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ASSEMBLY, No. 2385

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED FEBRUARY 6, 2014

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Telecommunications and Utilities Committee on February 20, 2014, with amendments.

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

1 AN ACT authorizing the creation of a municipal shared services
2 energy authority to provide for shared facilities, powers and
3 services, amending P.L.1971, c.198 and supplementing Title 40A
4 of the ¹**[Revised]** New Jersey¹ Statutes.

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

8
9 1. (New section) This act shall be known and may be cited as
10 the "Municipal Shared Services Energy Authority ¹**[Law]** Act¹."

11
12 2. (New section) The Legislature finds and declares that for
13 many years, municipalities in the State have had the power to
14 construct and maintain facilities for the generation ¹and
15 distribution¹ of electricity; that nine municipalities and one rural
16 electric cooperative presently own and operate electric utility
17 systems for the benefit of their residents and businesses; and that
18 the generation and distribution of electricity has evolved from a
19 local and statewide endeavor into a national marketplace and
20 ¹**[such]** this¹ evolution has resulted in a system where the size and
21 sophistication of the market participants influence the ability to
22 efficiently compete in the marketplace.

23 The Legislature further finds and declares that the ability to
24 reserve sufficient electric capacity at reasonable prices to ensure
25 safe, reliable¹,¹ and efficient electrical power to local businesses
26 and residents is paramount in the present marketplace, and ¹**[such]**
27 the¹ ability is contingent on the power to contract for the generation
28 or delivery of a sufficient quantity of wholesale power and to act as
29 a contracting partner in long term, short term, and spot market
30 wholesale power supply contracts; ¹and¹ that given this evolution of
31 the electric supply marketplace, the municipal electric utilities
32 operating in New Jersey ¹**[must]** should¹ be authorized to act
33 jointly to achieve greater efficiencies in the procurement and
34 generation of electric power at the wholesale level to benefit the
35 retail customers in the participating municipalities.

36 The Legislature further finds and declares that the operation of
37 electric utility systems by municipalities and the improvement of
38 these systems through joint action in the wholesale procurement of
39 electricity and transmission services, and in the generation,
40 transmission, and distribution of electric power and energy within
41 the corporate limits and franchise areas of the participating
42 municipalities, are in the public interest; ¹and¹ that the
43 establishment of a municipal shared services energy authority by

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATU committee amendments adopted February 20, 2014.

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

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

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

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

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

33 “Cost” means, in addition to the usual connotations thereof, the
34 cost of acquisition or construction of all or any part of an electric
35 supply project located within the corporate limits and franchise
36 areas of the members and of all or any property, rights, easements,
37 privileges, agreements, and franchises deemed by the authority to
38 be necessary or useful and convenient therefor ^{1,1} or in connection
39 therewith, including interest or discount on bonds, cost of issuance
40 of bonds, engineering and inspection costs **“and”** ^{1,1} legal expenses,
41 cost of financial, professional ^{1,1} and other estimates and advice,
42 organization, administrative, operating, and other expenses of the
43 municipal shared services energy authority prior to and during
44 **“such”** acquisition or construction, and all **“such”** other
45 expenses as may be necessary or incident to the financing,
46 acquisition, construction, and completion of an electric supply
47 project or part thereof, and the placing of **“such”** a project in

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

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

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

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

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

44 "Member" means a municipality or a rural electric cooperative
 45 that, on the effective date of P.L. , c. (C.) (pending before the
 46 Legislature as this bill), provides electric service to customers

1 within the State and that enters into an initial or amended inter-
 2 municipal agreement of a municipal shared services energy
 3 authority.

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

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

14 **¹["Person" means a natural person, a public agency, cooperative**
 15 **or private corporation, association, firm, statutory trust, partnership,**
 16 **or business trust of any nature whatsoever, organized and existing**
 17 **under the laws of any state. ¹]**

18 "Power supply contract" means **¹[a contractual arrangement (1)]**
 19 **: a. a contractual arrangement¹** between the authority and another
 20 person for the purchase of wholesale electric power and energy and
 21 component goods and services related thereto by the authority for
 22 its members; **¹[(2)] b. a contractual arrangement¹** between the
 23 authority and its members for the wholesale sale of electric power
 24 and energy produced by the authority's generation facilities; or
 25 **¹[(3)] c. a contractual arrangement¹** between the authority and any
 26 other person for the wholesale sale of excess electric power and
 27 energy purchased or produced by the authority that is not needed to
 28 serve the load within the corporate limits and franchise areas of the
 29 members **¹[, but] . A power supply contract¹** shall not include a
 30 contract for the sale of excess power by the authority to any other
 31 municipality.

32 "Public agency" means any municipality or other municipal
 33 corporation, political subdivision, government unit ¹,¹ or public
 34 corporation created under the laws of this State ¹**[or of]** ¹,¹ another
 35 state ¹,¹ or ¹**[of the United States]** under federal law¹ , ¹**[and]**¹ any
 36 state, ¹**[and]**¹ the United States, and any person, board ¹,¹ or other
 37 body declared by ¹**[the laws of any state or the United States]** State
 38 or federal law¹ to be a department, agency or instrumentality
 39 thereof.

40 "Rural electric cooperative" means a non-profit ¹**[utility]**
 41 cooperative¹ in existence on the effective date of P.L. , c. (C.)
 42 (pending before the Legislature as this bill), that serves customers
 43 within the State and that is exclusively owned and controlled by the
 44 customers it serves, and which is exempt from ¹the jurisdiction of
 45 the¹ Board of Public Utilities ¹**[jurisdiction]**¹ pursuant to section 1
 46 of P.L.1983, c.78 (C.48:2-13.1).

1 4. (New section) a. Any combination of three or more
2 municipalities that, on the effective date of P.L. , c. (C.)
3 (pending before the Legislature as this bill), operate retail electric
4 distribution systems pursuant to R.S.40:62-12 et seq. may, by
5 adoption of parallel ordinances approving an inter-municipal
6 agreement, establish a separate legal entity to be known as the
7 "municipal shared services energy authority" to be used by its
8 members to effect joint development of electric energy resources or
9 production, distribution, and transmission of electric power and
10 energy, including the utilization of renewable capacity and energy,
11 in whole or in part, for the benefit of its members. Notwithstanding
12 any other law to the contrary, following approval by the Local
13 Finance Board ¹【within the Division of Local Government Services
14 in the Department of Community Affairs】¹ pursuant to subsection
15 b. of this section, the final adoption by the municipalities of the
16 parallel ordinances, and due execution by the municipalities, the
17 inter-municipal agreement shall have a term as provided by the
18 inter-municipal agreement. The member municipalities that enter
19 into the inter-municipal agreement may thereafter amend the inter-
20 municipal agreement as provided in subsection e. of this section.

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

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

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

46 (1) A municipality requesting to become a member of the
47 authority shall negotiate an amended inter-municipal agreement on
48 terms and conditions acceptable to the members. Once an amended

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

9 (2) The municipality requesting to become a member of the
10 authority shall introduce an ordinance approving the amended inter-
11 municipal agreement as approved by the board of commissioners of
12 the authority. Upon the introduction of the ordinance, but before
13 final adoption of ¹**【such】** the ordinance, copies of the ordinance,
14 together with the proposed amended inter-municipal agreement,
15 shall be submitted to the Local Finance Board for approval. If,
16 upon submission of a complete application for approval of the
17 proposed amended inter-municipal agreement, the Local Finance
18 Board does not approve the agreement, it shall specify the reason or
19 reasons, therefor, and shall file its statement with the clerk of each
20 member municipality. If the Local Finance Board does not
21 disapprove the application for approval of the proposed amended
22 inter-municipal agreement within 60 days after receipt of a
23 complete application, then the ordinance and proposed amended
24 inter-municipal agreement shall be deemed approved and the
25 municipality may proceed to adopt the proposed ordinance.

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

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

40 (2) The authority shall submit the proposed amended inter-
41 municipal agreement for approval to the Local Finance Board. If,
42 upon submission of a complete application for approval of the
43 proposed amended inter-municipal agreement, the Local Finance
44 Board does not approve the agreement, it shall specify the reason or
45 reasons, therefor, and shall file its statement with the clerk of each
46 member municipality. If the Local Finance Board does not act upon
47 the application for approval of the proposed amended inter-
48 municipal agreement within 60 days after receipt of a complete

1 application, then the proposed amended inter-municipal agreement
2 shall be deemed approved.

