

[Second Reprint]
SENATE, No. 944

STATE OF NEW JERSEY
216th LEGISLATURE

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Sponsored by:

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District 17 (Middlesex and Somerset)

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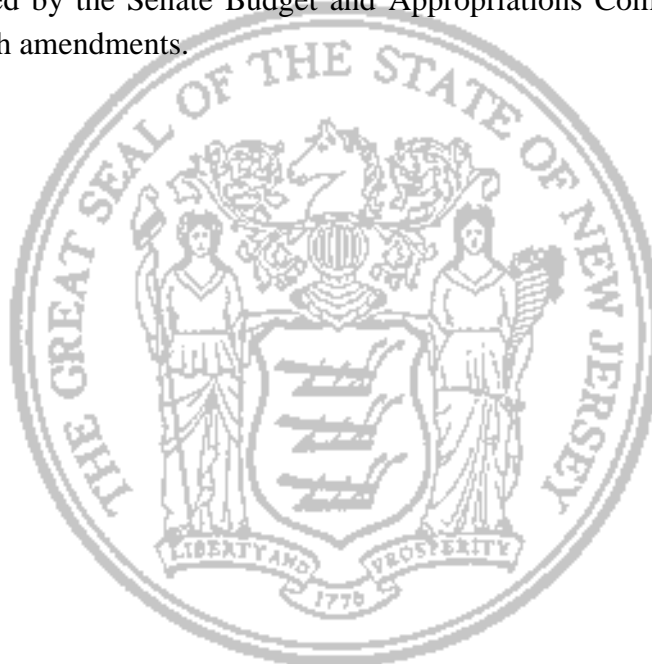
Senators Pennacchio, P.Barnes, III, Van Drew, Oroho and Greenstein

SYNOPSIS

Authorizes rural electric cooperative and certain municipalities to establish municipal shared services authority.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 22, 2015, with amendments.



(Sponsorship Updated As Of: 6/26/2015)

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 ²**[Revised]** New Jersey² 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 ²**[Law]** Act²."

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 ²and
 15 distribution² of electricity; that nine municipalities and one rural
 16 electric cooperative presently own and operate electric utility
 17 systems for the benefit of their residents and businesses; and that
 18 the generation and distribution of electricity has evolved from a
 19 local and statewide endeavor into a national marketplace and
 20 ²**[such]** this² evolution has resulted in a system where the size and
 21 sophistication of the market participants influence the ability to
 22 efficiently compete in the marketplace.

23 The Legislature further finds and declares that the ability to
 24 reserve sufficient electric capacity at reasonable prices to ensure
 25 safe, reliable ², ² and efficient electrical power to local businesses
 26 and residents is paramount in the present marketplace, and ²**[such]**
 27 the² ability is contingent on the power to contract for the generation
 28 or delivery of a sufficient quantity of wholesale power and to act as
 29 a contracting partner in long term, short term, and spot market
 30 wholesale power supply contracts; ²and² that given this evolution of
 31 the electric supply marketplace, the municipal electric utilities
 32 operating in New Jersey ²**[must]** should² be authorized to act
 33 jointly to achieve greater efficiencies in the procurement and
 34 generation of electric power at the wholesale level to benefit the
 35 retail customers in the participating municipalities.

36 The Legislature further finds and declares that the operation of
 37 electric utility systems by municipalities and the improvement of
 38 these systems through joint action in the wholesale procurement of
 39 electricity and transmission services, and in the generation,
 40 transmission, and distribution of electric power and energy within
 41 the corporate limits and franchise areas of the participating
 42 municipalities, are in the public interest; ²and² that the
 43 establishment of a municipal shared services energy authority by

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.

²Senate SBA committee amendments adopted June 22, 2015.

1 municipalities that currently own or operate electric utility systems
 2 will ensure the continued viability and stability of these systems, by
 3 enabling ²~~the~~² municipalities to act jointly to develop coordinated
 4 bulk power and fuel supply programs, ²~~and to~~² post collateral ,
 5 and act as a market participant in ²~~such~~² these programs, thereby
 6 providing the means to pursue efficiencies and savings for retail
 7 customers within their corporate limits and franchise areas.

8 The Legislature therefore determines that it is in the public
 9 interest to permit ²~~those~~² existing municipally-owned or operated
 10 electric utility systems to act jointly through the voluntary creation
 11 of a single municipal shared services energy authority, ²~~and~~² to
 12 authorize the authority to perform according to standard electric
 13 industry practices, in order to aid in promoting the stability and
 14 viability of ²~~such~~² these systems , and to achieve the efficiencies
 15 and savings for the retail customers of these utility systems located
 16 within the corporate limits and franchise ¹~~area~~¹ areas of the
 17 participating municipalities.

18
 19 3. (New section) As used in P.L. , c. (C.) (pending
 20 before the Legislature as this bill):

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

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

33 "Cost" means, in addition to the usual connotations thereof, the
 34 cost of acquisition or construction of all or any part of an electric
 35 supply project located within the corporate limits and franchise
 36 areas of the members and of all or any property, rights, easements,
 37 privileges, agreements, and franchises deemed by the authority to
 38 be necessary or useful and convenient ~~therefore~~ ²therefor,² or in
 39 connection therewith, including interest or discount on bonds, cost
 40 of issuance of bonds, engineering and inspection costs ²~~and~~² ,²
 41 legal expenses, cost of financial, professional ^{2,2} and other
 42 estimates and advice, organization, administrative, operating, and
 43 other expenses of the municipal shared services energy authority
 44 prior to and during ²~~such~~² acquisition or construction, and all
 45 ²~~such~~² other expenses as may be necessary or incident to the
 46 financing, acquisition, construction, and completion of an electric
 47 supply project or part thereof, and the placing of ²~~such~~² a project

1 in operation, and ²~~also such~~ the² provision or reserves for
 2 working capital, operating, maintenance ²~~or~~ ² replacement
 3 expenses ²~~or for~~ ² payment or security of principal of, or interest
 4 on, bonds during or after ²~~such~~² acquisition or construction as the
 5 authority may determine, and ²~~also~~² reimbursements to the
 6 authority or any county, municipality, or other person of any
 7 ²~~moneys~~ monies² theretofore expended for the purposes of the
 8 authority or to any county or municipality of any ²~~moneys~~
 9 monies² theretofore expended for or in connection with electric
 10 utility systems and facilities.

11 "Electric supply project" or "project" means ²~~[(1)]~~ : a.² any
 12 plant, works, system, facility, and real and personal property of any
 13 nature whatsoever, together with all parts thereof and appurtenances
 14 thereto, located within the corporate limits and franchise areas of
 15 the members, that are used or useful in the generation, production,
 16 transmission, distribution, purchase, sale, exchange, or interchange
 17 of electric power and energy, in whole or in part ²~~[(2)]~~ : b.² the
 18 acquisition ¹or transportation¹ of fuel of any kind for the generation
 19 or production ¹of electric power and energy¹ within the corporate
 20 limits and franchise areas of the members ²~~[(1)]~~² ¹~~of electric power~~
 21 and energy, or] ¹ ²~~[(3)]~~ : c.² the ¹~~transportation,~~¹ storage ¹~~[(1)]~~¹ or
 22 reprocessing of ²~~such~~ that² fuel ¹within the corporate limits and
 23 franchise areas of the members for the generation or production of
 24 electric power and energy within² ~~those~~² the² corporate limits and
 25 franchise areas of the members¹ ²~~[(1)]~~² or ²~~[(4)]~~ d.² any
 26 conservation measures, for the benefit of the members, including
 27 the utilization of renewable capacity and energy, or any interest
 28 therein or right to capacity thereof that occurs within the corporate
 29 limits and franchise areas of the members.

30 "Energy" means ²~~[(1)]~~ : a.² the output of an electric supply
 31 project measured in megawatt hours or kilowatt hours ²~~[(1)]~~² or
 32 ²~~[(2)]~~ b.² that portion of a wholesale power supply contract
 33 measured in megawatt hours or kilowatt hours.

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

42 "Local Finance Board" means the Local Finance Board in the
 43 Division of Local Government Services in the Department of
 44 Community Affairs.

45 "Member" means a municipality or a rural electric cooperative
 46 that, on the effective date of P.L. , c. (C.) (pending before the

1 Legislature as this bill), provides electric service to customers
 2 within the State and that enters into an initial or amended inter-
 3 municipal agreement of a municipal shared services energy
 4 authority.

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

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

15 ²["Person" means a natural person, a public agency, cooperative
 16 or private corporation, association, firm, statutory trust, partnership,
 17 or business trust of any nature whatsoever, organized and existing
 18 under the laws of any state.]"²

19 "Power supply contract" means ²[a contractual arrangement
 20 (1)]: a. a contractual arrangement² between the authority and
 21 another person for the purchase of wholesale electric power and
 22 energy ¹and component goods and services related thereto¹ by the
 23 authority for its members; ²[(2)] b. a contractual arrangement²
 24 between the authority and its members for the ¹[sale of]¹ wholesale
 25 sale of electric power and energy produced by the authority's
 26 generation facilities; or ²[(3)] c. a contractual arrangement²
 27 between the authority and any other person for the wholesale sale of
 28 excess electric power and energy purchased or produced by the
 29 authority that is not needed to serve the load within the corporate
 30 limits and franchise areas of the members ²[, but] . A power
 31 supply contract² shall not include a contract for the sale of excess
 32 power by the authority to any other municipality.

33 "Public agency" means any municipality or other municipal
 34 corporation, political subdivision, government unit ^{2,2} or public
 35 corporation created under the laws of this State ²[or of]₁² another
 36 state ^{2,2} or ²[of the United States] under federal law², ²[and]² any
 37 state, ²[and]² the United States, and any person, board₁ or other
 38 body declared by ²[the laws of any state or the United States] State
 39 or federal law² to be a department, agency or instrumentality
 40 thereof.

