

[First Reprint]

SENATE, No. 944

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED JANUARY 16, 2014

Sponsored by:

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District 17 (Middlesex and Somerset)

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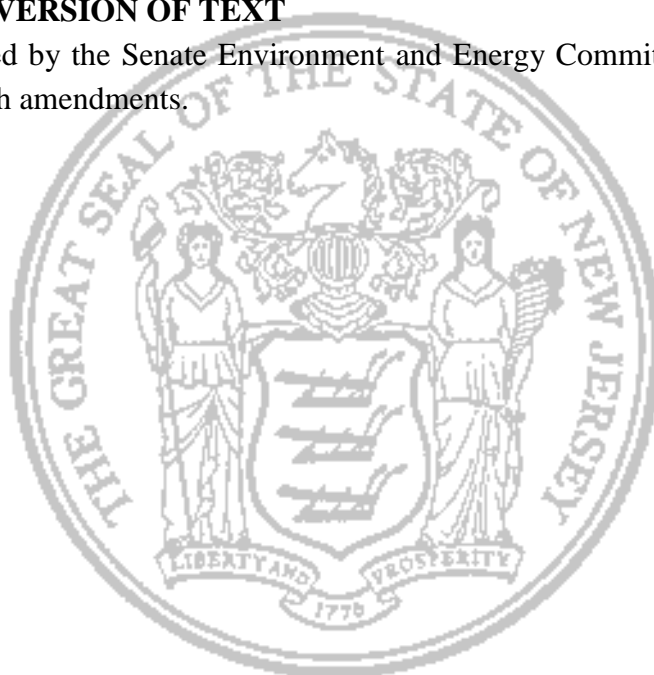
Senators Pennacchio, P.Barnes, III, Van Drew and Oroho

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 reported by the Senate Environment and Energy Committee on January 27, 2014, with amendments.



(Sponsorship Updated As Of: 3/28/2014)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted January 27, 2014.

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 ¹~~["area"]~~ areas¹ 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 'or transportation' of fuel of any kind for the generation or
13 production 'of electric power and energy' within the corporate
14 limits and franchise areas of the members, '[of electric power and
15 energy, or]' (3) the '[transportation,]' storage '[.]' or
16 reprocessing of such fuel 'within the corporate limits and franchise
17 areas of the members for the generation or production of electric
18 power and energy within those corporate limits and franchise areas
19 of the members', or (4) any conservation measures, for the benefit
20 of the members, including the utilization of renewable capacity and
21 energy, or any interest therein or right to capacity thereof that
22 occurs within the corporate limits and franchise areas of the
23 members.

24 "Energy" means (1) the output of an electric supply project
25 measured in megawatt hours or kilowatt hours, or (2) that portion
26 of a wholesale power supply contract measured in megawatt hours
27 or kilowatt hours.

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

36 "Local Finance Board" means the Local Finance Board in the
37 Division of Local Government Services in the Department of
38 Community Affairs.

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

45 "Member municipality" means a municipality that, on the
46 effective date of P.L. , c. (C.) (pending before the Legislature
47 as this bill), operates a retail electric distribution system pursuant to

1 R.S.40:62-12 et seq., that joins with other member municipalities to
2 create or join the municipal shared services energy authority
3 pursuant to section 4 of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

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

8 "Person" means a natural person, a public agency, cooperative or
9 private corporation, association, firm, statutory trust, partnership, or
10 business trust of any nature whatsoever, organized and existing
11 under the laws of any state.

12 "Power supply contract" means a contractual arrangement (1)
13 between the authority and another person for the purchase of
14 wholesale electric power and energy ¹and component goods and
15 services related thereto¹ by the authority for its members; (2)
16 between the authority and its members for the ¹~~sale of~~¹ wholesale
17 sale of electric power and energy produced by the authority's
18 generation facilities; or (3) between the authority and any other
19 person for the wholesale sale of excess electric power and energy
20 purchased or produced by the authority that is not needed to serve
21 the load within the corporate limits and franchise areas of the
22 members, but shall not include a contract for the sale of excess
23 power by the authority to any other municipality.