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

20

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

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

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

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

39 d. The manner of selection of the executive director and staff
40 of the authority and their duties;

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

45 f. The duties of the board, which shall include the obligation to
46 comply with the "Local Authorities Fiscal Control Law," P.L.1983,
47 c.313 (C.40A:5A-1 et seq.) except as otherwise provided in P.L. ,
48 c. (C.) (pending before the Legislature as this bill), and the laws

1 of this State and, in addition, with every provision in the inter-
2 municipal agreement creating the authority on its part to be kept or
3 performed;

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

8 h. The manner in which members may withdraw from
9 participation in the inter-municipal agreement, which shall include
10 a defeasance of ¹~~such~~ the¹ member's pro-rata share of any bonds
11 issued by the authority;

12 i. Provisions for the disposition, division ¹₂¹ or distribution of
13 any property or assets of the authority on dissolution;

14 j. The term of the inter-municipal agreement, which may be a
15 definite period or until rescinded or terminated, and the method, if
16 any, by which the inter-municipal agreement may be rescinded or
17 terminated, but the inter-municipal agreement may not be rescinded
18 or terminated so long as the authority has bonds outstanding, unless
19 provision for full payment of ¹~~such~~ the¹ bonds, by escrow or
20 otherwise, has been made pursuant to the terms of the bonds or the
21 resolution, trust indenture ¹₂¹ or security instrument securing the
22 bonds; and

23 k. The terms for payment to the authority of funds for
24 commodities to be procured and services to be rendered by the
25 authority, including ¹~~the~~¹ authority to enter into purchase
26 agreements between the members and the authority for the purchase
27 of wholesale electric power and energy whereby the member is
28 obligated to make payments or provide collateral in amounts which
29 shall be sufficient to enable the authority to meet its expenses,
30 interest ¹₂¹ and principal payments, whether at maturity or upon
31 sinking fund redemption, for its bonds, reasonable reserves for debt
32 service, operation ¹₂¹ and maintenance and renewals and
33 replacements and the requirements of any rate covenant with
34 respect to debt service coverage contained in any resolution, trust
35 indenture ¹₂¹ or other security instrument. ¹~~Such~~ The¹ purchase
36 agreements between the members and the authority may contain
37 ¹~~such~~¹ other terms and conditions as the authority and the
38 members may determine, including provisions whereby a member is
39 obligated to pay for electric power and energy irrespective of
40 whether electric power and energy is produced or delivered to the
41 member or whether any electric supply project contemplated by
42 ¹~~any such~~ the¹ agreement is completed, operable or operating,
43 and notwithstanding suspension, interruption, interference,
44 reduction, or curtailment of the output of ¹~~such~~ the¹ electric
45 supply project. The inter-municipal agreement may further provide
46 that, if one or more of the members defaults in the payment of its
47 obligations under ¹~~any such~~ a¹ purchase agreement, the

1 remaining members, which also have ¹~~["such"]~~ purchase¹
2 agreements, shall be required to accept and pay for, and shall be
3 entitled proportionately to use or otherwise dispose of, the power
4 and energy to be purchased by the defaulting purchaser. For ¹~~the~~¹
5 purposes of this section, "purchase of electric power and energy"
6 includes the purchase of any right to capacity, or interest in, any
7 electric supply project.

8
9 6. (New section) Nothing in P.L. , c. (C.) (pending
10 before the Legislature as this bill) shall be construed to restrict the
11 right of a person to form a rural electric cooperative or a
12 municipality to engage in functions authorized pursuant to
13 R.S.40:62-12 et seq.

14
15 7. (New section) ¹~~["No"]~~ A¹ commissioner, officer, or
16 employee of the municipal shared services energy authority shall
17 ¹~~not~~¹ have or acquire any interest, direct or indirect, in any contract
18 or proposed contract or property related to the provision of
19 wholesale electric power, transmission, generation, materials,
20 services ¹₁ or supplies to be furnished ¹₁ to or used by ¹₁ the
21 authority or any of its members.

22
23 8. (New section) The municipal shared services energy
24 authority shall be a public body politic and corporate, established as
25 an instrumentality exercising public and essential governmental
26 functions to provide for the public health and welfare. The authority
27 shall have the duties, privileges, immunities, rights, liabilities, and
28 disabilities of a public body politic and corporate but shall not have
29 taxing power. The authority shall be a "contracting unit" for
30 purposes of the "Local Public Contracts Law," P.L.1971, c.198
31 (C.40A:11-1 et seq.), shall have perpetual succession, and, to meet
32 the electric power or energy needs of its members, shall have the
33 following powers:

34 a. To adopt and have a common seal and to alter the same at
35 pleasure;

36 b. To sue and be sued;

37 c. To acquire, own, rent, hold, lease, as lessor or lessee, use
38 and sell or otherwise dispose of, mortgage, pledge, or grant a
39 security in, any real or personal property, commodity ¹₁ or service
40 or interest therein;

41 d. To hold or place collateral with a counterparty to a
42 wholesale power supply contract and to account for ¹~~[""]~~¹ value
43 ¹~~[""]~~¹ and use ¹~~["such"]~~¹ collateral as provided in the power supply
44 contract ¹₁ notwithstanding any other law or regulation to the
45 contrary;

46 e. To plan, develop, acquire, construct, reconstruct, operate,
47 manage, dispose of, participate in, maintain, repair, extend, or

1 improve one or more electric supply projects within the corporate
2 limits and franchise areas of the members, and act as agent, or
3 designate one or more other persons participating in an electric
4 supply project to act as its agent, in connection with the planning,
5 acquisition, construction, operation, maintenance, repair, extension,
6 or improvement of ¹**[such]** the¹ electric supply project for
7 generation, production, transmission, and provision to the members
8 of the authority of electrical power and energy at wholesale, to meet
9 the electric power or energy needs of the members, provided that
10 the authority shall not sell electric power or energy at the retail
11 level;

12 f. To enter into franchises, exchange, interchange, pooling,
13 wheeling, or transmission agreements with any person, firm, entity,
14 or public agency in order to purchase wholesale electric power and
15 energy for the members, or to sell excess power and energy
16 purchased or produced by the members' generation assets and not
17 needed to serve ¹the¹ load within the corporate limits and franchise
18 areas of the members, and to negotiate for, and buy fuels necessary
19 for the production of electric power and energy within the corporate
20 limits and franchise areas of the members, to develop bulk power
21 and fuel supply programs, and to implement energy conservation
22 measures within the corporate limits and franchise areas of the
23 members as necessary or appropriate, to meet the electric power or
24 energy needs of its members;

25 g. To negotiate and enter into power supply contracts pursuant
26 to section 19 of P.L. , c. (C.) (pending before the Legislature
27 as this bill) and to take ¹**[such]**¹ actions as are necessary to remain
28 in compliance with the terms of ¹**[such]** those¹ contracts;

29 h. To make and execute ¹**[such]**¹ additional contracts and other
30 instruments necessary or convenient to the exercise of its powers;

31 i. To employ agents and employees;

32 j. To contract with any person, entity ¹₁¹ or public agency
33 within or outside the State of New Jersey for the construction of any
34 electric supply project within the corporate limits and franchise area
35 of its members or for the purchase, sale ¹₂¹ or transmission of
36 electric power and energy generated by any electric supply project
37 located within the corporate limits and franchise area of its
38 members, in whole or in part, for the benefit of its members, or for
39 any interest or share therein, or any right to capacity thereof, on
40 ¹**[such]**¹ terms and for ¹**[such]** a¹ period of time as its board shall
41 determine, provided that the authority shall not enter into any
42 contract that speculates in the energy markets and the authority
43 shall not construct or contract for the construction of any electric
44 supply project that, when added to the existing authority-owned or
45 co-owned generation assets, will produce more than ¹**[105 %]** 105
46 percent¹ of the power and energy requirements of the members;