41 "Rural electric cooperative" means a non-profit ²[utility]
 42 cooperative² in existence on the effective date of P.L. , c. (C.)
 43 (pending before the Legislature as this bill), that serves customers
 44 within the State and that is exclusively owned and controlled by the
 45 customers it serves, and which is exempt from ²the jurisdiction of

1 the ² Board of Public Utilities ²【jurisdiction】² pursuant to section 1
2 of P.L.1983, c.78 (C.48:2-13.1).

3
4 4. (New section) a. Any combination of three or more
5 municipalities that, on the effective date of P.L. , c. (C.)
6 (pending before the Legislature as this bill), operate retail electric
7 distribution systems pursuant to R.S.40:62-12 et seq. may, by
8 adoption of parallel ordinances approving an inter-municipal
9 agreement, establish a separate legal entity to be known as the
10 "municipal shared services energy authority" to be used by its
11 members to effect joint development of electric energy resources or
12 production, distribution, and transmission of electric power and
13 energy, including the utilization of renewable capacity and energy,
14 in whole or in part, for the benefit of its members. Notwithstanding
15 any other law to the contrary, following approval by the Local
16 Finance Board ²【within the Division of Local Government Services
17 in the Department of Community Affairs】² pursuant to subsection
18 b. of this section, the final adoption by the municipalities of the
19 parallel ordinances, and due execution by the municipalities, the
20 inter-municipal agreement shall have a term as provided by the
21 inter-municipal agreement. The member municipalities that enter
22 into the inter-municipal agreement may thereafter amend the inter-
23 municipal agreement as provided in subsection e. of this section.

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

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

42 c. Once the authority has been legally established pursuant to
43 the provisions of P.L. , c. (C.) (pending before the Legislature
44 as this bill), only those municipalities that operate a retail electric
45 distribution system pursuant to R.S.40:62-12 et seq. on the effective
46 date of P.L. , c. (C.) (pending before the Legislature as this bill)
47 may join the authority as provided in ²【paragraphs (1) and (2) of】²
48 this subsection.

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

12 (2) The municipality requesting to become a member of the
13 authority shall introduce an ordinance approving the amended inter-
14 municipal agreement as approved by the board of commissioners of
15 the authority. Upon the introduction of the ordinance, but before
16 final adoption of ²~~such~~ the² ordinance, copies of the ordinance,
17 together with the proposed amended inter-municipal agreement,
18 shall be submitted to the Local Finance Board for approval. If,
19 upon submission of a complete application for approval of the
20 proposed amended inter-municipal agreement, the Local Finance
21 Board does not approve the agreement, it shall specify the reason or
22 reasons, therefor, and shall file its statement with the clerk of each
23 member municipality. If the Local Finance Board does not
24 disapprove the application for approval of the proposed amended
25 inter-municipal agreement within 60 days after receipt of a
26 complete application, then the ordinance and proposed amended
27 inter-municipal agreement shall be deemed approved and the
28 municipality may proceed to adopt the proposed ordinance.

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

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

43 (2) The authority shall submit the proposed amended inter-
44 municipal agreement for approval to the Local Finance Board. If,
45 upon submission of a complete application for approval of the
46 proposed amended inter-municipal agreement, the Local Finance
47 Board does not approve the agreement, it shall specify the reason or
48 reasons, therefor, and shall file its statement with the clerk of each

1 member municipality. If the Local Finance Board does not act upon
2 the application for approval of the proposed amended inter-
3 municipal agreement within 60 days after receipt of a complete
4 application, then the proposed amended inter-municipal agreement
5 shall be deemed approved.

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

23
24 5. (New section) The inter-municipal agreement establishing
25 the municipal shared services energy authority pursuant to
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall provide:

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

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

36 c. The number of commissioners, the manner of their
37 appointment, the terms of office, if any, and the procedure for
38 filling vacancies on the board. Commissioners shall receive no
39 compensation for their service on the board. Each member shall
40 have the power to appoint one member to the board of
41 commissioners and shall be entitled to remove that member at will;

42 d. The manner of selection of the executive director and staff
43 of the authority and their duties;

44 e. The voting requirements for action by the board; but, unless
45 specifically provided otherwise, a majority of commissioners shall
46 constitute a quorum and a majority of the quorum shall be necessary
47 for any action taken by the board;

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

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

12 h. The manner in which members may withdraw from
13 participation in the inter-municipal agreement, which shall include
14 a defeasance of ²~~such~~ the² member's pro-rata share of any bonds
15 issued by the authority;

16 i. Provisions for the disposition, division ^{2,2} or distribution of
17 any property or assets of the authority on dissolution;

18 j. The term of the inter-municipal agreement, which may be a
19 definite period or until rescinded or terminated, and the method, if
20 any, by which the inter-municipal agreement may be rescinded or
21 terminated, but the inter-municipal agreement may not be rescinded
22 or terminated so long as the authority has bonds outstanding, unless
23 provision for full payment of ²~~such~~ the² bonds, by escrow or
24 otherwise, has been made pursuant to the terms of the bonds or the
25 resolution, trust indenture ^{2,2} or security instrument securing the
26 bonds; and

27 k. The terms for payment to the authority of funds for
28 commodities to be procured and services to be rendered by the
29 authority, including ²~~the~~² authority to enter into purchase
30 agreements between the members and the authority for the purchase
31 of wholesale electric power and energy whereby the member is
32 obligated to make payments or provide collateral in amounts which
33 shall be sufficient to enable the authority to meet its expenses,
34 interest ^{2,2} and principal payments, whether at maturity or upon
35 sinking fund redemption, for its bonds, reasonable reserves for debt
36 service, operation ^{2,2} and maintenance and renewals and
37 replacements and the requirements of any rate covenant with
38 respect to debt service coverage contained in any resolution, trust
39 indenture ^{2,2} or other security instrument. ²~~Such~~ The² purchase
40 agreements between the members and the authority may contain
41 ²~~such~~² other terms and conditions as the authority and the
42 members may determine, including provisions whereby a member is
43 obligated to pay for electric power and energy irrespective of
44 whether electric power and energy is produced or delivered to the
45 member or whether any electric supply project contemplated by
46 ²~~any such~~ the² agreement is completed, operable or operating,
47 and notwithstanding suspension, interruption, interference,

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

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

18
19 7. (New section) ²~~No~~ ²A commissioner, officer, or
20 employee of the municipal shared services energy authority shall
21 ²~~not~~ have or acquire any interest, direct or indirect, in any contract
22 or proposed contract or property related to the provision of
23 wholesale electric power, transmission, generation, materials,
24 services ², or supplies to be furnished to ², or used by ², the
25 authority or any of its members.

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

38 a. To adopt and have a common seal and to alter the same at
39 pleasure;

40 b. To sue and be sued;

41 c. To acquire, own, rent, hold, lease, as lessor or lessee, use
42 and sell or otherwise dispose of, mortgage, pledge, or grant a
43 security in, any real or personal property, commodity ², or service
44 or interest therein;

45 d. To hold or place collateral with a counterparty to a
46 wholesale power supply contract and to account for ²~~,~~ value
47 ²~~,~~ and use ²~~such~~ collateral as provided in the power supply

- 1 contract ^{2,2} notwithstanding any other law or regulation to the
2 contrary;
- 3 e. To plan, develop, acquire, construct, reconstruct, operate,
4 manage, dispose of, participate in, maintain, repair, extend, or
5 improve one or more electric supply projects within the corporate
6 limits and franchise areas of the members, and act as agent, or
7 designate one or more other persons participating in an electric
8 supply project to act as its agent, in connection with the planning,
9 acquisition, construction, operation, maintenance, repair, extension,
10 or improvement of ²[such] the² electric supply project for
11 generation, production, transmission, and provision to the members
12 of the authority of electrical power and energy at wholesale, to meet
13 the electric power or energy needs of the members, provided that
14 the authority shall not sell electric power or energy at the retail
15 level;
- 16 f. To enter into franchises, exchange, interchange, pooling,
17 wheeling, or transmission agreements with any person, firm, entity,
18 or public agency in order to purchase wholesale electric power and
19 energy for the members, or to sell excess power and energy
20 purchased or produced by the members' generation assets and not
21 needed to serve ²the² load within the corporate limits and franchise
22 areas of the members, and to negotiate for, and buy fuels necessary
23 for the production of electric power and energy within the corporate
24 limits and franchise areas of the members, to develop bulk power
25 and fuel supply programs, and to implement energy conservation
26 measures within the corporate limits and franchise areas of the
27 members as necessary or appropriate, to meet the electric power or
28 energy needs of its members;
- 29 g. To negotiate and enter into power supply contracts pursuant
30 to section 19 of P.L. , c. (C.) (pending before the Legislature
31 as this bill) and to take ²[such]² actions as are necessary to remain
32 in compliance with the terms of ²[such] those² contracts;
- 33 h. To make and execute ²[such]² additional contracts and other
34 instruments necessary or convenient to the exercise of its powers;
- 35 i. To employ agents and employees;
- 36 j. To contract with any person, entity ^{2,2} or public agency
37 within or outside the State of New Jersey for the construction of any
38 electric supply project within the corporate limits and franchise area
39 of its members or for the purchase, sale ^{2,2} or transmission of
40 electric power and energy generated by any electric supply project
41 located within the corporate limits and franchise area of its
42 members, in whole or in part, for the benefit of its members, or for
43 any interest or share therein, or any right to capacity thereof, on
44 ²[such]² terms and for ²[such] a² period of time as its board shall
45 determine, provided that the authority shall not enter into any
46 contract that speculates in the energy markets and the authority
47 shall not construct or contract for the construction of any electric

1 supply project that, when added to the existing authority-owned or
 2 co-owned generation assets, will produce more than ²~~105%~~ 105
 3 percent² of the power and energy requirements of the members;

