

SENATE, No. 2329

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1997

By Senator SINAGRA

1 AN ACT concerning contracts between municipalities and private firms
2 for the aggregation of energy services, amending R.S.40:48-1 and
3 P.L.1971, c.198 and supplementing Title 40 of the Revised
4 Statutes.

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

8
9 1. (New section) Sections 1 through 10 of P.L. , c. (C.) (now
10 before the Legislature as this bill) shall be known and may be cited as
11 the “New Jersey Municipal Energy Services Aggregation Act.”

12
13 2. (New section) The Legislature finds and declares that it is in the
14 public interest of the State to foster, promote and encourage by all
15 reasonable means the provision of affordable and reliable supplies of
16 electricity and gas and related products and services to the general
17 public; that lower energy costs and increased efficiency in the use of
18 energy supplies is important in promoting the general welfare of the
19 residents of each municipality; and that enabling consumers to
20 voluntarily aggregate their purchases of electricity and gas, together
21 with other related energy products and services, in order to lower the
22 overall cost thereof should be strongly encouraged and facilitated.

23 The Legislature further finds and declares that aggregation has the
24 potential of enabling consumers to take advantage of developments
25 and innovations in emerging energy technology products and services
26 that might not otherwise be as readily available without aggregation;
27 that at some future date retail customers will be permitted to choose
28 their electricity and gas suppliers; and that retail customers will only
29 be able to maximize the benefits of expanded retail choice in energy
30 services markets if the municipalities in which they reside or conduct
31 business are authorized by law to act as agents on their behalf.

32 The Legislature therefore determines that it is in the public interest
33 to establish a comprehensive procedure designed to authorize
34 municipalities to enter into contracts with private firms to facilitate the

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

Matter underlined thus is new matter.

1 voluntary aggregation by consumers for the purchase of electricity and
2 gas, together with related energy products and services.

3

4 3. (New section) As used in sections 1 through 10 of P.L. , c.
5 (C.) (now before the Legislature as this bill):

6 "Contract" means a written agreement between a contracting unit
7 and a private firm wherein the private firm agrees to provide energy
8 services to energy consumers within the territorial jurisdiction of a
9 contracting unit pursuant to an energy services aggregation program;

10 "Contracting unit" means a municipality or municipal corporation
11 as defined pursuant to R.S.40:42-1, or a group of municipalities that
12 enters into a contract pursuant to the "Interlocal Services Act,"
13 P.L.1973, c.208 (C.40:8A-1 et seq.), that acts as an agent in the
14 procurement of energy services pursuant to a written contract;

15 "Energy consumer" means a business or residential energy
16 consumer located within the territorial jurisdiction of a contracting
17 unit;

18 "Energy services" means the retail supply of the commodity of
19 electricity or gas, of other related energy products or services, or of
20 any combination thereof, which are provided pursuant to P.L. , c.
21 (C.) (now before the Legislature as this bill), and which shall not
22 include regulated distribution services;

23 "Energy services aggregation program" means a program and
24 procedure pursuant to which a contracting unit may act as an agent for
25 energy consumers located within its territorial jurisdiction in the
26 procurement of energy services pursuant to a written contract;

27 "Private firm" means any public utility subject to the jurisdiction of
28 the Board of Public Utilities, or any other privately or publicly held
29 company qualified to do business and having an office in the State of
30 New Jersey that is licensed or otherwise authorized by the Board of
31 Public Utilities to engage in the retail sale of gas or electricity, as
32 applicable, and that is financially, technically, and administratively
33 capable of providing energy services to energy consumers under the
34 terms of a contract entered into pursuant to P.L. , c. (C.) (now
35 before the Legislature as this bill); and

36 "Proposal document" means a document prepared by or on behalf
37 of a contracting unit describing the energy services to be procured by
38 a contracting unit from a private firm pursuant to a contract, and shall
39 include specific minimum qualifications that a private firm shall meet,
40 as well as the criteria that will be used by a contracting unit to evaluate
41 a proposal submitted by a private firm.

42

43 4. (New section) Notwithstanding the provisions of any other law,
44 rule or regulation to the contrary, a contracting unit may enter into a
45 contract with a private firm for the provision of energy services

1 pursuant to P.L. c. (C.) (now before the Legislature as this
2 bill).

3
4 5. (New section) a. A contracting unit that wishes to establish an
5 energy services aggregation program shall publish a request for
6 proposals to enter into a contract pursuant to P.L. , c. (C.) (now
7 before the Legislature as this bill) in at least one newspaper of general
8 circulation in the territorial jurisdiction of the contracting unit and one
9 newspaper of broad regional circulation. A contracting unit that
10 publishes a request for proposals to enter into a contract shall notify
11 in writing the Board of Public Utilities, the Division of Local
12 Government Services in the Department of Community Affairs, and
13 the Division of the Ratepayer Advocate, or their successors. Such
14 notification shall include one copy each of the request for proposals
15 and the proposal document. A contracting unit may request technical
16 assistance from the Division of the Ratepayer Advocate.

17 b. The request for proposals required under subsection a. of this
18 section shall contain the following minimum information:

19 (1) The type of energy services desired;

20 (2) The name, address and phone number of a person who can
21 provide a proposal document and any additional information upon
22 request; and

23 (3) A deadline date for the submission of proposals by private firms
24 to the contracting unit that shall be not less than 30 days from the date
25 of the publication of the request for proposals.

