

ASSEMBLY, No. 3668

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 6, 2011

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

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District 18 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Authorizes certain municipalities to establish the municipal shared services energy company.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/4/2011)

1 **AN ACT** authorizing municipal electric utilities to create the
2 municipal shared services energy company to provide for shared
3 facilities, 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 Company Law."

11
12 2. (New section) The Legislature finds and declares that:

13 a. Since 1888, municipalities in New Jersey have had the
14 power to construct and maintain facilities for the generation of
15 electricity;

16 b. Under such statutory authority, nine municipalities and one
17 rural electric cooperative presently utilize such power to own and
18 operate municipal electric utility systems for the benefit of their
19 residents and businesses;

20 c. Since 1888, the generation and distribution of electricity has
21 evolved from a local and statewide endeavor into a national
22 marketplace and such evolution has resulted in a system where the
23 size and sophistication of the market participants influence the
24 ability to efficiently compete in the marketplace;

25 d. Paramount in the present marketplace is the ability to reserve
26 sufficient electric capacity at reasonable prices to ensure safe,
27 reliable and efficient electrical power to local businesses and
28 residents, and such ability is contingent on the power to contract for
29 the generation or delivery of a sufficient quantity of power and to
30 act as a contracting partner in long term, short term, and spot
31 market power supply contracts;

32 e. Given this evolution of the electric supply marketplace, the
33 municipal electric utilities operating in New Jersey desire to act
34 jointly to achieve greater efficiencies in the procurement and
35 generation of electric power;

36 f. The operation of electric utility systems by municipalities
37 and the improvement of these systems through joint action in the
38 wholesale procurement of electricity and transmission services, and
39 in the generation, transmission and distribution of electric power
40 and energy, is in the public interest;

41 g. The establishment of the municipal shared services energy
42 company by municipalities which own or operate electric utility
43 systems will ensure the continued viability and stability of these
44 systems, by enabling these municipalities to act jointly to develop
45 coordinated bulk power and fuel supply programs, and to post

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 collateral and act as a market participant in such programs, thereby
2 providing the means to pursue efficiencies and savings for retail
3 customers;

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

12 i. Thirty seven other states have enacted statutes to allow
13 individual municipal electric utilities to act jointly to pursue such
14 marketplace efficiencies, and the Legislature has resolved to follow
15 the example developed by Delaware which enacted legislation in
16 1978 to establish the Delaware Municipal Electric Corporation
17 pursuant to 22 Del. C. s.1301 et seq. and to authorize its local
18 governments to act as efficient market participants in the national
19 electricity marketplace; and

20 j. It is therefore declared to be the policy of this State to
21 promote the welfare of its residents by authorizing municipalities
22 that operate municipal electric utilities to jointly establish a body
23 corporate and politic to be known as the "municipal shared services
24 energy company" which shall exist and operate for the purposes set
25 forth in this act. Such purposes are declared to be public purposes
26 for which public money may be spent and private property may be
27 acquired by the exercise of the power of eminent domain.

28

29 3. (New section) As used in P.L. , c. (C.) (pending
30 before the Legislature as this bill), unless a different meaning
31 clearly appears from the context:

32 "Bonds" means any bonds, interim certificates, notes,
33 debentures, or other obligations issued by the municipal shared
34 services energy company pursuant to P.L. , c. (C.)
35 (pending before the Legislature as this bill);

36 "Collateral" means cash, letters of credit, or other security of a
37 party to a power supply contract acceptable to the counterparty,
38 which shall be valued in accordance with the terms of the applicable
39 power supply contract and which shall be otherwise consistent with
40 electric industry standards in the marketplace, and which shall
41 secure the obligations of the municipal shared services energy
42 company and its counterparty under a power supply contract;

43 "Cost" means, in addition to the usual connotations thereof, the
44 cost of acquisition or construction of all or any part of an electric
45 supply project and of all or any property, rights, easements,
46 privileges, agreements, and franchises deemed by the company to
47 be necessary or useful and convenient therefor or in connection
48 therewith, including interest or discount on bonds, cost of issuance

1 of bonds, engineering and inspection costs and legal expenses, cost
2 of financial, professional and other estimates and advice,
3 organization, administrative, operating, and other expenses of the
4 municipal shared services energy company prior to and during such
5 acquisition or construction, and all such other expenses as may be
6 necessary or incident to the financing, acquisition, construction, and
7 completion of an electric supply project or part thereof, and the
8 placing of such a project in operation, and also such provision or
9 reserves for working capital, operating, maintenance or replacement
10 expenses or for payment or security of principal of, or interest on,
11 bonds during or after such acquisition or construction as the
12 company may determine, and also reimbursements to the company
13 or any county, municipality, or other person of any moneys
14 theretofore expended for the purposes of the company or to any
15 county or municipality of any moneys theretofore expended for or
16 in connection with electric utility systems and facilities;

17 "Creation contract" means a contract executed by the member
18 municipalities creating the municipal shared services energy
19 company and defining the rights and responsibilities of the
20 company and its members; as such creation contract may be
21 amended as provided herein to, among other things, add one or
22 more rural electric cooperatives as members;

23 "Electric supply project" or "project" means any plant, works,
24 system, facilities, and real and personal property of any nature
25 whatsoever, together with all parts thereof and appurtenances
26 thereto, used or useful in the generation, production, transmission,
27 distribution, purchase, sale, exchange, or interchange of electric
28 power and energy, in whole or in part, for the benefit of the
29 members including the utilization of renewable capacity and
30 energy, or any interest therein or right to capacity thereof and the
31 acquisition of fuel of any kind for any such purposes, including, but
32 not limited to, the acquisition of fuel deposits and the acquisition or
33 construction and operation of facilities for extracting fuel from
34 natural deposits, for converting it for use in another form, for
35 burning it in place, for transportation, storage and reprocessing or
36 for any energy conservation measure which involves public
37 education or the actual fitting and application of a device;

38 "Member municipality" means a municipality which joins with
39 other members to create or join the municipal shared services
40 energy company pursuant to section 4 of P.L. , c. (C.)
41 (pending before the Legislature as this bill);