4 k. To purchase and sell, exchange ²~~,~~² or transmit electric power
 5 and energy at wholesale within and outside the State ²~~of New~~
 6 ~~Jersey~~², consistent with federal law, in ²~~such~~² amounts as it
 7 shall determine to be necessary or appropriate to make the most
 8 effective use of its powers and to meet its responsibilities, to sell,
 9 exchange, or transmit excess electric power purchased or produced
 10 by electric generation facilities within the corporate limits and
 11 franchise areas of its members that is not needed to serve load
 12 within those corporate limits and franchise areas;

13 l. To co-own an electric generating facility project initiated by
 14 any person and constructed outside the corporate limits and
 15 franchise area of the members, provided that ²~~[,]~~² (1) the share of
 16 authority co-ownership shall be restricted to supply the electric and
 17 power needs of the members of the authority ²~~[,]~~² and (2) when
 18 added to the aggregate of existing authority-owned or member-
 19 owned generation facilities together with co-ownership of facilities
 20 outside of the corporate limits and franchise areas of the members,
 21 the aggregate produces no more than ²~~105%~~ 105 percent² of the
 22 power and energy needs of the members;

23 m. To provide for and secure the payment of any bonds and the
 24 rights of the holders thereof, and to purchase, hold, and dispose of
 25 any bonds;

26 n. To accept gifts or grants of real or personal property, money,
 27 material, labor, or supplies solely for the purposes and exclusive use
 28 and benefit of the municipal shared services energy authority, and
 29 to make and perform ²~~such~~ those² agreements and contracts as
 30 may be necessary or convenient in connection with the procuring,
 31 acceptance, or disposition of the gifts or grants;

32 o. To make and enforce by-laws or rules and regulations for the
 33 management and regulation of its business and affairs and for the
 34 use, maintenance, and operation of its properties and to amend
 35 ²~~the~~ its² by-laws;

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

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

46 r. To exercise ²~~such~~² powers ²~~as~~ which² are granted to
 47 municipalities under R.S.40:62-12 et seq.;

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

4 t. To enter into a power supply contract, lease, operation
5 contract, or contract for management of electric generation within
6 the corporate limits and franchise areas of ²the² its² members, or
7 for the purchase of fuel for electric generation within the corporate
8 limits and franchise areas of the members, to meet the electric
9 power or energy needs of its members, for a term not to exceed 40
10 years; and

11 u. To invest any funds held in reserve or sinking funds, or any
12 funds not required for immediate disbursement, including the
13 proceeds from the sale of any bonds, in ²such² those² obligations,
14 securities, and other investments as the authority deems to be
15 proper and as the ²constituent² members of the authority are
16 authorized pursuant to law.

17
18 9. (New section) a. In order to meet the electric power needs
19 of its members, the municipal shared services energy authority shall
20 have the power to authorize or provide for the issuance of bonds
21 pursuant to P.L. , c. (C.) (pending before the Legislature as
22 this bill) for the purpose of raising funds to pay the cost of any part
23 of an electric supply project, to fulfill the terms of a power supply
24 contract, including any provision for collateral or related
25 performance security measures, and to fund or refund any bonds.

26 b. The municipal shared services energy authority shall adopt a
27 bond resolution which shall:

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

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

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

36
37 10. (New section) Upon adoption of a bond resolution, the
38 municipal shared services energy authority shall have power to
39 incur indebtedness, borrow money and issue its bonds for the
40 purpose of financing a project to meet the electric power needs of
41 its members or of funding or refunding the bonds issued pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill).
43 ²Such² The² bonds shall be authorized by the bond resolution and
44 may be issued in one or more series and shall bear ²such² the² date
45 or dates, mature at ²such² a² time or times not exceeding 40 years
46 from the date thereof, bear interest at a rate or rates within ²such²
47 a² maximum rate as permitted by law, be in ²such² a²

1 denomination or denominations, be in ²[such] ²a² form, either
2 coupon or registered, carry ²[such] ²a² conversion or registration
3 privileges, have ²[such] ²a² rank or priority, be executed in ²[such]
4 ²a² manner, be payable from ²[such]² sources in ²[such] ²a² medium
5 of payment at ²[such] ²a² place or places within or without the
6 State, and be subject to ²[such] ²the² terms of redemption, with or
7 without a premium, as the bond resolution may provide.

8
9 11. (New section) Bonds of the municipal shared services
10 energy authority may be sold by the municipal shared services
11 energy authority at public or private sale, and at ²[such] ²a² price or
12 prices ²[as]² the municipal shared services energy authority shall
13 determine subject to the provisions of ²the “Local Authorities Fiscal
14 Control Law,”² P.L.1983, c. 313 (C.40A:5A-1 et seq.).

15
16 12. (New section) The municipal shared services energy
17 authority may cause a copy of any bond resolution adopted by it to
18 be filed for public inspection in its office and in the office of the
19 clerk of the governing body of each member municipality, and may
20 thereupon cause to be published, in a newspaper published or
21 circulating in each member's community, a notice stating the fact
22 and date of this adoption and the places where the bond resolution
23 has been filed for public inspection ²[and also] ²,² the date of the
24 first publication of the notice ²,² and ²[also]² that any action or
25 proceeding ²[of any kind or nature]² in any court questioning the
26 validity or proper authorization of bonds provided for by the bond
27 resolution, or the validity of any covenants, agreements ²,² or
28 contract provided for by the bond resolution ²,² shall be commenced
29 within 20 days after the first publication of the notice. If the notice
30 shall at any time be published and if no action or proceeding
31 questioning the validity of the establishment of the municipal
32 shared services energy authority or the validity or proper
33 authorization of bonds provided for by the bond resolution referred
34 to in the notice, or the validity of any covenants, agreements ²,² or
35 contract provided for by the bond resolution shall be commenced or
36 instituted within 20 days after the first publication of the notice,
37 then all residents and taxpayers and owners of property in each of
38 the member municipalities, and all other persons whatsoever, shall
39 be forever barred and foreclosed from instituting or commencing
40 any action or proceeding in any court, or from pleading any defense
41 to any action or proceedings, questioning the validity of the
42 establishment of the municipal shared services energy authority,
43 ²[or]² the validity or proper authorization of the bonds, or the
44 validity of the covenants, agreements ²,² or contracts, and the
45 municipal shared services energy authority shall be conclusively
46 deemed to have been validly established and to be authorized to

1 transact business and exercise powers as an authority pursuant to
 2 P.L. , c. (C.) (pending before the Legislature as this bill),
 3 and the bonds, covenants, agreements ²₁² and contracts shall be
 4 conclusively deemed to be valid and binding obligations in
 5 accordance with their terms and tenor.

6
 7 13. (New section) ²**Any provision** The provisions² of any law
 8 ², rule, or regulation² to the contrary notwithstanding, any bond or
 9 other obligation issued pursuant to P.L. , c. (C.) (pending
 10 before the Legislature as this bill) shall be fully negotiable ²**within**
 11 **the meaning and**² for ²**all** the² purposes of the negotiable
 12 instruments law ²**of this State** under Title 12A of the New Jersey
 13 Statutes² , and each holder or owner of ²**such**² a bond or other
 14 obligation, or of any coupon appurtenant thereto, by accepting
 15 ²**such** the² bond or coupon shall be conclusively deemed to have
 16 agreed that ²**such**² bond, obligation ²₁² or coupon is and shall be
 17 fully negotiable ²**within the meaning and**² for ²**all** the²
 18 purposes of the ²**State's**² negotiable instruments law under Title
 19 12A of the New Jersey Statutes.

20
 21 14. (New section) Neither the members of the municipal shared
 22 services energy authority nor any person executing bonds issued
 23 pursuant to P.L. , c. (C.) (pending before the Legislature as
 24 this bill) shall be liable personally on the bonds by reason of the
 25 issuance thereof. Bonds or other obligations issued pursuant to
 26 P.L. , c. (C.) (pending before the Legislature as this bill)
 27 shall not be in any way a debt or liability of the State, and bonds or
 28 other obligations issued by the municipal shared services energy
 29 authority pursuant to P.L. , c. (C.) (pending before the
 30 Legislature as this bill) shall not be in any way a debt or liability of
 31 the State ²**or** ₁² of any local unit ²**or** ₁² of any county ²₁² or ²of
 32 any² municipality, except for member municipalities guaranteeing
 33 ²**such** the² bonds in accordance with the provisions of section 18
 34 of P.L. , c. (C.) (pending before the Legislature as this bill),
 35 and shall not create or constitute any indebtedness, liability ²₁² or
 36 obligation of the State ²**or**² of any ²**such**² local unit, ²of any²
 37 county ²₁² or ²of any² municipality, either legal, moral, or
 38 otherwise, and nothing in P.L. , c. (C.) (pending before the
 39 Legislature as this bill) ²**contained**² shall be construed to
 40 authorize the municipal shared services energy authority to incur
 41 any indebtedness on behalf of ²₁² or in any way ²₁² to obligate the
 42 State or any county or municipality.

