

ASSEMBLY, No. 2316

STATE OF NEW JERSEY

215th LEGISLATURE

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Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2012)

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 such programs, thereby providing the means to pursue efficiencies
2 and savings for retail customers within their territorial limits.

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

11

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

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

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

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

1 "Electric supply project" or "project" means any plant, works,
2 system, facility, and real and personal property of any nature
3 whatsoever, together with all parts thereof and appurtenances
4 thereto, used or useful in the generation, production, transmission,
5 distribution, purchase, sale, exchange, or interchange of electric
6 power and energy, in whole or in part, for the use of the members
7 including the utilization of renewable capacity and energy, or any
8 interest therein or right to capacity thereof.

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

16 "Local Finance Board" means the Local Finance Board in the
17 Division of Local Government Services in the Department of
18 Community Affairs.

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

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

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

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

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

40 "Public agency" means any municipality or other municipal
41 corporation, political subdivision, government unit or public
42 corporation created under the laws of this State or of another state
43 or of the United States, and any state, and the United States, and
44 any person, board or other body declared by the laws of any state or
45 the United States to be a department, agency or instrumentality
46 thereof.

47 "Rural electric cooperative" means a non-profit utility that serves
48 customers within the State and that is exclusively owned and

1 controlled by the customers it serves, and which is exempt from
2 Board of Public Utilities jurisdiction pursuant to section 1 of
3 P.L.1983, c.78 (C.48:2-13.1).

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

25 b. Upon the introduction of the parallel ordinances by each
26 municipality seeking to create the authority, but before final
27 adoption of the ordinances, copies of the ordinances, together with
28 the proposed inter-municipal agreement, shall be submitted to the
29 Local Finance Board for approval. Upon submission of a complete
30 application for approval of the proposed inter-municipal agreement,
31 the Local Finance Board shall not unreasonably withhold approval.
32 If the Local Finance Board does not disapprove the application for
33 approval of the proposed inter-municipal agreement within 60 days
34 after receipt of the submission of a complete application, then the
35 ordinances and proposed inter-municipal agreement shall be
36 deemed approved.

37 c. Once an authority has been legally established pursuant to
38 the provisions of P.L. , c. (C.) (pending before the Legislature
39 as this bill), additional municipalities may join the authority as
40 provided in paragraphs (1) and (2) of this subsection.

41 (1) A municipality requesting to become a member of the
42 authority shall negotiate an amended inter-municipal agreement on
43 terms and conditions acceptable to the members. Once an amended
44 inter-municipal agreement has been agreed to, it shall be submitted
45 for approval to the board of commissioners. Adoption of an
46 amended inter-municipal agreement shall require approval by a
47 two-thirds majority vote of the full membership of the board.

1 (2) The municipality requesting to become a member of the
2 authority shall introduce an ordinance approving the amended inter-
3 municipal agreement as approved by the board of commissioners of
4 the authority. Upon the introduction of the ordinance, but before
5 final adoption of such ordinance, copies of the ordinance, together
6 with the proposed amended inter-municipal agreement, shall be
7 submitted to the Local Finance Board for approval. Upon
8 submission of a complete application for approval of the proposed
9 amended inter-municipal agreement, the Local Finance Board shall
10 not unreasonably withhold approval. If the Local Finance Board
11 does not disapprove the application for approval of the proposed
12 amended inter-municipal agreement within 60 days after receipt of
13 a complete application, then the ordinance and proposed amended
14 inter-municipal agreement shall be deemed approved.

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

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

26 (2) The authority shall submit the proposed amended inter-
27 municipal agreement for approval to the Local Finance Board.
28 Upon submission of a complete application for approval of the
29 proposed amended inter-municipal agreement, the Local Finance
30 Board shall not unreasonably withhold approval. If the Local
31 Finance Board does not disapprove the application for approval of
32 the proposed amended inter-municipal agreement within 60 days
33 after receipt of a complete application, then the proposed amended
34 inter-municipal agreement shall be deemed approved.

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

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

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

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

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

18
19 6. (New section) Nothing in P.L. , c. (C.) (pending
20 before the Legislature as this bill) shall be construed to restrict the
21 right of a person to form a rural electric cooperative or a
22 municipality to engage in functions authorized pursuant to
23 R.S.40:62-12 et seq.