42 "Member" means a member municipality or a rural electric
43 cooperative which joins in the initial or amended creation contract
44 of the municipal shared services energy company;

45 "Municipal shared services energy company" or "company"
46 means the public corporation created under P.L. , c. (C.)
47 (pending before the Legislature as this bill) by contract between

1 three or more municipalities that operate retail electric distribution
2 systems;

3 "Municipality" means a municipal corporation and includes
4 cities, towns, townships, villages and boroughs, and any
5 municipality governed by a board of commissioners or an
6 improvement commission;

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

11 "Power supply contract" means a contractual arrangement
12 between the company and another person relating to the purchase or
13 sale of electrical power and component goods or services related
14 thereto;

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

22 "Rural electric cooperative" means a non-profit utility that is
23 exclusively owned and controlled by the customers it serves, and
24 which is exempt from Board of Public Utilities jurisdiction pursuant
25 to section 1 of P.L.1983, c.78 (C.48:2-13.1).

26

27 4. (New section) a. Any combination of three or more
28 municipalities that operate retail electric distribution systems
29 pursuant to R.S.40:62-12 et seq., may, by adoption of parallel
30 ordinances approving a creation contract, establish a separate legal
31 entity to be known as the "municipal shared services energy
32 company" to be used by its members to effect joint development of
33 electric energy resources or production, distribution, and
34 transmission of electric power and energy, including the utilization
35 of renewable capacity and energy, in whole or in part, for the
36 benefit of its members. Notwithstanding any other law to the
37 contrary, following approval of the Local Finance Board within the
38 Division of Local Government Services in the Department of
39 Community Affairs pursuant to subsection b. of this section, the
40 final adoption by the municipalities of the parallel ordinances, and
41 due execution by the municipalities, the creation contract shall have
42 such term as is provided by the contract. The members that enter
43 into the creation contract may thereafter amend the contract in the
44 manner set forth by P.L. , c. (C.) (pending before the
45 Legislature as this bill).

46 b. Upon the introduction of the parallel ordinances by each
47 municipality seeking to create the company, but before final
48 adoption of the ordinances, copies of the ordinances, together with

1 the proposed creation contract shall be submitted to the Local
2 Finance Board for approval. The Local Finance Board shall not
3 unreasonably withhold approval of the proposed creation contract,
4 and if the Local Finance Board does not disapprove the contract
5 within 60 days after receipt of the proposed creation contract, then
6 the ordinances and proposed creation contract shall be deemed
7 approved.

8 c. Upon receipt of the creation contract duly executed by the
9 member municipalities, the Department of the Treasury shall record
10 the creation contract and issue a certificate of incorporation stating
11 the name of the company and the date and fact of incorporation.
12 The issuance of the certificate shall be conclusive proof that the
13 company legally exists and such company shall have the powers set
14 forth in section 8 of P.L. , c. (C.) (pending before the
15 Legislature as this bill).

16 d. Once the company has been legally established, it may add
17 member municipalities as provided in paragraphs (1) and (2) of this
18 subsection:

19 (1) A municipality requesting to become a member of the
20 company and the staff and board of directors of the company shall
21 negotiate an amended creation contract on terms and conditions
22 acceptable to the parties. Once an amended creation contract has
23 been agreed to, it shall be submitted for approval by the board of
24 directors. Adoption of an amended creation contract shall require
25 approval by a two-thirds majority vote of the full membership of the
26 board.

27 (2) The municipality requesting to become a member of the
28 company shall introduce an ordinance approving the amended
29 creation contract as approved by the board of directors of the
30 company. Upon the introduction of the ordinance, but before final
31 adoption of such ordinance, copies of the ordinance, together with
32 the proposed amended creation contract shall be submitted to the
33 Local Finance Board within the Division of Local Government
34 Services in the Department of Community Affairs, for approval.
35 The Local Finance Board shall not unreasonably withhold approval,
36 and if the Local Finance Board does not disapprove the proposed
37 amended creation contract within 60 days after receipt of the
38 proposed amended creation contract, then the ordinance and
39 proposed amended creation contract shall be deemed approved.

40 e. Once the company has been legally established, it may add
41 one or more rural electric cooperatives as a member as provided in
42 paragraphs (1) and (2) of this subsection:

43 (1) A rural electric cooperative requesting to become a member
44 of the company and the staff and board of directors of the company
45 shall negotiate an amended creation contract on terms and
46 conditions acceptable to the parties. Once an amended creation
47 contract has been agreed to, it shall be submitted for approval by
48 the board of directors. Adoption of an amended creation contract

1 shall require approval by a two-thirds majority vote of the full
2 membership of the board.

3 (2) The company shall present the proposed amended creation
4 contract for approval to the Local Finance Board within the
5 Division of Local Government Services in the Department of
6 Community Affairs. The Local Finance Board shall not
7 unreasonably withhold approval, and if the Local Finance Board
8 does not disapprove the proposed amended creation contract within
9 60 days after receipt of the proposed amended creation contract,
10 then the proposed amended creation contract shall be deemed
11 approved.

12

13 5. (New section) Any creation contract establishing the
14 municipal shared services energy company under P.L. , c. (C.)
15 (pending before the Legislature as this bill) shall specify:

16 a. The name and purpose of the company and the functions or
17 services to be provided by the company. The name may refer to the
18 company as an agency, company, group, system or other descriptive
19 title;

20 b. The establishment and organization of a governing board of
21 the company which shall be a board of directors in which all powers
22 of the company are vested. The creation contract may provide for
23 the creation by the board of an executive committee of the board to
24 which the power and duties may be delegated as the board shall
25 specify;

26 c. The number of directors, the manner of their appointment,
27 the terms of office and compensation, if any, and the procedure for
28 filling vacancies on the board. Each member municipality and
29 cooperative shall have the power to appoint one member to the
30 board of directors and shall be entitled to remove that member at
31 will;

32 d. The manner of selection of the officers of the company and
33 their duties;