- 1 k. To purchase and sell, exchange ^{1,1} or transmit electric power
2 and energy at wholesale within and outside the State ¹ ~~of New~~
3 ~~Jersey~~ ¹, consistent with federal law, in ¹ ~~such~~ amounts as it
4 shall determine to be necessary or appropriate to make the most
5 effective use of its powers and to meet its responsibilities, to sell,
6 exchange, or transmit excess electric power purchased or produced
7 by electric generation facilities within the corporate limits and
8 franchise areas of its members that is not needed to serve ¹ ~~the~~ load
9 within those corporate limits and franchise areas;
- 10 l. To co-own an electric generating facility project initiated by
11 any person and constructed outside the corporate limits and
12 franchise area of the members, provided that ¹ ~~the~~ (1) the share of
13 authority co-ownership shall be restricted to supply the electric and
14 power needs of the members of the authority ¹ ~~the~~ and (2) when
15 added to the aggregate of existing authority-owned or member-
16 owned generation facilities together with co-ownership of facilities
17 outside of the corporate limits and franchise areas of the members,
18 the aggregate produces no more than ¹ ~~105%~~ 105 percent of the
19 power and energy needs of the members;
- 20 m. To provide for and secure the payment of any bonds and the
21 rights of the holders thereof, and to purchase, hold, and dispose of
22 any bonds;
- 23 n. To accept gifts or grants of real or personal property, money,
24 material, labor, or supplies solely for the purposes and exclusive use
25 and benefit of the municipal shared services energy authority, and
26 to make and perform ¹ ~~such~~ those agreements and contracts as
27 may be necessary or convenient in connection with the procuring,
28 acceptance, or disposition of the gifts or grants;
- 29 o. To make and enforce by-laws or rules and regulations for the
30 management and regulation of its business and affairs and for the
31 use, maintenance, and operation of its properties and to amend
32 ¹ ~~the~~ its by-laws;
- 33 p. To do and perform any acts and things authorized by P.L. ,
34 c. (C.) (pending before the Legislature as this bill), through or
35 by means of its own officers, agents, and employees, or by contract
36 with any person;
- 37 q. To enter into any and all contracts, execute any and all
38 instruments, and do and perform any and all things or acts
39 necessary, convenient, or desirable for the purposes of the
40 municipal shared services energy authority, or to carry out any
41 power expressly authorized under P.L. , c. (C.) (pending
42 before the Legislature as this bill);
- 43 r. To exercise ¹ ~~such~~ powers ¹ ~~as~~ which are granted to
44 municipalities under R.S.40:62-12 et seq.;
- 45 s. To join organizations, including private or trade
46 organizations, which the board of commissioners has deemed to be
47 beneficial to the accomplishment of the authority's purposes;

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

8 u. To invest any funds held in reserve or sinking funds, or any
9 funds not required for immediate disbursement, including the
10 proceeds from the sale of any bonds, in **'[such] those'** obligations,
11 securities, and other investments as the authority deems to be
12 proper and as the **'[constituent]'** members of the authority are
13 authorized pursuant to law.

14
15 9. (New section) a. In order to meet the electric power needs
16 of its members, the municipal shared services energy authority shall
17 have the power to authorize or provide for the issuance of bonds
18 pursuant to P.L. , c. (C.) (pending before the Legislature as
19 this bill) for the purpose of raising funds to pay the cost of any part
20 of an electric supply project, to fulfill the terms of a power supply
21 contract, including any provision for collateral or related
22 performance security measures, and to fund or refund any bonds.

23 b. The municipal shared services energy authority shall adopt a
24 bond resolution which shall:

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

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

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

33
34 10. (New section) Upon adoption of a bond resolution, the
35 municipal shared services energy authority shall have power to
36 incur indebtedness, borrow money ¹,¹ and issue its bonds for the
37 purpose of financing a project to meet the electric power needs of
38 its members or of funding or refunding the bonds issued pursuant to
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 **'[Such] The'** bonds shall be authorized by the bond resolution and
41 may be issued in one or more series and shall bear **'[such] the'** date
42 or dates, mature at **'[such] a'** time or times not exceeding 40 years
43 from the date thereof, bear interest at a rate or rates within **'[such]**
44 **a'** maximum rate as permitted by law, be in **'[such] a'**
45 denomination or denominations, be in **'[such] a'** form, either
46 coupon or registered, carry **'[such] a'** conversion or registration
47 privileges, have **'[such] a'** rank or priority, be executed in **'[such]**

1 a¹ manner, be payable from ¹["such"]¹ sources in ¹["such"] a¹ medium
2 of payment at ¹["such"] a¹ place or places within or without the
3 State, and be subject to ¹["such"] the¹ terms of redemption, with or
4 without a premium, as the bond resolution may provide.

5
6 11. (New section) Bonds of the municipal shared services
7 energy authority may be sold by the municipal shared services
8 energy authority at public or private sale, and at ¹["such"] a¹ price or
9 prices ¹["as"]¹ the municipal shared services energy authority shall
10 determine subject to the provisions of ¹the "Local Authorities Fiscal
11 Control Law,"¹ P.L.1983, c. 313 (C.40A:5A-1 et seq.).

12
13 12. (New section) The municipal shared services energy
14 authority may cause a copy of any bond resolution adopted by it to
15 be filed for public inspection in its office and in the office of the
16 clerk of the governing body of each member municipality, and may
17 thereupon cause to be published, in a newspaper published or
18 circulating in each member's community, a notice stating the fact
19 and date of this adoption and the places where the bond resolution
20 has been filed for public inspection ¹["and also"]¹ the date of the
21 first publication of the notice ¹,¹ and ¹["also"]¹ that any action or
22 proceeding ¹["of any kind or nature"]¹ in any court questioning the
23 validity or proper authorization of bonds provided for by the bond
24 resolution, or the validity of any covenants, agreements ¹,¹ or
25 contract provided for by the bond resolution ¹,¹ shall be commenced
26 within 20 days after the first publication of the notice. If the notice
27 shall at any time be published and if no action or proceeding
28 questioning the validity of the establishment of the municipal
29 shared services energy authority or the validity or proper
30 authorization of bonds provided for by the bond resolution referred
31 to in the notice, or the validity of any covenants, agreements ¹,¹ or
32 contract provided for by the bond resolution shall be commenced or
33 instituted within 20 days after the first publication of the notice,
34 then all residents and taxpayers and owners of property in each of
35 the member municipalities, and all other persons whatsoever, shall
36 be forever barred and foreclosed from instituting or commencing
37 any action or proceeding in any court, or from pleading any defense
38 to any action or proceedings, questioning the validity of the
39 establishment of the municipal shared services energy authority,
40 ¹["or"]¹ the validity or proper authorization of the bonds, or the
41 validity of the covenants, agreements ¹,¹ or contracts, and the
42 municipal shared services energy authority shall be conclusively
43 deemed to have been validly established and to be authorized to
44 transact business and exercise powers as an authority pursuant to
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 and the bonds, covenants, agreements ¹,¹ and contracts shall be

1 conclusively deemed to be valid and binding obligations in
2 accordance with their terms and tenor.

3
4 13. (New section) **1**~~Any provision~~ The provisions¹ of any law
5 1, rule, or regulation¹ to the contrary notwithstanding, any bond or
6 other obligation issued pursuant to P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall be fully negotiable **1**~~within~~
8 ~~the meaning and~~¹ for **1**~~all~~ the¹ purposes of the negotiable
9 instruments law **1**~~of this State~~ under Title 12A of the New Jersey
10 Statutes¹ , and each holder or owner of **1**~~such~~¹ a bond or other
11 obligation, or of any coupon appurtenant thereto, by accepting
12 **1**~~such~~ the¹ bond or coupon shall be conclusively deemed to have
13 agreed that **1**~~such~~ the¹ bond, obligation ^{1,1} or coupon is and shall
14 be fully negotiable **1**~~within the meaning and~~¹ for **1**~~all~~ the¹
15 purposes of the **1**~~State's~~¹ negotiable instruments law under Title
16 12A of the New Jersey Statutes.

17
18 14. (New section) Neither the members of the municipal shared
19 services energy authority nor any person executing bonds issued
20 pursuant to P.L. , c. (C.) (pending before the Legislature as
21 this bill) shall be liable personally on the bonds by reason of the
22 issuance thereof. Bonds or other obligations issued pursuant to
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 shall not be in any way a debt or liability of the State, and bonds or
25 other obligations issued by the municipal shared services energy
26 authority pursuant to P.L. , c. (C.) (pending before the
27 Legislature as this bill) shall not be in any way a debt or liability of
28 the State **1**~~or~~ ^{1,1} of any local unit **1**~~or~~ ^{1,1} of any county ^{1,1} or of
29 any¹ municipality, except for member municipalities guaranteeing
30 **1**~~such~~ the¹ bonds in accordance with the provisions of section 18
31 of P.L. , c. (C.) (pending before the Legislature as this bill),
32 and shall not create or constitute any indebtedness, liability ^{1,1} or
33 obligation of the State **1**~~or~~ of¹ of any **1**~~such~~¹ local unit, of
34 any¹ county ^{1,1} or of any¹ municipality, either legal, moral, or
35 otherwise, and nothing in P.L. , c. (C.) (pending before the
36 Legislature as this bill) **1**~~contained~~¹ shall be construed to
37 authorize the municipal shared services energy authority to incur
38 any indebtedness on behalf of ^{1,1} or in any way ^{1,1} to obligate the
39 State or any county or municipality.

