

SENATE, No. 944

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 16, 2014

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

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Senator Pennacchio

SYNOPSIS

Authorizes those municipalities and a rural electric cooperative that currently provide electric service at retail to establish a municipal shared services energy authority.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/28/2014)

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 Revised Statutes.

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

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

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

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

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

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

 Matter underlined thus is new matter.

1 fuel supply programs, and to post collateral and act as a market
2 participant in such programs, thereby providing the means to pursue
3 efficiencies and savings for retail customers within their corporate
4 limits and franchise areas.

5 The Legislature therefore determines that it is in the public
6 interest to permit those existing municipally-owned or operated
7 electric utility systems to act jointly through the voluntary creation
8 of a single municipal shared services energy authority, and to
9 authorize the authority to perform according to standard electric
10 industry practices, in order to aid in promoting the stability and
11 viability of such systems and to achieve the efficiencies and savings
12 for the retail customers of these utility systems located within the
13 corporate limits and franchise area of the participating
14 municipalities.

15

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

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

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

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

1 or any county, municipality, or other person of any moneys
2 theretofore expended for the purposes of the authority or to any
3 county or municipality of any moneys theretofore expended for or
4 in connection with electric utility systems and facilities.

5 "Electric supply project" or "project" means (1) any plant,
6 works, system, facility, and real and personal property of any nature
7 whatsoever, together with all parts thereof and appurtenances
8 thereto, located within the corporate limits and franchise areas of
9 the members, that are used or useful in the generation, production,
10 transmission, distribution, purchase, sale, exchange, or interchange
11 of electric power and energy, in whole or in part, (2) the acquisition
12 of fuel of any kind for the generation or production within the
13 corporate limits and franchise areas of the members, of electric
14 power and energy, or (3) the transportation, storage, or reprocessing
15 of such fuel, or any conservation measures, for the benefit of the
16 members, including the utilization of renewable capacity and
17 energy, or any interest therein or right to capacity thereof that
18 occurs within the corporate limits and franchise areas of the
19 members.

20 "Energy" means (1) the output of an electric supply project
21 measured in megawatt hours or kilowatt hours, or (2) that portion
22 of a wholesale power supply contract measured in megawatt hours
23 or kilowatt hours.

24 "Inter-municipal agreement" means an agreement as provided in
25 section 5 of P.L. , c. (C.) (pending before the Legislature as
26 this bill), adopted by the members creating the municipal shared
27 services energy authority and defining the rights and responsibilities
28 of the authority and its members, as may be amended as provided
29 herein to, among other things, add a rural electric cooperative that
30 exists in the State on the effective date of P.L. , c. (C.)
31 (pending before the Legislature as this bill), as a member.

32 "Local Finance Board" means the Local Finance Board in the
33 Division of Local Government Services in the Department of
34 Community Affairs.

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

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

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

4 "Person" means a natural person, a public agency, cooperative or
5 private corporation, association, firm, statutory trust, partnership, or
6 business trust of any nature whatsoever, organized and existing
7 under the laws of any state.

8 "Power supply contract" means a contractual arrangement (1)
9 between the authority and another person for the purchase of
10 wholesale electric power and energy by the authority for its
11 members; (2) between the authority and its members for the sale of
12 wholesale sale of electric power and energy produced by the
13 authority's generation facilities; or (3) between the authority and
14 any other person for the wholesale sale of excess electric power and
15 energy purchased or produced by the authority that is not needed to
16 serve the load within the corporate limits and franchise areas of the
17 members, but shall not include a contract for the sale of excess
18 power by the authority to any other municipality.

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

26 "Rural electric cooperative" means a non-profit utility in
27 existence on the effective date of P.L. , c. (C.) (pending before
28 the Legislature as this bill), that serves customers within the State
29 and that is exclusively owned and controlled by the customers it
30 serves, and which is exempt from Board of Public Utilities
31 jurisdiction pursuant to section 1 of P.L.1983, c.78 (C.48:2-13.1).

32
33 4. (New section) a. Any combination of three or more
34 municipalities that, on the effective date of P.L. , c. (C.)
35 (pending before the Legislature as this bill), operate retail electric
36 distribution systems pursuant to R.S.40:62-12 et seq. may, by
37 adoption of parallel ordinances approving an inter-municipal
38 agreement, establish a separate legal entity to be known as the
39 "municipal shared services energy authority" to be used by its
40 members to effect joint development of electric energy resources or
41 production, distribution, and transmission of electric power and
42 energy, including the utilization of renewable capacity and energy,
43 in whole or in part, for the benefit of its members. Notwithstanding
44 any other law to the contrary, following approval by the Local
45 Finance Board within the Division of Local Government Services in
46 the Department of Community Affairs pursuant to subsection b. of
47 this section, the final adoption by the municipalities of the parallel
48 ordinances, and due execution by the municipalities, the inter-

1 municipal agreement shall have a term as provided by the inter-
2 municipal agreement. The member municipalities that enter into the
3 inter-municipal agreement may thereafter amend the inter-
4 municipal agreement as provided in subsection e. of this section.