24
25 7. (New section) No commissioner, officer, or employee of the
26 municipal shared services energy authority shall have or acquire
27 any interest, direct or indirect, in any contract or proposed contract
28 or property related to the provision of wholesale electric power,
29 transmission, generation, materials, services or supplies to be
30 furnished to or used by the authority or any of its members.

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

- 43 a. To adopt and have a common seal and to alter the same at
44 pleasure;
45 b. To sue and be sued;
46 c. To acquire, own, rent, hold, lease, as lessor or lessee, use
47 and sell or otherwise dispose of, mortgage, pledge, or grant a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17

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

45

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

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

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

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

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

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

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

46 c. The contract may also provide for payments in the form of
47 collateral, contributions to defray the cost of any purpose set forth

1 in the contract and as advances for any such purpose subject to
2 repayment by the municipal shared services energy authority.

3 d. Such agreements may be for a term covering the life of an
4 electric supply project, for the anticipated output period of the
5 electric supply project, or for any other term not exceeding 40
6 years. If a power supply contract is entered into with a municipality
7 other than a member municipality, the contracts shall be subject to
8 the "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-1 et
9 seq.).

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

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

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

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

22
23 24. (New section) All banks, bankers, trust companies, savings
24 banks, investment companies, and other persons carrying on a
25 banking business are hereby authorized to give to the municipal
26 shared services energy authority a good and sufficient undertaking
27 with such sureties as shall be approved by the municipal shared
28 services energy authority to the effect that this bank or banking
29 institution shall faithfully keep and pay over to the order of or upon
30 the warrant of the municipal shared services energy authority or its
31 authorized agent, all such funds as may be deposited with it by the
32 municipal shared services energy authority and agreed interest
33 thereon, at such times or upon such demands as may be agreed with
34 the municipal shared services energy authority or in lieu of these
35 sureties, deposit with the municipal shared services energy
36 authority or its agent or any trustee therefor or for the holders of
37 any bonds, as collateral, such securities as the municipal shared
38 services energy authority may approve. The deposits of the
39 municipal shared services energy authority may be evidenced or
40 secured by a depository collateral agreement in such form and upon
41 such terms and conditions as may be agreed upon by the municipal
42 shared services energy authority and the bank or banking
43 institution.

44
45 25. (New section) The municipal shared services energy
46 authority shall cause an annual audit of its accounts to be made, and
47 for this purpose shall employ a certified public accountant licensed
48 pursuant to the laws of the State of New Jersey. The audit shall be

1 completed and filed with the municipal shared services energy
2 authority within four months after the close of its fiscal year and a
3 certified duplicate thereof shall be filed with the Director of the
4 Division of Local Government Services in the Department of
5 Community Affairs within five days after the original report is filed
6 with the municipal shared services energy authority.

7
8 26. (New section) The municipal shared services energy
9 authority shall file a copy of each bond resolution adopted by it
10 with the Director of the Division of Local Government Services in
11 the Department of Community Affairs, together with a summary of
12 the dates, amounts, maturities, and interest rates of all bonds issued
13 pursuant thereto.

14
15 27. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to
16 read as follows:

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

21 (1) The subject matter thereof consists of:

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

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

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

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

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

- 1 (f) The supplying of any product or the rendering of any service
2 by a public utility, which is subject to the jurisdiction of the Board
3 of Public Utilities or the Federal Energy Regulatory Commission or
4 its successor, in accordance with tariffs and schedules of charges
5 made, charged or exacted, filed with the board or commission;
- 6 (g) The acquisition, subject to prior approval of the Attorney
7 General, of special equipment for confidential investigation;
- 8 (h) The printing of bonds and documents necessary to the
9 issuance and sale thereof by a contracting unit;
- 10 (i) Equipment repair service if in the nature of an extraordinary
11 unspecifiable service and necessary parts furnished in connection
12 with such service, which exception shall be in accordance with the
13 requirements for extraordinary unspecifiable services;
- 14 (j) The publishing of legal notices in newspapers as required by
15 law;
- 16 (k) The acquisition of artifacts or other items of unique intrinsic,
17 artistic or historical character;
- 18 (l) Those goods and services necessary or required to prepare
19 and conduct an election;
- 20 (m) Insurance, including the purchase of insurance coverage and
21 consultant services, which exception shall be in accordance with the
22 requirements for extraordinary unspecifiable services;
- 23 (n) The doing of any work by handicapped persons employed by
24 a sheltered workshop;
- 25 (o) The provision of any goods or services including those of a
26 commercial nature, attendant upon the operation of a restaurant by
27 any nonprofit, duly incorporated, historical society at or on any
28 historical preservation site;
- 29 (p) (Deleted by amendment, P.L.1999, c.440.)
- 30 (q) Library and educational goods and services;
- 31 (r) (Deleted by amendment, P.L.2005, c.212).
- 32 (s) The marketing of recyclable materials recovered through a
33 recycling program, or the marketing of any product intentionally
34 produced or derived from solid waste received at a resource
35 recovery facility or recovered through a resource recovery program,
36 including, but not limited to, refuse-derived fuel, compost materials,
37 methane gas, and other similar products;
- 38 (t) (Deleted by amendment, P.L.1999, c.440.)
- 39 (u) Contracting unit towing and storage contracts, provided that
40 all such contracts shall be pursuant to reasonable non-exclusionary
41 and non-discriminatory terms and conditions, which may include
42 the provision of such services on a rotating basis, at the rates and
43 charges set by the municipality pursuant to section 1 of P.L.1979,
44 c.101 (C.40:48-2.49). All contracting unit towing and storage
45 contracts for services to be provided at rates and charges other than
46 those established pursuant to the terms of this paragraph shall only
47 be awarded to the lowest responsible bidder in accordance with the

- 1 provisions of the "Local Public Contracts Law" and without regard
2 for the value of the contract therefor;
- 3 (v) The purchase of steam or electricity from, or the rendering
4 of services directly related to the purchase of such steam or
5 electricity from a qualifying small power production facility or a
6 qualifying cogeneration facility as defined pursuant to 16
7 U.S.C.s.796;
- 8 (w) The purchase of electricity or administrative or dispatching
9 services directly related to the transmission of such purchased
10 electricity by a contracting unit engaged in the generation of
11 electricity;
- 12 (x) The printing of municipal ordinances or other services
13 necessarily incurred in connection with the revision and
14 codification of municipal ordinances;
- 15 (y) An agreement for the purchase of an equitable interest in a
16 water supply facility or for the provision of water supply services
17 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
18 an agreement entered into pursuant to P.L.1989, c.109
19 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
20 later than six months after the effective date of P.L.1993, c.381;
- 21 (z) A contract for the provision of water supply services entered
22 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 23 (aa) The cooperative marketing of recyclable materials recovered
24 through a recycling program;
- 25 (bb) A contract for the provision of wastewater treatment
26 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
27 al.);
- 28 (cc) Expenses for travel and conferences;
- 29 (dd) The provision or performance of goods or services for the
30 support or maintenance of proprietary computer hardware and
31 software, except that this provision shall not be utilized to acquire
32 or upgrade non-proprietary hardware or to acquire or update non-
33 proprietary software;
- 34 (ee) The management or operation of an airport owned by the
35 contracting unit pursuant to R.S.40:8-1 et seq.;
- 36 (ff) Purchases of goods and services at rates set by the Universal
37 Service Fund administered by the Federal Communications
38 Commission;
- 39 (gg) A contract for the provision of water supply services or
40 wastewater treatment services entered into pursuant to section 2 of
41 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
42 construction, operation, or maintenance, or any combination
43 thereof, of a water supply facility as defined in subsection (16) of
44 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
45 treatment system as defined in subsection (19) of section 15 of
46 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
47 thereof, including a water filtration system as defined in subsection
48 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

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

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

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

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

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

31 (iii) Any minor amendment or modification of any of the terms,
32 conditions, restrictions and specifications, which were the subject of
33 competitive bidding pursuant to section 4 of P.L.1971, c.198
34 (C.40A:11-4), shall be stated in the resolution awarding such
35 contract; provided further, however, that if on the second occasion
36 the bids received are rejected as unreasonable as to price, the
37 contracting agent shall notify each responsible bidder submitting
38 bids on the second occasion of its intention to negotiate, and afford
39 each bidder a reasonable opportunity to negotiate, but the governing
40 body shall not award such contract unless the negotiated price is
41 lower than the lowest rejected bid price submitted on the second
42 occasion by a responsible bidder, is the lowest negotiated price
43 offered by any responsible vendor, and is a reasonable price for
44 such goods or services.