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

- 1 provisions in the bond resolution to covenant and agree with the
2 several holders of the bonds, as to:
- 3 a. The custody, security, use, expenditure, or application of the
4 proceeds of the bonds;
- 5 b. The construction and completion, or replacement, of all or
6 any part of an electric supply project of the municipal shared
7 services energy authority or its system;
- 8 c. The use, regulation, operation, maintenance, insurance, or
9 disposition of all or any part of an electric supply project of the
10 municipal shared services energy authority, or its system, or
11 restrictions on the exercise of the powers of the municipal shared
12 services energy authority to dispose of, limit, or regulate the use of
13 all or any part of the electric supply project or system;
- 14 d. **¹['Payment]** The payment¹ of the principal of, or interest on,
15 the bonds, or any other obligations, and the sources and methods
16 thereof, the rank or priority of the bonds or obligations as to any
17 lien or security, or the acceleration of the maturity of the bonds or
18 obligations;
- 19 e. The use and disposition of any monies of the municipal
20 shared services energy authority, including any of the authority's
21 revenues, derived or to be derived from the operation of all or any
22 part of one or more electric supply projects of the municipal shared
23 services energy authority or systems thereof, including any parts
24 thereof that are thereafter constructed or acquired as any of the
25 project's parts, extensions, replacements, or improvements
26 thereafter constructed or acquired;
- 27 f. **¹['Pledging]** The pledging¹, setting aside, depositing, or
28 acting as trustee for all or any part of the system revenues or other
29 monies of the municipal shared services energy authority to secure
30 the payment of the principal of, or interest on, the bonds or any
31 other obligations, or the payment of expenses of operation or
32 maintenance of one or more electric supply projects of the
33 municipal shared services energy authority or its system, and the
34 powers and duties of any trustee with regard thereto;
- 35 g. The setting aside out of the system revenues or other monies
36 of the municipal shared services energy authority including its
37 reserves and sinking funds, and the source, custody, security,
38 regulation, application, and disposition thereof;
- 39 h. **¹['Determination]** The determination or definition of the
40 system revenues or of the expenses of operation and maintenance of
41 the system or one or more of its electric supply projects;
- 42 i. The rents, rates, fees ^{1,1} or other charges in connection with
43 the use, products, or services of one or more electric supply projects
44 of the municipal shared services energy authority or its system,
45 including any of the parts, extensions, replacements, or
46 improvements of the project or its system thereafter constructed or
47 acquired, and the fixing, establishment, collection ^{1,1} and

1 enforcement of ¹**the same** those charges¹, the amount of electric
2 supply project revenues or system revenues to be produced thereby,
3 and the disposition and application of the amounts charged or
4 collected;

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

11 k. ¹**Limitations** The limitations¹ on the issuance of additional
12 bonds or any other obligations or on the incurrence of indebtedness
13 of the municipal shared services energy authority;

14 1. ¹**Limitations** The limitations¹ on the powers of the
15 municipal shared services energy authority to construct, acquire or
16 operate, or to permit the construction, acquisition ¹,¹ or operation
17 of, any plants, structures, facilities ¹,¹ or properties which may
18 compete or tend to compete with one or more of the municipal
19 shared services energy authority's electric supply projects or any
20 part of its system;

21 m. ¹**Vesting** The vesting¹ in a trustee or trustees within or
22 without the State ¹**such** any¹ property, rights, powers, and duties
23 in trust as the municipal shared services energy authority may
24 determine, which may include any or all of the rights, powers, and
25 duties of the trustee appointed by the holders of bonds, and limiting
26 or abrogating the right of the holders to appoint a trustee or limiting
27 the rights, duties, and powers of the trustee;

28 n. ¹**Payment** The payment¹ of costs or expenses incident to
29 the enforcement of the bonds or of the provisions of the bond
30 resolutions or of any covenant or contract with the holders of the
31 bonds;

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

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

40 The provisions of the bond resolution and the covenants and
41 agreements relative thereto shall constitute valid and legally binding
42 contracts between the municipal shared services energy authority
43 and the several holders of the bonds, regardless of the time of
44 issuance of the bonds, and shall be enforceable by any holder or
45 holders by appropriate suit, action ¹,¹ or proceeding in any court of
46 competent jurisdiction, or by proceeding in lieu of prerogative writ.

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

23 b. ¹~~['Such] The~~¹ trustee ¹~~, appointed pursuant to subsection a.~~
24 ~~of this section,~~¹ may and upon written request of the holders of 25
25 percent in aggregate principal amount of the bonds of ¹~~['such] the~~¹
26 series then outstanding shall, in the trustee's or its own name:

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

36 (2) bring an action upon all or any part of ¹~~['such] the~~¹ bonds or
37 interest coupons or claims appurtenant thereto;

38 (3) by action, require the municipal shared services energy
39 authority to account as if it were the trustee of an express trust for
40 the holders of ¹~~['such] the~~¹ bonds;

41 (4) by action, enjoin any acts or things which may be unlawful
42 or in violation of the rights of the holders of ¹~~['such] the~~¹ bonds;
43 and

44 (5) declare all ¹~~['such] the~~¹ bonds due and payable, whether or
45 not in advance of maturity, upon 30 days' prior notice in writing to
46 the municipal shared services energy authority and, if all defaults

1 shall be made good, then with the consent of the holders of 25
2 percent of the principal amount of ¹~~such~~ the¹ bonds then
3 outstanding, annul ¹~~such~~ the¹ declaration and its consequences.

4 c. The trustee shall, in addition to the powers set forth in
5 subsections a. and b. of this section, ¹~~have and~~¹ possess all of the
6 powers necessary ¹~~or appropriate~~¹ for the exercise of the
7 functions specifically set forth herein or incident to the general
8 representation of the holders of bonds of ¹~~such~~ the¹ series in the
9 enforcement and protection of their rights.

10 d. In any action or proceeding by the trustee, the fees, counsel
11 fees and expenses of the trustee and of the receiver, if any,
12 appointed pursuant to P.L. , c. (C.) (pending before the
13 Legislature as this bill), shall constitute taxable costs and
14 disbursements, and all costs and disbursements, allowed by the
15 court, shall be a first charge upon any service charges and system
16 revenues of the municipal shared services energy authority pledged
17 for the payment or security of bonds of ¹~~such~~ the¹ series.

18

19 17. (New section) If the bond resolution of the municipal shared
20 services energy authority authorizing or providing for the issuance
21 of a series of its bonds shall provide ¹~~in substance~~¹ that the
22 holders of the bonds of ¹~~such~~ the¹ series shall be entitled to the
23 benefits of section 15 of P.L. , c. (C.) (pending before the
24 Legislature as this bill), and shall further provide ¹~~in substance~~¹
25 that any trustee appointed pursuant to that section or having the
26 powers of ~~such~~ a trustee shall have the powers provided by this
27 section, then ¹~~such~~ the¹ trustee, whether or not all of the bonds of
28 ¹~~such~~ the¹ series ¹~~shall~~¹ have been declared due and payable,
29 shall be entitled as of right to the appointment of a receiver of the
30 assets of the authority, and the receiver may enter upon and take
31 possession of the assets of the authority and, subject to any pledge
32 or contract with the holders of ¹~~such~~ the¹ bonds, shall take
33 possession of all ¹~~moneys~~ monies¹ and other property derived
34 from or applicable to the acquisition, construction, operation,
35 maintenance, or reconstruction of the assets of the authority, and
36 proceed with ¹~~such~~ the¹ acquisition, construction, operation,
37 maintenance, or reconstruction which the municipal shared services
38 energy authority is under any obligation to do, and operate,
39 maintain ¹₁ and reconstruct the utility system and fix, charge,
40 collect, enforce, and receive the service charges and all system
41 revenues thereafter arising subject to any pledge thereof or contract
42 with the holders of the bonds relating thereto and perform the
43 public duties and carry out the contracts and obligations of the
44 municipal shared services energy authority in the same manner as
45 the municipal shared services energy authority itself might do ¹₁
46 and under the direction of the court.