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

8 b. Upon the introduction of the parallel ordinances by each
9 municipality seeking to create the authority, but before final
10 adoption of the ordinances, copies of the ordinances, together with
11 the proposed inter-municipal agreement, shall be submitted to the
12 Local Finance Board for approval. If, upon submission of a
13 complete application for approval of the proposed inter-municipal
14 agreement, the Local Finance Board does not approve the
15 agreement, it shall specify the reason or reasons therefor, and shall
16 file its statement with the clerk of each member municipality. If the
17 Local Finance Board does not act upon the application for approval
18 of the proposed inter-municipal agreement within 60 days after
19 receipt of the submission of a complete application, then the
20 ordinances and proposed inter-municipal agreement shall be
21 deemed approved and the municipalities may proceed to adopt the
22 proposed ordinances.

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

30 (1) A municipality requesting to become a member of the
31 authority shall negotiate an amended inter-municipal agreement on
32 terms and conditions acceptable to the members. Once an amended
33 inter-municipal agreement has been agreed to, it shall be submitted
34 for approval to the board of commissioners of the authority.
35 Adoption of an amended inter-municipal agreement shall require
36 approval by a two-thirds majority vote of the full membership of the
37 board of commissioners, approval by the Local Finance Board of
38 the proposed amended agreement, and final adoption by each
39 member municipality of an ordinance approving the proposed
40 agreement, as provided in subsection e. of this section.

41 (2) The municipality requesting to become a member of the
42 authority shall introduce an ordinance approving the amended inter-
43 municipal agreement as approved by the board of commissioners of
44 the authority. Upon the introduction of the ordinance, but before
45 final adoption of such ordinance, copies of the ordinance, together
46 with the proposed amended inter-municipal agreement, shall be
47 submitted to the Local Finance Board for approval. If, upon
48 submission of a complete application for approval of the proposed

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

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

14 (1) A rural electric cooperative requesting to become a member
15 of the authority and the board of commissioners of the authority
16 shall negotiate an amended inter-municipal agreement on terms and
17 conditions acceptable to the parties. Once an amended inter-
18 municipal agreement has been agreed to, it shall be submitted for
19 approval by the board of commissioners. Adoption of an amended
20 inter-municipal agreement shall require approval by a two-thirds
21 majority vote of the full membership of the board of commissioners
22 and approval by ordinance of each member municipality as
23 provided in subsection e. of this section.

24 (2) The authority shall submit the proposed amended inter-
25 municipal agreement for approval to the Local Finance Board. If,
26 upon submission of a complete application for approval of the
27 proposed amended inter-municipal agreement, the Local Finance
28 Board does not approve the agreement, it shall specify the reason or
29 reasons, therefor, and shall file its statement with the clerk of each
30 member municipality. If the Local Finance Board does not act upon
31 the application for approval of the proposed amended inter-
32 municipal agreement within 60 days after receipt of a complete
33 application, then the proposed amended inter-municipal agreement
34 shall be deemed approved.

35 e. Upon approval by the board of commissioners of an
36 amended inter-municipal agreement, each member municipality
37 shall introduce an ordinance approving the amended inter-municipal
38 agreement. Before final adoption of the ordinances, copies of the
39 ordinances, together with the proposed amended inter-municipal
40 agreement, shall be submitted to the Local Finance Board for
41 approval. If, upon submission of a complete application for
42 approval of the proposed amended inter-municipal agreement, the
43 Local Finance Board does not approve the agreement, it shall
44 specify the reason or reasons, therefor, and shall file its statement
45 with the clerk of each member municipality. If the Local Finance
46 Board does not act upon the application for approval of the
47 proposed amended inter-municipal agreement within 60 days after
48 receipt of the submission of a complete application, then the

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

4

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

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

11 b. The establishment and organization of a governing board for
12 the authority which shall be a board of commissioners in which the
13 powers of the authority are vested. The inter-municipal agreement
14 may provide for the creation by the board of commissioners of an
15 executive committee to which the power and duties may be
16 delegated as the board shall specify;