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

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

37
38 4. (New section) a. Any combination of three or more
39 municipalities that, on the effective date of P.L. , c. (C.)
40 (pending before the Legislature as this bill), operate retail electric
41 distribution systems pursuant to R.S.40:62-12 et seq. may, by
42 adoption of parallel ordinances approving an inter-municipal
43 agreement, establish a separate legal entity to be known as the
44 "municipal shared services energy authority" to be used by its
45 members to effect joint development of electric energy resources or
46 production, distribution, and transmission of electric power and
47 energy, including the utilization of renewable capacity and energy,
48 in whole or in part, for the benefit of its members. Notwithstanding

1 any other law to the contrary, following approval by the Local
2 Finance Board within the Division of Local Government Services in
3 the Department of Community Affairs pursuant to subsection b. of
4 this section, the final adoption by the municipalities of the parallel
5 ordinances, and due execution by the municipalities, the inter-
6 municipal agreement shall have a term as provided by the inter-
7 municipal agreement. The member municipalities that enter into the
8 inter-municipal agreement may thereafter amend the inter-
9 municipal agreement as provided in subsection e. of this section.

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

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

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

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

46 (2) The municipality requesting to become a member of the
47 authority shall introduce an ordinance approving the amended inter-
48 municipal agreement as approved by the board of commissioners of

1 the authority. Upon the introduction of the ordinance, but before
2 final adoption of such ordinance, copies of the ordinance, together
3 with the proposed amended inter-municipal agreement, shall be
4 submitted to the Local Finance Board for approval. If, upon
5 submission of a complete application for approval of the proposed
6 amended inter-municipal agreement, the Local Finance Board does
7 not approve the agreement, it shall specify the reason or reasons,
8 therefor, and shall file its statement with the clerk of each member
9 municipality. If the Local Finance Board does not disapprove the
10 application for approval of the proposed amended inter-municipal
11 agreement within 60 days after receipt of a complete application,
12 then the ordinance and proposed amended inter-municipal
13 agreement shall be deemed approved and the municipality may
14 proceed to adopt the proposed ordinance.

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

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

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

40 e. Upon approval by the board of commissioners of an
41 amended inter-municipal agreement, each member municipality
42 shall introduce an ordinance approving the amended inter-municipal
43 agreement. Before final adoption of the ordinances, copies of the
44 ordinances, together with the proposed amended inter-municipal
45 agreement, shall be submitted to the Local Finance Board for
46 approval. If, upon submission of a complete application for
47 approval of the proposed amended inter-municipal agreement, the
48 Local Finance Board does not approve the agreement, it shall

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

9
10 5. (New section) The inter-municipal agreement establishing
11 the municipal shared services energy authority pursuant to
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 shall provide:

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

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

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

28 d. The manner of selection of the executive director and staff
29 of the authority and their duties;

30 e. The voting requirements for action by the board; but, unless
31 specifically provided otherwise, a majority of commissioners shall
32 constitute a quorum and a majority of the quorum shall be necessary
33 for any action taken by the board;

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

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

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

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

3 j. The term of the inter-municipal agreement, which may be a
4 definite period or until rescinded or terminated, and the method, if
5 any, by which the inter-municipal agreement may be rescinded or
6 terminated, but the inter-municipal agreement may not be rescinded
7 or terminated so long as the authority has bonds outstanding, unless
8 provision for full payment of such bonds, by escrow or otherwise,
9 has been made pursuant to the terms of the bonds or the resolution,
10 trust indenture or security instrument securing the bonds; and

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

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

1 7. (New section) No commissioner, officer, or employee of the
2 municipal shared services energy authority shall have or acquire
3 any interest, direct or indirect, in any contract or proposed contract
4 or property related to the provision of wholesale electric power,
5 transmission, generation, materials, services or supplies to be
6 furnished to or used by the authority or any of its members.

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

19 a. To adopt and have a common seal and to alter the same at
20 pleasure;

21 b. To sue and be sued;

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

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

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

42 f. To enter into franchises, exchange, interchange, pooling,
43 wheeling, or transmission agreements with any person, firm, entity,
44 or public agency in order to purchase wholesale electric power and
45 energy for the members, or to sell excess power and energy
46 purchased or produced by the members' generation assets and not
47 needed to serve load within the corporate limits and franchise areas
48 of the members, and to negotiate for, and buy fuels necessary for

1 the production of electric power and energy within the corporate
2 limits and franchise areas of the members, to develop bulk power
3 and fuel supply programs, and to implement energy conservation
4 measures within the corporate limits and franchise areas of the
5 members as necessary or appropriate, to meet the electric power or
6 energy needs of its members;