45 Whenever a contracting unit shall determine that a bid was not
46 arrived at independently in open competition pursuant to subsection
47 (3) of this section it shall thereupon notify the county prosecutor of
48 the county in which the contracting unit is located and the Attorney

1 General of the facts upon which its determination is based, and
2 when appropriate, it may institute appropriate proceedings in any
3 State or federal court of competent jurisdiction for a violation of
4 any State or federal antitrust law or laws relating to the unlawful
5 restraint of trade.

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

39 (5) Notwithstanding any provision of law, rule or regulation to
40 the contrary, the subject matter consists of the combined collection
41 and marketing, or the cooperative combined collection and
42 marketing of recycled material recovered through a recycling
43 program, or any product intentionally produced or derived from
44 solid waste received at a resource recovery facility or recovered
45 through a resource recovery program including, but not limited to,
46 refuse-derived fuel, compost materials, methane gas, and other
47 similar products, provided that in lieu of engaging in such public
48 advertising for bids and the bidding therefor, the contracting unit

1 shall, prior to commencing the procurement process, submit for
2 approval to the Director of the Division of Local Government
3 Services, a written detailed description of the process to be
4 followed in securing said services. Within 30 days after receipt of
5 the written description the director shall, if the director finds that
6 the process provides for fair competition and integrity in the
7 negotiation process, approve, in writing, the description submitted
8 by the contracting unit. If the director finds that the process does
9 not provide for fair competition and integrity in the negotiation
10 process, the director shall advise the contracting unit of the
11 deficiencies that must be remedied. If the director fails to respond
12 in writing to the contracting unit within 30 days, the procurement
13 process as described shall be deemed approved. As used in this
14 section, "collection" means the physical removal of recyclable
15 materials from curbside or any other location selected by the
16 contracting unit.

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

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

43

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

46 15. All contracts for the provision or performance of goods or
47 services shall be awarded for a period not to exceed 24 consecutive
48 months, except that contracts for professional services pursuant to

1 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
2 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
3 exceed 12 consecutive months. Contracts may be awarded for
4 longer periods of time as follows:

5 (1) Supplying of:

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

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

8 (c) Thermal energy produced by a cogeneration facility, for use
9 for heating or air conditioning or both, for any term not exceeding
10 40 years, when the contract is approved by the Board of Public
11 Utilities. For the purposes of this paragraph, "cogeneration" means
12 the simultaneous production in one facility of electric power and
13 other forms of useful energy such as heating or process steam;

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

15 (3) The collection and disposal of municipal solid waste, the
16 collection and disposition of recyclable material, or the disposal of
17 sewage sludge, for any term not exceeding in the aggregate, five
18 years;

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

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

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

45 (7) Leasing or servicing of (a) automobiles, motor vehicles,
46 machinery and equipment of every nature and kind, for a period not
47 to exceed five years, or (b) machinery and equipment used in the
48 generation of electricity by a contracting unit engaged in the

1 generation of electricity, for a period not to exceed 20 years;
2 provided, however, such contracts shall be awarded only subject to
3 and in accordance with the rules and regulations promulgated by the
4 Director of the Division of Local Government Services in the
5 Department of Community Affairs;

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

9 (9) Any single project for the construction, reconstruction or
10 rehabilitation of any public building, structure or facility, or any
11 public works project, including the retention of the services of any
12 architect or engineer in connection therewith, for the length of time
13 authorized and necessary for the completion of the actual
14 construction;

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

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

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

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

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

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

30 (16) The provision of water supply services or the designing,
31 financing, construction, operation, or maintenance, or any
32 combination thereof, of a water supply facility, or any component
33 part or parts thereof, including a water filtration system, for a period
34 not to exceed 40 years, when the contract for these services is
35 approved by the Division of Local Government Services in the
36 Department of Community Affairs, the Board of Public Utilities,
37 and the Department of Environmental Protection pursuant to
38 P.L.1985, c.37 (C.58:26-1 et al.), except that no such approvals
39 shall be required for those contracts otherwise exempted pursuant to
40 subsection (30), (31), (34), (35) or (43) of this section. For the
41 purposes of this subsection, "water supply services" means any
42 service provided by a water supply facility; "water filtration
43 system" means any equipment, plants, structures, machinery,
44 apparatus, or land, or any combination thereof, acquired, used,
45 constructed, rehabilitated, or operated for the collection,
46 impoundment, storage, improvement, filtration, or other treatment
47 of drinking water for the purposes of purifying and enhancing water
48 quality and insuring its portability prior to the distribution of the