17 c. The number of commissioners, the manner of their
18 appointment, the terms of office, if any, and the procedure for
19 filling vacancies on the board. Commissioners shall receive no
20 compensation for their service on the board. Each member shall
21 have the power to appoint one member to the board of
22 commissioners and shall be entitled to remove that member at will;

23 d. The manner of selection of the executive director and staff
24 of the authority and their duties;

25 e. The voting requirements for action by the board; but, unless
26 specifically provided otherwise, a majority of commissioners shall
27 constitute a quorum and a majority of the quorum shall be necessary
28 for any action taken by the board;

29 f. The duties of the board, which shall include the obligation to
30 comply with the "Local Authorities Fiscal Control Law," P.L.1983,
31 c.313 (C.40A:5A-1 et seq.) except as otherwise provided in P.L. ,
32 c. (C.) (pending before the Legislature as this bill), and the laws
33 of this State and, in addition, with every provision in the inter-
34 municipal agreement creating the authority on its part to be kept or
35 performed;

36 g. The manner in which additional municipalities and rural
37 electric cooperatives as authorized pursuant to section 4 of P.L. , c.
38 (C.) (pending before the Legislature as this bill) may become
39 parties to the inter-municipal agreement by amendment;

40 h. The manner in which members may withdraw from
41 participation in the inter-municipal agreement, which shall include
42 a defeasance of such member's pro-rata share of any bonds issued
43 by the authority;

44 i. Provisions for the disposition, division or distribution of any
45 property or assets of the authority on dissolution;

46 j. The term of the inter-municipal agreement, which may be a
47 definite period or until rescinded or terminated, and the method, if
48 any, by which the inter-municipal agreement may be rescinded or

1 terminated, but the inter-municipal agreement may not be rescinded
2 or terminated so long as the authority has bonds outstanding, unless
3 provision for full payment of such bonds, by escrow or otherwise,
4 has been made pursuant to the terms of the bonds or the resolution,
5 trust indenture or security instrument securing the bonds; and

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

36
37 6. (New section) Nothing in P.L. , c. (C.) (pending
38 before the Legislature as this bill) shall be construed to restrict the
39 right of a person to form a rural electric cooperative or a
40 municipality to engage in functions authorized pursuant to
41 R.S.40:62-12 et seq.

42
43 7. (New section) No commissioner, officer, or employee of the
44 municipal shared services energy authority shall have or acquire
45 any interest, direct or indirect, in any contract or proposed contract
46 or property related to the provision of wholesale electric power,
47 transmission, generation, materials, services or supplies to be
48 furnished to or used by the authority or any of its members.

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

12 a. To adopt and have a common seal and to alter the same at
13 pleasure;

14 b. To sue and be sued;

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

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

23 e. To plan, develop, acquire, construct, reconstruct, operate,
24 manage, dispose of, participate in, maintain, repair, extend, or
25 improve one or more electric supply projects within the corporate
26 limits and franchise areas of the members, and act as agent, or
27 designate one or more other persons participating in an electric
28 supply project to act as its agent, in connection with the planning,
29 acquisition, construction, operation, maintenance, repair, extension,
30 or improvement of such electric supply project for generation,
31 production, transmission, and provision to the members of the
32 authority of electrical power and energy at wholesale, to meet the
33 electric power or energy needs of the members, provided that the
34 authority shall not sell electric power or energy at the retail level;

35 f. To enter into franchises, exchange, interchange, pooling,
36 wheeling, or transmission agreements with any person, firm, entity,
37 or public agency in order to purchase wholesale electric power and
38 energy for the members, or to sell excess power and energy
39 purchased or produced by the members' generation assets and not
40 needed to serve load within the corporate limits and franchise areas
41 of the members, and to negotiate for, and buy fuels necessary for
42 the production of electric power and energy within the corporate
43 limits and franchise areas of the members, to develop bulk power
44 and fuel supply programs, and to implement energy conservation
45 measures within the corporate limits and franchise areas of the
46 members as necessary or appropriate, to meet the electric power or
47 energy needs of its members;