26 c. The contracting unit may, prior to the submission deadline,
27 revise the proposal document provided that the contracting unit meets
28 all of the requirements set forth pursuant to subsections a. and b. of
29 this section.

30

31 6. (New section) a. The contracting unit shall conduct a review
32 of the proposals submitted by private firms to determine which
33 proposals meet the minimum qualifications and standards outlined in
34 the proposal document and as set forth in rules and regulations
35 adopted by the Board of Public Utilities. The review shall be
36 conducted in a manner that avoids disclosure of the contents of a
37 proposal to any private firm submitting a competing proposal. The
38 contracting unit may conduct discussions with a private firm
39 submitting a qualified proposal for the purpose of clarifying the
40 submitted information. The contracting unit may at any time revise the
41 proposal document after the review of the submitted proposals if it
42 notifies simultaneously and in writing each private firm that submitted
43 a proposal of the revision and provides a time frame of not less than
44 20 days within which a private firm may submit a revised proposal.

45 b. A contracting unit may select one qualified proposal from
46 among those submitted. The contracting unit may negotiate a

1 proposed contract with the private firm that submitted the selected
2 proposal. If the contracting unit is unable to negotiate a satisfactory
3 proposed contract with the private firm first selected, it may select
4 another qualified proposal from among those submitted and negotiate
5 a proposed contract with the private firm that submitted the proposal.
6 The contracting unit shall set forth in writing the reasons for the
7 selection of the qualified proposal submitted by the private firm with
8 which the contracting unit has negotiated a proposed contract and
9 shall make this document and the proposed contract available to the
10 public upon request and at the public hearing conducted pursuant to
11 section 7 of P.L. , c. (C.) (now before the Legislature as this bill).

12 c. A contract entered into pursuant to P.L. , c. (C.) (now
13 before the Legislature as this bill) shall include the following
14 provisions:

15 (1) The specific responsibilities of the contracting unit and the
16 private firm in connection with the energy services aggregation
17 program;

18 (2) The charges, rates, fees, or formulas to be used to determine the
19 charges, rates, or fees, to be charged to the energy consumers electing
20 to receive energy services pursuant to the energy services aggregation
21 program;

22 (3) The methods and procedures to be followed by the private firm
23 to solicit participation in the energy services aggregation program
24 including, but not necessarily limited to, mechanisms to educate energy
25 consumers concerning the provisions of the energy services
26 aggregation program;

27 (4) The proposed terms and conditions of a standard contract
28 between energy consumers and the private firm including, but not
29 necessarily limited to:

30 (a) the allocation of the risks in connection with the provision of
31 such services between the private firm and the energy consumers
32 receiving such services;

33 (b) the term of the proposed contract;

34 (c) the allocation of the risks associated with circumstances or
35 occurrences beyond the control of the parties to the contract; and

36 (d) default and remedies.

37 (5) The use of contracting unit resources, equipment, systems or
38 employees in connection with such services;

39 (6) The proposed term of the contract with the contracting unit;

40 (7) A provision indemnifying and holding the contracting unit
41 harmless from all liabilities, damages and costs associated with any
42 contract between a resident of the contracting unit and the private
43 firm;

44 (8) The requirements for the provision of a performance bond by
45 the private firm, if so required by the contracting unit;

46 (9) Procedures to ensure that participation in the energy services

1 aggregation program is the result of an affirmative choice by energy
2 consumers and consistent with regulations adopted by the Board of
3 Public Utilities;

4 (10) Terms and conditions applicable to consumer protection as
5 provided in rules and regulations adopted by the Board of Public
6 Utilities, in consultation with the Division of Consumer Affairs in the
7 Department of Law and Public Safety;

8 (11) Such other terms and conditions as the contracting unit deems
9 necessary; and

10 (12) Any other terms and conditions that are negotiated by the
11 contracting unit and the private firm.

12 d. No concession fees or other direct monetary benefit shall be paid
13 to any contracting unit by, or on behalf of, a private firm as a result of
14 the contract; provided, however, that nothing in this subsection shall
15 be deemed to prohibit the payment of compensation by a private firm
16 to a contracting unit for in-kind services actually provided by the
17 contracting unit to the private firm pursuant to such contract.

18 e. A private firm shall be subject to the prohibitions against
19 political contributions in accordance with the provisions of R.S.19:34-
20 45.

21

22 7. (New section) a. A contracting unit that intends to enter into
23 a contract pursuant to P.L. , c. (C.) (now before the Legislature
24 as this bill) shall conduct a public hearing on the proposed contract
25 negotiated pursuant to section 6 of P.L. , c. (C.) (now before the
26 Legislature as this bill). A contracting unit that has entered into a
27 contract pursuant to P.L. , c. (C.) (now before the Legislature as
28 this bill) and that proposes to revise such contract shall conduct a
29 public hearing on the proposed revision.