34 e. The voting requirements for action by the board; but, unless
35 specifically provided otherwise, a majority of directors shall
36 constitute a quorum and a majority of the quorum shall be necessary
37 for any action taken by the board;

38 f. The duties of the board, which shall include the obligation to
39 comply or to cause compliance with P.L. , c. (C.) (pending
40 before the Legislature as this bill) and the laws of this State and, in
41 addition, with each and every term, provision and covenant in the
42 creation contract creating the company on its part to be kept or
43 performed;

44 g. The manner in which additional municipalities and rural
45 electric cooperatives may become parties to the creation contract by
46 amendment;

1 h. The manner in which members may withdraw from
2 participation in the contract, which shall include a defeasance of
3 such member's pro-rata share of any bonds issued by the company;

4 i. Provisions for the disposition, division or distribution of any
5 property or assets of the company on dissolution;

6 j. The term of the creation contract, which may be a definite
7 period or until rescinded or terminated, and the method, if any, by
8 which the creation contract may be rescinded or terminated, but the
9 creation contract may not be rescinded or terminated so long as the
10 company has bonds outstanding, unless provision for full payment
11 of such bonds, by escrow or otherwise, has been made pursuant to
12 the terms of the bonds or the resolution, trust indenture or security
13 instrument securing the bonds; and

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

43
44 6. (New section) No provision of P.L. , c. (C.)
45 (pending before the Legislature as this bill) shall be construed to
46 limit, inhibit or in any way restrict the right of any municipality to
47 form, own, or operate an electric utility, either directly, or as a
48 department of that municipality.

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

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

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

20 b. To sue and be sued;

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

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

29 e. To plan, develop, acquire, construct, reconstruct, operate,
30 manage, dispose of, participate in, maintain, repair, extend, or
31 improve one or more electric supply projects within or outside the
32 State and act as agent, or designate one or more other persons
33 participating in an electric supply project to act as its agent, in
34 connection with the planning, acquisition, construction, operation,
35 maintenance, repair, extension, or improvement of such electric
36 supply project for generation, production, transmission, and
37 provision of electrical power and energy at wholesale, in whole or
38 in part, for the benefit of the members;

39 f. To negotiate for, exploit, produce, acquire, buy, sell,
40 distribute and process fuels necessary or appropriate to the
41 production of electric power and energy, the development of
42 coordinated bulk power and fuel supply programs, and the
43 implementation of energy conservation measures as necessary or
44 appropriate to meet energy needs of the members and clients of the
45 company;

46 g. To enter into franchises, exchange, interchange, pooling,
47 wheeling, transmission, construction, and other agreements with
48 any person, firm, entity, or public agency, notwithstanding the

- 1 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) or any other law,
2 provided, however, that any contract to provide for construction of
3 a facility as a result of such arrangement shall be subject to
4 P.L.1971, c.198 (C.40A:11-1 et seq.);
- 5 h. To negotiate and enter into power supply contracts pursuant
6 to section 19 of P.L. , c. (C.) (pending before the
7 Legislature as this bill) and to take such actions as are necessary to
8 remain in compliance with the terms of such contracts;
- 9 i. In addition to power supply contracts, to make and execute
10 such additional contracts and other instruments necessary or
11 convenient to the exercise of its powers;
- 12 j. To employ agents and employees;
- 13 k. To contract with any person, entity or public agency within
14 or outside the State of New Jersey for the construction of any
15 electric supply project or for the purchase, sale or transmission of
16 electric power and energy generated by any electric supply project,
17 in whole or in part, for the benefit of its members, or for any
18 interest or share therein, or any right to capacity thereof, on such
19 terms and for such period of time as its board shall determine;
- 20 l. To purchase and sell, exchange or transmit electric power
21 and energy at wholesale within and outside the State of New Jersey,
22 consistent with federal law, in such amounts as it shall determine to
23 be necessary or appropriate to make the most effective use of its
24 powers and to meet its responsibilities and to enter into agreements
25 with any person, entity, or public agency with respect to the
26 purchase, sale, exchange, or transmission on such terms and for
27 such period of time as its board shall determine;
- 28 m. To provide for and secure the payment of any bonds and the
29 rights of the holders thereof, and to purchase, hold, and dispose of
30 any bonds;
- 31 n. To accept gifts or grants of real or personal property, money,
32 material, labor, or supplies for the purposes of the municipal shared
33 services energy company, and to make and perform such
34 agreements and contracts as may be necessary or convenient in
35 connection with the procuring, acceptance, or disposition of the
36 gifts or grants;
- 37 o. To acquire, by condemnation, any land or building which is
38 necessary for an electric supply project, pursuant to the provisions
39 of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
40 seq.), and to enter on any lands, waters, or premises for the purpose
41 of making surveys, borings, soundings and examinations for the
42 purposes of the municipal shared services energy company;
- 43 p. To make and enforce by-laws or rules and regulations for the
44 management and regulation of its business and affairs and for the
45 use, maintenance, and operation of its properties and to amend the
46 by-laws;