- 1 g. To negotiate and enter into power supply contracts pursuant
2 to section 19 of P.L. , c. (C.) (pending before the Legislature
3 as this bill) and to take such actions as are necessary to remain in
4 compliance with the terms of such contracts;
- 5 h. To make and execute such additional contracts and other
6 instruments necessary or convenient to the exercise of its powers;
- 7 i. To employ agents and employees;
- 8 j. To contract with any person, entity or public agency within
9 or outside the State of New Jersey for the construction of any
10 electric supply project within the corporate limits and franchise area
11 of its members or for the purchase, sale or transmission of electric
12 power and energy generated by any electric supply project located
13 within the corporate limits and franchise area of its members, in
14 whole or in part, for the benefit of its members, or for any interest
15 or share therein, or any right to capacity thereof, on such terms and
16 for such period of time as its board shall determine, provided that
17 the authority shall not enter into any contract that speculates in the
18 energy markets and the authority shall not construct or contract for
19 the construction of any electric supply project that, when added to
20 the existing authority-owned or co-owned generation assets, will
21 produce more than 105% of the power and energy requirements of
22 the members;
- 23 k. To purchase and sell, exchange or transmit electric power
24 and energy at wholesale within and outside the State of New Jersey,
25 consistent with federal law, in such amounts as it shall determine to
26 be necessary or appropriate to make the most effective use of its
27 powers and to meet its responsibilities, to sell, exchange, or
28 transmit excess electric power purchased or produced by electric
29 generation facilities within the corporate limits and franchise areas
30 of its members that is not needed to serve load within those
31 corporate limits and franchise areas;
- 32 l. To co-own an electric generating facility project initiated by
33 any person and constructed outside the corporate limits and
34 franchise area of the members, provided that, (1) the share of
35 authority co-ownership shall be restricted to supply the electric and
36 power needs of the members of the authority, and (2) when added
37 to the aggregate of existing authority-owned or member- owned
38 generation facilities together with co-ownership of facilities outside
39 of the corporate limits and franchise areas of the members, the
40 aggregate produces no more than 105% of the power and energy
41 needs of the members;
- 42 m. To provide for and secure the payment of any bonds and the
43 rights of the holders thereof, and to purchase, hold, and dispose of
44 any bonds;
- 45 n. To accept gifts or grants of real or personal property, money,
46 material, labor, or supplies solely for the purposes and exclusive use
47 and benefit of the municipal shared services energy authority, and
48 to make and perform such agreements and contracts as may be

1 necessary or convenient in connection with the procuring,
2 acceptance, or disposition of the gifts or grants;

3 o. To make and enforce by-laws or rules and regulations for the
4 management and regulation of its business and affairs and for the
5 use, maintenance, and operation of its properties and to amend the
6 by-laws;

7 p. To do and perform any acts and things authorized by P.L. ,
8 c. (C.) (pending before the Legislature as this bill), through or
9 by means of its own officers, agents, and employees, or by contract
10 with any person;

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

17 r. To exercise such powers as are granted to municipalities
18 under R.S.40:62-12 et seq.;

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

22 t. To enter into a power supply contract, lease, operation
23 contract, or contract for management of electric generation within
24 the corporate limits and franchise areas of the members, or for the
25 purchase of fuel for electric generation within the corporate limits
26 and franchise areas of the members, to meet the electric power or
27 energy needs of its members, for a term not to exceed 40 years; and

28 u. To invest any funds held in reserve or sinking funds, or any
29 funds not required for immediate disbursement, including the
30 proceeds from the sale of any bonds, in such obligations, securities,
31 and other investments as the authority deems to be proper and as the
32 constituent members of the authority are authorized pursuant to law.

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

42 b. The municipal shared services energy authority shall adopt a
43 bond resolution which shall:

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

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

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

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

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

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

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

16
17 13. (New section) Any provision of any law to the contrary
18 notwithstanding, any bond or other obligation issued pursuant to
19 P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall be fully negotiable within the meaning and for all purposes of
21 the negotiable instruments law of this State, and each holder or
22 owner of such a bond or other obligation, or of any coupon
23 appurtenant thereto, by accepting such bond or coupon shall be
24 conclusively deemed to have agreed that such bond, obligation or
25 coupon is and shall be fully negotiable within the meaning and for
26 all purposes of the State's negotiable instruments law under Title
27 12A of the New Jersey Statutes.

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

1 authority to incur any indebtedness on behalf of or in any way to
2 obligate the State or any county or municipality.