43
 44 15. (New section) Any bond resolution of the municipal shared
 45 services energy authority providing for or authorizing the issuance
 46 of any bonds may contain provisions, and the municipal shared

1 services energy authority shall, in order to secure the payment of
2 the bonds in addition to its other powers, have the power by the
3 provisions in the bond resolution to covenant and agree with the
4 several holders of the bonds, as to:

5 a. The custody, security, use, expenditure, or application of the
6 proceeds of the bonds;

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

10 c. The use, regulation, operation, maintenance, insurance, or
11 disposition of all or any part of an electric supply project of the
12 municipal shared services energy authority, or its system, or
13 restrictions on the exercise of the powers of the municipal shared
14 services energy authority to dispose of, limit, or regulate the use of
15 all or any part of the electric supply project or system;

16 d. ²**[Payment]** The payment² of the principal of, or interest on,
17 the bonds, or any other obligations, and the sources and methods
18 thereof, the rank or priority of the bonds or obligations as to any
19 lien or security, or the acceleration of the maturity of the bonds or
20 obligations;

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

29 f. ²**[Pledging]** The pledging², setting aside, depositing, or
30 acting as trustee for all or any part of the system revenues or other
31 monies of the municipal shared services energy authority to secure
32 the payment of the principal of, or interest on, the bonds or any
33 other obligations, or the payment of expenses of operation or
34 maintenance of one or more electric supply projects of the
35 municipal shared services energy authority or its system, and the
36 powers and duties of any trustee with regard thereto;

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

41 h. **[Determination]** ²The determination² or definition of the
42 system revenues or of the expenses of operation and maintenance of
43 the system or one or more of its electric supply projects;

44 i. The rents, rates, fees ^{2, 2} or other charges in connection with
45 the use, products, or services of one or more electric supply projects
46 of the municipal shared services energy authority or its system,
47 including any of the parts, extensions, replacements, or
48 improvements of the project or its system thereafter constructed or

1 acquired, and the fixing, establishment, collection ^{2,2} and
2 enforcement of ²【the same】 those charges², the amount of electric
3 supply project revenues or system revenues to be produced thereby,
4 and the disposition and application of the amounts charged or
5 collected;

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

12 k. ²【Limitations】 The limitations² on the issuance of additional
13 bonds or any other obligations or on the incurrence of indebtedness
14 of the municipal shared services energy authority;

15 1. ²【Limitations】 The limitations² on the powers of the
16 municipal shared services energy authority to construct, acquire or
17 operate, or to permit the construction, acquisition or operation of,
18 any plants, structures, facilities or properties which may compete or
19 tend to compete with one or more of the municipal shared services
20 energy authority's electric supply projects or any part of its system;

21 m. ²【Vesting】 The vesting² in a trustee or trustees within or
22 without the State ²【such】 any² property, rights, powers, and duties
23 in trust as the municipal shared services energy authority may
24 determine, which may include any or all of the rights, powers, and
25 duties of the trustee appointed by the holders of bonds, and limiting
26 or abrogating the right of the holders to appoint a trustee or limiting
27 the rights, duties, and powers of the trustee;

28 n. ²【Payment】 The payment² of costs or expenses incident to
29 the enforcement of the bonds or of the provisions of the bond
30 resolutions or of any covenant or contract with the holders of the
31 bonds;

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

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

40 The provisions of the bond resolution and the covenants and
41 agreements relative thereto shall constitute valid and legally binding
42 contracts between the municipal shared services energy authority
43 and the several holders of the bonds, regardless of the time of
44 issuance of the bonds, and shall be enforceable by any holder or
45 holders by appropriate suit, action ^{2,2} or proceeding in any court of
46 competent jurisdiction, or by proceeding in lieu of prerogative writ.

1 16. (New section) a. If the bond resolution of the municipal
 2 shared services energy authority authorizing or providing for the
 3 issuance of a series of its bonds shall provide in substance that the
 4 holders of the bonds of ²**[such]** the² series shall be entitled to the
 5 benefits of this section, then, in the event that there shall be a
 6 default in the payment of ²the² principal of, or interest on, any
 7 bonds of ²**[such]** the² series after the ²**[same]** bonds² shall become
 8 due, whether at maturity or upon call for redemption, and ²**[such]**
 9 the² default shall continue for a period of 30 days, or in the event
 10 that the municipal shared services energy authority shall fail or
 11 refuse to comply with the provisions of P.L. , c. (C.)
 12 (pending before the Legislature as this bill) or shall fail or refuse to
 13 carry out and perform the terms of any contract with the holders of
 14 ²**[any such]** those² bonds, and ²**[such]** that² failure or refusal shall
 15 continue for a period of 30 days after written notice to the
 16 municipal shared services energy authority of its existence and
 17 nature, the holders of 25 percent in aggregate principal amount of
 18 the bonds and ²**[such]** the² series then outstanding by instrument or
 19 instruments filed in the office of the Secretary of State and proved
 20 or acknowledged in the same manner as a deed to be recorded, may
 21 appoint a trustee to represent the holders of the bonds of ²**[such]**
 22 the² series for the purposes provided in this section.

23 b. ²**[Such]** The² trustee ², appointed pursuant to subsection a.
 24 of this section,² may and upon written request of the holders of 25
 25 percent in aggregate principal amount of the bonds of ²**[such]** the²
 26 series then outstanding shall, in the trustee's or its own name:

27 (1) by any action, writ, proceeding in lieu of prerogative writ, or
 28 other proceeding, enforce all rights of the holders of ²**[such]** the²
 29 bonds, including the right to require the municipal shared services
 30 energy authority to charge and collect service charges adequate to
 31 carry out any contract as to, or pledge of, system revenues, and to
 32 require the municipal shared services energy authority to carry out
 33 and perform the terms of any contract with the holders of ²**[such]**
 34 the² bonds or its duties under P.L. , c. (C.) (pending before
 35 the Legislature as this bill);

36 (2) bring an action upon all or any part of ²**[such]** the² bonds or
 37 interest coupons or claims appurtenant thereto;

38 (3) by action, require the municipal shared services energy
 39 authority to account as if it were the trustee of an express trust for
 40 the holders of ²**[such]** the² bonds;

41 (4) by action, enjoin any acts or things which may be unlawful
 42 or in violation of the rights of the holders of ²**[such]** the² bonds;
 43 and

44 (5) declare all ²**[such]** the² bonds due and payable, whether or
 45 not in advance of maturity, upon 30 days' prior notice in writing to
 46 the municipal shared services energy authority and, if all defaults

1 shall be made good, then with the consent of the holders of 25
2 percent of the principal amount of ²[such] the² bonds then
3 outstanding, annul ²[such] the² declaration and its consequences.

4 c. The trustee shall, in addition to the powers set forth in
5 subsections a. and b. of this section, ²[have and]² possess all of the
6 powers necessary ²[or appropriate]² for the exercise of the
7 functions specifically set forth herein or incident to the general
8 representation of the holders of bonds of ²[such] the² series in the
9 enforcement and protection of their rights.

10 d. In any action or proceeding by the trustee, the fees, counsel
11 fees and expenses of the trustee and of the receiver, if any,
12 appointed pursuant to P.L. , c. (C.) (pending before the
13 Legislature as this bill), shall constitute taxable costs and
14 disbursements, and all costs and disbursements, allowed by the
15 court, shall be a first charge upon any service charges and system
16 revenues of the municipal shared services energy authority pledged
17 for the payment or security of bonds of ²[such] the² series.

18

19 17. (New section) If the bond resolution of the municipal shared
20 services energy authority authorizing or providing for the issuance
21 of a series of its bonds shall provide ²[in substance]² that the
22 holders of the bonds of ²[such] the² series shall be entitled to the
23 benefits of section 15 of P.L. , c. (C.) (pending before the
24 Legislature as this bill), and shall further provide ²[in substance]²
25 that any trustee appointed pursuant to that section or having the
26 powers of ²[such]² a trustee shall have the powers provided by this
27 section, then ²[such] the² trustee, whether or not all of the bonds of
28 ²[such] the² series ²[shall]² have been declared due and payable,
29 shall be entitled as of right to the appointment of a receiver of the
30 assets of the authority, and the receiver may enter upon and take
31 possession of the assets of the authority and, subject to any pledge
32 or contract with the holders of ²[such] the² bonds, shall take
33 possession of all ²[moneys] monies² and other property derived
34 from or applicable to the acquisition, construction, operation,
35 maintenance, or reconstruction of the assets of the authority, and
36 proceed with ²[such] the² acquisition, construction, operation,
37 maintenance, or reconstruction which the municipal shared services
38 energy authority is under any obligation to do, and operate,
39 maintain ^{2,2} and reconstruct the utility system and fix, charge,
40 collect, enforce, and receive the service charges and all system
41 revenues thereafter arising subject to any pledge thereof or contract
42 with the holders of the bonds relating thereto and perform the
43 public duties and carry out the contracts and obligations of the
44 municipal shared services energy authority in the same manner as
45 the municipal shared services energy authority itself might do ^{2,2}
46 and under the direction of the court.

1 18. (New section) For the purpose of aiding the municipal
2 shared services energy authority in the planning, undertaking,
3 acquisition, construction, financing or operation of any electric
4 supply project authorized pursuant to P.L. , c. (C.)
5 (pending before the Legislature as this bill), a member municipality
6 may, by ordinance of its governing body, in the manner provided
7 for adoption of a bond ordinance as provided in ²[any local bond
8 law] the “Local Bond Law,” N.J.S.40A:2-1 et seq.² and with or
9 without consideration and upon ²[such] those² terms and
10 conditions as may be agreed to by and between the member
11 municipality and the authority, unconditionally guaranty the
12 punctual payment of the principal of, and interest on, all or a
13 portion of any bonds of the authority. Any guaranty of the bonds of
14 the authority made pursuant to this section shall be evidenced by
15 endorsement thereof on the bonds, executed in the name of the
16 member municipality and on its behalf by ²[such] the² officer
17 thereof as may be designated in the ordinance authorizing ²[such]
18 the² guaranty, and the municipality shall ²[thereupon and
19 thereafter]² be obligated to pay the principal of, and interest on,
20 ²[said] the² bonds in the same manner and ²[to the same]² extent
21 as in the case of bonds issued by it. Any ordinance authorizing
22 ²[such] the² guaranty shall be treated as a security agreement and
23 shall be subject to the provisions of ²the “Local Authorities Fiscal
24 Control Law,”² P.L.1983, c.313 (C.40A:5A-1 et seq.). Any
25 ²[such]² guaranty of bonds of the authority may be made, and any
26 ordinance authorizing ²[such] the² guaranty may be adopted,
27 notwithstanding any statutory debt or other limitations, including
28 particularly any limitation or requirement under or pursuant to
29 ²[any local bond law] the “Local Bond Law,” N.J.S.40A:2-1 et
30 seq.² , but the principal amount of the bonds so guaranteed, shall,
31 after their issuance, be included in the gross debt of the member
32 municipality for the purpose of determining the indebtedness of the
33 municipality under or pursuant to ²[any local bond law] the “Local
34 Bond Law,” N.J.S.40A:2-1 et seq.² . The principal amount of the
35 bonds ²[so]² guaranteed and included in gross debt shall be
36 deducted and ²[is hereby]² declared to be ²[and to constitute]² a
37 deduction from ²[the]² gross debt under ²[and for all the purposes
38 of any local bond law] the “Local Bond Law,” N.J.S.40A:2-1 et
39 seq.² :

40 a. ²[from and after the time] after the² of issuance of the bonds
41 until the end of the fiscal year beginning next after the completion
42 of acquisition or construction of the facility to be financed from the
43 proceeds of the bonds; and

44 b. in any annual debt statement filed pursuant to ²[any local
45 bond law] the “Local Bond Law,” N.J.S.40A:2-1 et seq.² as of the
46 end of the fiscal year or any subsequent fiscal year if the revenues

1 or other receipts or ²~~monies~~ monies² of the authority in that year
 2 are sufficient to pay its expenses of operation and maintenance in
 3 the year ²,² and all amounts payable in the year on account of the
 4 principal of, and interest on, all ²~~the~~² guaranteed bonds, and all
 5 bonds of the authority issued under P.L. , c. (C.) (pending
 6 before the Legislature as this bill).