1 18. (New section) For the purpose of aiding the municipal
2 shared services energy authority in the planning, undertaking,
3 acquisition, construction, financing ¹,¹ or operation of any electric
4 supply project authorized pursuant to P.L. , c. (C.)
5 (pending before the Legislature as this bill), a member municipality
6 may, by ordinance of its governing body, in the manner provided
7 for adoption of a bond ordinance as provided in ¹**any local bond**
8 **law** the “Local Bond Law,” N.J.S.40A:2-1 et seq.¹ and with or
9 without consideration and upon ¹**such** those¹ terms and
10 conditions as may be agreed to by and between the member
11 municipality and the authority, unconditionally guaranty the
12 punctual payment of the principal of, and interest on, all or a
13 portion of any bonds of the authority. Any guaranty of the bonds of
14 the authority made pursuant to this section shall be evidenced by
15 endorsement thereof on the bonds, executed in the name of the
16 member municipality and on its behalf by ¹**such** the¹ officer
17 thereof as may be designated in the ordinance authorizing ¹**such**
18 the¹ guaranty, and the municipality shall ¹**thereupon and**
19 **thereafter**¹ be obligated to pay the principal of, and interest on,
20 ¹**said** the¹ bonds in the same manner and ¹**to the same**¹ extent
21 as in the case of bonds issued by it. Any ordinance authorizing
22 ¹**such** the¹ guaranty shall be treated as a security agreement and
23 shall be subject to the provisions of ¹the “Local Authorities Fiscal
24 Control Law,”¹ P.L.1983, c.313 (C.40A:5A-1 et seq.). Any
25 ¹**such**¹ guaranty of bonds of the authority may be made, and any
26 ordinance authorizing ¹**such** the¹ guaranty may be adopted,
27 notwithstanding any statutory debt or other limitations, including
28 particularly any limitation or requirement under or pursuant to
29 ¹**any local bond law** the “Local Bond Law,” N.J.S.40A:2-1 et
30 seq.¹ , but the principal amount of the bonds so guaranteed, shall,
31 after their issuance, be included in the gross debt of the member
32 municipality for the purpose of determining the indebtedness of the
33 municipality under or pursuant to ¹**any local bond law** the “Local
34 Bond Law,” N.J.S.40A:2-1 et seq.¹ . The principal amount of the
35 bonds ¹**so**¹ guaranteed and included in gross debt shall be
36 deducted and ¹**is hereby**¹ declared to be ¹**and to constitute**¹ a
37 deduction from ¹**the**¹ gross debt under ¹**and for all the purposes**
38 of any local bond law the “Local Bond Law,” N.J.S.40A:2-1 et
39 seq.¹ :

40 a. ¹**from and after the time of** after the¹ issuance of the bonds
41 until the end of the fiscal year beginning next after the completion
42 of acquisition or construction of the facility to be financed from the
43 proceeds of the bonds; and

44 b. in any annual debt statement filed pursuant to ¹**any local**
45 **bond law** the “Local Bond Law,” N.J.S.40A:2-1 et seq.¹ as of the

1 end of the fiscal year or any subsequent fiscal year if the revenues
2 or other receipts or ¹['moneys'] monies¹ of the authority in that year
3 are sufficient to pay its expenses of operation and maintenance in
4 the year ¹,¹ and all amounts payable in the year on account of the
5 principal of, and interest on, all ¹['the']¹ guaranteed bonds, and all
6 bonds of the authority issued under P.L. , c. (C.) (pending
7 before the Legislature as this bill).

8
9 19. (New section) a. The municipal shared services energy
10 authority may enter into ¹a¹ wholesale power supply ¹['contracts']
11 contract¹ with any person ¹['within or outside the State of New
12 Jersey']¹ to meet the electric power or energy needs of its members,
13 for the purchase or sale of electric power or energy, or ¹['for']¹ both
14 ¹['the purchase and sale of electric power and energy to supply
15 electric power or energy to its members']¹, and for the wholesale
16 sale of any excess electric power or energy. ¹['The'] A¹ power
17 supply ¹['contracts'] contract¹ shall be for a term not to exceed 40
18 years and shall provide for payment to or from the ¹['municipal
19 shared services energy']¹ authority of funds for commodities to be
20 procured, and services to be rendered by or to the ¹['municipal
21 shared services energy']¹ authority. The ¹['municipal shared
22 services energy']¹ authority may enter into ¹a¹ power supply
23 ¹['contracts'] contract¹ with persons for the purchase or sale of
24 electric power and energy, or ¹['for']¹ both ¹['the purchase and sale
25 of electric power and energy']¹, whereby the purchaser is obligated
26 to make payments in amounts which shall be sufficient to enable the
27 ¹['municipal shared services energy'] authority to meet its expenses,
28 interest ¹,¹ and principal payments, whether at maturity or upon
29 sinking fund redemption, for its bonds, reasonable reserves for debt
30 service, operation and maintenance, renewals and replacements, and
31 the requirements of any rate covenant with respect to debt service
32 coverage contained in any resolution, trust indenture, or other
33 security instrument. ¹['Power'] A power¹ supply ¹['contracts']
34 contract¹ may contain ¹['such']¹ other terms and conditions as the
35 municipal shared services energy authority and the purchasers may
36 determine, including provisions whereby the purchaser is obligated
37 to pay for ¹electric¹ power irrespective of whether energy is
38 produced or delivered to the purchaser, or whether any electric
39 supply project contemplated by the ¹['agreement'] power supply
40 contract¹ is completed, operable, or operating, and notwithstanding
41 suspension, interruption, interference, reduction, or curtailment of
42 the output of the electric supply project. The power ¹['purchase
43 agreement'] supply contract¹ may provide that if one or more of the
44 purchasers defaults in the payment of its obligations under the
45 ¹['purchase agreement'] power supply contract¹, the remaining

1 purchasers which also have ¹**["such agreements"]** a power supply
 2 contract¹ shall be required to accept and pay for the electric power
 3 and energy to be purchased by the defaulting purchaser, and shall
 4 be entitled proportionately to use or otherwise dispose of the
 5 electric power and energy to be purchased by the defaulting
 6 purchaser. For purposes of this subsection ¹the ¹**["phrase"]** term¹
 7 “purchase ¹or sale¹ of electric power and energy” includes the
 8 purchase of any right to capacity of, or interest in, any electric
 9 supply project located within the corporate limits and franchise
 10 areas of the members.

11 b. The obligations of a member municipality under a power
 12 supply contract with the ¹**["municipal shared services energy"]**¹
 13 authority, or arising out of the default by any other member with
 14 respect to a power supply contract, shall not be construed to
 15 constitute a debt of the municipality. To the extent provided in the
 16 ¹**["purchase agreement"]** power supply contract¹ , these obligations
 17 shall constitute special obligations of the municipality, payable
 18 solely from the revenues and other ¹**["moneys"]** monies¹ derived by
 19 the municipality from its municipal electric utility and shall be
 20 treated as expenses of operating a municipal electric utility.

21 c. The ¹power supply¹ contract may also provide for payments
 22 in the form of collateral, contributions to defray the cost of any
 23 purpose set forth in the contract ¹and as advances for ¹**["any such"]**
 24 a¹ purpose subject to repayment by the municipal shared services
 25 energy authority.

26 d. ¹**["Such agreements"]** A power supply contract¹ may be for a
 27 term covering the life of an electric supply project, for the
 28 anticipated output period of the electric supply project, or for any
 29 other term not exceeding 40 years.

31 20. (New section) The ¹**["municipal shared services energy"]**
 32 authority formed pursuant to P.L. , c. (C.) (pending before
 33 the Legislature as this bill) shall comply with the provisions of
 34 P.L. , c. (C.) (pending before the Legislature as this bill) and
 35 all applicable federal and State laws. Nothing in P.L. , c. (C.)
 36 (pending before the Legislature as this bill) shall be construed to
 37 require regulation of ¹**["a municipal shared services energy"]** an¹
 38 authority or its members as an electric public utility as defined
 39 under R.S.48:2-13. Wholesale sales and purchases by the
 40 ¹**["municipal shared services energy"]** authority shall not subject the
 41 ¹**["municipal shared services energy"]**¹ authority or its members to
 42 the jurisdiction of the Board of Public Utilities as a public utility
 43 ¹**["as set forth in R.S.48:2-13 et seq"]** pursuant to Title 48 of the
 44 Revised Statutes¹. A municipality that is a member of the
 45 ¹**["municipal shared services energy"]** authority shall continue to be
 46 subject to all laws of the State.

1 21. (New section) All property of the ¹['municipal shared
2 services energy']¹ authority within the corporate limits and
3 franchise areas of the members shall be exempt from levy and sale
4 by virtue of an execution of a court of competent jurisdiction and no
5 execution or other judicial process shall issue against the ¹['same']
6 authority¹ nor shall any judgment against the ¹['municipal shared
7 services energy']¹ authority be a charge or lien upon its property,
8 provided, however, that nothing in this section shall apply to or
9 limit the rights of the holder of any bonds to pursue any remedy for
10 the enforcement of any pledge or lien given by the ¹['municipal
11 shared services energy']¹ authority on its system, revenues, or other
12 monies.

