructed ^{1,1} or operated, or to
42 be acquired, constructed ^{1,1} or operated, in whole or in part by or on
43 behalf of a political subdivision of the State or any agency thereof,
44 for the purpose of augmenting the natural water resources of the
45 State and making available an increased supply of water for all
46 uses, or of conserving existing water resources, and any and all
47 appurtenances necessary, useful ^{1,1} or convenient for the collecting,

1 impounding, storing, improving, treating, filtering, conserving ^{1,1} or
2 transmitting of water and for the preservation and protection of
3 these resources and facilities and providing for the conservation and
4 development of future water supply resources;

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

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

40 (19) The provision of wastewater treatment services or the
41 designing, financing, construction, operation, or maintenance, or
42 any combination thereof, of a wastewater treatment system, or any
43 component part or parts thereof, for a period not to exceed 40 years,
44 when the contract for these services is approved by the Division of
45 Local Government Services in the Department of Community
46 Affairs and the Department of Environmental Protection pursuant to
47 P.L.1985, c.72 (C.58:27-1 et al.), except that no ¹["such"]¹ approvals
48 shall be required for those contracts otherwise exempted pursuant to

1 subsection (36) or (43) of this section. For the purposes of this
2 subsection, "wastewater treatment services" means any services
3 provided by a wastewater treatment system, and "wastewater
4 treatment system" means equipment, plants, structures, machinery,
5 apparatus, or land, or any combination thereof, acquired, used,
6 constructed, or operated for the storage, collection, reduction,
7 recycling, reclamation, disposal, separation, or other treatment of
8 wastewater or sewage sludge, or for the final disposal of residues
9 resulting from the treatment of wastewater, including, but not
10 limited to, pumping and ventilating stations, facilities, plants and
11 works, connections, outfall sewers, interceptors, trunk lines, and
12 other personal property and appurtenances necessary for their
13 operation;

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

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

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

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

23 (24) The purchase of electricity or administrative or dispatching
24 services related to the transmission of ¹**[such]**¹ electricity, from a
25 supplier of electricity subject to the jurisdiction of a federal
26 regulatory agency, from a qualifying small power producing facility
27 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796,
28 or from any supplier of electricity within any regional transmission
29 organization or independent system operator or from ¹**[such]** an¹
30 organization or operator or their successors, by a contracting unit
31 engaged in the generation of electricity for retail sale, as of May 24,
32 1991, for a term not to exceed 40 years, or by a contracting unit
33 engaged solely in the distribution of electricity for retail sale for a
34 term not to exceed ten years, except that a contract with a
35 contracting unit, engaged solely in the distribution of electricity for
36 retail sale, in excess of ten years, shall require the written approval
37 of the Director of the Division of Local Government Services. If
38 the director fails to respond in writing to the contracting unit within
39 10 business days, the contract shall be deemed approved;

40 (25) Basic life support services, for a period not to exceed five
41 years. For the purposes of this subsection, "basic life support"
42 means a basic level of prehospital care, which includes but need not
43 be limited to patient stabilization, airway clearance,
44 cardiopulmonary resuscitation, hemorrhage control, initial wound
45 care ^{1,1} and fracture stabilization;

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

1 (27) The provision of transportation services to ¹an¹ elderly
2 ¹person¹ , ¹**[disabled]** an individual with a disability,¹ or ¹an¹
3 indigent ¹**[persons]** person¹ for any term of not more than three
4 years. For the purposes of this subsection, "elderly ¹**[persons]**
5 person¹ " means ¹**[persons]** a person¹ who ¹**[are]** is¹ 60 years of
6 age or older. ¹**["Disabled persons"]** "Individual with a disability"¹
7 means ¹**[persons]** a person¹ of any age who, by reason of illness,
8 injury, age, congenital malfunction, or other permanent or
9 temporary incapacity or disability, are unable, without special
10 facilities or special planning or design to utilize mass transportation
11 facilities and services as effectively as persons who are not so
12 affected. "Indigent ¹**[persons]** person¹ " means ¹**[persons]** a
13 person¹ of any age whose income does not exceed 100 percent of
14 the poverty level, adjusted for family size, established and adjusted
15 under section 673(2) of subtitle B, the "Community Services Block
16 Grant Act," Pub.L.97-35 (42 U.S.C. s.9902 (2));