7
 8 19. (New section) a. The municipal shared services energy
 9 authority may enter into ²a² wholesale power supply ²~~contracts~~²
 10 contract² with any person ²~~within or outside the State of New~~²
 11 ~~Jersey~~² to meet the electric power or energy needs of its members,
 12 for the purchase or sale of electric power or energy, or ²~~for~~² both
 13 ²~~the purchase and sale of electric power and energy to supply~~²
 14 ~~electric power or energy to its members~~,² and for the wholesale
 15 sale of any excess electric power or energy. ²~~The~~ A² power
 16 supply ²~~contracts~~ contract² shall be for a term not to exceed 40
 17 years and shall provide for payment to or from the ²~~municipal~~²
 18 ~~shared services energy~~² authority of funds for commodities to be
 19 procured, and services to be rendered by or to the ²~~municipal~~²
 20 ~~shared services energy~~² authority. The ²~~municipal shared~~²
 21 ~~services energy~~² authority may enter into ²a² power supply
 22 ²~~contracts~~ contract² with persons for the purchase or sale of
 23 electric power and energy, or ²~~for~~² both ²~~the purchase and sale~~²
 24 ~~of electric power and energy~~², whereby the purchaser is obligated
 25 to make payments in amounts which shall be sufficient to enable the
 26 ²~~municipal shared services energy~~² authority to meet its
 27 expenses, interest ²,² and principal payments, whether at maturity or
 28 upon sinking fund redemption, for its bonds, reasonable reserves for
 29 debt service, operation and maintenance, renewals and
 30 replacements, and the requirements of any rate covenant with
 31 respect to debt service coverage contained in any resolution, trust
 32 indenture, or other security instrument. ²~~Power~~ A power² supply
 33 ²~~contracts~~ contract² may contain ²~~such~~² other terms and
 34 conditions as the municipal shared services energy authority and the
 35 purchasers may determine, including provisions whereby the
 36 purchaser is obligated to pay for ²electric² power irrespective of
 37 whether energy is produced or delivered to the purchaser, or
 38 whether any electric supply project contemplated by the
 39 ²~~agreement~~ power supply contract² is completed, operable, or
 40 operating, and notwithstanding suspension, interruption,
 41 interference, reduction, or curtailment of the output of the electric
 42 supply project. The power ²~~purchase agreement~~ supply contract²
 43 may provide that if one or more of the purchasers defaults in the
 44 payment of its obligations under the ²~~purchase agreement~~ power
 45 supply contract², the remaining purchasers which also have ²~~such~~

1 agreements] a power supply contract² shall be required to accept
 2 and pay for the electric power and energy to be purchased by the
 3 defaulting purchaser, and shall be entitled proportionately to use or
 4 otherwise dispose of the electric power and energy to be purchased
 5 by the defaulting purchaser. For purposes of this subsection ^{2,2} the
 6 ²[phrase] term² “purchase ²or sale² of electric power and energy”
 7 includes the purchase of any right to capacity of, or interest in, any
 8 electric supply project located within the corporate limits and
 9 franchise areas of the members.

10 b. The obligations of a member municipality under a power
 11 supply contract with the ²[municipal shared services energy]²
 12 authority, or arising out of the default by any other member with
 13 respect to a power supply contract, shall not be construed to
 14 constitute a debt of the municipality. To the extent provided in the
 15 ²[purchase agreement] power supply contract², these obligations
 16 shall constitute special obligations of the municipality, payable
 17 solely from the revenues and other ²[moneys] monies² derived by
 18 the municipality from its municipal electric utility and shall be
 19 treated as expenses of operating a municipal electric utility.

20 c. The ²power supply² contract may also provide for payments
 21 in the form of collateral, contributions to defray the cost of any
 22 purpose set forth in the contract ^{2,2} and as advances for ²[any such]
 23 a² purpose subject to repayment by the municipal shared services
 24 energy authority.

25 d. ²[Such agreements] A power supply contract² may be for a
 26 term covering the life of an electric supply project, for the
 27 anticipated output period of the electric supply project, or for any
 28 other term not exceeding 40 years.

29
 30 20. (New section) The ²[municipal shared services energy]²
 31 authority formed pursuant to P.L. , c. (C.) (pending before
 32 the Legislature as this bill) shall comply with the provisions of
 33 P.L. , c. (C.) (pending before the Legislature as this bill) and
 34 all applicable federal and State laws. Nothing in P.L. , c. (C.)
 35 (pending before the Legislature as this bill) shall be construed to
 36 require regulation of a ²[municipal shared services energy] an²
 37 authority or its members as an electric public utility as defined
 38 under R.S.48:2-13. Wholesale sales and purchases by the
 39 ²[municipal shared services energy]² authority shall not subject the
 40 ²[municipal shared services energy]² authority or its members to
 41 the jurisdiction of the Board of Public Utilities as a public utility
 42 ²[as set forth in R.S.48:2-13 et seq] pursuant to Title 48 of the
 43 Revised Statutes². A municipality that is a member of the
 44 ²[municipal shared services energy]² authority shall continue to be
 45 subject to all laws of the State.

1 21. (New section) All property of the ²【municipal shared
2 services energy】² authority within the corporate limits and
3 franchise areas of the members shall be exempt from levy and sale
4 by virtue of an execution of a court of competent jurisdiction and no
5 execution or other judicial process shall issue against the ²【same】
6 authority² nor shall any judgment against the ²【municipal shared
7 services energy】² authority be a charge or lien upon its property,
8 provided, however, that nothing in this section shall apply to or
9 limit the rights of the holder of any bonds to pursue any remedy for
10 the enforcement of any pledge or lien given by the ²【municipal
11 shared services energy】² authority on its system, revenues, or other
12 monies.

13
14 22. (New section) Notwithstanding any restriction contained in
15 any other law, the State and all public officers, municipalities,
16 counties, political subdivisions of public bodies, and agencies
17 thereof, all banks, bankers, trust companies, savings banks and
18 institutions, building and loan associations, savings and loan
19 associations, investment companies, and other persons carrying on a
20 banking business, all insurance companies, insurance associations,
21 and other persons carrying on an insurance business, and all
22 executors, administrators, guardians, trustees ^{2,2} and other
23 fiduciaries, may legally invest any sinking funds, monies, or other
24 funds belonging to them or within their control, in any bonds of the
25 ²【municipal shared services energy】² authority, and the bonds shall
26 be authorized security for any and all public deposits.

27
28 23. (New section) Every electric supply project or facility
29 within the corporate limits and franchise areas of the members that
30 ²【are】 is² owned by the ²【municipal shared services energy】²
31 authority, including any pro rata share of any property within the
32 corporate limits and franchise areas of the members that ²【are】 is²
33 owned by the ²【municipal shared services energy】² authority in
34 conjunction with any other person or public agency and used in
35 connection with the generation, transmission ^{2,2} and production of
36 electric power and energy, and all other property of the ²【municipal
37 shared services energy】² authority within the corporate limits and
38 franchise areas of the members, is hereby declared to be public
39 property and devoted to an essential public and governmental
40 function and purpose, and the property within the corporate limits
41 and franchise areas of the members, the ²【municipal shared services
42 energy】² authority and its income shall be exempt from all taxes
43 and special assessments of the State or any subdivision of the State.
44 All bonds of the ²【municipal shared services energy】² authority are
45 hereby declared to be issued by a political subdivision of the State
46 and for an essential public and governmental purpose and to be a

1 public instrumentality in the bonds, and the interest thereon and the
2 income therefrom and all service charges, funds, revenues, and
3 other monies pledged or available to pay or secure the payment of
4 the bonds, or interest thereon, shall at all times be exempt from
5 taxation except for transfer, inheritance and estate taxes, and taxes
6 on transfers by or in contemplation of death.

7
8 24. (New section) The State of New Jersey does hereby pledge
9 to and covenant and agree with the holders of any bonds issued
10 pursuant to a bond resolution of the ²[municipal shared services
11 energy]² authority, that the State will not limit or alter the rights
12 hereby vested in the municipal shared services energy authority to
13 acquire, construct, operate, and participate in one or more electric
14 supply projects and facilities for the generation, production, and
15 transmission of electric power and energy at wholesale, to fix,
16 establish, charge, and collect charges, fees, and payments, and to
17 fulfill the terms of any agreement made with the holders of the
18 bonds or other obligations, ²[and]² will not in any way impair the
19 rights or remedies of these holders, and will not modify in any way
20 the exemptions from taxation provided for in P.L. , c. (C.)
21 (pending before the Legislature as this bill) until the bonds, together
22 with interest thereon, with interest on any unpaid installments of
23 interest, and all costs and expenses in connection with any action or
24 proceeding by or on behalf of these holders, are fully met and
25 discharged.