13
14 22. (New section) Notwithstanding any restriction contained in
15 any other law, the State and all public officers, municipalities,
16 counties, political subdivisions of public bodies, and agencies
17 thereof, all banks, bankers, trust companies, savings banks and
18 institutions, building and loan associations, savings and loan
19 associations, investment companies, and other persons carrying on a
20 banking business, all insurance companies, insurance associations,
21 and other persons carrying on an insurance business, and all
22 executors, administrators, guardians, trustees ^{1,1} and other
23 fiduciaries, may legally invest any sinking funds, monies, or other
24 funds belonging to them or within their control, in any bonds of the
25 ¹['municipal shared services energy']¹ authority, and the bonds shall
26 be authorized security for any and all public deposits.

27
28 23. (New section) Every electric supply project or facility
29 within the corporate limits and franchise areas of the members that
30 ¹['are'] is¹ owned by the ¹['municipal shared services energy']¹
31 authority, including any pro rata share of any property within the
32 corporate limits and franchise areas of the members that ¹['are'] is¹
33 owned by the ¹['municipal shared services energy']¹ authority in
34 conjunction with any other person or public agency and used in
35 connection with the generation, transmission ^{1,1} and production of
36 electric power and energy, and all other property of the ¹['municipal
37 shared services energy']¹ authority within the corporate limits and
38 franchise areas of the members, is hereby declared to be public
39 property and devoted to an essential public and governmental
40 function and purpose, and the property within the corporate limits
41 and franchise areas of the members, the ¹['municipal shared services
42 energy']¹ authority and its income shall be exempt from all taxes
43 and special assessments of the State or any subdivision of the State.
44 All bonds of the ¹['municipal shared services energy']¹ authority are
45 hereby declared to be issued by a political subdivision of the State
46 and for an essential public and governmental purpose and to be a

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

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

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

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

3
4 26. (New section) The municipal shared services energy
5 authority shall cause an annual audit of its accounts to be made, and
6 for this purpose shall employ a certified public accountant licensed
7 pursuant to the laws of the State ¹['of New Jersey']¹ . The audit
8 shall be completed and filed with the ¹['municipal shared services
9 energy']¹ authority within four months after the close of its fiscal
10 year and a certified duplicate thereof shall be filed with the Director
11 of the Division of Local Government Services in the Department of
12 Community Affairs within five days after the original report is filed
13 with the ¹['municipal shared services energy']¹ authority.

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

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

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

28 (1) The subject matter thereof consists of:

29 (a) (i) Professional services. The governing body shall in each
30 instance state supporting reasons for its action in the resolution
31 awarding each contract and shall forthwith cause to be printed once,
32 in the official newspaper, a brief notice stating the nature, duration,
33 service and amount of the contract, and that the resolution and
34 contract are on file and available for public inspection in the office
35 of the clerk of the county or municipality, or, in the case of a
36 contracting unit created by more than one county or municipality, of
37 the counties or municipalities creating ¹['such'] the¹ contracting
38 unit; or (ii) Extraordinary unspecifiable services. The application
39 of this exception shall be construed narrowly in favor of open
40 competitive bidding, whenever possible, and the Division of Local
41 Government Services is authorized to adopt and promulgate rules
42 and regulations after consultation with the Commissioner of
43 Education limiting the use of this exception in accordance with the
44 intention herein expressed. The governing body shall in each
45 instance state supporting reasons for its action in the resolution
46 awarding each contract and shall forthwith cause to be printed, in

- 1 the manner set forth in subsection (1) (a) (i) of this section, a brief
2 notice of the award of ¹**["such"]** the¹ contract;
- 3 (b) The doing of any work by employees of the contracting unit;
- 4 (c) The printing of legal briefs, records ¹,¹ and appendices to be
5 used in any legal proceeding in which the contracting unit may be a
6 party;
- 7 (d) The furnishing of a tax map or maps for the contracting unit;
- 8 (e) The purchase of perishable foods as a subsistence supply;
- 9 (f) The supplying of any product or the rendering of any service
10 by a public utility, which is subject to the jurisdiction of the Board
11 of Public Utilities or the Federal Energy Regulatory Commission or
12 its successor, in accordance with tariffs and schedules of charges
13 made, charged or exacted, filed with the board or commission;
- 14 (g) The acquisition, subject to prior approval of the Attorney
15 General, of special equipment for confidential investigation;
- 16 (h) The printing of bonds and documents necessary to the
17 issuance and sale thereof by a contracting unit;
- 18 (i) Equipment repair service if in the nature of an extraordinary
19 unspecifiable service and necessary parts furnished in connection
20 with ¹**["such"]** the¹ service, which exception shall be in accordance
21 with the requirements for extraordinary unspecifiable services;
- 22 (j) The publishing of legal notices in newspapers as required by
23 law;
- 24 (k) The acquisition of artifacts or other items of unique intrinsic,
25 artistic or historical character;
- 26 (l) Those goods and services necessary or required to prepare
27 and conduct an election;
- 28 (m) Insurance, including the purchase of insurance coverage and
29 consultant services, which exception shall be in accordance with the
30 requirements for extraordinary unspecifiable services;
- 31 (n) The doing of any work by handicapped persons employed by
32 a sheltered workshop;
- 33 (o) The provision of any goods or services including those of a
34 commercial nature, attendant upon the operation of a restaurant by
35 any nonprofit, duly incorporated, historical society at or on any
36 historical preservation site;
- 37 (p) (Deleted by amendment, P.L.1999, c.440.)
- 38 (q) Library and educational goods and services;
- 39 (r) (Deleted by amendment, P.L.2005, c.212).
- 40 (s) The marketing of recyclable materials recovered through a
41 recycling program, or the marketing of any product intentionally
42 produced or derived from solid waste received at a resource
43 recovery facility or recovered through a resource recovery program,
44 including, but not limited to, refuse-derived fuel, compost materials,
45 methane gas, and other similar products;
- 46 (t) (Deleted by amendment, P.L.1999, c.440.)
- 47 (u) Contracting unit towing and storage contracts, provided that
48 all ¹**["such"]** of the¹ contracts shall be pursuant to reasonable non-

1 exclusionary and non-discriminatory terms and conditions, which
2 may include the provision of ¹['such'] the¹ services on a rotating
3 basis, at the rates and charges set by the municipality pursuant to
4 section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit
5 towing and storage contracts for services to be provided at rates and
6 charges other than those established pursuant to the terms of this
7 paragraph shall only be awarded to the lowest responsible bidder in
8 accordance with the provisions of the "Local Public Contracts Law"
9 and without regard for the value of the contract therefor;

10 (v) The purchase of steam or electricity from, or the rendering
11 of services directly related to the purchase of ¹['such']¹ steam or
12 electricity from a qualifying small power production facility or a
13 qualifying cogeneration facility as defined pursuant to 16 U.S.C.
14 s.796;

15 (w) The purchase of electricity or administrative or dispatching
16 services directly related to the transmission of ¹['such']¹ purchased
17 electricity by a contracting unit engaged in the generation of
18 electricity;

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

22 (y) An agreement for the purchase of an equitable interest in a
23 water supply facility or for the provision of water supply services
24 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
25 an agreement entered into pursuant to P.L.1989, c.109
26 (N.J.S.40A:31-1 et al.), so long as ¹['such'] the¹ agreement is
27 entered into no later than six months after the effective date of
28 P.L.1993, c.381;

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

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

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

36 (cc) Expenses for travel and conferences;

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

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

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

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

1 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
2 construction, operation, or maintenance, or any combination
3 thereof, of a water supply facility as defined in subsection (16) of
4 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
5 treatment system as defined in subsection (19) of section 15 of
6 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
7 thereof, including a water filtration system as defined in subsection
8 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); ¹or¹

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

12 (2) It is to be made or entered into with the United States of
13 America, the State of New Jersey, county ¹ ¹ or municipality ¹ ¹ or
14 any board, body, officer, agency ¹ ¹ or authority thereof ¹ ¹ or any
15 other state or subdivision thereof.