- 1 q. To do and perform any acts and things authorized by this
2 act, through or by means of its own officers, agents, and employees,
3 or by contract with any person;
- 4 r. To enter into any and all contracts, execute any and all
5 instruments, and do and perform any and all things or acts
6 necessary, convenient, or desirable for the purposes of the
7 municipal shared services energy company, or to carry out any
8 power expressly authorized under P.L. , c. (C.) (pending
9 before the Legislature as this bill);
- 10 s. To exercise such powers as are granted to municipalities
11 under R.S.40:60-12 et seq.;
- 12 t. To join organizations, including private or trade
13 organizations, which the board of directors has deemed to be
14 beneficial to the accomplishment of the company's purposes;
- 15 u. To enter into a power supply contract, lease, operation
16 contract, or contract for management of electric generation, or for
17 the purchase of fuel for electric generation for a term not to exceed
18 40 years, notwithstanding any durational limitation in section 15 of
19 P.L.1971, c.198 (C.40A:11-15); and
- 20 v. Notwithstanding any other law to the contrary, to invest any
21 funds held in reserve or sinking funds, or any funds not required for
22 immediate disbursement, including the proceeds from the sale of
23 any bonds, in such obligations, securities, and other investments as
24 the company deems to be proper.
25
- 26 9. (New section) a. The municipal shared services energy
27 company shall have the power to authorize or provide for the
28 issuance of bonds pursuant to P.L. , c. (C.) (pending before
29 the Legislature as this bill) for the purpose of raising funds to pay
30 the cost of any part of an electric supply project, to fulfill the terms
31 of a power supply contract, including any provision for collateral or
32 related performance security measures, and to fund or refund any
33 bonds.
- 34 b. The municipal shared services energy company shall adopt a
35 bond resolution which shall:
- 36 (1) describe in brief and general terms sufficient for reasonable
37 identification the electric supply project or part thereof, to be
38 constructed or acquired, or describe the bonds which are to be
39 funded or refunded, if any;
- 40 (2) state the cost or estimated cost of the project, if any; and
- 41 (3) provide for the issuance of the bonds in accordance with
42 sections 10 through 18 of P.L. , c. (C.) (pending before the
43 Legislature as this bill).
44
- 45 10. (New section) Upon adoption of a bond resolution, the
46 municipal shared services energy company shall have power to
47 incur indebtedness, borrow money and issue its bonds for the
48 purpose of financing a project or of funding or refunding the bonds

1 issued pursuant to P.L. , c. (C.) (pending before the
2 Legislature as this bill). Such bonds shall be authorized by the
3 bond resolution and may be issued in one or more series and shall
4 bear such date or dates, mature at such time or times not exceeding
5 40 years from the date thereof, bear interest at a rate or rates within
6 such maximum rate as permitted by law, be in such denomination or
7 denominations, be in such form, either coupon or registered, carry
8 such conversion or registration privileges, have such rank or
9 priority, be executed in such manner, be payable from such sources
10 in such medium of payment at such place or places within or
11 without the State, and be subject to such terms of redemption, with
12 or without a premium, as the bond resolution may provide.

13

14 11. (New section) Bonds of the municipal shared services
15 energy company may be sold by the municipal shared services
16 energy company at public or private sale, and at such price or prices
17 as the municipal shared services energy company shall determine.

18

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

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

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

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

39
40 15. (New section) Any bond resolution of the municipal shared
41 services energy company providing for or authorizing the issuance
42 of any bonds may contain provisions, and the municipal shared
43 services energy company shall, in order to secure the payment of
44 the bonds in addition to its other powers, have the power by the
45 provisions in the bond resolution to covenant and agree with the
46 several holders of the bonds as to:

47 a. The custody, security, use, expenditure, or application of the
48 proceeds of the bonds;

- 1 b. The construction and completion, or replacement, of all or
2 any part of an electric supply project of the municipal shared
3 services energy company or its system;
- 4 c. The use, regulation, operation, maintenance, insurance, or
5 disposition of all or any part of an electric supply project of the
6 municipal shared services energy company, or its system, or
7 restrictions on the exercise of the powers of the municipal shared
8 services energy company to dispose of, limit, or regulate the use of
9 all or any part of the electric supply project or system;
- 10 d. Payment of the principal of, or interest on, the bonds, or any
11 other obligations, and the sources and methods thereof, the rank or
12 priority of the bonds or obligations as to any lien or security, or the
13 acceleration of the maturity of the bonds or obligations;
- 14 e. The use and disposition of any monies of the municipal
15 shared energy company, including any of the company's revenues,
16 derived or to be derived from the operation of all or any part of one
17 or more electric supply projects of the municipal shared services
18 energy company or systems thereof, including any parts thereof that
19 are thereafter constructed or acquired as any of the project's parts,
20 extensions, replacements, or improvements thereafter constructed or
21 acquired;
- 22 f. Pledging, setting aside, depositing, or acting as trustee for all
23 or any part of the system revenues or other monies of the municipal
24 shared services energy company to secure the payment of the
25 principal of, or interest on, the bonds or any other obligations, or
26 the payment of expenses of operation or maintenance of one or
27 more electric supply projects of the municipal shared services
28 energy company or its system, and the powers and duties of any
29 trustee with regard thereto;
- 30 g. The setting aside out of the system revenues or other monies
31 of the municipal shared services energy company including its
32 reserves and sinking funds, and the source, custody, security,
33 regulation, application, and disposition thereof;
- 34 h. Determination or definition of the system revenues or of the
35 expenses of operation and maintenance of the system or one or
36 more of its electric supply projects;
- 37 i. The rents, rates, fees or other charges in connection with the
38 use, products, or services of one or more electric supply projects of
39 the municipal shared services energy company or its system,
40 including any of the parts, extensions, replacements, or
41 improvements of the project or its system thereafter constructed or
42 acquired, and the fixing, establishment, collection and enforcement
43 of the same, the amount of electric supply project revenues or
44 system revenues to be produced thereby, and the disposition and
45 application of the amounts charged or collected;
- 46 j. The assumption or payment or discharge of any
47 indebtedness, liens, or other claims relating to the whole or any part
48 of one or more electric supply projects of the municipal shared

1 services energy company or of its system for any obligations having
2 or which may have a lien on any part of the system of the municipal
3 shared services energy company;

4 k. Limitations on the issuance of additional bonds or any other
5 obligations or on the incurrence of indebtedness of the municipal
6 shared services energy company;

7 1. Limitations on the powers of the municipal shared services
8 energy company to construct, acquire or operate, or to permit the
9 construction, acquisition or operation of any plants, structures,
10 facilities or properties which may compete or tend to compete with
11 one or more of the municipal shared services energy company's
12 electric supply projects or any part of its system;

13 m. Vesting in a trustee or trustees within or without the State
14 such property, rights, powers, and duties in trust as the municipal
15 shared services energy company may determine, which may include
16 any or all of the rights, powers, and duties of the trustee appointed
17 by the holders of bonds, and limiting or abrogating the right of the
18 holders to appoint a trustee or limiting the rights, duties, and powers
19 of the trustee;

20 n. Payment of costs or expenses incident to the enforcement of
21 the bonds or of the provisions of the bond resolutions or of any
22 covenant or contract with the holders of the bonds;

23 o. The procedure, if any, by which the terms of any covenant or
24 contract with, or duty to the holders of the bonds may be amended
25 or abrogated, the amount of bonds that the holders of which must
26 consent thereto, and the manner in which the consent may be given
27 or evidenced; and

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

31 The provisions of the bond resolution and the covenants and
32 agreements relative thereto shall constitute valid and legally binding
33 contracts between the municipal shared services energy company
34 and the several holders of the bonds, regardless of the time of
35 issuance of the bonds, and shall be enforceable by any holder or
36 holders by appropriate suit, action or proceeding in any court of
37 competent jurisdiction, or by proceeding in lieu of prerogative writ.