30 b. At least 14 days prior to a public hearing required pursuant to
31 subsection a. of this section, the contracting unit shall publish notice
32 of the public hearing in at least one newspaper of general circulation
33 in the territorial jurisdiction of the contracting unit. The publication
34 shall include notice of the date, time and place of the public hearing,
35 notice of the place at which copies of the proposed contract or the
36 proposed revisions to an existing contract, as applicable, will be
37 available for public inspection, and the times during which such
38 inspection will be permitted.

39 c. At the public hearing, the contracting unit shall explain the terms
40 and conditions of the proposed contract or the proposed revisions to
41 an existing contract, as applicable, and shall answer questions raised
42 by prospective energy consumers and other interested parties. The
43 contracting unit shall explain during the hearing the charges, rates or
44 fees that will or may be charged, as well as the principal terms and
45 conditions of related contracts with residents of the contracting unit,
46 for the supply of energy services as a result of the proposed contract

1 or the proposed revisions to an existing contract, as applicable, as well
2 as such other matters as the contracting unit deems appropriate.

3 d. The official record of the public hearing shall be kept open for
4 a period of seven days following the conclusion of the hearing, during
5 which time interested parties may submit written statements to be
6 included in the record. The contracting unit shall prepare a written
7 transcript, which shall include a copy of the proposed contract or the
8 proposed revisions to an existing contract, as applicable, a copy of the
9 statement setting forth the contracting unit's reasons for the selection
10 of the proposal submitted by the private firm with which the
11 contracting unit has negotiated a contract, or in the case of a proposed
12 revision to an existing contract, a copy of the statement setting forth
13 the contracting unit's reasons for revising the contract, the official
14 record of the public hearing, and a statement prepared by the
15 contracting unit summarizing the major issues raised at the public
16 hearing and the contracting unit's specific responses to those issues.
17 The contracting unit shall provide public notice of the availability of
18 the transcript by publication in at least one newspaper of general
19 circulation in the territorial jurisdiction of the contracting unit. The
20 contracting unit shall make copies of the transcript available to
21 interested parties upon request at a cost not to exceed the actual cost
22 of printing or copying the transcript.

23 e. The governing body of a contracting unit that has negotiated the
24 proposed contract or the proposed revisions to an existing contract,
25 as applicable, shall adopt an ordinance authorizing the same. The
26 ordinance may be introduced at the first meeting of the governing body
27 of the contracting unit held no less than 14 days after the transcript is
28 made available to the public pursuant to subsection d. of this section.

29
30 8. (New section) A contract entered into pursuant to P.L. , c.
31 (C.) (now before the Legislature as this bill), shall only be effective
32 upon the issuance of final orders of the Board of Public Utilities, or
33 upon the enactment into law of legislation, providing for the
34 deregulation of gas, electricity, or related energy services, or any
35 combination thereof.

36
37 9. (New section) A contracting unit shall provide all energy
38 consumers with the opportunity to participate in an energy services
39 aggregation program on a voluntary basis and in a clear and consistent
40 manner. Energy consumers who do not voluntarily and affirmatively
41 choose to participate in an energy services aggregation program shall
42 continue to be entitled to contract with and purchase energy services
43 from any corporation or entity authorized by law to engage in the
44 retail sale of such energy services.

45
46 10. (New section) The Board of Public Utilities, in consultation

1 with the Division of Consumer Affairs in the Department of Law and
2 Public Safety, shall adopt, pursuant to the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations
4 necessary to effectuate the purposes of this act.

5
6 11. R.S.40:48-1 (C.40:48-1) is amended to read as follows:

7 The governing body of every municipality may make, amend, repeal
8 and enforce ordinances to:

9 Finances and property. 1. Manage, regulate and control the
10 finances and property, real and personal, of the municipality;

11 Contracts and contractor's bonds. 2. Prescribe the form and
12 manner of execution and approval of all contracts to be executed by
13 the municipality and of all bonds to be given to it;

14 Officers and employees; duties, terms and salaries. 3. Prescribe
15 and define, except as otherwise provided by law, the duties and terms
16 of office or employment, of all officers and employees; and to provide
17 for the employment and compensation of such officials and
18 employees, in addition to those provided for by statute, as may be
19 deemed necessary for the efficient conduct of the affairs of the
20 municipality;

21 Fees. 4. Fix the fees of any officer or employee of the
22 municipality for any service rendered in connection with his office or
23 position, for which no specific fee or compensation is provided. In the
24 case of salaried officers or employees, such fee shall be paid into the
25 municipal treasury;

26 Salaries instead of fees; disposition of fees. 5. Provide that any
27 officer or employee receiving compensation for his services, in whole
28 or in part by fees, whether paid by the municipality or otherwise, shall
29 be paid a salary to be fixed in the ordinance, and thereafter all fees
30 received by such officer or employee shall be paid into the municipal
31 treasury;

32 Maintain order. 6. Prevent vice, drunkenness and immorality;
33 to preserve the public peace and order; to prevent and quell riots,
34 disturbances and disorderly assemblages;

35 Punish beggars; prevention of loitering. 7. Restrain and punish
36 drunkards, vagrants, mendicants and street beggars; to prevent
37 loitering, lounging or sleeping in the streets, parks or public places;

38 Auctions and noises. 8. Regulate the ringing of bells and the
39 crying of goods and other commodities for sale at auction or
40 otherwise, and to prevent disturbing noises;

