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LAW

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED DECEMBER 8, 2008

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Cunningham, Ruiz, Kyrillos, Oroho and Van Drew**

SYNOPSIS

Authorizes public entities to implement energy savings improvement programs.

CURRENT VERSION OF TEXT

As amended by the Senate on December 15, 2008.

(Sponsorship Updated As Of: 12/16/2008)

1 AN ACT authorizing public entities to implement energy savings
2 improvement programs and amending and supplementing various
3 parts of the statutory law

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 **¹[I. SCHOOL DISTRICTS]**¹

9 1. (New section) a. A board of education, as defined in
10 N.J.S.18A:18A-2, may implement an energy savings improvement
11 program in the manner provided by this section whenever it
12 determines that the savings generated from reduced energy use from
13 the program will be sufficient to cover the cost of the program's
14 energy conservation measures as set forth in an energy savings plan.
15 Under such a program, a board of education may enter into an
16 energy savings services contract with an energy services company
17 to implement the program or the board may authorize separate
18 contracts to implement the program. The provisions of
19 N.J.S.18A:18A-1 et seq. shall apply to any contracts awarded
20 pursuant to this section to the extent that the provisions of such law
21 are not inconsistent with any provision of this section.

22 b. (1) To be eligible to enter into an energy savings services
23 contract, an energy services company shall be a commercial entity
24 that is qualified to provide energy savings services in accordance
25 with the provisions of this section. A board of education may
26 determine to enter into an energy savings services contract either
27 through public advertising for bids and the receipt of bids therefor
28 or through competitive contracting in lieu of public bidding in the
29 manner provided by sections 45 through 49 of P.L.1999, c.440
30 (C.18A:18A-4.1 et seq.).

31 (2) (a) Public works activities performed under an energy
32 savings improvement program shall be subject to all requirements
33 regarding public bidding, bid security, performance guarantees,
34 insurance and other public contracting requirements that are
35 applicable to public works contracts, to the extent not inconsistent
36 with this section. A general contractor, energy services company
37 serving as general contractor, or any subcontractor hired for the
38 furnishing of plumbing and gas fitting and all kindred work, and of
39 steam and hot water heating and ventilating apparatus, steam power
40 plants and kindred work, and electrical work, structural steel and
41 ornamental iron work, shall be classified by the Division of
42 Property Management and Construction in the Department of the
43 Treasury in order to perform public works activities under an
44 energy savings improvement program.

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:

¹ Senate floor amendments adopted December 15, 2008.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan ¹, provided that the hiring of subcontractors
11 that are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed pursuant to the
13 public bidding requirements of the board of education¹. A contract
14 with an energy savings company shall include, but not be limited to:
15 preparation of an energy savings plan; the responsibilities of the
16 parties for project schedules, installations, performance and quality,
17 payment of subcontractors, project completion, commissioning,
18 savings implementation; a requirement that the savings to be
19 achieved by energy conservation measures be verified upon
20 commissioning of the improvements; allocation of State and federal
21 rebates and tax credits; and any other provisions deemed necessary
22 by the parties.

23 (4) Except as provided in paragraph (5) of this subsection, a
24 subsidiary or wholly-owned or partially-owned affiliate of the
25 energy ¹['service] services¹ company shall not be an eligible
26 contractor or subcontractor under an energy savings services
27 contract.

28 (5) When the energy services company is the manufacturer of
29 direct digital control systems and contracts with the board of
30 education to provide a guaranteed energy savings option pursuant to
31 subsection f. of this section, the specification of such direct digital
32 control systems may be treated as proprietary goods and if so
33 treated, the bid specification shall set forth an allowance price for
34 its supply by the energy services company which shall be used by
35 all bidders in the public bidding process. Direct digital controls
36 shall be open protocol format and shall meet the interoperability
37 guidelines established by the American Society of Heating,
38 Refrigerating and Air-Conditioning Engineers.

39 c. An energy savings improvement program may be financed
40 through a lease-purchase agreement or through the issuance of
41 energy savings obligations pursuant to this subsection.