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

21 (29) The performance of patient care services by contracted
22 medical staff at county hospitals, correction facilities ¹₂¹ and long
23 term care facilities, for any term of not more than three years;

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

30 (31) The provision of water supply services or the financing,
31 construction, operation ¹₂¹ or maintenance or any combination
32 thereof, of a water supply facility or any component part or parts
33 thereof, by a partnership or copartnership established pursuant to a
34 contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2),
35 for a period not to exceed 40 years;

36 (32) Laundry service and the rental, supply ¹₂¹ and cleaning of
37 uniforms for any term of not more than three years;

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

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

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

1 (45) The provision or performance of goods or services for the
2 purpose of producing class I renewable energy or class II renewable
3 energy, as those terms are defined in section 3 of P.L.1999, c.23
4 (C.48:3-51), at, or adjacent to, buildings owned by, or operations
5 conducted by, the contracting unit, the entire price of which is to be
6 established as a percentage of the resultant savings in energy costs,
7 for a term not to exceed 15 years; provided, however, that ¹【such
8 contracts】 a contract¹ shall be entered into only subject to and in
9 accordance with guidelines promulgated by the Board of Public
10 Utilities establishing a methodology for computing energy cost
11 savings and energy generation costs 【.】; and

12 (46) A power supply contract, as defined pursuant to section
13 3 of P.L. , c. (C.) (pending before the Legislature as this
14 bill), between a member municipality as defined pursuant to section
15 3 of P.L. , c. (C.) (pending before the Legislature as this
16 bill), and the municipal shared services energy authority established
17 pursuant to the provisions of P.L. , c. (C.) (pending before
18 the Legislature as this bill) to meet the electric power needs of its
19 members, for the lease, operation, or management of electric
20 generation within a member municipality's corporate limits and
21 franchise area or the purchase of electricity, or the purchase of fuel
22 for generating units for a term not to exceed 40 years.

23 Any contract for services other than professional services, the
24 statutory length of which contract is for three years or less, may
25 include provisions for no more than one two-year, or two one-year,
26 extensions, subject to the following limitations: a. The contract
27 shall be awarded by resolution of the governing body upon a
28 finding by the governing body that the services are being performed
29 in an effective and efficient manner; b. No ¹【such】¹ contract shall
30 be extended so that it runs for more than a total of five consecutive
31 years; c. Any price change included as part of an extension shall be
32 based upon the price of the original contract as cumulatively
33 adjusted pursuant to any previous adjustment or extension and shall
34 not exceed the change in the index rate for the 12 months preceding
35 the most recent quarterly calculation available at the time the
36 contract is renewed; and d. The terms and conditions of the
37 contract remain substantially the same.

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

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

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

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

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

32

33 30. (New section) The powers granted under P.L. ,
 34 c. (C.) (pending before the Legislature as this bill) shall not
 35 limit the powers of ¹ ~~municipalities~~ ¹ a municipality to enter into
 36 ¹ a shared service ¹ ~~agreements~~ ¹ agreement or ¹ ~~contracts~~ ¹ or
 37 contract, or to establish ¹ a separate legal ¹ ~~entities~~ ¹ entity
 38 pursuant to State law or otherwise to carry out their powers under
 39 applicable statutory provisions, nor shall the powers granted under
 40 P.L. , c. (C.) (pending before the Legislature as this bill)
 41 limit the powers reserved to ¹ ~~municipalities~~ ¹ a municipality by
 42 State law.

43

44 31. This act shall take effect immediately.

1

2

3 Authorizes rural electric cooperative and certain municipalities

4 to establish municipal shared services authority.