26
27 25. (New section) All banks, bankers, trust companies, savings
28 banks, investment companies, and other persons carrying on a
29 banking business are hereby authorized to give to the municipal
30 shared services energy authority a good and sufficient undertaking
31 with ²[such] those² sureties as shall be approved by the
32 ²[municipal shared services energy]² authority to the effect that
33 ²[this] the² bank or banking institution shall faithfully keep and
34 pay over to the order of or upon the warrant of the ²[municipal
35 shared services energy]² authority or its authorized agent, all
36 ²[such]² funds as may be deposited with it by the ²[municipal
37 shared services energy]² authority and agreed interest thereon, at
38 ²[such]² times or upon ²[such]² demands as may be agreed with
39 the ²[municipal shared services energy]² authority or in lieu of
40 these sureties, deposit with the ²[municipal shared services
41 energy]² authority or its agent or any trustee therefor or for the
42 holders of any bonds, as collateral, ²[such] the² securities as the
43 ²[municipal shared services energy]² authority may approve. The
44 deposits of the ²[municipal shared services energy]² authority may
45 be evidenced or secured by a depository collateral agreement in
46 ²[such] a² form and upon ²[such]² terms and conditions as may be

1 agreed upon by the ²["municipal shared services energy"]² authority
2 and the bank or banking institution.

3
4 26. (New section) The municipal shared services energy
5 authority shall cause an annual audit of its accounts to be made, and
6 for this purpose shall employ a certified public accountant licensed
7 pursuant to the laws of the State ²["of New Jersey"]². The audit shall
8 be completed and filed with the ²["municipal shared services
9 energy"]² authority within four months after the close of its fiscal
10 year and a certified duplicate thereof shall be filed with the Director
11 of the Division of Local Government Services in the Department of
12 Community Affairs within five days after the original report is filed
13 with the ²["municipal shared services energy"]² authority.

14
15 27. (New section) The municipal shared services energy
16 authority shall file a copy of each bond resolution adopted by it
17 with the Director of the Division of Local Government Services in
18 the Department of Community Affairs, together with a summary of
19 the dates, amounts, maturities, and interest rates of all bonds issued
20 pursuant thereto.

21
22 28. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to
23 read as follows:

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

28 (1) The subject matter thereof consists of:

29 (a) (i) Professional services. The governing body shall in each
30 instance state supporting reasons for its action in the resolution
31 awarding each contract and shall forthwith cause to be printed once,
32 in the official newspaper, a brief notice stating the nature, duration,
33 service and amount of the contract, and that the resolution and
34 contract are on file and available for public inspection in the office
35 of the clerk of the county or municipality, or, in the case of a
36 contracting unit created by more than one county or municipality, of
37 the counties or municipalities creating ²["such"] the² contracting
38 unit; or (ii) Extraordinary unspecifiable services. The application
39 of this exception shall be construed narrowly in favor of open
40 competitive bidding, whenever possible, and the Division of Local
41 Government Services is authorized to adopt and promulgate rules
42 and regulations after consultation with the Commissioner of
43 Education limiting the use of this exception in accordance with the
44 intention herein expressed. The governing body shall in each
45 instance state supporting reasons for its action in the resolution
46 awarding each contract and shall forthwith cause to be printed, in

- 1 the manner set forth in subsection (1) (a) (i) of this section, a brief
2 notice of the award of ²**such** the² contract;
- 3 (b) The doing of any work by employees of the contracting unit;
- 4 (c) The printing of legal briefs, records ²₂ and appendices to be
5 used in any legal proceeding in which the contracting unit may be a
6 party;
- 7 (d) The furnishing of a tax map or maps for the contracting unit;
- 8 (e) The purchase of perishable foods as a subsistence supply;
- 9 (f) The supplying of any product or the rendering of any service
10 by a public utility, which is subject to the jurisdiction of the Board
11 of Public Utilities or the Federal Energy Regulatory Commission or
12 its successor, in accordance with tariffs and schedules of charges
13 made, charged or exacted, filed with the board or commission;
- 14 (g) The acquisition, subject to prior approval of the Attorney
15 General, of special equipment for confidential investigation;
- 16 (h) The printing of bonds and documents necessary to the
17 issuance and sale thereof by a contracting unit;
- 18 (i) Equipment repair service if in the nature of an extraordinary
19 unspecifiable service and necessary parts furnished in connection
20 with ²**such** the² service, which exception shall be in accordance
21 with the requirements for extraordinary unspecifiable services;
- 22 (j) The publishing of legal notices in newspapers as required by
23 law;
- 24 (k) The acquisition of artifacts or other items of unique intrinsic,
25 artistic or historical character;
- 26 (l) Those goods and services necessary or required to prepare
27 and conduct an election;
- 28 (m) Insurance, including the purchase of insurance coverage and
29 consultant services, which exception shall be in accordance with the
30 requirements for extraordinary unspecifiable services;
- 31 (n) The doing of any work by handicapped persons employed by
32 a sheltered workshop;
- 33 (o) The provision of any goods or services including those of a
34 commercial nature, attendant upon the operation of a restaurant by
35 any nonprofit, duly incorporated, historical society at or on any
36 historical preservation site;
- 37 (p) (Deleted by amendment, P.L.1999, c.440.)
- 38 (q) Library and educational goods and services;
- 39 (r) (Deleted by amendment, P.L.2005, c.212).
- 40 (s) The marketing of recyclable materials recovered through a
41 recycling program, or the marketing of any product intentionally
42 produced or derived from solid waste received at a resource
43 recovery facility or recovered through a resource recovery program,
44 including, but not limited to, refuse-derived fuel, compost materials,
45 methane gas, and other similar products;
- 46 (t) (Deleted by amendment, P.L.1999, c.440.)
- 47 (u) Contracting unit towing and storage contracts, provided that
48 all ²**such** of the² contracts shall be pursuant to reasonable non-

1 exclusionary and non-discriminatory terms and conditions, which
2 may include the provision of ²**[such]** the² services on a rotating
3 basis, at the rates and charges set by the municipality pursuant to
4 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit
5 towing and storage contracts for services to be provided at rates and
6 charges other than those established pursuant to the terms of this
7 paragraph shall only be awarded to the lowest responsible bidder in
8 accordance with the provisions of the "Local Public Contracts Law"
9 and without regard for the value of the contract therefor;

10 (v) The purchase of steam or electricity from, or the rendering
11 of services directly related to the purchase of ²**[such]**² steam or
12 electricity from a qualifying small power production facility or a
13 qualifying cogeneration facility as defined pursuant to 16
14 U.S.C.s.796;

15 (w) The purchase of electricity or administrative or dispatching
16 services directly related to the transmission of ²**[such]**² purchased
17 electricity by a contracting unit engaged in the generation of
18 electricity;

19 (x) The printing of municipal ordinances or other services
20 necessarily incurred in connection with the revision and
21 codification of municipal ordinances;

22 (y) An agreement for the purchase of an equitable interest in a
23 water supply facility or for the provision of water supply services
24 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
25 an agreement entered into pursuant to P.L.1989, c.109
26 (N.J.S.40A:31-1 et al.), so long as ²**[such]** the² agreement is
27 entered into no later than six months after the effective date of
28 P.L.1993, c.381;

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

31 (aa) The cooperative marketing of recyclable materials recovered
32 through a recycling program;

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

36 (cc) Expenses for travel and conferences;

37 (dd) The provision or performance of goods or services for the
38 support or maintenance of proprietary computer hardware and
39 software, except that this provision shall not be utilized to acquire
40 or upgrade non-proprietary hardware or to acquire or update non-
41 proprietary software;

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

44 (ff) Purchases of goods and services at rates set by the Universal
45 Service Fund administered by the Federal Communications
46 Commission;

47 (gg) A contract for the provision of water supply services or
48 wastewater treatment services entered into pursuant to section 2 of

1 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
2 construction, operation, or maintenance, or any combination
3 thereof, of a water supply facility as defined in subsection (16) of
4 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
5 treatment system as defined in subsection (19) of section 15 of
6 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
7 thereof, including a water filtration system as defined in subsection
8 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); ²or²

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

12 (2) It is to be made or entered into with the United States of
13 America, the State of New Jersey, county ²₁² or municipality ²₁² or
14 any board, body, officer, agency ²₁² or authority thereof ²₁² or any
15 other state or subdivision thereof.

16 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
17 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
18 received on both occasions in response to the advertisement, or (b)
19 the governing body has rejected ²[such] the² bids on two occasions
20 because it has determined that they are not reasonable as to price,
21 on the basis of cost estimates prepared for or by the contracting
22 agent prior to the advertising therefor, or have not been
23 independently arrived at in open competition, or (c) on one occasion
24 no bids were received pursuant to (a) and on one occasion all bids
25 were rejected pursuant to (b), in whatever sequence; ²[any such] a²
26 contract may then be negotiated and may be awarded upon adoption
27 of a resolution by a two-thirds affirmative vote of the authorized
28 membership of the governing body authorizing ²[such] the²
29 contract; provided, however, that:

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

36 (ii) The terms, conditions, restrictions ²₁² and specifications set
37 forth in the negotiated contract are not substantially different from
38 those which were the subject of competitive bidding pursuant to
39 section 4 of P.L.1971, c.198 (C.40A:11-4); and

40 (iii) Any minor amendment or modification of any of the terms,
41 conditions, restrictions ²₁² and specifications, which were the
42 subject of competitive bidding pursuant to section 4 of P.L.1971,
43 c.198 (C.40A:11-4), shall be stated in the resolution awarding
44 ²[such] the² contract; provided further, however, that if on the
45 second occasion the bids received are rejected as unreasonable as to
46 price, the contracting agent shall notify each responsible bidder
47 submitting bids on the second occasion of its intention to negotiate,

1 and afford each bidder a reasonable opportunity to negotiate, but
2 the governing body shall not award ²~~such~~ the² contract unless the
3 negotiated price is lower than the lowest rejected bid price
4 submitted on the second occasion by a responsible bidder, is the
5 lowest negotiated price offered by any responsible vendor, and is a
6 reasonable price for ²~~such~~² goods or services.