42 (1) An energy savings improvement program may be financed
43 through a lease-purchase agreement between a board of education
44 and an energy ¹['service] services¹ company or other public or
45 private entity. Under a lease-purchase agreement, ownership of the
46 energy savings equipment or improved facilities shall pass to the
47 board of education when all lease payments have been made.

1 Notwithstanding the provisions of ¹[N.J.S.18A:18A-4.2] section 46
2 of P.L.1999, c.440 (C.18A:18A-4.2)¹ or any other law to the
3 contrary, duration of such a lease-purchase agreement shall not
4 exceed 15 years, except that the duration of a lease purchase
5 agreement for a combined heat and power or cogeneration project
6 shall not exceed 20 years.

7 (2) Any lease-purchase agreement entered into pursuant to this
8 subsection may contain: a clause making it subject to the
9 availability and appropriation annually of sufficient funds as may
10 be required to meet the extended obligation; and a non-substitution
11 clause maintaining that if the agreement is terminated for non-
12 appropriation, the board of education may not replace the leased
13 equipment or facilities with equipment or facilities that perform the
14 same or similar functions.

15 (3) A board of education may arrange for incurring energy
16 savings obligations to finance an energy savings improvement
17 program. Energy savings obligations may be funded through
18 appropriations for utility services in the annual budget of the board
19 and may be issued as refunding bonds pursuant to P.L.1969, c.130
20 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
21 notes as may be necessary, provided that all such bonds and notes
22 mature within the periods authorized for such energy savings
23 obligations. Energy savings obligations may be issued either
24 through the board of education or another public agency authorized
25 to undertake financing on behalf of the board.

26 (4) Lease-purchase agreements and energy savings obligations
27 shall not be used to finance maintenance, guarantees, or verification
28 of guarantees of energy conservation measures. Lease-purchase
29 agreements and energy savings obligations may be used to finance
30 the cost of an energy audit or the cost of verification of energy
31 savings as part of adopting an energy savings plan.
32 Notwithstanding any law to the contrary, lease-purchase agreements
33 and energy savings certificates shall not be excepted from any
34 budget or tax levy limitation otherwise provided by law. Maturity
35 schedules of lease-purchase agreements or energy savings
36 obligations must exceed the estimated useful life of the individual
37 energy conservation measures.

38 d. (1) The energy audit component of an energy savings
39 improvement program shall be conducted either by the board of
40 education or by a qualified third party retained by the board for that
41 purpose. It shall not be conducted by an energy services company
42 subsequently hired to develop an energy savings improvement
43 program. The energy audit shall identify the current energy use of
44 any or all facilities and energy conservation measures that can be
45 implemented in which the energy savings and energy efficiency
46 could be realized and maximized.

1 (2) To implement an energy savings improvement program, a
2 board of education shall develop an energy savings plan that
3 consists of one or more energy conservation measures. The plan
4 shall:

5 (a) contain the results of an energy audit;

6 (b) describe the energy conservation measures that will
7 comprise the program;

8 (c) estimate ¹[of] ¹greenhouse gas reductions resulting from
9 those energy savings;

10 (d) identify all design and compliance issues that require the
11 professional services of an architect or engineer and identify who
12 will provide these services;

13 (e) include an assessment of risks involved in the successful
14 implementation of the plan;

15 (f) identify the eligibility for, and costs and revenues associated
16 with the PJM Independent System Operator for demand response
17 and curtailable service activities;

18 (g) include schedules showing calculations of all costs of
19 implementing the proposed energy conservation measures and the
20 projected energy savings;

21 (h) identify maintenance requirements necessary to ensure
22 continued energy savings, and describe how they will be fulfilled;
23 and

24 (i) if developed by an energy services company, a description
25 of, and cost estimates of an energy savings guarantee.

26 All professionals providing engineering services under the plan
27 shall have errors and omissions insurance.

28 (3) Prior to the adoption of the plan by the governing body, the
29 board of education shall contract with a qualified third party to
30 verify the projected energy savings to be realized from the proposed
31 program have been calculated as required by subsection e. of this
32 section.

33 (4) Upon adoption, the plan shall be submitted to the Board of
34 Public Utilities, which shall post it on the Internet on a public
35 webpage maintained for such purpose. If the board of education
36 maintains its own website, it shall also post the plan on that site.
37 The Board of Public Utilities may require periodic reporting
38 concerning the implementation of the plan.