41 Swimming; bathing costume. 9. Regulate or prohibit swimming
42 or bathing in the waters of, in, or bounding the municipality, and to
43 regulate or prohibit persons from appearing upon the public streets,
44 parks and places clad in bathing costumes or robes, or costumes of a
45 similar character;

46 Prohibit annoyance of persons or animals. 10. Regulate or

1 prohibit any practice tending to frighten animals, or to annoy or injure
2 persons in the public streets;

3 Animals; pounds; establishment and regulation. 11. Establish
4 and regulate one or more pounds, and to prohibit or regulate the
5 running at large of horses, cattle, dogs, swine, goats and other
6 animals, and to authorize their impounding and sale for the penalty
7 incurred, and the costs of impounding, keeping and sale; to regulate
8 or prohibit the keeping of cattle, goats or swine in any part of the
9 municipality; to authorize the destruction of dogs running at large
10 therein;

11 Hucksters. 12. Prescribe and regulate the place of vending or
12 exposing for sale articles of merchandise from vehicles;

13 Building regulations; wooden structures. 13. Regulate and
14 control the construction, erection, alteration and repair of buildings
15 and structures of every kind within the municipality; and to prohibit,
16 within certain limits, the construction, erection or alteration of
17 buildings or structures of wood or other combustible material;

18 Inflammable materials; inspect docks and buildings. 14. Regulate
19 the use, storage, sale and disposal of inflammable or combustible
20 materials, and to provide for the protection of life and property from
21 fire, explosions and other dangers; to provide for inspections of
22 buildings, docks, wharves, warehouses and other places, and of goods
23 and materials contained therein, to secure the proper enforcement of
24 such ordinance;

25 Dangerous structures; removal or destruction; procedure. 15.
26 Provide for the removal or destruction of any building, wall or
27 structure which is or may become dangerous to life or health, or
28 might tend to extend a conflagration; and to assess the cost thereof as
29 a municipal lien against the premises;

30 Chimneys and boilers. 16. Regulate the construction and setting
31 up of chimneys, furnaces, stoves, boilers, ovens and other contrivances
32 in which fire is used;

33 Explosives. 17. Regulate, in conformity with the statutes of this
34 State, the manufacture, storage, sale, keeping or conveying of
35 gunpowder, nitroglycerine, dynamite and other explosives;

36 Firearms and fireworks. 18. Regulate and prohibit the sale and
37 use of guns, pistols, firearms, and fireworks of all descriptions;

38 Soft coal. 19. Regulate the use of soft coal in locomotives,
39 factories, power houses and other places;

40 Theatres, schools, churches and public places. 20. Regulate the
41 use of theatres, cinema houses, public halls, schools, churches, and
42 other places where numbers of people assemble, and the exits
43 therefrom, so that escape therefrom may be easily and safely made in
44 case of fire or panic; and to regulate any machinery, scenery, lights,
45 wires and other apparatus, equipment or appliances used in all places
46 of public amusement;

1 Excavations. 21. Regulate excavations below the established
2 grade or curb line of any street, not greater than eight feet, which the
3 owner of any land may make, in the erection of any building upon his
4 own property; and to provide for the giving of notice, in writing, of
5 such intended excavation to any adjoining owner or owners, and that
6 they will be required to protect and care for their several foundation
7 walls that may be endangered by such excavation; and to provide that
8 in case of the neglect or refusal, for 10 days, of such adjoining owner
9 or owners to take proper action to secure and protect the foundations
10 of any adjacent building or other structure, that the party or parties
11 giving such notice, or their agents, contractors or employees, may
12 enter into and upon such adjoining property and do all necessary work
13 to make such foundations secure, and may recover the cost of such
14 work and labor in so protecting such adjacent property; and to make
15 such further and other provisions in relation to the proper conduct
16 and performance of said work as the governing body or board of the
17 municipality may deem necessary and proper;

18 Sample medicines. 22. Regulate and prohibit the distribution,
19 depositing or leaving on the public streets or highways, public places
20 or private property, or at any private place or places within any such
21 municipality, and medicine, medicinal preparation or preparations
22 represented to cure ailments or diseases of the body or mind, or any
23 samples thereof, or any advertisements or circulars relating thereto,
24 but no ordinance shall prohibit a delivery of any such article to any
25 person above the age of 12 years willing to receive the same;

26 Boating. 23. Regulate the use of motor and other boats upon
27 waters within or bounding the municipality;

28 Fire escapes. 24. Provide for the erection of fire escapes on
29 buildings in the municipality, and to provide rules and regulations
30 concerning the construction and maintenance of the same, and for the
31 prevention of any obstruction thereof or thereon;

32 Care of injured employees. 25. Provide for the payment of
33 compensation and for medical attendance to any officer or employee
34 of the municipality injured in the performance of his duty;

35 Bulkheads and other structures. 26. Fix and determine the lines
36 of bulkheads or other works or structures to be erected, constructed
37 or maintained by the owners of lands facing upon any navigable water
38 in front of their lands, and in front of or along any highway or public
39 lands of said municipality, and to designate the materials to be used,
40 and the type, height and dimensions thereof;

41 Lifeguard. 27. Establish, maintain, regulate and control a
42 lifeguard upon any beach within or bordering on the municipality;