1 drinking water to the general public for human consumption,
2 including plants and works, and other personal property and
3 appurtenances necessary for their use or operation; and "water
4 supply facility" means and refers to the real property and the plants,
5 structures, interconnections between existing water supply facilities,
6 machinery and equipment and other property, real, personal and
7 mixed, acquired, constructed or operated, or to be acquired,
8 constructed or operated, in whole or in part by or on behalf of a
9 political subdivision of the State or any agency thereof, for the
10 purpose of augmenting the natural water resources of the State and
11 making available an increased supply of water for all uses, or of
12 conserving existing water resources, and any and all appurtenances
13 necessary, useful or convenient for the collecting, impounding,
14 storing, improving, treating, filtering, conserving or transmitting of
15 water and for the preservation and protection of these resources and
16 facilities and providing for the conservation and development of
17 future water supply resources;

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

40 (18) The sale of electricity or thermal energy, or both, produced
41 by a resource recovery facility for a period not to exceed 40 years
42 when the contract is approved by the Board of Public Utilities, and
43 when the resource recovery facility is in conformance with a district
44 solid waste management plan approved pursuant to P.L.1970, c.39
45 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource
46 recovery facility" means a solid waste facility constructed and
47 operated for the incineration of solid waste for energy production
48 and the recovery of metals and other materials for reuse; or a

1 mechanized composting facility, or any other facility constructed or
2 operated for the collection, separation, recycling, and recovery of
3 metals, glass, paper, and other materials for reuse or for energy
4 production;

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

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

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

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

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

36 (24) The purchase of electricity or administrative or dispatching
37 services related to the transmission of such electricity, from a
38 supplier of electricity subject to the jurisdiction of a federal
39 regulatory agency, from a qualifying small power producing facility
40 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or
41 from any supplier of electricity within any regional transmission
42 organization or independent system operator or from such
43 organization or operator or their successors, by a contracting unit
44 engaged in the generation of electricity for retail sale, as of May 24,
45 1991, for a term not to exceed 40 years, or by a contracting unit
46 engaged solely in the distribution of electricity for retail sale for a
47 term not to exceed ten years, except that a contract with a
48 contracting unit, engaged solely in the distribution of electricity for

1 retail sale, in excess of ten years, shall require the written approval
2 of the Director of the Division of Local Government Services. If
3 the director fails to respond in writing to the contracting unit within
4 10 business days, the contract shall be deemed approved;

5 (25) Basic life support services, for a period not to exceed five
6 years. For the purposes of this subsection, "basic life support"
7 means a basic level of prehospita! care, which includes but need not
8 be limited to patient stabilization, airway clearance,
9 cardiopulmonary resuscitation, hemorrhage control, initial wound
10 care and fracture stabilization;

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

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

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

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

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

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

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

46 (33) The supplying of any product or the rendering of any
47 service, including consulting services, by a cemetery management
48 company for the maintenance and preservation of a municipal

1 cemetery operating pursuant to the "New Jersey Cemetery Act,"
2 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

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

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

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

17 (37) The operation and management of a facility under a license
18 issued or permit approved by the Department of Environmental
19 Protection, including a wastewater treatment system or a water
20 supply or distribution facility, as the case may be, for any term of
21 not more than ten years. For the purposes of this subsection,
22 "wastewater treatment system" refers to facilities operated or
23 maintained for the storage, collection, reduction, disposal, or other
24 treatment of wastewater or sewage sludge, remediation of
25 groundwater contamination, stormwater runoff, or the final disposal
26 of residues resulting from the treatment of wastewater; and "water
27 supply or distribution facility" refers to facilities operated or
28 maintained for augmenting the natural water resources of the State,
29 increasing the supply of water, conserving existing water resources,
30 or distributing water to users;

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

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

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

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

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

44 (43) A contract between the governing body of a city of the first
45 class and a duly incorporated nonprofit association for the provision
46 of water supply services as defined in subsection (16) of this
47 section, or wastewater treatment services as defined in subsection

1 (19) of this section, may be entered into for a period not to exceed
2 40 years;