39 (5) Verification by a qualified third party shall be required when
40 energy conservation measures are placed in service or
41 commissioned, to ensure the savings projected in the energy savings
42 plan shall be achieved.

43 (6) Energy-related capital improvements that do not reduce
44 energy usage may be included in an energy savings improvement
45 program but the cost of such improvements shall not be financed as
46 a lease-purchase or through energy savings obligations authorized
47 by subsection c. of this section. Nothing herein is intended to

1 prevent financing of such capital improvements through otherwise
2 authorized means.

3 (7) A qualified third party when required by this subsection may
4 include an employee of the board of education who is properly
5 trained and qualified to perform such work.

6 e. (1) The calculation of energy savings for the purposes of
7 determining that the energy savings resulting from the program will
8 be sufficient to cover the cost of the program's energy conservation
9 measures, as provided in subsection a. of this section, shall involve
10 determination of the dollar amount saved through implementation
11 of an energy savings improvement program using the guidelines of
12 the International Performance Measurement and Verification
13 Protocol or other protocols approved by the Board of Public
14 Utilities and standards adopted by the Board of Public Utilities
15 pursuant to this section. The calculation shall include all applicable
16 State and federal rebates and tax credits, but shall not include the
17 cost of an energy audit and the cost of verifying energy savings.
18 The calculation shall state which party has made application for
19 rebates and credits and how these applications translate into energy
20 savings.

21 (2) For the purposes of this section, the Board of Public Utilities
22 shall adopt standards and uniform values for interest rates and
23 escalation of labor, electricity, oil, and gas, as well as standards for
24 presenting these costs in a life cycle and net present value format,
25 standards for the presentation of obligations for carbon reductions,
26 and other standards that the board may determine necessary.

27 f. (1) When an energy 'service' services' company is
28 awarded an energy savings services contract, it shall offer the board
29 of education the option to purchase, for an additional amount, an
30 energy savings guarantee. The guarantee, if accepted by a separate
31 vote of the board of education, shall insure that the energy savings
32 resulting from the energy savings improvement program,
33 determined periodically over the duration of the guarantee, will be
34 sufficient to defray all payments required to be made pursuant to
35 the lease-purchase agreement or energy savings obligation, and if
36 the savings are not sufficient, the energy 'service' services'
37 company will reimburse the board for any additional amounts.
38 Annual costs of a guarantee shall not be financed or included as
39 costs in an energy savings plan but shall be fully disclosed in an
40 energy savings plan.

41 (2) When a guaranteed energy savings option is purchased, the
42 contract shall require a qualified third party to verify the energy
43 savings at intervals established by the parties.

44 g. As used in this section:

45 "direct digital control systems" 'mean' means' the devices and
46 computerized control equipment that contain software and computer
47 interfaces that perform the logic that control a building's heating,

1 ventilating, and air conditioning system. Direct digital controls
2 shall be open protocol format and shall meet the interoperability
3 guidelines established by the American Society of Heating,
4 Refrigerating and Air-Conditioning Engineers.

5 “energy conservation measure” means an improvement that
6 results in reduced energy use, including, but not limited to,
7 installation of energy efficient equipment; demand response
8 equipment; combined heat and power systems; facilities for the
9 production of renewable energy; water conservation measures
10 fixtures or facilities; building envelope improvements that are part
11 of an energy savings improvement program; and related control
12 systems for each of the foregoing;

13 “energy related capital improvement” means a capital
14 improvement that uses energy but does not result in a reduction of
15 energy use;

16 “energy saving obligation” means a bond, note or other
17 agreement evidencing the obligation to repay borrowed funds
18 incurred in order to finance energy saving improvements;

19 “energy savings” means a measured reduction in fuel, energy
20 operating or maintenance costs resulting from the implementation
21 of one or more energy conservation measures services when
22 compared with an established baseline of previous fuel, energy,
23 operating or maintenance costs, including, but not limited to, future
24 capital replacement expenditures avoided as a result of equipment
25 installed or services performed as part of an energy savings plan;