38
39 16. (New section) a. If the bond resolution of the municipal
40 shared services energy company authorizing or providing for the
41 issuance of a series of its bonds shall provide in substance that the
42 holders of the bonds of such series shall be entitled to the benefits
43 of this section, then, in the event that there shall be a default in the
44 payment of principal of, or interest on, any bonds of such series
45 after the same shall become due, whether at maturity or upon call
46 for redemption, and such default shall continue for a period of 30
47 days, or in the event that the municipal shared services energy
48 company shall fail or refuse to comply with the provisions of

1 P.L. , c. (C.) (pending before the Legislature as this bill) or
2 shall fail or refuse to carry out and perform the terms of any
3 contract with the holders of any such bonds, and such failure or
4 refusal shall continue for a period of 30 days after written notice to
5 the municipal shared services energy company of its existence and
6 nature, the holders of 25 percent in aggregate principal amount of
7 the bonds and such series then outstanding by instrument or
8 instruments filed in the office of the Secretary of State and proved
9 or acknowledged in the same manner as a deed to be recorded, may
10 appoint a trustee to represent the holders of the bonds of such series
11 for the purposes provided in this section.

12 b. Such trustee may and upon written request of the holders of
13 25 percent in aggregate principal amount of the bonds of such series
14 then outstanding shall, in the trustee's or its own name:

15 (1) by any action, writ, proceeding in lieu of prerogative writ, or
16 other proceeding, enforce all rights of the holders of such bonds,
17 including the right to require the municipal shared services energy
18 company to charge and collect service charges adequate to carry out
19 any contract as to, or pledge of, system revenues, and to require the
20 municipal shared services energy company to carry out and perform
21 the terms of any contract with the holders of such bonds or its
22 duties under P.L. , c. (C.) (pending before the Legislature
23 as this bill);

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

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

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

31 (5) declare all such bonds due and payable, whether or not in
32 advance of maturity, upon 30 days' prior notice in writing to the
33 municipal shared services energy company and, if all defaults shall
34 be made good, then with the consent of the holders of 25 percent of
35 the principal amount of such bonds then outstanding, annul such
36 declaration and its consequences.

37 c. The trustee shall, in addition to the powers set forth in
38 subsections a. and b. of this section, have and possess all of the
39 powers necessary or appropriate for the exercise of the functions
40 specifically set forth herein or incident to the general representation
41 of the holders of bonds of such series in the enforcement and
42 protection of their rights.

43 d. In any action or proceeding by the trustee, the fees, counsel
44 fees and expenses of the trustee and of the receiver, if any,
45 appointed pursuant to P.L. , c. (C.) (pending before the
46 Legislature as this bill), shall constitute taxable costs and
47 disbursements, and all costs and disbursements, allowed by the
48 court, shall be a first charge upon any service charges and system

1 revenues of the municipal shared services energy company pledged
2 for the payment or security of bonds of such series.

3
4 17. (New section) If the bond resolution of the municipal shared
5 services energy company authorizing or providing for the issuance
6 of a series of its bonds shall provide in substance that the holders of
7 the bonds of such series shall be entitled to the benefits of section
8 15 of P.L. , c. (C.) (pending before the Legislature as this
9 bill), and shall further provide in substance that any trustee
10 appointed pursuant to that section or having the powers of such a
11 trustee shall have the powers provided by this section, then such
12 trustee, whether or not all of the bonds of such series shall have
13 been declared due and payable, shall be entitled as of right to the
14 appointment of a receiver of the utility system, and the receiver may
15 enter upon and take possession of the utility system and, subject to
16 any pledge or contract with the holders of such bonds, shall take
17 possession of all moneys and other property derived from or
18 applicable to the acquisition, construction, operation, maintenance,
19 or reconstruction of the utility system, and proceed with such
20 acquisition, construction, operation, maintenance, or reconstruction
21 which the municipal shared services energy company is under any
22 obligation to do, and operate, maintain and reconstruct the utility
23 system and fix, charge, collect, enforce, and receive the service
24 charges and all system revenues thereafter arising subject to any
25 pledge thereof or contract with the holders of the bonds relating
26 thereto and perform the public duties and carry out the contracts
27 and obligations of the municipal shared services energy company in
28 the same manner as the municipal shared services energy company
29 itself might do and under the direction of the court.

30
31 18. (New section) For the purpose of aiding the municipal
32 shared services energy company in the planning, undertaking,
33 acquisition, construction, financing or operation of any electric
34 supply project authorized pursuant to P.L. , c. (C.)
35 (pending before the Legislature as this bill), a member municipality
36 may, by ordinance of its governing body, in the manner provided
37 for adoption of a bond ordinance as provided in any local bond law
38 and with or without consideration and upon such terms and
39 conditions as may be agreed to by and between the member
40 municipality and the company, unconditionally guarantee the
41 punctual payment of the principal of, and interest on, all or a
42 portion of any bonds of the company. Any guaranty of the bonds of
43 the company made pursuant to this section shall be evidenced by
44 endorsement thereof on the bonds, executed in the name of the
45 member municipality and on its behalf by such officer thereof as
46 may be designated in the ordinance authorizing such guaranty, and
47 the municipality shall thereupon and thereafter be obligated to pay
48 the principal of, and interest on, said bonds in the same manner and