43 Appropriation for life-saving apparatus. 28. Appropriate moneys
44 to safeguard people from drowning within its borders, by location of
45 apparatus or conduct of educational work in harmony with the plans
46 of the United States volunteer life-saving corps in this State;

1 Fences. 29. Regulate the size, height and dimensions of any
2 fences between the lands of adjoining owners, whether built or erected
3 as division or partition fences between such lands, and whether the
4 same exist or be erected entirely or only partly upon the lands of any
5 such adjoining owners, or along or immediately adjacent to any
6 division or partition line of such lands. To provide, in such ordinance,
7 the manner of securing, fastening or shoring such fences. In the case
8 of fences thereafter erected contrary to the provisions thereof, the
9 governing body may provide for a penalty for the violation of such
10 ordinance, and in the case of such fence or fences erected or existing
11 at the time of the passage of any such ordinance, may provide therein
12 for the removal, change or alteration thereof, so as to make such
13 fence or fences comply with the provisions of any such ordinance;

14 Advertise municipality. 30. Appropriate funds for advertising the
15 advantages of the municipality.

16 Energy Services Aggregation Programs. 31. Establish programs
17 and procedures pursuant to which the municipality may act as an agent
18 for its energy consumers in the procurement of either electricity or gas
19 supplies or other related products and services or any combination
20 thereof pursuant to a written contract entered into pursuant to P.L. ,
21 c. (C.) (now before the Legislature as this bill).

22 Notwithstanding the provisions of any other law, rule or regulation
23 to the contrary, a municipality providing energy aggregation services
24 pursuant to P.L. , c. (C.) (now before the Legislature as this bill)
25 shall not be deemed to be a public utility pursuant to R.S.40:62-24 or
26 R.S.48:1-1 et seq. or be deemed to be operating any form of public
27 utility service pursuant to R.S.40:62-1 et seq., to the extent such
28 municipality is solely engaged in the provision of such aggregation
29 service and not otherwise owning or operating any plant or facility for
30 the production or distribution of gas, electricity, steam or other
31 product as provided in R.S.40:62-12.

32 (cf: P.L.1979, c.43, s.1)

33

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

36 5. Exceptions. Any purchase, contract or agreement of the
37 character described in section 4 of P.L.1971, c.198 (C.40A:11-4) may
38 be made, negotiated or awarded by the governing body without public
39 advertising for bids and bidding therefor if:

40 (1) The subject matter thereof consists of:

41 (a) (i) Professional services. The governing body shall in each
42 instance state supporting reasons for its action in the resolution
43 awarding each contract and shall forthwith cause to be printed once,
44 in a newspaper authorized by law to publish its legal advertisements,
45 a brief notice stating the nature, duration, service and amount of the
46 contract, and that the resolution and contract are on file and available

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

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

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

17 (d) The furnishing of a tax map or maps for the contracting party;

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

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

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

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

28 (i) Equipment repair service if in the nature of an extraordinary
29 unspecifiable service and necessary parts furnished in connection with
30 such service, which exception shall be in accordance with the
31 requirements for extraordinary unspecifiable services;

32 (j) The publishing of legal notices in newspapers as required by
33 law;

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

36 (l) Election expenses;

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

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

42 (o) The provision of any service or the furnishing of materials
43 including those of a commercial nature, attendant upon the operation
44 of a restaurant by any nonprofit, duly incorporated, historical society
45 at or on any historical preservation site;

1 (p) Homemaker--home health services performed by voluntary,
2 nonprofit agencies;

3 (q) The purchase of materials and services for a law library
4 established pursuant to R.S.40:33-14, including books, periodicals,
5 newspapers, documents, pamphlets, photographs, reproductions,
6 microforms, pictorial or graphic works, copyright and patent materials,
7 maps, charts, globes, sound recordings, slides, films, filmstrips, video
8 and magnetic tapes, and other audiovisual, printed, or published
9 material of a similar nature; necessary binding or rebinding of law
10 library materials; and specialized library services;

11 (r) On-site inspections undertaken by private agencies pursuant to
12 the "State Uniform Construction Code Act," P.L.1975, c.217
13 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

14 (s) The marketing of recyclable materials recovered through a
15 recycling program, or the marketing of any product intentionally
16 produced or derived from solid waste received at a resource recovery
17 facility or recovered through a resource recovery program, including,
18 but not limited to, refuse-derived fuel, compost materials, methane
19 gas, and other similar products;

20 (t) Emergency medical services provided by a hospital to the
21 residents of a municipality or county, provided that: (a) such
22 exception be allowed only after the governing body determines that the
23 emergency services are available only from one provider; and (b) if
24 the contract is awarded without advertising for bids or bidding the
25 governing body shall in each instance state supporting reasons for its
26 action in a resolution awarding the contract and cause to be printed
27 once in a newspaper authorized by law to publish its legal
28 advertisements a brief notice stating the nature, duration, service, and
29 amount of the contract; and (c) the contract shall be kept on file for
30 public inspection in the office of the clerk of the municipality;