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

16 (4) The contracting unit has solicited and received at least three
17 quotations on materials, supplies ²~~,~~² or equipment for which a State
18 contract has been issued pursuant to section 12 of P.L.1971, c.198
19 (C.40A:11-12), and the lowest responsible quotation is at least
20 ²~~10%~~ 10 percent² less than the price the contracting unit would
21 be charged for the identical materials, supplies ²~~,~~² or equipment, in
22 the same quantities, under the State contract. ²~~Any such~~ A²
23 contract entered into pursuant to this subsection may be awarded
24 only upon adoption of a resolution by the affirmative vote of two-
25 thirds of the full membership of the governing body of the
26 contracting unit at a meeting thereof authorizing ²~~such a~~ the²
27 contract. A copy of the purchase order relating to ²~~any such~~ the²
28 contract, the requisition for purchase order, if applicable, and
29 documentation identifying the price of the materials, supplies or
30 equipment under the State contract and the State contract number
31 shall be filed with the director within five working days of the
32 award of ²~~any such~~ the² contract by the contracting unit. The
33 director shall notify the contracting unit of receipt of the material
34 and shall make the material available to the State Treasurer. The
35 contracting unit shall make available to the director upon request
36 any other documents relating to the solicitation and award of the
37 contract, including, but not limited to, quotations, requests for
38 quotations, and resolutions. The director periodically shall review
39 material submitted by contracting units to determine the impact of
40 ²~~such~~ the² contracts on local contracting and shall consult with
41 the State Treasurer on the impact of ²~~such~~ the² contracts on the
42 State procurement process. The director may, after consultation
43 with the State Treasurer, adopt rules in accordance with the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.) to limit the use of this subsection, after considering the impact
46 of contracts awarded under this subsection on State and local
47 contracting, or after considering the extent to which the award of

1 contracts pursuant to this subsection is consistent with and in
2 furtherance of the purposes of the public contracting laws.

3 (5) Notwithstanding any provision of law, rule ²₁² or regulation
4 to the contrary, the subject matter consists of the combined
5 collection and marketing, or the cooperative combined collection
6 and marketing of recycled material recovered through a recycling
7 program, or any product intentionally produced or derived from
8 solid waste received at a resource recovery facility or recovered
9 through a resource recovery program including, but not limited to,
10 refuse-derived fuel, compost materials, methane gas, and other
11 similar products, provided that in lieu of engaging in ²**[such]**²
12 public advertising for bids and the bidding therefor, the contracting
13 unit shall, prior to commencing the procurement process, submit for
14 approval to the Director of the Division of Local Government
15 Services, a written detailed description of the process to be
16 followed in securing ²**[said]** the² services. Within 30 days after
17 receipt of the written description the director shall, if the director
18 finds that the process provides for fair competition and integrity in
19 the negotiation process, approve, in writing, the description
20 submitted by the contracting unit. If the director finds that the
21 process does not provide for fair competition and integrity in the
22 negotiation process, the director shall advise the contracting unit of
23 the deficiencies that must be remedied. If the director fails to
24 respond in writing to the contracting unit within 30 days, the
25 procurement process as described shall be deemed approved. As
26 used in this section, "collection" means the physical removal of
27 recyclable materials from curbside or any other location selected by
28 the contracting unit.

29 (6) Notwithstanding any provision of law, rule ²₁² or regulation
30 to the contrary, the contract is for the provision of electricity by a
31 contracting unit engaged in the distribution of electricity for retail
32 sale, for the provision of wholesale electricity by a municipal
33 shared services energy authority as defined pursuant to section 3 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), or
35 for the provision of administrative or dispatching services related to
36 the transmission of ²**[such]**² electricity, provided that in lieu of
37 engaging in public advertising for bids and the bidding therefor, the
38 contracting unit shall, prior to commencing the procurement
39 process, submit for approval to the Director of the Division of Local
40 Government Services, a written detailed description of the process
41 to be followed in securing ²**[such]** these² services. ²**[Such]** The²
42 process shall be designed in a way that is appropriate to and
43 commensurate with industry practices, and the integrity of the
44 government contracting process. Within 30 days after receipt of the
45 written description, the director shall, if the director finds that the
46 process provides for fair competition and integrity in the
47 negotiation process, approve, in writing, the description submitted

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

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

9
10 29. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
11 read as follows:

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

19 (1) Supplying of:

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

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

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

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

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

33 (4) The collection and recycling of methane gas from a sanitary
34 landfill facility, for any term not exceeding 25 years, when ²**[such]**
35 the² contract is in conformance with a district solid waste
36 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1
37 et seq.), and with the approval of the Division of Local Government
38 Services in the Department of Community Affairs and the
39 Department of Environmental Protection. The contracting unit shall
40 award the contract to the highest responsible bidder,
41 notwithstanding that the contract price may be in excess of the
42 amount of any necessarily related administrative expenses; except
43 that if the contract requires the contracting unit to expend funds
44 only, the contracting unit shall award the contract to the lowest
45 responsible bidder. The approval by the Division of Local
46 Government Services of public bidding requirements shall not be
47 required for those contracts exempted therefrom pursuant to section
48 5 of P.L.1971, c.198 (C.40A:11-5);

- 1 (5) Data processing service, for any term of not more than seven
2 years;
- 3 (6) Insurance, including the purchase of insurance coverages,
4 insurance consulting or administrative services, claims
5 administration services and including participation in a joint self-
6 insurance fund, risk management program or related services
7 provided by a contracting unit insurance group, or participation in
8 an insurance fund established by a local unit pursuant to
9 N.J.S.40A:10-6, or a joint insurance fund established pursuant to
10 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more
11 than three years;
- 12 (7) Leasing or servicing of (a) automobiles, motor vehicles,
13 machinery ^{2,2} and equipment of every nature and kind, for a period
14 not to exceed five years, or (b) machinery and equipment used in
15 the generation of electricity by a municipal share services energy
16 authority established pursuant to section 4 of P.L. , c. (C.)
17 (pending before the Legislature as this bill), or a contracting unit
18 engaged in the generation of electricity, for a period not to exceed
19 20 years; provided, however, ²[such contracts] a contract² shall be
20 awarded only subject to and in accordance with the rules and
21 regulations promulgated by the Director of the Division of Local
22 Government Services in the Department of Community Affairs;
- 23 (8) The supplying of any product or the rendering of any service
24 by a company providing voice, data, transmission ^{2,2} or switching
25 services for a term not exceeding five years;
- 26 (9) Any single project for the construction, reconstruction ^{2,2} or
27 rehabilitation of any public building, structure ^{2,2} or facility, or any
28 public works project, including the retention of the services of any
29 architect or engineer in connection therewith, for the length of time
30 authorized and necessary for the completion of the actual
31 construction;
- 32 (10) The providing of food services for any term not exceeding
33 three years;
- 34 (11) On-site inspections and plan review services undertaken by
35 private agencies pursuant to the "State Uniform Construction Code
36 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
37 more than three years;
- 38 (12) (Deleted by amendment, P.L.2009, c.4).
- 39 (13) (Deleted by amendment, P.L.1999, c.440.)
- 40 (14) (Deleted by amendment, P.L.1999, c.440.)
- 41 (15) Leasing of motor vehicles, machinery ^{2,2} and other
42 equipment primarily used to fight fires, for a term not to exceed ten
43 years, when the contract includes an option to purchase, subject to
44 and in accordance with rules and regulations promulgated by the
45 Director of the Division of Local Government Services in the
46 Department of Community Affairs;

1 (16) The provision of water supply services or the designing,
2 financing, construction, operation, or maintenance, or any
3 combination thereof, of a water supply facility, or any component
4 part or parts thereof, including a water filtration system, for a period
5 not to exceed 40 years, when the contract for these services is
6 approved by the Division of Local Government Services in the
7 Department of Community Affairs, the Board of Public Utilities,
8 and the Department of Environmental Protection pursuant to
9 P.L.1985, c.37 (C.58:26-1 et al.), except that no ²~~such~~² approvals
10 shall be required for those contracts otherwise exempted pursuant to
11 subsection (30), (31), (34), (35) or (43) of this section. For the
12 purposes of this subsection, "water supply services" means any
13 service provided by a water supply facility; "water filtration
14 system" means any equipment, plants, structures, machinery,
15 apparatus, or land, or any combination thereof, acquired, used,
16 constructed, rehabilitated, or operated for the collection,
17 impoundment, storage, improvement, filtration, or other treatment
18 of drinking water for the purposes of purifying and enhancing water
19 quality and insuring its portability prior to the distribution of the
20 drinking water to the general public for human consumption,
21 including plants and works, and other personal property and
22 appurtenances necessary for their use or operation; and "water
23 supply facility" means and refers to the real property and the plants,
24 structures, ²or² interconnections between existing water supply
25 facilities, machinery and equipment and other property, real,
26 personal ²,² and mixed, acquired, constructed ²,² or operated, or to
27 be acquired, constructed ²,² or operated, in whole or in part by or on
28 behalf of a political subdivision of the State or any agency thereof,
29 for the purpose of augmenting the natural water resources of the
30 State and making available an increased supply of water for all
31 uses, or of conserving existing water resources, and any and all
32 appurtenances necessary, useful ²,² or convenient for the collecting,
33 impounding, storing, improving, treating, filtering, conserving ²,² or
34 transmitting of water and for the preservation and protection of
35 these resources and facilities and providing for the conservation and
36 development of future water supply resources;