1 to the same extent as in the case of bonds issued by it. Any such
2 guaranty of bonds of the company may be made, and any ordinance
3 authorizing such guaranty may be adopted, notwithstanding any
4 statutory debt or other limitations, including particularly any
5 limitation or requirement under or pursuant to any local bond law,
6 but the principal amount of the bonds so guaranteed, shall, after
7 their issuance, be included in the gross debt of the member
8 municipality for the purpose of determining the indebtedness of the
9 municipality under or pursuant to any local bond law. The principal
10 amount of the bonds so guaranteed and included in gross debt shall
11 be deducted and is hereby declared to be and to constitute a
12 deduction from the gross debt under and for all the purposes of any
13 local bond law:

14 a. from and after the time of issuance of the bonds until the end
15 of the fiscal year beginning next after the completion of acquisition
16 or construction of the facility to be financed from the proceeds of
17 the bonds; and

18 b. in any annual debt statement filed pursuant to any local bond
19 law as of the end of the fiscal year or any subsequent fiscal year if
20 the revenues or other receipts or moneys of the company in that
21 year are sufficient to pay its expenses of operation and maintenance
22 in the year and all amounts payable in the year on account of the
23 principal of, and interest on, all the guaranteed bonds, and all bonds
24 of the company issued under P.L. , c. (C.) (pending before
25 the Legislature as this bill).

26

27 19. (New section) a. The municipal shared services energy
28 company may enter into power supply contracts with any person,
29 entity, or public agency within or outside the State of New Jersey
30 for the purchase or sale of electric power and energy, or for both the
31 purchase and sale of electric power and energy. The power supply
32 contracts shall be for a term not to exceed 40 years and shall
33 provide for payment to or from the municipal shared services
34 energy company of funds for commodities to be procured, and
35 services to be rendered by or to the municipal shared services
36 energy company. The municipal shared services energy company
37 may enter into power supply contracts with these customers for the
38 purchase or sale of electric power and energy, or for both the
39 purchase and sale of electric power and energy, whereby the
40 purchaser is obligated to make payments in amounts which shall be
41 sufficient to enable the municipal shared services energy company
42 to meet its expenses, interest and principal payments, whether at
43 maturity or upon sinking fund redemption, for its bonds, reasonable
44 reserves for debt service, operation and maintenance, renewals and
45 replacements, and the requirements of any rate covenant with
46 respect to debt service coverage contained in any resolution, trust
47 indenture, or other security instrument. Power supply contracts
48 may contain such other terms and conditions as the municipal

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

18 b. The obligations of a municipality that is eligible to be, but
19 that is not, a member municipality under a power supply contract
20 with the municipal shared services energy company, or arising out
21 of the default by any other purchaser with respect to such an
22 agreement, shall not be construed to constitute a debt of the
23 municipality. To the extent provided in the purchase agreement,
24 these obligations shall constitute special obligations of the
25 municipality, payable solely from the revenues and other moneys
26 derived by the municipality from its municipal electric utility and
27 shall be treated as expenses of operating a municipal electric utility.

28 c. The contract may also provide for payments in the form of
29 collateral, contributions to defray the cost of any purpose set forth
30 in the contract and as advances for any such purpose subject to
31 repayment by the municipal shared services energy company.

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

39

40 20. (New section) The Board of Public Utilities shall have no
41 supervision or regulatory authority over the municipal shared
42 services energy company formed pursuant to P.L. , c. (C.)
43 (pending before the Legislature as this bill), or over the budget,
44 operations, rates, property, property rights, equipment, or facilities
45 of the municipal shared services energy company formed pursuant
46 to P.L. , c. (C.) (pending before the Legislature as this
47 bill).

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

11
12 22. (New section) Notwithstanding any restriction contained in
13 any other law, the State and all public officers, municipalities,
14 counties, political subdivisions of public bodies, and agencies
15 thereof, all banks, bankers, trust companies, savings banks and
16 institutions, building and loan associations, savings and loan
17 associations, investment companies, and other persons carrying on a
18 banking business, all insurance companies, insurance associations,
19 and other persons carrying on an insurance business, and all
20 executors, administrators, guardians, trustees and other fiduciaries,
21 may legally invest any sinking funds, monies, or other funds
22 belonging to them or within their control, in any bonds of the
23 municipal shared services energy company, and the bonds shall be
24 authorized security for any and all public deposits.

25
26 23. (New section) Every electric supply project, facility, or item
27 of utility plant owned by the municipal shared services energy
28 company, including any pro rata share of any property owned by the
29 municipal shared services energy company in conjunction with any
30 other person or public agency and used in connection with the
31 generation, transmission and production of electrical power and
32 energy, and all other property of the municipal shared services
33 energy company, is hereby declared to be public property and
34 devoted to an essential public and governmental function and
35 purpose and, the property, the municipal shared services energy
36 company and its income shall be exempt from all taxes and special
37 assessments of the State or any subdivision of the State. All bonds
38 of the municipal shared services energy company are hereby
39 declared to be issued by a political subdivision of the State and for
40 an essential public and governmental purpose and to be a public
41 instrumentality in the bonds, and the interest thereon and the
42 income therefrom and all service charges, funds, revenues, and
43 other monies pledged or available to pay or secure the payment of
44 the bonds, or interest thereon, shall at all times be exempt from
45 taxation except for transfer, inheritance and estate taxes, and taxes
46 on transfers by or in contemplation of death.

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

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

41
42 26. (New section) The municipal shared services energy
43 company shall cause an annual audit of its accounts to be made, and
44 for this purpose shall employ a registered municipal accountant
45 registered pursuant to the laws of the State of New Jersey or a
46 certified public accountant licensed pursuant to the laws of the State
47 of New Jersey. The audit shall be completed and filed with the
48 municipal shared services energy company within four months after

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

6
7 27. (New section) The municipal shared services energy
8 company shall file a copy of each bond resolution adopted by it
9 with the Director of the Division of Local Government Services in
10 the Department of Community Affairs, together with a summary of
11 the dates, amounts, maturities, and interest rates of all bonds issued
12 pursuant thereto.