3
4 15. (New section) Any bond resolution of the municipal shared
5 services energy authority providing for or authorizing the issuance
6 of any bonds may contain provisions, and the municipal shared
7 services energy authority shall, in order to secure the payment of
8 the bonds in addition to its other powers, have the power by the
9 provisions in the bond resolution to covenant and agree with the
10 several holders of the bonds, as to:

11 a. The custody, security, use, expenditure, or application of the
12 proceeds of the bonds;

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

16 c. The use, regulation, operation, maintenance, insurance, or
17 disposition of all or any part of an electric supply project of the
18 municipal shared services energy authority, or its system, or
19 restrictions on the exercise of the powers of the municipal shared
20 services energy authority to dispose of, limit, or regulate the use of
21 all or any part of the electric supply project or system;

22 d. Payment of the principal of, or interest on, the bonds, or any
23 other obligations, and the sources and methods thereof, the rank or
24 priority of the bonds or obligations as to any lien or security, or the
25 acceleration of the maturity of the bonds or obligations;

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

34 f. Pledging, setting aside, depositing, or acting as trustee for all
35 or any part of the system revenues or other monies of the municipal
36 shared services energy authority to secure the payment of the
37 principal of, or interest on, the bonds or any other obligations, or
38 the payment of expenses of operation or maintenance of one or
39 more electric supply projects of the municipal shared services
40 energy authority or its system, and the powers and duties of any
41 trustee with regard thereto;

42 g. The setting aside out of the system revenues or other monies
43 of the municipal shared services energy authority including its
44 reserves and sinking funds, and the source, custody, security,
45 regulation, application, and disposition thereof;

46 h. Determination or definition of the system revenues or of the
47 expenses of operation and maintenance of the system or one or
48 more of its electric supply projects;

- 1 i. The rents, rates, fees or other charges in connection with the
2 use, products, or services of one or more electric supply projects of
3 the municipal shared services energy authority or its system,
4 including any of the parts, extensions, replacements, or
5 improvements of the project or its system thereafter constructed or
6 acquired, and the fixing, establishment, collection and enforcement
7 of the same, the amount of electric supply project revenues or
8 system revenues to be produced thereby, and the disposition and
9 application of the amounts charged or collected;
- 10 j. The assumption or payment or discharge of any
11 indebtedness, liens, or other claims relating to the whole or any part
12 of one or more electric supply projects of the municipal shared
13 services energy authority or of its system for any obligations having
14 or which may have a lien on any part of the system of the municipal
15 shared services energy authority;
- 16 k. Limitations on the issuance of additional bonds or any other
17 obligations or on the incurrence of indebtedness of the municipal
18 shared services energy authority;
- 19 1. Limitations on the powers of the municipal shared services
20 energy authority to construct, acquire or operate, or to permit the
21 construction, acquisition or operation of, any plants, structures,
22 facilities or properties which may compete or tend to compete with
23 one or more of the municipal shared services energy authority's
24 electric supply projects or any part of its system;
- 25 m. Vesting in a trustee or trustees within or without the State
26 such property, rights, powers, and duties in trust as the municipal
27 shared services energy authority may determine, which may include
28 any or all of the rights, powers, and duties of the trustee appointed
29 by the holders of bonds, and limiting or abrogating the right of the
30 holders to appoint a trustee or limiting the rights, duties, and powers
31 of the trustee;
- 32 n. Payment of costs or expenses incident to the enforcement of
33 the bonds or of the provisions of the bond resolutions or of any
34 covenant or contract with the holders of the bonds;
- 35 o. The procedure, if any, by which the terms of any covenant or
36 contract with, or duty to, the holders of the bonds may be amended
37 or abrogated, the amount of bonds that the holders of which must
38 consent thereto, and the manner in which the consent may be given
39 or evidenced; and
- 40 p. Any other matter or course of conduct which, by recital in
41 the bond resolution, is declared to further secure the payment of the
42 principal of, or interest on, the bonds.
- 43 The provisions of the bond resolution and the covenants and
44 agreements relative thereto shall constitute valid and legally binding
45 contracts between the municipal shared services energy authority
46 and the several holders of the bonds, regardless of the time of
47 issuance of the bonds, and shall be enforceable by any holder or

1 holders by appropriate suit, action or proceeding in any court of
2 competent jurisdiction, or by proceeding in lieu of prerogative writ.

3
4 16. (New section) a. If the bond resolution of the municipal
5 shared services energy authority authorizing or providing for the
6 issuance of a series of its bonds shall provide in substance that the
7 holders of the bonds of such series shall be entitled to the benefits
8 of this section, then, in the event that there shall be a default in the
9 payment of principal of, or interest on, any bonds of such series
10 after the same shall become due, whether at maturity or upon call
11 for redemption, and such default shall continue for a period of 30
12 days, or in the event that the municipal shared services energy
13 authority shall fail or refuse to comply with the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this bill) or
15 shall fail or refuse to carry out and perform the terms of any
16 contract with the holders of any such bonds, and such failure or
17 refusal shall continue for a period of 30 days after written notice to
18 the municipal shared services energy authority of its existence and
19 nature, the holders of 25 percent in aggregate principal amount of
20 the bonds and such series then outstanding by instrument or
21 instruments filed in the office of the Secretary of State and proved
22 or acknowledged in the same manner as a deed to be recorded, may
23 appoint a trustee to represent the holders of the bonds of such series
24 for the purposes provided in this section.