31 (u) Contracting unit towing and storage contracts, provided that
32 all such contracts shall be pursuant to reasonable non-exclusionary and
33 non-discriminatory terms and conditions, which may include the
34 provision of such services on a rotating basis, at the rates and charges
35 set by the municipality pursuant to section 1 of P.L.1979, c.101
36 (C.40:48-2.49). All contracting unit towing and storage contracts for
37 services to be provided at rates and charges other than those
38 established pursuant to the terms of this paragraph shall only be
39 awarded to the lowest responsible bidder in accordance with the
40 provisions of the "Local Public Contracts Law" and without regard for
41 the value of the contract therefor. Each of the aforementioned means
42 of contracting shall be subject to any regulations adopted by the
43 Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8
44 (C.17:33B-47);

45 (v) The purchase of steam or electricity from, or the rendering of
46 services directly related to the purchase of such steam or electricity

1 from a qualifying small power production facility or a qualifying
2 cogeneration facility as defined pursuant to 16 U.S.C.796;

3 (w) The purchase of electricity or administrative or dispatching
4 services directly related to the transmission of such purchased
5 electricity by a contracting unit engaged in the generation of
6 electricity;

7 (x) The printing of municipal ordinances or other services
8 necessarily incurred in connection with the revision and codification
9 of municipal ordinances;

10 (y) An agreement for the purchase of an equitable interest in a
11 water supply facility or for the provision of water supply services
12 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
13 an agreement entered into pursuant to P.L.1989, c.109
14 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
15 later than six months after the effective date of P.L.1993, c.381;

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

18 (aa) The cooperative marketing of recyclable materials recovered
19 through a recycling program; [or]

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

22 (cc) The purchase, pursuant to an energy services aggregation
23 program established pursuant to P.L. , c. (C.) (now before the
24 Legislature as this bill), of either the commodity of electricity or gas,
25 of other related energy products or services, or of any combination
26 thereof, from any public utility subject to the jurisdiction of the Board
27 of Public Utilities or any other publicly or privately held company that
28 is licensed or otherwise authorized by the Board of Public Utilities to
29 engage in the retail sale of electricity or gas or other related energy
30 products or services, as applicable.

31 (2) It is to be made or entered into with the United States of
32 America, the State of New Jersey, county or municipality or any
33 board, body, officer, agency or authority thereof and any other state
34 or subdivision thereof.

35 (3) The contracting agent has advertised for bids pursuant to
36 section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a)
37 has received no bids on both occasions in response to its
38 advertisement, or (b) the governing body has rejected such bids on
39 two occasions because the contracting agent has determined that they
40 are not reasonable as to price, on the basis of cost estimates prepared
41 for or by the contracting agent prior to the advertising therefor, or
42 have not been independently arrived at in open competition, or (c) on
43 one occasion no bids were received pursuant to (a) and on one
44 occasion all bids were rejected pursuant to (b), in whatever sequence;
45 any such contract or agreement may then be negotiated and may be
46 awarded upon adoption of a resolution by a two-thirds affirmative vote

1 of the authorized membership of the governing body authorizing such
2 contract or agreement; provided, however, that:

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

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

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

27 Whenever a contracting unit shall determine that a bid was not
28 arrived at independently in open competition pursuant to subsection
29 (3) of this section it shall thereupon notify the county prosecutor of
30 the county in which the contracting unit is located and the Attorney
31 General of the facts upon which its determination is based, and when
32 appropriate, it may institute appropriate proceedings in any State or
33 federal court of competent jurisdiction for a violation of any State or
34 federal antitrust law or laws relating to the unlawful restraint of trade.
35 (cf: P.L.1995, c.216, s.11)

36
37 13. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
38 read as follows:

39 15. All purchases, contracts or agreements for the performing of
40 work or the furnishing of materials, supplies or services shall be made
41 for a period not to exceed 24 consecutive months, except that
42 contracts for professional services pursuant to subparagraph (i) of
43 paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198
44 (C.40A:11-5) shall be made for a period not to exceed 12 consecutive
45 months. Contracts or agreements may be entered into for longer
46 periods of time as follows:

- 1 (1) Supplying of:
 - 2 (a) (Deleted by amendment, P.L.1996, c.113.)
 - 3 (b) (Deleted by amendment, P.L.1996, c.113.)
 - 4 (c) Thermal energy produced by a cogeneration facility, for use for
5 heating or air conditioning or both, for any term not exceeding 40
6 years, when the contract is approved by the Board of Public Utilities.
7 For the purposes of this paragraph, "cogeneration" means the
8 simultaneous production in one facility of electric power and other
9 forms of useful energy such as heating or process steam;
- 10 (2) (Deleted by amendment, P.L.1977, c.53.)
- 11 (3) The collection and disposal of municipal solid waste, the
12 collection and disposition of recyclable material, or the disposal of
13 sewage sludge, for any term not exceeding in the aggregate, five years;
- 14 (4) The collection and recycling of methane gas from a sanitary
15 landfill facility, for any term not exceeding 25 years, when such
16 contract is in conformance with a district solid waste management plan
17 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
18 approval of the Division of Local Government Services in the
19 Department of Community Affairs and the Department of
20 Environmental Protection. The contracting unit shall award the
21 contract to the highest responsible bidder, notwithstanding that the
22 contract price may be in excess of the amount of any necessarily
23 related administrative expenses; except that if the contract requires the
24 contracting unit to expend funds only, the contracting unit shall award
25 the contract to the lowest responsible bidder. The approval by the
26 Division of Local Government Services of public bidding requirements
27 shall not be required for those contracts exempted therefrom pursuant
28 to section 5 of P.L.1971, c.198 (C.40A:11-5);
- 29 (5) Data processing service, for any term of not more than three
30 years;
- 31 (6) Insurance, for any term of not more than three years;
- 32 (7) Leasing or servicing of automobiles, motor vehicles, machinery
33 and equipment of every nature and kind, for a period not to exceed
34 three years; provided, however, such contracts shall be entered into
35 only subject to and in accordance with the rules and regulations
36 promulgated by the Director of the Division of Local Government
37 Services of the Department of Community Affairs;
- 38 (8) The supplying of any product or the rendering of any service by
39 a telephone company which is subject to the jurisdiction of the Board
40 of Public Utilities for a term not exceeding five years;
- 41 (9) Any single project for the construction, reconstruction or
42 rehabilitation of any public building, structure or facility, or any public
43 works project, including the retention of the services of any architect
44 or engineer in connection therewith, for the length of time authorized
45 and necessary for the completion of the actual construction;