7 g. To negotiate and enter into power supply contracts pursuant
8 to section 19 of P.L. , c. (C.) (pending before the Legislature
9 as this bill) and to take such actions as are necessary to remain in
10 compliance with the terms of such contracts;

11 h. To make and execute such additional contracts and other
12 instruments necessary or convenient to the exercise of its powers;

13 i. To employ agents and employees;

14 j. To contract with any person, entity or public agency within
15 or outside the State of New Jersey for the construction of any
16 electric supply project within the corporate limits and franchise area
17 of its members or for the purchase, sale or transmission of electric
18 power and energy generated by any electric supply project located
19 within the corporate limits and franchise area of its members, in
20 whole or in part, for the benefit of its members, or for any interest
21 or share therein, or any right to capacity thereof, on such terms and
22 for such period of time as its board shall determine, provided that
23 the authority shall not enter into any contract that speculates in the
24 energy markets and the authority shall not construct or contract for
25 the construction of any electric supply project that, when added to
26 the existing authority-owned or co-owned generation assets, will
27 produce more than 105% of the power and energy requirements of
28 the members;

29 k. To purchase and sell, exchange or transmit electric power
30 and energy at wholesale within and outside the State of New Jersey,
31 consistent with federal law, in such amounts as it shall determine to
32 be necessary or appropriate to make the most effective use of its
33 powers and to meet its responsibilities, to sell, exchange, or
34 transmit excess electric power purchased or produced by electric
35 generation facilities within the corporate limits and franchise areas
36 of its members that is not needed to serve load within those
37 corporate limits and franchise areas;

38 l. To co-own an electric generating facility project initiated by
39 any person and constructed outside the corporate limits and
40 franchise area of the members, provided that, (1) the share of
41 authority co-ownership shall be restricted to supply the electric and
42 power needs of the members of the authority, and (2) when added
43 to the aggregate of existing authority-owned or member- owned
44 generation facilities together with co-ownership of facilities outside
45 of the corporate limits and franchise areas of the members, the
46 aggregate produces no more than 105% of the power and energy
47 needs of the members;

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

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

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

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

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

11

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

29

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

35

36 12. (New section) The municipal shared services energy
37 authority may cause a copy of any bond resolution adopted by it to
38 be filed for public inspection in its office and in the office of the
39 clerk of the governing body of each member municipality, and may
40 thereupon cause to be published, in a newspaper published or
41 circulating in each member's community, a notice stating the fact
42 and date of this adoption and the places where the bond resolution
43 has been filed for public inspection and also the date of the first
44 publication of the notice and also that any action or proceeding of
45 any kind or nature in any court questioning the validity or proper
46 authorization of bonds provided for by the bond resolution, or the
47 validity of any covenants, agreements or contract provided for by
48 the bond resolution shall be commenced within 20 days after the

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

23
24 13. (New section) Any provision of any law to the contrary
25 notwithstanding, any bond or other obligation issued pursuant to
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall be fully negotiable within the meaning and for all purposes of
28 the negotiable instruments law of this State, and each holder or
29 owner of such a bond or other obligation, or of any coupon
30 appurtenant thereto, by accepting such bond or coupon shall be
31 conclusively deemed to have agreed that such bond, obligation or
32 coupon is and shall be fully negotiable within the meaning and for
33 all purposes of the State's negotiable instruments law under Title
34 12A of the New Jersey Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 b. Such trustee may and upon written request of the holders of
34 25 percent in aggregate principal amount of the bonds of such series
35 then outstanding shall, in the trustee's or its own name:

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

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

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

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

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

12 c. The trustee shall, in addition to the powers set forth in
13 subsections a. and b. of this section, have and possess all of the
14 powers necessary or appropriate for the exercise of the functions
15 specifically set forth herein or incident to the general representation
16 of the holders of bonds of such series in the enforcement and
17 protection of their rights.

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

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

1 with the holders of the bonds relating thereto and perform the
2 public duties and carry out the contracts and obligations of the
3 municipal shared services energy authority in the same manner as
4 the municipal shared services energy authority itself might do and
5 under the direction of the court.

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

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

44 b. in any annual debt statement filed pursuant to any local bond
45 law as of the end of the fiscal year or any subsequent fiscal year if
46 the revenues or other receipts or moneys of the authority in that
47 year are sufficient to pay its expenses of operation and maintenance
48 in the year and all amounts payable in the year on account of the

1 principal of, and interest on, all the guaranteed bonds, and all bonds
2 of the authority issued under P.L. , c. (C.) (pending before
3 the Legislature as this bill).