25 b. Such trustee may and upon written request of the holders of
26 25 percent in aggregate principal amount of the bonds of such series
27 then outstanding shall, in the trustee's or its own name:

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

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

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

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

44 (5) declare all such bonds due and payable, whether or not in
45 advance of maturity, upon 30 days' prior notice in writing to the
46 municipal shared services energy authority and, if all defaults shall
47 be made good, then with the consent of the holders of 25 percent of

1 the principal amount of such bonds then outstanding, annul such
2 declaration and its consequences.

3 c. The trustee shall, in addition to the powers set forth in
4 subsections a. and b. of this section, have and possess all of the
5 powers necessary or appropriate for the exercise of the functions
6 specifically set forth herein or incident to the general representation
7 of the holders of bonds of such series in the enforcement and
8 protection of their rights.

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

17

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

45

46 18. (New section) For the purpose of aiding the municipal
47 shared services energy authority in the planning, undertaking,
48 acquisition, construction, financing or operation of any electric

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

31 a. from and after the time of issuance of the bonds until the end
32 of the fiscal year beginning next after the completion of acquisition
33 or construction of the facility to be financed from the proceeds of
34 the bonds; and

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

43
44 19. (New section) a. The municipal shared services energy
45 authority may enter into wholesale power supply contracts with any
46 person within or outside the State of New Jersey to meet the electric
47 power or energy needs of its members, for the purchase or sale of
48 electric power or energy, or for both the purchase and sale of

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

39 b. The obligations of a member municipality under a power
40 supply contract with the municipal shared services energy authority,
41 or arising out of the default by any other member with respect to a
42 power supply contract, shall not be construed to constitute a debt of
43 the municipality. To the extent provided in the purchase agreement,
44 these obligations shall constitute special obligations of the
45 municipality, payable solely from the revenues and other moneys
46 derived by the municipality from its municipal electric utility and
47 shall be treated as expenses of operating a municipal electric utility.

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

5 d. Such agreements may be for a term covering the life of an
6 electric supply project, for the anticipated output period of the
7 electric supply project, or for any other term not exceeding 40
8 years.

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

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

37
38 22. (New section) Notwithstanding any restriction contained in
39 any other law, the State and all public officers, municipalities,
40 counties, political subdivisions of public bodies, and agencies
41 thereof, all banks, bankers, trust companies, savings banks and
42 institutions, building and loan associations, savings and loan
43 associations, investment companies, and other persons carrying on a
44 banking business, all insurance companies, insurance associations,
45 and other persons carrying on an insurance business, and all
46 executors, administrators, guardians, trustees and other fiduciaries,
47 may legally invest any sinking funds, monies, or other funds
48 belonging to them or within their control, in any bonds of the

1 municipal shared services energy authority, and the bonds shall be
2 authorized security for any and all public deposits.

3
4 23. (New section) Every electric supply project or facility
5 within the corporate limits and franchise areas of the members that
6 are owned by the municipal shared services energy authority,
7 including any pro rata share of any property within the corporate
8 limits and franchise areas of the members that are owned by the
9 municipal shared services energy authority in conjunction with any
10 other person or public agency and used in connection with the
11 generation, transmission and production of electric power and
12 energy, and all other property of the municipal shared services
13 energy authority within the corporate limits and franchise areas of
14 the members, is hereby declared to be public property and devoted
15 to an essential public and governmental function and purpose, and
16 the property within the corporate limits and franchise areas of the
17 members, the municipal shared services energy authority and its
18 income shall be exempt from all taxes and special assessments of
19 the State or any subdivision of the State. All bonds of the municipal
20 shared services energy authority are hereby declared to be issued by
21 a political subdivision of the State and for an essential public and
22 governmental purpose and to be a public instrumentality in the
23 bonds, and the interest thereon and the income therefrom and all
24 service charges, funds, revenues, and other monies pledged or
25 available to pay or secure the payment of the bonds, or interest
26 thereon, shall at all times be exempt from taxation except for
27 transfer, inheritance and estate taxes, and taxes on transfers by or in
28 contemplation of death.