3 (44) The purchase of electricity generated through class I
4 renewable energy or from a power production facility that is fueled
5 by methane gas extracted from a landfill in the county of the
6 contracting unit for any term not exceeding 25 years;

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

18 (46) A power supply contract, as defined pursuant to section
19 3 of P.L. , c. (C.) (pending before the Legislature as this
20 bill), between a contracting unit and the municipal shared services
21 energy authority established pursuant to the provisions of P.L. ,
22 c. (C.) (pending before the Legislature as this bill) to meet the
23 electric power needs of its members, for the lease, operation, or
24 management of electric generation or the purchase of electricity, or
25 the purchase of fuel for generating units for a term not to exceed 40
26 years.

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

42 All multiyear leases and contracts entered into pursuant to this
43 section, including any two-year or one-year extensions, except
44 contracts involving the supplying of electricity for the purpose of
45 lighting public streets and contracts for thermal energy authorized
46 pursuant to subsection (1) above, construction contracts authorized
47 pursuant to subsection (9) above, contracts for the provision or
48 performance of goods or services or the supplying of equipment to

1 promote energy conservation through the production of class I
2 renewable energy or class II renewable energy authorized pursuant
3 to subsection (45) above, contracts for water supply services or for
4 a water supply facility, or any component part or parts thereof
5 authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or
6 (43) above, contracts for resource recovery services or a resource
7 recovery facility authorized pursuant to subsection (17) above,
8 contracts for the sale of energy produced by a resource recovery
9 facility authorized pursuant to subsection (18) above, contracts for
10 wastewater treatment services or for a wastewater treatment system
11 or any component part or parts thereof authorized pursuant to
12 subsection (19), (36), (37) or (43) above, and contracts for the
13 purchase of electricity or administrative or dispatching services
14 related to the transmission of such electricity authorized pursuant to
15 subsection (24) above **[and]**, contracts for the purchase of
16 electricity generated from a power production facility that is fueled
17 by methane gas authorized pursuant to subsection (44) above, and
18 power supply contracts authorized pursuant to subsection (46)
19 respectively, shall contain a clause making them subject to the
20 availability and appropriation annually of sufficient funds as may
21 be required to meet the extended obligation, or contain an annual
22 cancellation clause.

23 The Division of Local Government Services in the Department
24 of Community Affairs shall adopt and promulgate rules and
25 regulations concerning the methods of accounting for all contracts
26 that do not coincide with the fiscal year.

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

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

36

37 29. (New section) The powers granted under P.L. ,
38 c. (C.) (pending before the Legislature as this bill) shall not
39 limit the powers of municipalities to enter into shared service
40 agreements or contracts, or to establish separate legal entities
41 pursuant to State law or otherwise to carry out their powers under
42 applicable statutory provisions, nor shall the powers granted under
43 P.L. , c. (C.) (pending before the Legislature as this bill)
44 limit the powers reserved to municipalities by State law.

45

46 30. This act shall take effect immediately.

STATEMENT

This bill would authorize three or more municipalities that operate retail electric distribution systems to establish a municipal shared services energy authority. Once established, the bill would authorize rural electric cooperatives to become a member of the authority.

The bill would authorize the authority to purchase, sell, exchange or transmit at wholesale, power or energy inside and outside of New Jersey. The authority would be authorized to enter into wholesale power supply contracts for the purchase or sale of electric power or energy to meet the electric power needs of its members and for the wholesale sale of any excess power. The bill authorizes such power supply contracts to extend for a term not to exceed 40 years. In addition, the authority would have the power to develop, finance, construct, own, operate, manage, or repair electric supply projects for the generation and transmission of electrical power and energy at wholesale, to meet the energy needs of the members of the authority. The authority would have the power to purchase, sell, lease, and make other arrangements, contractual and otherwise, with respect to generation, transmission, pooling, and provision of electric power and energy at wholesale.

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

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

The committee amendments would:

(1) change the shared service entity from a company to an authority;

(2) revise the formation process of the shared services authority to reflect that it is a public authority;

(3) provide for oversight of certain functions by the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs;

- 1 (4) narrow and clarify the powers and authority of the municipal
- 2 shared services entity created in the bill, including the deletion of
- 3 the authority's power to exercise eminent domain;
- 4 (5) narrow the definition of electric supply project; and
- 5 (6) make other clarifying and technical changes to the bill.