- 1 (10) The providing of food services for any term not exceeding
2 three years;
- 3 (11) On-site inspections undertaken by private agencies pursuant to
4 the "State Uniform Construction Code Act," P.L.1975, c.217
5 (C.52:27D-119 et seq.) for any term of not more than three years;
- 6 (12) The performance of work or services or the furnishing of
7 materials or supplies for the purpose of conserving energy in buildings
8 owned by, or operations conducted by, the contracting unit, the entire
9 price of which to be established as a percentage of the resultant
10 savings in energy costs, for a term not to exceed 10 years; provided,
11 however, that such contracts shall be entered into only subject to and
12 in accordance with rules and regulations promulgated by the
13 Department of Environmental Protection establishing a methodology
14 for computing energy cost savings;
- 15 (13) The performance of work or services or the furnishing of
16 materials or supplies for the purpose of elevator maintenance for any
17 term not exceeding three years;
- 18 (14) Leasing or servicing of electronic communications equipment
19 for a period not to exceed five years; provided, however, such contract
20 shall be entered into only subject to and in accordance with the rules
21 and regulations promulgated by the Director of the Division of Local
22 Government Services of the Department of Community Affairs;
- 23 (15) Leasing of motor vehicles, machinery and other equipment
24 primarily used to fight fires, for a term not to exceed seven years,
25 when the contract includes an option to purchase, subject to and in
26 accordance with rules and regulations promulgated by the Director of
27 the Division of Local Government Services of the Department of
28 Community Affairs;
- 29 (16) The provision of water supply services or the designing,
30 financing, construction, operation, or maintenance, or any combination
31 thereof, of a water supply facility, or any component part or parts
32 thereof, including a water filtration system, for a period not to exceed
33 40 years, when the contract for these services is approved by the
34 Division of Local Government Services in the Department of
35 Community Affairs, the Board of Public Utilities, and the Department
36 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
37 al.), except for those contracts otherwise exempted pursuant to
38 subsection (30), (31), (34) or (35) of this section. For the purposes
39 of this subsection, "water supply services" means any service provided
40 by a water supply facility; "water filtration system" means any
41 equipment, plants, structures, machinery, apparatus, or land, or any
42 combination thereof, acquired, used, constructed, rehabilitated, or
43 operated for the collection, impoundment, storage, improvement,
44 filtration, or other treatment of drinking water for the purposes of
45 purifying and enhancing water quality and insuring its potability prior
46 to the distribution of the drinking water to the general public for

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

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

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

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

5 (19) The provision of wastewater treatment services or the
6 designing, financing, construction, operation, or maintenance, or any
7 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 Affairs
11 and the Department of Environmental Protection pursuant to
12 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise
13 exempted pursuant to subsection (36) of this section. For the
14 purposes of this subsection, "wastewater treatment services" means
15 any services provided by a wastewater treatment system, and
16 "wastewater treatment system" means equipment, plants, structures,
17 machinery, apparatus, or land, or any combination thereof, acquired,
18 used, constructed, or operated for the storage, collection, reduction,
19 recycling, reclamation, disposal, separation, or other treatment of
20 wastewater or sewage sludge, or for the final disposal of residues
21 resulting from the treatment of wastewater, including, but not limited
22 to, pumping and ventilating stations, facilities, plants and works,
23 connections, outfall sewers, interceptors, trunk lines, and other
24 personal property and appurtenances necessary for their operation;

25 (20) The supplying of materials or services for the purpose of
26 lighting public streets, for a term not to exceed five years, provided
27 that the rates, fares, tariffs or charges for the supplying of electricity
28 for that purpose are approved by the Board of Public Utilities;

29 (21) In the case of a contracting unit which is a county or
30 municipality, the provision of emergency medical services by a hospital
31 to residents of a municipality or county as appropriate for a term not
32 to exceed five years;

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

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

38 (24) The purchase of electricity or administrative or dispatching
39 services related to the transmission of such electricity, from a public
40 utility company subject to the jurisdiction of the Board of Public
41 Utilities, a similar regulatory body of another state, or a federal
42 regulatory agency, or from a qualifying small power producing facility
43 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
44 a contracting unit engaged in the generation of electricity for retail
45 sale, as of May 24,1991, for a term not to exceed 40 years;