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

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

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

14 d. Such agreements may be for a term covering the life of an
15 electric supply project, for the anticipated output period of the
16 electric supply project, or for any other term not exceeding 40
17 years.

18

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

34

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

46

47 22. (New section) Notwithstanding any restriction contained in
48 any other law, the State and all public officers, municipalities,

1 counties, political subdivisions of public bodies, and agencies
2 thereof, all banks, bankers, trust companies, savings banks and
3 institutions, building and loan associations, savings and loan
4 associations, investment companies, and other persons carrying on a
5 banking business, all insurance companies, insurance associations,
6 and other persons carrying on an insurance business, and all
7 executors, administrators, guardians, trustees and other fiduciaries,
8 may legally invest any sinking funds, monies, or other funds
9 belonging to them or within their control, in any bonds of the
10 municipal shared services energy authority, and the bonds shall be
11 authorized security for any and all public deposits.

12

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

38

39 24. (New section) The State of New Jersey does hereby pledge
40 to and covenant and agree with the holders of any bonds issued
41 pursuant to a bond resolution of the municipal shared services
42 energy authority, that the State will not limit or alter the rights
43 hereby vested in the municipal shared services energy authority to
44 acquire, construct, operate, and participate in one or more electric
45 supply projects and facilities for the generation, production, and
46 transmission of electric power and energy at wholesale, to fix,
47 establish, charge, and collect charges, fees, and payments, and to
48 fulfill the terms of any agreement made with the holders of the

1 bonds or other obligations, and will not in any way impair the rights
2 or remedies of these holders, and will not modify in any way the
3 exemptions from taxation provided for in P.L. , c. (C.)
4 (pending before the Legislature as this bill) until the bonds, together
5 with interest thereon, with interest on any unpaid installments of
6 interest, and all costs and expenses in connection with any action or
7 proceeding by or on behalf of these holders, are fully met and
8 discharged.

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

31
32 26. (New section) The municipal shared services energy
33 authority shall cause an annual audit of its accounts to be made, and
34 for this purpose shall employ a certified public accountant licensed
35 pursuant to the laws of the State of New Jersey. The audit shall be
36 completed and filed with the municipal shared services energy
37 authority within four months after the close of its fiscal year and a
38 certified duplicate thereof shall be filed with the Director of the
39 Division of Local Government Services in the Department of
40 Community Affairs within five days after the original report is filed
41 with the municipal shared services energy authority.

42
43 27. (New section) The municipal shared services energy
44 authority shall file a copy of each bond resolution adopted by it
45 with the Director of the Division of Local Government Services in
46 the Department of Community Affairs, together with a summary of
47 the dates, amounts, maturities, and interest rates of all bonds issued
48 pursuant thereto.

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

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

7 (1) The subject matter thereof consists of:

8 (a) (i) Professional services. The governing body shall in each
9 instance state supporting reasons for its action in the resolution
10 awarding each contract and shall forthwith cause to be printed once,
11 in the official newspaper, a brief notice stating the nature, duration,
12 service and amount of the contract, and that the resolution and
13 contract are on file and available for public inspection in the office
14 of the clerk of the county or municipality, or, in the case of a
15 contracting unit created by more than one county or municipality, of
16 the counties or municipalities creating such contracting unit; or (ii)
17 Extraordinary unspecifiable services. The application of this
18 exception shall be construed narrowly in favor of open competitive
19 bidding, whenever possible, and the Division of Local Government
20 Services is authorized to adopt and promulgate rules and regulations
21 after consultation with the Commissioner of Education limiting the
22 use of this exception in accordance with the intention herein
23 expressed. The governing body shall in each instance state
24 supporting reasons for its action in the resolution awarding each
25 contract and shall forthwith cause to be printed, in the manner set
26 forth in subsection (1) (a) (i) of this section, a brief notice of the
27 award of such contract;

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

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

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

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

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

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

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

43 (i) Equipment repair service if in the nature of an extraordinary
44 unspecifiable service and necessary parts furnished in connection
45 with such service, which exception shall be in accordance with the
46 requirements for extraordinary unspecifiable services;

47 (j) The publishing of legal notices in newspapers as required by
48 law;