13
14 28. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to
15 read as follows:

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

20 (1) The subject matter thereof consists of:

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

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

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

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

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

47 (f) The supplying of any product or the rendering of any service
48 by a public utility, which is subject to the jurisdiction of the Board

1 of Public Utilities or the Federal Energy Regulatory Commission or
2 its successor, in accordance with tariffs and schedules of charges
3 made, charged or exacted, filed with the board or commission;
4 (g) The acquisition, subject to prior approval of the Attorney
5 General, of special equipment for confidential investigation;
6 (h) The printing of bonds and documents necessary to the
7 issuance and sale thereof by a contracting unit;
8 (i) Equipment repair service if in the nature of an extraordinary
9 unspecifiable service and necessary parts furnished in connection
10 with such service, which exception shall be in accordance with the
11 requirements for extraordinary unspecifiable services;
12 (j) The publishing of legal notices in newspapers as required by
13 law;
14 (k) The acquisition of artifacts or other items of unique intrinsic,
15 artistic or historical character;
16 (l) Those goods and services necessary or required to prepare
17 and conduct an election;
18 (m) Insurance, including the purchase of insurance coverage and
19 consultant services, which exception shall be in accordance with the
20 requirements for extraordinary unspecifiable services;
21 (n) The doing of any work by handicapped persons employed by
22 a sheltered workshop;
23 (o) The provision of any goods or services including those of a
24 commercial nature, attendant upon the operation of a restaurant by
25 any nonprofit, duly incorporated, historical society at or on any
26 historical preservation site;
27 (p) (Deleted by amendment, P.L.1999, c.440.)
28 (q) Library and educational goods and services;
29 (r) (Deleted by amendment, P.L.2005, c.212).
30 (s) The marketing of recyclable materials recovered through a
31 recycling program, or the marketing of any product intentionally
32 produced or derived from solid waste received at a resource
33 recovery facility or recovered through a resource recovery program,
34 including, but not limited to, refuse-derived fuel, compost materials,
35 methane gas, and other similar products;
36 (t) (Deleted by amendment, P.L.1999, c.440.)
37 (u) Contracting unit towing and storage contracts, provided that
38 all such contracts shall be pursuant to reasonable non-exclusionary
39 and non-discriminatory terms and conditions, which may include
40 the provision of such services on a rotating basis, at the rates and
41 charges set by the municipality pursuant to section 1 of P.L.1979,
42 c.101 (C.40:48-2.49). All contracting unit towing and storage
43 contracts for services to be provided at rates and charges other than
44 those established pursuant to the terms of this paragraph shall only
45 be awarded to the lowest responsible bidder in accordance with the
46 provisions of the "Local Public Contracts Law" and without regard
47 for the value of the contract therefor;

- 1 (v) The purchase of steam or electricity from, or the rendering
2 of services directly related to the purchase of such steam or
3 electricity from a qualifying small power production facility or a
4 qualifying cogeneration facility as defined pursuant to 16
5 U.S.C.s.796;
- 6 (w) The purchase of electricity or administrative or dispatching
7 services directly related to the transmission of such purchased
8 electricity by a contracting unit engaged in the generation of
9 electricity;
- 10 (x) The printing of municipal ordinances or other services
11 necessarily incurred in connection with the revision and
12 codification of municipal ordinances;
- 13 (y) An agreement for the purchase of an equitable interest in a
14 water supply facility or for the provision of water supply services
15 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
16 an agreement entered into pursuant to P.L.1989, c.109
17 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
18 later than six months after the effective date of P.L.1993, c.381;
- 19 (z) A contract for the provision of water supply services entered
20 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 21 (aa) The cooperative marketing of recyclable materials recovered
22 through a recycling program;
- 23 (bb) A contract for the provision of wastewater treatment
24 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
25 al.);
- 26 (cc) Expenses for travel and conferences;
- 27 (dd) The provision or performance of goods or services for the
28 support or maintenance of proprietary computer hardware and
29 software, except that this provision shall not be utilized to acquire
30 or upgrade non-proprietary hardware or to acquire or update non-
31 proprietary software;
- 32 (ee) The management or operation of an airport owned by the
33 contracting unit pursuant to R.S.40:8-1 et seq.;
- 34 (ff) Purchases of goods and services at rates set by the Universal
35 Service Fund administered by the Federal Communications
36 Commission;
- 37 (gg) A contract for the provision of water supply services or
38 wastewater treatment services entered into pursuant to section 2 of
39 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
40 construction, operation, or maintenance, or any combination
41 thereof, of a water supply facility as defined in subsection (16) of
42 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
43 treatment system as defined in subsection (19) of section 15 of
44 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
45 thereof, including a water filtration system as defined in subsection
46 (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
28 forth in the negotiated contract are not substantially different from
29 those which were the subject of competitive bidding pursuant to
30 section 4 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 contracting unit engaged in the generation, transmission, or
20 distribution of electricity for wholesale or retail sale, or for the
21 provision of administrative or dispatching services related to the
22 transmission of such electricity, provided that in lieu of engaging in
23 public advertising for bids and the bidding therefor, the contracting
24 unit shall, prior to commencing the procurement process, submit for
25 approval to the Director of the Division of Local Government
26 Services, a written detailed description of the process to be
27 followed in securing such services. Such process shall be designed
28 in a way that is appropriate to and commensurate with industry
29 practices, and the integrity of the government contracting process.
30 Within 30 days after receipt of the written description, the director
31 shall, if the director finds that the process provides for fair
32 competition and integrity in the negotiation process, approve, in
33 writing, the description submitted by the contracting unit. If the
34 director finds that the process does not provide for fair competition
35 and integrity in the negotiation process, the director shall advise the
36 contracting unit of the deficiencies that must be remedied. If the
37 director fails to respond in writing to the contracting unit within 30
38 days, the procurement process, as submitted to the director pursuant
39 to this section, shall be deemed approved.