16 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
17 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
18 received on both occasions in response to the advertisement, or (b)
19 the governing body has rejected ¹**[such]** the¹ bids on two occasions
20 because it has determined that they are not reasonable as to price,
21 on the basis of cost estimates prepared for or by the contracting
22 agent prior to the advertising therefor, or have not been
23 independently arrived at in open competition, or (c) on one occasion
24 no bids were received pursuant to (a) and on one occasion all bids
25 were rejected pursuant to (b), in whatever sequence; ¹**[any such]** a¹
26 contract may then be negotiated and may be awarded upon adoption
27 of a resolution by a two-thirds affirmative vote of the authorized
28 membership of the governing body authorizing ¹**[such]** the¹
29 contract; provided, however, that:

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

36 (ii) The terms, conditions, restrictions ¹ ¹ and specifications set
37 forth in the negotiated contract are not substantially different from
38 those which were the subject of competitive bidding pursuant to
39 section 4 of P.L.1971, c.198 (C.40A:11-4); and

40 (iii) Any minor amendment or modification of any of the terms,
41 conditions, restrictions ¹ ¹ and specifications, which were the
42 subject of competitive bidding pursuant to section 4 of P.L.1971,
43 c.198 (C.40A:11-4), shall be stated in the resolution awarding
44 ¹**[such]** the¹ contract; provided further, however, that if on the
45 second occasion the bids received are rejected as unreasonable as to
46 price, the contracting agent shall notify each responsible bidder
47 submitting bids on the second occasion of its intention to negotiate,

1 and afford each bidder a reasonable opportunity to negotiate, but
2 the governing body shall not award ¹~~such~~ the¹ contract unless the
3 negotiated price is lower than the lowest rejected bid price
4 submitted on the second occasion by a responsible bidder, is the
5 lowest negotiated price offered by any responsible vendor, and is a
6 reasonable price for ¹~~such~~¹ goods or services.

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

16 (4) The contracting unit has solicited and received at least three
17 quotations on materials, supplies ¹~~,~~¹ or equipment for which a State
18 contract has been issued pursuant to section 12 of P.L.1971, c.198
19 (C.40A:11-12), and the lowest responsible quotation is at least
20 ¹~~10%~~ 10 percent¹ less than the price the contracting unit would
21 be charged for the identical materials, supplies ¹~~,~~¹ or equipment, in
22 the same quantities, under the State contract. ¹~~Any such~~ A¹
23 contract entered into pursuant to this subsection may be awarded
24 only upon adoption of a resolution by the affirmative vote of two-
25 thirds of the full membership of the governing body of the
26 contracting unit at a meeting thereof authorizing ¹~~such a~~ the¹ a
27 contract. A copy of the purchase order relating to ¹~~any such~~ the¹
28 contract, the requisition for purchase order, if applicable, and
29 documentation identifying the price of the materials, supplies or
30 equipment under the State contract and the State contract number
31 shall be filed with the director within five working days of the
32 award of ¹~~any such~~ the¹ contract by the contracting unit. The
33 director shall notify the contracting unit of receipt of the material
34 and shall make the material available to the State Treasurer. The
35 contracting unit shall make available to the director upon request
36 any other documents relating to the solicitation and award of the
37 contract, including, but not limited to, quotations, requests for
38 quotations, and resolutions. The director periodically shall review
39 material submitted by contracting units to determine the impact of
40 ¹~~such~~ the¹ contracts on local contracting and shall consult with
41 the State Treasurer on the impact of ¹~~such~~ the¹ contracts on the
42 State procurement process. The director may, after consultation
43 with the State Treasurer, adopt rules in accordance with the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.) to limit the use of this subsection, after considering the impact
46 of contracts awarded under this subsection on State and local
47 contracting, or after considering the extent to which the award of

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

3 (5) Notwithstanding any provision of law, rule ¹,¹ or regulation
4 to the contrary, the subject matter consists of the combined
5 collection and marketing, or the cooperative combined collection
6 and marketing of recycled material recovered through a recycling
7 program, or any product intentionally produced or derived from
8 solid waste received at a resource recovery facility or recovered
9 through a resource recovery program including, but not limited to,
10 refuse-derived fuel, compost materials, methane gas, and other
11 similar products, provided that in lieu of engaging in ¹**["such"]**¹
12 public advertising for bids and the bidding therefor, the contracting
13 unit shall, prior to commencing the procurement process, submit for
14 approval to the Director of the Division of Local Government
15 Services, a written detailed description of the process to be
16 followed in securing ¹**["said"]** the¹ services. Within 30 days after
17 receipt of the written description the director shall, if the director
18 finds that the process provides for fair competition and integrity in
19 the negotiation process, approve, in writing, the description
20 submitted by the contracting unit. If the director finds that the
21 process does not provide for fair competition and integrity in the
22 negotiation process, the director shall advise the contracting unit of
23 the deficiencies that must be remedied. If the director fails to
24 respond in writing to the contracting unit within 30 days, the
25 procurement process as described shall be deemed approved. As
26 used in this section, "collection" means the physical removal of
27 recyclable materials from curbside or any other location selected by
28 the contracting unit.

29 (6) Notwithstanding any provision of law, rule ¹,¹ or regulation
30 to the contrary, the contract is for the provision of electricity by a
31 contracting unit engaged in the distribution of electricity for retail
32 sale, for the provision of wholesale electricity by a municipal
33 shared services energy authority as defined pursuant to section 3 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), or
35 for the provision of administrative or dispatching services related to
36 the transmission of ¹**["such"]** electricity, provided that in lieu of
37 engaging in public advertising for bids and the bidding therefor, the
38 contracting unit shall, prior to commencing the procurement
39 process, submit for approval to the Director of the Division of Local
40 Government Services, a written detailed description of the process
41 to be followed in securing ¹**["such"]** these¹ services. ¹**["Such"]** The¹
42 process shall be designed in a way that is appropriate to and
43 commensurate with industry practices, and the integrity of the
44 government contracting process. Within 30 days after receipt of the
45 written description, the director shall, if the director finds that the
46 process provides for fair competition and integrity in the
47 negotiation process, approve, in writing, the description submitted

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

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

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

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

19 (1) Supplying of:

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

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

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

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

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

33 (4) The collection and recycling of methane gas from a sanitary
34 landfill facility, for any term not exceeding 25 years, when ¹**[such]**
35 the¹ contract is in conformance with a district solid waste
36 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1
37 et seq.), and with the approval of the Division of Local Government
38 Services in the Department of Community Affairs and the
39 Department of Environmental Protection. The contracting unit shall
40 award the contract to the highest responsible bidder,
41 notwithstanding that the contract price may be in excess of the
42 amount of any necessarily related administrative expenses; except
43 that if the contract requires the contracting unit to expend funds
44 only, the contracting unit shall award the contract to the lowest
45 responsible bidder. The approval by the Division of Local
46 Government Services of public bidding requirements shall not be
47 required for those contracts exempted therefrom pursuant to section
48 5 of P.L.1971, c.198 (C.40A:11-5);

- 1 (5) Data processing service, for any term of not more than seven
2 years;
- 3 (6) Insurance, including the purchase of insurance coverages,
4 insurance consulting or administrative services, claims
5 administration services and including participation in a joint self-
6 insurance fund, risk management program or related services
7 provided by a contracting unit insurance group, or participation in
8 an insurance fund established by a local unit pursuant to
9 N.J.S.40A:10-6, or a joint insurance fund established pursuant to
10 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more
11 than three years;
- 12 (7) Leasing or servicing of (a) automobiles, motor vehicles,
13 machinery ^{1,1} and equipment of every nature and kind, for a period
14 not to exceed five years, or (b) machinery and equipment used in
15 the generation of electricity by a municipal shared services energy
16 authority established pursuant to section 4 of P.L. , c. (C.)
17 (pending before the Legislature as this bill), or a contracting unit
18 engaged in the generation of electricity, for a period not to exceed
19 20 years; provided, however, ¹**["such contracts"]** a contract¹ shall be
20 awarded only subject to and in accordance with the rules and
21 regulations promulgated by the Director of the Division of Local
22 Government Services in the Department of Community Affairs;
- 23 (8) The supplying of any product or the rendering of any service
24 by a company providing voice, data, transmission ^{1,1} or switching
25 services for a term not exceeding five years;
- 26 (9) Any single project for the construction, reconstruction ^{1,1} or
27 rehabilitation of any public building, structure ^{1,1} or facility, or any
28 public works project, including the retention of the services of any
29 architect or engineer in connection therewith, for the length of time
30 authorized and necessary for the completion of the actual
31 construction;
- 32 (10) The providing of food services for any term not exceeding
33 three years;
- 34 (11) On-site inspections and plan review services undertaken by
35 private agencies pursuant to the "State Uniform Construction Code
36 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
37 more than three years;
- 38 (12) (Deleted by amendment, P.L.2009, c.4).
- 39 (13) (Deleted by amendment, P.L.1999, c.440.)
- 40 (14) (Deleted by amendment, P.L.1999, c.440.)
- 41 (15) Leasing of motor vehicles, machinery ^{1,1} and other
42 equipment primarily used to fight fires, for a term not to exceed ten
43 years, when the contract includes an option to purchase, subject to
44 and in accordance with rules and regulations promulgated by the
45 Director of the Division of Local Government Services in the
46 Department of Community Affairs;