- 1 (k) The acquisition of artifacts or other items of unique intrinsic,
2 artistic or historical character;
- 3 (l) Those goods and services necessary or required to prepare
4 and conduct an election;
- 5 (m) Insurance, including the purchase of insurance coverage and
6 consultant services, which exception shall be in accordance with the
7 requirements for extraordinary unspecifiable services;
- 8 (n) The doing of any work by handicapped persons employed by
9 a sheltered workshop;
- 10 (o) The provision of any goods or services including those of a
11 commercial nature, attendant upon the operation of a restaurant by
12 any nonprofit, duly incorporated, historical society at or on any
13 historical preservation site;
- 14 (p) (Deleted by amendment, P.L.1999, c.440.)
- 15 (q) Library and educational goods and services;
- 16 (r) (Deleted by amendment, P.L.2005, c.212).
- 17 (s) The marketing of recyclable materials recovered through a
18 recycling program, or the marketing of any product intentionally
19 produced or derived from solid waste received at a resource
20 recovery facility or recovered through a resource recovery program,
21 including, but not limited to, refuse-derived fuel, compost materials,
22 methane gas, and other similar products;
- 23 (t) (Deleted by amendment, P.L.1999, c.440.)
- 24 (u) Contracting unit towing and storage contracts, provided that
25 all such contracts shall be pursuant to reasonable non-exclusionary
26 and non-discriminatory terms and conditions, which may include
27 the provision of such services on a rotating basis, at the rates and
28 charges set by the municipality pursuant to section 1 of P.L.1979,
29 c.101 (C.40:48-2.49). All contracting unit towing and storage
30 contracts for services to be provided at rates and charges other than
31 those established pursuant to the terms of this paragraph shall only
32 be awarded to the lowest responsible bidder in accordance with the
33 provisions of the "Local Public Contracts Law" and without regard
34 for the value of the contract therefor;
- 35 (v) The purchase of steam or electricity from, or the rendering
36 of services directly related to the purchase of such steam or
37 electricity from a qualifying small power production facility or a
38 qualifying cogeneration facility as defined pursuant to 16
39 U.S.C.s.796;
- 40 (w) The purchase of electricity or administrative or dispatching
41 services directly related to the transmission of such purchased
42 electricity by a contracting unit engaged in the generation of
43 electricity;
- 44 (x) The printing of municipal ordinances or other services
45 necessarily incurred in connection with the revision and
46 codification of municipal ordinances;
- 47 (y) An agreement for the purchase of an equitable interest in a
48 water supply facility or for the provision of water supply services

1 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
2 an agreement entered into pursuant to P.L.1989, c.109
3 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
4 later than six months after the effective date of P.L.1993, c.381;

5 (z) A contract for the provision of water supply services entered
6 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

7 (aa) The cooperative marketing of recyclable materials recovered
8 through a recycling program;

9 (bb) A contract for the provision of wastewater treatment
10 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
11 al.);

12 (cc) Expenses for travel and conferences;

13 (dd) The provision or performance of goods or services for the
14 support or maintenance of proprietary computer hardware and
15 software, except that this provision shall not be utilized to acquire
16 or upgrade non-proprietary hardware or to acquire or update non-
17 proprietary software;

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

20 (ff) Purchases of goods and services at rates set by the Universal
21 Service Fund administered by the Federal Communications
22 Commission;

23 (gg) A contract for the provision of water supply services or
24 wastewater treatment services entered into pursuant to section 2 of
25 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
26 construction, operation, or maintenance, or any combination
27 thereof, of a water supply facility as defined in subsection (16) of
28 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
29 treatment system as defined in subsection (19) of section 15 of
30 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
31 thereof, including a water filtration system as defined in subsection
32 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

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

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

40 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
41 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
42 received on both occasions in response to the advertisement, or (b)
43 the governing body has rejected such bids on two occasions because
44 it has determined that they are not reasonable as to price, on the
45 basis of cost estimates prepared for or by the contracting agent prior
46 to the advertising therefor, or have not been independently arrived
47 at in open competition, or (c) on one occasion no bids were received
48 pursuant to (a) and on one occasion all bids were rejected pursuant

1 to (b), in whatever sequence; any such contract may then be
2 negotiated and may be awarded upon adoption of a resolution by a
3 two-thirds affirmative vote of the authorized membership of the
4 governing body authorizing such contract; provided, however, that:

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

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

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

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

38 (4) The contracting unit has solicited and received at least three
39 quotations on materials, supplies or equipment for which a State
40 contract has been issued pursuant to section 12 of P.L.1971, c.198
41 (C.40A:11-12), and the lowest responsible quotation is at least 10%
42 less than the price the contracting unit would be charged for the
43 identical materials, supplies or equipment, in the same quantities,
44 under the State contract. Any such contract entered into pursuant to
45 this subsection may be awarded only upon adoption of a resolution
46 by the affirmative vote of two-thirds of the full membership of the
47 governing body of the contracting unit at a meeting thereof
48 authorizing such a contract. A copy of the purchase order relating

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

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

(6) Notwithstanding any provision of law, rule or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, for the provision of wholesale electricity by a municipal shared services energy authority as defined pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), or for the provision of administrative or dispatching services related to the transmission of such electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing such services. Such process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

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

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

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

(1) Supplying of:

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

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

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

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

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of

1 sewage sludge, for any term not exceeding in the aggregate, five
2 years;

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

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

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

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

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

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

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

1 water and for the preservation and protection of these resources and
2 facilities and providing for the conservation and development of
3 future water supply resources;

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

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

39 (19) The provision of wastewater treatment services or the
40 designing, financing, construction, operation, or maintenance, or
41 any combination thereof, of a wastewater treatment system, or any
42 component part or parts thereof, for a period not to exceed 40 years,
43 when the contract for these services is approved by the Division of
44 Local Government Services in the Department of Community
45 Affairs and the Department of Environmental Protection pursuant to
46 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals
47 shall be required for those contracts otherwise exempted pursuant to
48 subsection (36) or (43) of this section. For the purposes of this

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

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

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

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

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

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

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

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

46 (27) The provision of transportation services to elderly, disabled
47 or indigent persons for any term of not more than three years. For
48 the purposes of this subsection, "elderly persons" means persons

1 who are 60 years of age or older. "Disabled persons" means
2 persons of any age who, by reason of illness, injury, age, congenital
3 malfunction, or other permanent or temporary incapacity or
4 disability, are unable, without special facilities or special planning
5 or design to utilize mass transportation facilities and services as
6 effectively as persons who are not so affected. "Indigent persons"
7 means persons of any age whose income does not exceed 100
8 percent of the poverty level, adjusted for family size, established
9 and adjusted under section 673(2) of subtitle B, the "Community
10 Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

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

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

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

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

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

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

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

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

46 (36) A contract between a public entity and a private firm or
47 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
48 the provision of wastewater treatment services may be entered into

1 for any term of not more than 40 years, including all optional
2 extension periods;

3 (37) The operation and management of a facility under a license
4 issued or permit approved by the Department of Environmental
5 Protection, including a wastewater treatment system or a water
6 supply or distribution facility, as the case may be, for any term of
7 not more than ten years. For the purposes of this subsection,
8 "wastewater treatment system" refers to facilities operated or
9 maintained for the storage, collection, reduction, disposal, or other
10 treatment of wastewater or sewage sludge, remediation of
11 groundwater contamination, stormwater runoff, or the final disposal
12 of residues resulting from the treatment of wastewater; and "water
13 supply or distribution facility" refers to facilities operated or
14 maintained for augmenting the natural water resources of the State,
15 increasing the supply of water, conserving existing water resources,
16 or distributing water to users;

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

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

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

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

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

30 (43) A contract between the governing body of a city of the first
31 class and a duly incorporated nonprofit association for the provision
32 of water supply services as defined in subsection (16) of this
33 section, or wastewater treatment services as defined in subsection
34 (19) of this section, may be entered into for a period not to exceed
35 40 years;

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

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

1 establishing a methodology for computing energy cost savings and
2 energy generation costs~~1.1~~; and

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

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

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

1 related to the transmission of such electricity authorized pursuant to
2 subsection (24) above **【and】**, contracts for the purchase of
3 electricity generated from a power production facility that is fueled
4 by methane gas authorized pursuant to subsection (44) above, and
5 power supply contracts authorized pursuant to subsection (46)
6 respectively, shall contain a clause making them subject to the
7 availability and appropriation annually of sufficient funds as may
8 be required to meet the extended obligation, or contain an annual
9 cancellation clause.

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

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

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

23

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

32

33 31. This act shall take effect immediately.