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

1 25. (New section) All banks, bankers, trust companies, savings
2 banks, investment companies, and other persons carrying on a
3 banking business are hereby authorized to give to the municipal
4 shared services energy authority a good and sufficient undertaking
5 with such sureties as shall be approved by the municipal shared
6 services energy authority to the effect that this bank or banking
7 institution shall faithfully keep and pay over to the order of or upon
8 the warrant of the municipal shared services energy authority or its
9 authorized agent, all such funds as may be deposited with it by the
10 municipal shared services energy authority and agreed interest
11 thereon, at such times or upon such demands as may be agreed with
12 the municipal shared services energy authority or in lieu of these
13 sureties, deposit with the municipal shared services energy
14 authority or its agent or any trustee therefor or for the holders of
15 any bonds, as collateral, such securities as the municipal shared
16 services energy authority may approve. The deposits of the
17 municipal shared services energy authority may be evidenced or
18 secured by a depository collateral agreement in such form and upon
19 such terms and conditions as may be agreed upon by the municipal
20 shared services energy authority and the bank or banking
21 institution.

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

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

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

43 5. Any contract the amount of which exceeds the bid threshold,
44 may be negotiated and awarded by the governing body without
45 public advertising for bids and bidding therefor and shall be
46 awarded by resolution of the governing body if:

47 (1) The subject matter thereof consists of:

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

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

- 1 (aa) The cooperative marketing of recyclable materials recovered
2 through a recycling program;
- 3 (bb) A contract for the provision of wastewater treatment
4 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
5 al.);
- 6 (cc) Expenses for travel and conferences;
- 7 (dd) The provision or performance of goods or services for the
8 support or maintenance of proprietary computer hardware and
9 software, except that this provision shall not be utilized to acquire
10 or upgrade non-proprietary hardware or to acquire or update non-
11 proprietary software;
- 12 (ee) The management or operation of an airport owned by the
13 contracting unit pursuant to R.S.40:8-1 et seq.;
- 14 (ff) Purchases of goods and services at rates set by the Universal
15 Service Fund administered by the Federal Communications
16 Commission;
- 17 (gg) A contract for the provision of water supply services or
18 wastewater treatment services entered into pursuant to section 2 of
19 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
20 construction, operation, or maintenance, or any combination
21 thereof, of a water supply facility as defined in subsection (16) of
22 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
23 treatment system as defined in subsection (19) of section 15 of
24 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
25 thereof, including a water filtration system as defined in subsection
26 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);
- 27 (hh) The purchase of electricity generated from a power
28 production facility that is fueled by methane gas extracted from a
29 landfill in the county of the contracting unit.
- 30 (2) It is to be made or entered into with the United States of
31 America, the State of New Jersey, county or municipality or any
32 board, body, officer, agency or authority thereof or any other state
33 or subdivision thereof.
- 34 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
35 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
36 received on both occasions in response to the advertisement, or (b)
37 the governing body has rejected such bids on two occasions because
38 it has determined that they are not reasonable as to price, on the
39 basis of cost estimates prepared for or by the contracting agent prior
40 to the advertising therefor, or have not been independently arrived
41 at in open competition, or (c) on one occasion no bids were received
42 pursuant to (a) and on one occasion all bids were rejected pursuant
43 to (b), in whatever sequence; any such contract may then be
44 negotiated and may be awarded upon adoption of a resolution by a
45 two-thirds affirmative vote of the authorized membership of the
46 governing body authorizing such contract; provided, however, that:
- 47 (i) A reasonable effort is first made by the contracting agent to
48 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 and specifications set forth
6 in the negotiated contract are not substantially different from those
7 which were the subject of competitive bidding pursuant to section 4
8 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 and specifications, which were the subject of
11 competitive bidding pursuant to section 4 of P.L.1971, c.198
12 (C.40A:11-4), shall be stated in the resolution awarding such
13 contract; provided further, however, that if on the second occasion
14 the bids received are rejected as unreasonable as to price, the
15 contracting agent shall notify each responsible bidder submitting
16 bids on the second occasion of its intention to negotiate, and afford
17 each bidder a reasonable opportunity to negotiate, but the governing
18 body shall not award such contract unless the negotiated price is
19 lower than the lowest rejected bid price submitted on the second
20 occasion by a responsible bidder, is the lowest negotiated price
21 offered by any responsible vendor, and is a reasonable price for
22 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 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 10%
36 less than the price the contracting unit would be charged for the
37 identical materials, supplies or equipment, in the same quantities,
38 under the State contract. Any such contract entered into pursuant to
39 this subsection may be awarded only upon adoption of a resolution
40 by the affirmative vote of two-thirds of the full membership of the
41 governing body of the contracting unit at a meeting thereof
42 authorizing such a contract. A copy of the purchase order relating
43 to any such contract, the requisition for purchase order, if
44 applicable, and documentation identifying the price of the materials,
45 supplies or equipment under the State contract and the State
46 contract number shall be filed with the director within five working
47 days of the award of any such contract by the contracting unit. The
48 director shall notify the contracting unit of receipt of the material