1 (16) The provision of water supply services or the designing,
2 financing, construction, operation, or maintenance, or any
3 combination thereof, of a water supply facility, or any component
4 part or parts thereof, including a water filtration system, for a period
5 not to exceed 40 years, when the contract for these services is
6 approved by the Division of Local Government Services in the
7 Department of Community Affairs, the Board of Public Utilities,
8 and the Department of Environmental Protection pursuant to
9 P.L.1985, c.37 (C.58:26-1 et al.), except that no ¹["such"]¹ approvals
10 shall be required for those contracts otherwise exempted pursuant to
11 subsection (30), (31), (34), (35) or (43) of this section. For the
12 purposes of this subsection, "water supply services" means any
13 service provided by a water supply facility; "water filtration
14 system" means any equipment, plants, structures, machinery,
15 apparatus, or land, or any combination thereof, acquired, used,
16 constructed, rehabilitated, or operated for the collection,
17 impoundment, storage, improvement, filtration, or other treatment
18 of drinking water for the purposes of purifying and enhancing water
19 quality and insuring its portability prior to the distribution of the
20 drinking water to the general public for human consumption,
21 including plants and works, and other personal property and
22 appurtenances necessary for their use or operation; and "water
23 supply facility" means and refers to the real property and the plants,
24 structures, ¹or¹ interconnections between existing water supply
25 facilities, machinery and equipment and other property, real,
26 personal ¹,¹ and mixed, acquired, constructed ¹,¹ or operated, or to
27 be acquired, constructed ¹,¹ or operated, in whole or in part by or on
28 behalf of a political subdivision of the State or any agency thereof,
29 for the purpose of augmenting the natural water resources of the
30 State and making available an increased supply of water for all
31 uses, or of conserving existing water resources, and any and all
32 appurtenances necessary, useful ¹,¹ or convenient for the collecting,
33 impounding, storing, improving, treating, filtering, conserving ¹,¹ or
34 transmitting of water and for the preservation and protection of
35 these resources and facilities and providing for the conservation and
36 development of future water supply resources;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (28) The supplying of liquid oxygen or other chemicals, for a
2 term not to exceed five years, when the contract includes the
3 installation of tanks or other storage facilities by the supplier, on or
4 near the premises of the contracting unit;
- 5 (29) The performance of patient care services by contracted
6 medical staff at county hospitals, correction facilities ^{1,1} and long
7 term care facilities, for any term of not more than three years;
- 8 (30) The acquisition of an equitable interest in a water supply
9 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
10 contract entered into pursuant to the "County and Municipal Water
11 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into
12 no later than January 7, 1995, for any term of not more than forty
13 years;
- 14 (31) The provision of water supply services or the financing,
15 construction, operation ^{1,1} or maintenance or any combination
16 thereof, of a water supply facility or any component part or parts
17 thereof, by a partnership or copartnership established pursuant to a
18 contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2),
19 for a period not to exceed 40 years;
- 20 (32) Laundry service and the rental, supply ^{1,1} and cleaning of
21 uniforms for any term of not more than three years;
- 22 (33) The supplying of any product or the rendering of any
23 service, including consulting services, by a cemetery management
24 company for the maintenance and preservation of a municipal
25 cemetery operating pursuant to the "New Jersey Cemetery Act,"
26 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;
- 27 (34) A contract between a public entity and a private firm
28 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
29 water supply services may be entered into for any term which, when
30 all optional extension periods are added, may not exceed 40 years;
- 31 (35) A contract for the purchase of a supply of water from a
32 public utility company subject to the jurisdiction of the Board of
33 Public Utilities in accordance with tariffs and schedules of charges
34 made, charged or exacted or contracts filed with the Board of Public
35 Utilities, for any term of not more than 40 years;
- 36 (36) A contract between a public entity and a private firm or
37 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
38 the provision of wastewater treatment services may be entered into
39 for any term of not more than 40 years, including all optional
40 extension periods;
- 41 (37) The operation and management of a facility under a license
42 issued or permit approved by the Department of Environmental
43 Protection, including a wastewater treatment system or a water
44 supply or distribution facility, as the case may be, for any term of
45 not more than ten years. For the purposes of this subsection,
46 "wastewater treatment system" refers to facilities operated or
47 maintained for the storage, collection, reduction, disposal, or other
48 treatment of wastewater or sewage sludge, remediation of

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

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

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

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

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

15 (42) Purchases made under a contract awarded by the Director of
16 the Division of Purchase and Property in the Department of the
17 Treasury for use by counties, municipalities ^{1,1} or other contracting
18 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
19 term not to exceed the term of that contract;

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

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

30 (45) The provision or performance of goods or services for the
31 purpose of producing class I renewable energy or class II renewable
32 energy, as those terms are defined in section 3 of P.L.1999, c.23
33 (C.48:3-51), at, or adjacent to, buildings owned by, or operations
34 conducted by, the contracting unit, the entire price of which is to be
35 established as a percentage of the resultant savings in energy costs,
36 for a term not to exceed 15 years; provided, however, that ¹["such
37 contracts"] a contract¹ shall be entered into only subject to and in
38 accordance with guidelines promulgated by the Board of Public
39 Utilities establishing a methodology for computing energy cost
40 savings and energy generation costs **[.]; and**

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

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

4 Any contract for services other than professional services, the
5 statutory length of which contract is for three years or less, may
6 include provisions for no more than one two-year, or two one-year,
7 extensions, subject to the following limitations: a. The contract
8 shall be awarded by resolution of the governing body upon a
9 finding by the governing body that the services are being performed
10 in an effective and efficient manner; b. No ¹**[such]**¹ contract shall
11 be extended so that it runs for more than a total of five consecutive
12 years; c. Any price change included as part of an extension shall be
13 based upon the price of the original contract as cumulatively
14 adjusted pursuant to any previous adjustment or extension and shall
15 not exceed the change in the index rate for the 12 months preceding
16 the most recent quarterly calculation available at the time the
17 contract is renewed; and d. The terms and conditions of the
18 contract remain substantially the same.

19 All multiyear leases and contracts entered into pursuant to this
20 section, including any two-year or one-year extensions, except
21 contracts involving the supplying of electricity for the purpose of
22 lighting public streets and contracts for thermal energy authorized
23 pursuant to subsection (1) above, construction contracts authorized
24 pursuant to subsection (9) above, contracts for the provision or
25 performance of goods or services or the supplying of equipment to
26 promote energy conservation through the production of class I
27 renewable energy or class II renewable energy authorized pursuant
28 to subsection (45) above, contracts for water supply services or for
29 a water supply facility, or any component part or parts thereof
30 authorized pursuant to subsection (16), (30), (31), (34), (35), (37)
31 ¹₂¹ or (43) above, contracts for resource recovery services or a
32 resource recovery facility authorized pursuant to subsection (17)
33 above, contracts for the sale of energy produced by a resource
34 recovery facility authorized pursuant to subsection (18) above,
35 contracts for wastewater treatment services or for a wastewater
36 treatment system or any component part or parts thereof authorized
37 pursuant to subsection (19), (36), (37) ¹₂¹ or (43) above, and
38 contracts for the purchase of electricity or administrative or
39 dispatching services related to the transmission of ¹**[such]**¹
40 electricity authorized pursuant to subsection (24) above **[and]**,
41 contracts for the purchase of electricity generated from a power
42 production facility that is fueled by methane gas authorized
43 pursuant to subsection (44) above, and power supply contracts
44 authorized pursuant to subsection (46) respectively, shall contain a
45 clause making them subject to the availability and appropriation
46 annually of sufficient funds as may be required to meet the
47 extended obligation, or contain an annual cancellation clause.

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

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

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

14
15 30. (New section) The powers granted under P.L. ,
16 c. (C.) (pending before the Legislature as this bill) shall not
17 limit the powers of ¹~~["municipalities"]~~ a municipality¹ to enter into
18 ¹a¹ shared service ¹~~["agreements"]~~ agreement¹ or ¹~~["contracts"]~~ or
19 contract¹, or to establish ¹a¹ separate legal ¹~~["entities"]~~ entity¹
20 pursuant to State law or otherwise to carry out their powers under
21 applicable statutory provisions, nor shall the powers granted under
22 P.L. , c. (C.) (pending before the Legislature as this bill)
23 limit the powers reserved to ¹~~["municipalities"]~~ a municipality¹ by
24 State law.

25
26 31. This act shall take effect immediately.