46 (25) Basic life support services, for a period not to exceed five

1 years. For the purposes of this subsection, "basic life support" means
2 a basic level of prehospital care, which includes but need not be limited
3 to patient stabilization, airway clearance, cardiopulmonary
4 resuscitation, hemorrhage control, initial wound care and fracture
5 stabilization;

6 (26) Claims administration services, for any term not to exceed
7 three years;

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

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

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

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

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

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

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

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

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

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

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

29 All multiyear leases and contracts entered into pursuant to this
30 section, except contracts for the leasing or servicing of equipment
31 supplied by a telephone company which is subject to the jurisdiction
32 of the Board of Public Utilities, contracts involving the supplying of
33 electricity for the purpose of lighting public streets and contracts for
34 thermal energy authorized pursuant to subsection (1) above,
35 construction contracts authorized pursuant to subsection (9) above,
36 contracts and agreements for the provision of work or the supplying
37 of equipment to promote energy conservation authorized pursuant to
38 subsection (12) above, contracts for water supply services or for a
39 water supply facility, or any component part or parts thereof
40 authorized pursuant to subsection (16), (30), (31), (34), (35) or (37)
41 above, contracts for resource recovery services or a resource recovery
42 facility authorized pursuant to subsection (17) above, contracts for the
43 sale of energy produced by a resource recovery facility authorized
44 pursuant to subsection (18) above, contracts for wastewater treatment
45 services or for a wastewater treatment system or any component part
46 or parts thereof authorized pursuant to subsection (19), (36) or (37)

1 above, and contracts for the purchase of electricity or administrative
2 or dispatching services related to the transmission of such electricity
3 authorized pursuant to subsection (24) above, shall contain a clause
4 making them subject to the availability and appropriation annually of
5 sufficient funds as may be required to meet the extended obligation, or
6 contain an annual cancellation clause.

7 The Division of Local Government Services shall adopt and
8 promulgate rules and regulations concerning the methods of
9 accounting for all contracts that do not coincide with the fiscal year.

10 (38) A contract for a term not exceeding 5 years, which contract
11 may contain an option to extend such contract for an additional 5
12 years, when such contract is adopted pursuant to the provisions of
13 P.L. c. (C.) (now before the Legislature as this bill) and R.S.
14 40:48-1, and filed with the Division of Local Government Services in
15 the Department of Community Affairs.

16 (cf: P.L.1996, c.113, s.19)

17

18 14. This act shall become effective immediately, except that no
19 contract shall be entered into pursuant to P.L. , c. (C.) (now
20 before the Legislature as this bill) prior to the adoption of rules and
21 regulations required pursuant to section 10 of P.L. , c. (C.)
22 (now before the Legislature as this bill).

23

24

25

STATEMENT

26

27 This bill establishes the procedure by which a municipality can enter
28 into a contractual agreement with a private firm to supply electricity,
29 gas or energy related services, or any combination thereof to business
30 and residential energy consumers within its boundaries. Under the bill,
31 a private firm is defined as a public utility or a provider of energy or
32 related services that is authorized to conduct business in New Jersey.
33 This bill does not authorize contractual agreements between a
34 municipality and the local utility for distribution services. This
35 process, known as municipal aggregation, allows municipalities to
36 negotiate more economical energy purchases by offering a private firm
37 the opportunity to meet the energy needs of all or a portion of its
38 residents and businesses in one contract. This will allow business and
39 residential energy consumers to enjoy the same opportunities for
40 savings as large users of energy, such as industrial and large
41 commercial consumers.

42 While the bill authorizes the municipality to negotiate and enter into
43 an aggregation agreement on behalf of residents and businesses within
44 its boundaries, participation is completely voluntary. The municipality
45 is authorized to give a private firm the opportunity to solicit
46 participation in the aggregation program. However, actual

1 participation is still at the discretion of the individual energy consumer.

2 The bill requires a municipality to issue a request for proposals to
3 provide all energy purveyors with an opportunity to submit proposals
4 to the municipality. Once proposals are submitted, the municipality is
5 authorized to negotiate the specifics of a contract with the preferred
6 energy purveyor. Prior to entering into the final aggregation
7 agreement, the municipality is required to hold a public hearing to
8 allow for public input and to address any questions that the public may
9 have.

10 The bill requires the Board of Public Utilities (BPU) to adopt rules
11 and regulations to implement the bill's provisions, including: (1) the
12 establishment of minimum qualifications and standards to be met by
13 private firms, (2) procedures to ensure that participation in an energy
14 services aggregation program is the result of an affirmative choice by
15 the energy consumer, and (3) in consultation with the Division of
16 Consumer Affairs, the terms and conditions applicable to consumer
17 protection. The bill also provides that no contract be effective until
18 the deregulation of electricity or gas is provided by law or BPU order,
19 and until the rules and regulations required by this bill are adopted.

20 The bill also amends current law to exempt local governments from
21 public contract bidding requirements when entering into contractual
22 agreements for the purchase of energy services pursuant to the
23 provisions of this bill.

24

25

26

27

28 Provides for municipal aggregation of energy services.