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

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

43 (6) Notwithstanding any provision of law, rule or regulation to
44 the contrary, the contract is for the provision of electricity by a
45 contracting unit engaged in the distribution of electricity for retail
46 sale, for the provision of wholesale electricity by a municipal
47 shared services energy authority as defined pursuant to section 3 of
48 P.L. , c. (C.) (pending before the Legislature as this bill), or

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

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

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

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

31 (1) Supplying of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (17) The provision of resource recovery services by a qualified
47 vendor, the disposal of the solid waste delivered for disposal which
48 cannot be processed by a resource recovery facility or the residual

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (37) The operation and management of a facility under a license
46 issued or permit approved by the Department of Environmental
47 Protection, including a wastewater treatment system or a water
48 supply or distribution facility, as the case may be, for any term of

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

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

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

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

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

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

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

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

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

45 (46) A power supply contract, as defined pursuant to section
46 3 of P.L. , c. (C.) (pending before the Legislature as this
47 bill), between a member municipality as defined pursuant to section
48 3 of P.L. , c. (C.) (pending before the Legislature as this

1 bill), and the municipal shared services energy authority established
2 pursuant to the provisions of P.L. , c. (C.) (pending before
3 the Legislature as this bill) to meet the electric power needs of its
4 members, for the lease, operation, or management of electric
5 generation within a member municipality's corporate limits and
6 franchise area or the purchase of electricity, or the purchase of fuel
7 for generating units for a term not to exceed 40 years.

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

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

1 availability and appropriation annually of sufficient funds as may
2 be required to meet the extended obligation, or contain an annual
3 cancellation clause.

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

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

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

17
18 30. (New section) The powers granted under P.L. ,
19 c. (C.) (pending before the Legislature as this bill) shall not
20 limit the powers of municipalities to enter into shared service
21 agreements or contracts, or to establish separate legal entities
22 pursuant to State law or otherwise to carry out their powers under
23 applicable statutory provisions, nor shall the powers granted under
24 P.L. , c. (C.) (pending before the Legislature as this bill)
25 limit the powers reserved to municipalities by State law.

26
27 31. This act shall take effect immediately.

28 29 30 STATEMENT

31
32 This bill would authorize three or more municipalities that
33 currently operate retail electric distribution systems to establish a
34 municipal shared services energy authority ("authority"). Once
35 established, the bill would authorize a rural electric cooperative in
36 existence on the effective date of the bill to become a member of
37 the authority.

38 The bill would authorize the authority to purchase, sell, exchange
39 or transmit at wholesale, electric power or energy. The authority
40 would be authorized to enter into wholesale power supply contracts
41 for the purchase or sale of electric power or energy to meet the
42 electric power or energy needs of its members and for the wholesale
43 sale of any excess power. The bill authorizes such power supply
44 contracts to extend for a term not to exceed 40 years. In addition,
45 the authority would have the power to develop, finance, construct,
46 own, operate, manage, or repair electric supply projects within the
47 corporate limits and franchise areas of its members, for the
48 generation and transmission of electrical power and energy at

1 wholesale, to meet the energy needs of the members of the
2 authority. The authority would have the power to purchase, sell,
3 lease, and make other arrangements, contractual and otherwise, with
4 respect to generation, transmission, pooling, and provision of
5 electric power and energy at wholesale.

6 The bill authorizes the authority to issue bonds to finance any
7 project authorized under the bill, to pay the cost of any part of an
8 electric supply project, to fulfill the terms of a power supply
9 contract, or to provide for collateral or performance security
10 measures.

11 The bill would also amend the "Local Public Contracts Law,"
12 P.L.1971, c.198 (C.40A:11-1 et seq.) to: (1) exempt from public
13 bidding requirements contracts for the provision of electricity by a
14 municipal shared services energy authority; (2) extend the
15 authorized duration to 20 years of any contract for the leasing or
16 servicing of machinery or equipment used in the generation of
17 electricity by a contracting unit; and (3) allow any power supply
18 contract between a contracting unit and a municipal shared services
19 energy authority for the lease, operation, or management of electric
20 generation or the purchase of electricity, or the purchase of fuel for
21 generating units to extend for a term of up to 40 years.