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

41
42 29. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
43 read as follows:

44 15. All contracts for the provision or performance of goods or
45 services shall be awarded for a period not to exceed 24 consecutive
46 months, except that contracts for professional services pursuant to
47 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
48 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to

1 exceed 12 consecutive months. Contracts may be awarded for
2 longer periods of time as follows:

3 (1) Supplying of:

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

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

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

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

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

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

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

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

43 (7) Leasing or servicing of (a) automobiles, motor vehicles,
44 machinery and equipment of every nature and kind, for a period not
45 to exceed five years, or (b) machinery and equipment used in the
46 generation of electricity by a contracting unit engaged in the
47 generation of electricity, for a period not to exceed 20 years;
48 provided, however, such contracts shall be awarded only subject to

1 and in accordance with the rules and regulations promulgated by the
2 Director of the Division of Local Government Services in the
3 Department of Community Affairs;

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

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

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

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

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

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

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

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

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

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

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

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

1 metals, glass, paper, and other materials for reuse or for energy
2 production;

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

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

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

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

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

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

1 the director fails to respond in writing to the contracting unit within
2 10 business days, the contract shall be deemed approved;

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

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

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

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

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

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

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

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

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

- 1 (34) A contract between a public entity and a private firm
2 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
3 water supply services may be entered into for any term which, when
4 all optional extension periods are added, may not exceed 40 years;
- 5 (35) A contract for the purchase of a supply of water from a
6 public utility company subject to the jurisdiction of the Board of
7 Public Utilities in accordance with tariffs and schedules of charges
8 made, 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
11 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
12 the provision of wastewater treatment services may be entered into
13 for any term of not more than 40 years, including all optional
14 extension periods;
- 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
18 supply or distribution facility, as the case may be, for any term of
19 not more than ten years. For the purposes of this subsection,
20 "wastewater treatment system" refers to facilities operated or
21 maintained for the storage, collection, reduction, disposal, or other
22 treatment of wastewater or sewage sludge, remediation of
23 groundwater contamination, stormwater runoff, or the final disposal
24 of residues resulting from the treatment of wastewater; and "water
25 supply or distribution facility" refers to facilities operated or
26 maintained for augmenting the natural water resources of the State,
27 increasing the supply of water, conserving existing water resources,
28 or distributing water to users;
- 29 (38) Municipal solid waste collection from facilities owned by a
30 contracting unit, for any term of not more than three years;
- 31 (39) Fuel for heating purposes, for any term of not more than
32 three years;
- 33 (40) Fuel or oil for use in motor vehicles for any term of not
34 more than three years;
- 35 (41) Plowing and removal of snow and ice for any term of not
36 more than three years;
- 37 (42) Purchases made under a contract awarded by the Director of
38 the Division of Purchase and Property in the Department of the
39 Treasury for use by counties, municipalities or other contracting
40 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
41 term not to exceed the term of that contract;
- 42 (43) A contract between the governing body of a city of the first
43 class and a duly incorporated nonprofit association for the provision
44 of water supply services as defined in subsection (16) of this
45 section, or wastewater treatment services as defined in subsection
46 (19) of this section, may be entered into for a period not to exceed
47 40 years;

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

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

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

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

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

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

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

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

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

33

34 30. (New section) P.L. , c. (C.) (pending before the
35 Legislature as this bill) shall be construed liberally to effectuate the
36 legislative intent and as complete and independent authority for the
37 performance of each and every act and thing that is authorized by
38 P.L. , c. (C.) (pending before the Legislature as this bill).
39 The powers granted under P.L. , c. (C.) (pending before the
40 Legislature as this bill) do not limit the powers of municipalities to
41 enter into intergovernmental cooperation agreements or contracts,
42 or to establish separate legal entities under municipal charters or
43 any other applicable law or otherwise to carry out their powers
44 under applicable statutory provisions, nor shall the powers granted
45 under P.L. , c. (C.) (pending before the Legislature as this
46 bill) limit the powers reserved to municipalities by State law. By
47 enacting P.L. , c. (C.) (pending before the Legislature as
48 this bill), the Legislature contemplates that activities by

1 municipalities or municipal agencies pursuant to P.L. , c. (C.)
2 (pending before the Legislature as this bill) are not subject to the
3 antitrust laws of the United States.

4
5 31. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill would authorize three or more municipalities that
11 operate retail electric distribution systems to establish the municipal
12 shared services energy company (the “company”). The bill
13 authorizes the company to enter into contracts with municipal
14 electric utilities, other public agencies, and private entities for the
15 purchase and sale at wholesale of electricity inside and outside of
16 New Jersey, consistent with federal law. Under current law, the
17 joint operation of such facilities under such a joint meeting
18 arrangement is not permitted under the “Uniform Shared Services
19 and Consolidation Act,” P.L.2007, c.63 (C.40A:65-1 through
20 C.40A:65-35).

21 The purpose of the company is to develop safe, reliable electric
22 energy resources for the generation and transmission of electric
23 power and energy, including the utilization of renewable capacity
24 and energy, at wholesale for the benefit of the customers of
25 municipally owned or operated electric utility systems in New
26 Jersey.

27 The company would have the power to plan, finance, develop,
28 acquire, construct, reconstruct, improve, own, operate, and
29 participate in, as joint or sole owner, electric supply projects, and
30 would be able to purchase, sell, lease, and make other
31 arrangements, contractual and otherwise, of every kind and
32 description, with respect to generation, transmission, pooling, and
33 provision of electric power and energy at wholesale. The company
34 would be able to develop generation projects using fuel sources
35 generated by other public agencies such as garbage, trash and other
36 waste materials, and using renewable resources such as solar
37 energy, wind power, geothermal energy, as well as traditional fossil
38 fuel resources.

39 The bill also provides for the company to have bonding powers,
40 and other general powers related to that of an independent legal
41 entity. The company would be considered a “contracting unit” with
42 respect to the "Local Public Contracts Law," P.L.1971, c.198
43 (C.40A:11-1 et seq.). In addition, the length of contract and
44 competitive bidding aspects of that law would apply in order to
45 allow for longer terms and special procurement rules as determined
46 by the Director of the Division of Local Government Services in the
47 Department of Community Affairs.