37 (17) The provision of resource recovery services by a qualified
38 vendor, the disposal of the solid waste delivered for disposal which
39 cannot be processed by a resource recovery facility or the residual
40 ash generated at a resource recovery facility, including hazardous
41 waste and recovered metals and other materials for reuse, or the
42 design, financing, construction, operation ²,² or maintenance of a
43 resource recovery facility for a period not to exceed 40 years when
44 the contract is approved by the Division of Local Government
45 Services in the Department of Community Affairs, and the
46 Department of Environmental Protection pursuant to P.L.1985, c.38
47 (C.13:1E-136 et al.); and when the resource recovery facility is in

1 conformance with a district solid waste management plan approved
2 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
3 this subsection, "resource recovery facility" means a solid waste
4 facility constructed and operated for the incineration of solid waste
5 for energy production and the recovery of metals and other
6 materials for reuse; or a mechanized composting facility, or any
7 other facility constructed or operated for the collection, separation,
8 recycling, and recovery of metals, glass, paper, and other materials
9 for reuse or for energy production; and "residual ash" means the
10 bottom ash, fly ash, or any combination thereof, resulting from the
11 combustion of solid waste at a resource recovery facility;

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

25 (19) The provision of wastewater treatment services or the
26 designing, financing, construction, operation, or maintenance, or
27 any combination thereof, of a wastewater treatment system, or any
28 component part or parts thereof, for a period not to exceed 40 years,
29 when the contract for these services is approved by the Division of
30 Local Government Services in the Department of Community
31 Affairs and the Department of Environmental Protection pursuant to
32 P.L.1985, c.72 (C.58:27-1 et al.), except that no ²[such]² approvals
33 shall be required for those contracts otherwise exempted pursuant to
34 subsection (36) or (43) of this section. For the purposes of this
35 subsection, "wastewater treatment services" means any services
36 provided by a wastewater treatment system, and "wastewater
37 treatment system" means equipment, plants, structures, machinery,
38 apparatus, or land, or any combination thereof, acquired, used,
39 constructed, or operated for the storage, collection, reduction,
40 recycling, reclamation, disposal, separation, or other treatment of
41 wastewater or sewage sludge, or for the final disposal of residues
42 resulting from the treatment of wastewater, including, but not
43 limited to, pumping and ventilating stations, facilities, plants and
44 works, connections, outfall sewers, interceptors, trunk lines, and
45 other personal property and appurtenances necessary for their
46 operation;

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

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

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

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

8 (24) The purchase of electricity or administrative or dispatching
9 services related to the transmission of ²**[such]**² electricity, from a
10 supplier of electricity subject to the jurisdiction of a federal
11 regulatory agency, from a qualifying small power producing facility
12 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or
13 from any supplier of electricity within any regional transmission
14 organization or independent system operator or from ²**[such]** an²
15 organization or operator or their successors, by a contracting unit
16 engaged in the generation of electricity for retail sale, as of May 24,
17 1991, for a term not to exceed 40 years, or by a contracting unit
18 engaged solely in the distribution of electricity for retail sale for a
19 term not to exceed ten years, except that a contract with a
20 contracting unit, engaged solely in the distribution of electricity for
21 retail sale, in excess of ten years, shall require the written approval
22 of the Director of the Division of Local Government Services. If
23 the director fails to respond in writing to the contracting unit within
24 10 business days, the contract shall be deemed approved;

25 (25) Basic life support services, for a period not to exceed five
26 years. For the purposes of this subsection, "basic life support"
27 means a basic level of prehospital care, which includes but need not
28 be limited to patient stabilization, airway clearance,
29 cardiopulmonary resuscitation, hemorrhage control, initial wound
30 care ²and ²fracture stabilization;

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

32 (27) The provision of transportation services to ²an² elderly
33 ²person² , ²**[disabled]** an individual with a disability,² or ²an²
34 indigent ²**[persons]** person² for any term of not more than three
35 years. For the purposes of this subsection, "elderly ²**[persons]**
36 person² " means ²**[persons]** a person² who ²**[are]** is² 60 years of
37 age or older. ²**["Disabled persons"]** "Individual with a disability"²
38 means ²**[persons]** a person² of any age who, by reason of illness,
39 injury, age, congenital malfunction, or other permanent or
40 temporary incapacity or disability, are unable, without special
41 facilities or special planning or design to utilize mass transportation
42 facilities and services as effectively as persons who are not so
43 affected. "Indigent ²**[persons]** person² " means ²**[persons]** a
44 person² of any age whose income does not exceed 100 percent of
45 the poverty level, adjusted for family size, established and adjusted
46 under section 673(2) of subtitle B, the "Community Services Block
47 Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

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

5 (29) The performance of patient care services by contracted
6 medical staff at county hospitals, correction facilities ^{2,2} and long
7 term care facilities, for any term of not more than three years;

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

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

20 (32) Laundry service and the rental, supply ^{2,2} and cleaning of
21 uniforms for any term of not more than three years;

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

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

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

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

41 (37) The operation and management of a facility under a license
42 issued or permit approved by the Department of Environmental
43 Protection, including a wastewater treatment system or a water
44 supply or distribution facility, as the case may be, for any term of
45 not more than ten years. For the purposes of this subsection,
46 "wastewater treatment system" refers to facilities operated or
47 maintained for the storage, collection, reduction, disposal, or other
48 treatment of wastewater or sewage sludge, remediation of

1 groundwater contamination, stormwater runoff, or the final disposal
2 of residues resulting from the treatment of wastewater; and "water
3 supply or distribution facility" refers to facilities operated or
4 maintained for augmenting the natural water resources of the State,
5 increasing the supply of water, conserving existing water resources,
6 or distributing water to users;

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

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

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

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

15 (42) Purchases made under a contract awarded by the Director of
16 the Division of Purchase and Property in the Department of the
17 Treasury for use by counties, municipalities ^{2,2} or other contracting
18 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
19 term not to exceed the term of that contract;

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

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

30 (45) The provision or performance of goods or services for the
31 purpose of producing class I renewable energy or class II renewable
32 energy, as those terms are defined in section 3 of P.L.1999, c.23
33 (C.48:3-51), at, or adjacent to, buildings owned by, or operations
34 conducted by, the contracting unit, the entire price of which is to be
35 established as a percentage of the resultant savings in energy costs,
36 for a term not to exceed 15 years; provided, however, that ²【such
37 contracts】 a contract² shall be entered into only subject to and in
38 accordance with guidelines promulgated by the Board of Public
39 Utilities establishing a methodology for computing energy cost
40 savings and energy generation costs **【.】**; and

41 (46) A power supply contract, as defined pursuant to section
42 3 of P.L. , c. (C.) (pending before the Legislature as this
43 bill), between a member municipality as defined pursuant to section
44 3 of P.L. , c. (C.) (pending before the Legislature as this
45 bill), and the municipal shared services energy authority established
46 pursuant to the provisions of P.L. , c. (C.) (pending before
47 the Legislature as this bill) to meet the electric power needs of its
48 members, for the lease, operation, or management of electric

1 generation within a member municipality's corporate limits and
2 franchise area or the purchase of electricity, or the purchase of fuel
3 for generating units for a term not to exceed 40 years.

4 Any contract for services other than professional services, the
5 statutory length of which contract is for three years or less, may
6 include provisions for no more than one two-year, or two one-year,
7 extensions, subject to the following limitations: a. The contract
8 shall be awarded by resolution of the governing body upon a
9 finding by the governing body that the services are being performed
10 in an effective and efficient manner; b. No ²[such]² contract shall
11 be extended so that it runs for more than a total of five consecutive
12 years; c. Any price change included as part of an extension shall be
13 based upon the price of the original contract as cumulatively
14 adjusted pursuant to any previous adjustment or extension and shall
15 not exceed the change in the index rate for the 12 months preceding
16 the most recent quarterly calculation available at the time the
17 contract is renewed; and d. The terms and conditions of the
18 contract remain substantially the same.

19 All multiyear leases and contracts entered into pursuant to this
20 section, including any two-year or one-year extensions, except
21 contracts involving the supplying of electricity for the purpose of
22 lighting public streets and contracts for thermal energy authorized
23 pursuant to subsection (1) above, construction contracts authorized
24 pursuant to subsection (9) above, contracts for the provision or
25 performance of goods or services or the supplying of equipment to
26 promote energy conservation through the production of class I
27 renewable energy or class II renewable energy authorized pursuant
28 to subsection (45) above, contracts for water supply services or for
29 a water supply facility, or any component part or parts thereof
30 authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or
31 ²₁² (43) above, contracts for resource recovery services or a
32 resource recovery facility authorized pursuant to subsection (17)
33 above, contracts for the sale of energy produced by a resource
34 recovery facility authorized pursuant to subsection (18) above,
35 contracts for wastewater treatment services or for a wastewater
36 treatment system or any component part or parts thereof authorized
37 pursuant to subsection (19), (36), (37) ²₁² or (43) above, and
38 contracts for the purchase of electricity or administrative or
39 dispatching services related to the transmission of ²[such]²
40 electricity authorized pursuant to subsection (24) above [and],
41 contracts for the purchase of electricity generated from a power
42 production facility that is fueled by methane gas authorized
43 pursuant to subsection (44) above, and power supply contracts
44 authorized pursuant to subsection (46) respectively, shall contain a
45 clause making them subject to the availability and appropriation
46 annually of sufficient funds as may be required to meet the
47 extended obligation, or contain an annual cancellation clause.

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

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

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

14
15 30. (New section) The powers granted under P.L. ,
16 c. (C.) (pending before the Legislature as this bill) shall not
17 limit the powers of ²**【municipalities】** a municipality² to enter into a
18 shared service ²**【agreements】** agreement² or ²**【contracts】** contract² ,
19 or to establish ²a² separate legal ²**【entities】** entity² pursuant to State
20 law or otherwise to carry out their powers under applicable
21 statutory provisions, nor shall the powers granted under P.L. ,
22 c. (C.) (pending before the Legislature as this bill) limit the
23 powers reserved to ²**【municipalities】** a municipality² by State law.

24
25 31. This act shall take effect immediately.