26 “energy savings improvement program” means an initiative of a
27 board of education to implement energy conservation measures in
28 existing facilities, provided that the value of the energy savings
29 resulting from the program will be sufficient to cover the cost of the
30 program’s energy conservation measures;

31 “energy savings plan” means the document that describes the
32 actions to be taken to implement the energy savings improvement
33 program;

34 “energy savings services contract” means a contract with an
35 energy savings company to develop an energy savings plan, prepare
36 bid specifications, manage the performance, provision,
37 construction, and installation of energy conservation measures by
38 subcontractors, to offer a guarantee of energy savings derived from
39 the implementation of an energy savings plan, and may include a
40 provision to manage the bidding process;

41 “energy services company” means a commercial entity that is
42 qualified to develop and implement an energy savings plan in
43 accordance with the provisions of this section;

44 “public works activities” means any work subject to the
45 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

1 “water conservation measure” means an alteration to a facility or
2 equipment that reduces water consumption, maximizes the
3 efficiency of water use, or reduces water loss.

4 h. (1) The Director of the Division of Local Government
5 Services in the Department of Community Affairs, the State
6 Treasurer, and the Board of Public Utilities may take such action as
7 is deemed necessary and consistent with the intent of this section to
8 implement its provisions.

9 (2) The Director of the Division of Local Government Services
10 in the Department of Community Affairs, the State Treasurer and
11 the Board of Public Utilities may adopt implementation guidelines
12 or directives, and adopt such administrative rules, pursuant to the
13 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
14 seq.), as are necessary for the implementation of those agencies’
15 respective responsibilities under this section, except that
16 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
17 seq.) to the contrary, the Director of the Division of Local
18 Government Services in the Department of Community Affairs, the
19 State Treasurer, and the Board of Public Utilities may adopt,
20 immediately upon filing with the Office of Administrative Law,
21 such rules and regulations as deemed necessary to implement the
22 provisions of this act which shall be effective for a period not to
23 exceed 12 months and shall thereafter be amended, adopted or re-
24 adopted in accordance with the provisions of P.L.1968, c.410
25 (C.52:14B-1 et seq.).

26
27 2. Section 45 of P.L.1999, c.440 (C.18A:18A-4.1) is amended
28 to read as follows:

29 45. Notwithstanding the provisions of any law, rule or regulation
30 to the contrary, competitive contracting may be used by boards of
31 education in lieu of public bidding for procurement of specialized
32 goods and services the price of which exceeds the bid threshold, for
33 the following purposes:

34 a. The purchase or licensing of proprietary computer software
35 designed for board of education purposes, which may include
36 hardware intended for use with the proprietary software. This
37 subsection shall not be utilized for the purpose of acquiring general
38 purpose computer hardware or software;

39 b. The hiring of a for-profit entity or a not-for-profit entity
40 incorporated under Title 15A of the New Jersey Statutes for the
41 purpose of:

42 (1) the operation, management or administration of recreation or
43 social service facilities or programs; or

44 (2) the operation, management or administration of data
45 processing services;

46 c. Services performed by an [energy services company,
47 including the design, measurement, financing and maintenance of

1 energy savings equipment or renovations, which result in payment
2 derived, in whole or in part, from the sale of verified energy savings
3 over the term of an agreement with a public utility or subsidiary,
4 but not the provision or performance of the physical improvements
5 that result in energy savings, provided that such savings are
6 calculated pursuant to guidelines promulgated by the Board of
7 Public Utilities and further provided that the Local Finance Board,
8 in consultation with the State Board of Education, shall find that the
9 terms and conditions of any financing agreement are reasonable.]
10 organization engaged in providing energy conservation education
11 and training services to train employees of a board of education to
12 reduce consumption of energy;

13 d. Telecommunications transmission or switching services that
14 are not part of a tariff or schedule of charges filed with the Board of
15 Public Utilities;

16 e. The purchase of specialized machinery or equipment of a
17 technical nature, or servicing thereof, which will not reasonably
18 permit the drawing of specifications;

19 f. Food services provided by food service management
20 companies when not part of programs administered by the New
21 Jersey Department of Agriculture, Bureau of Child Nutrition
22 Programs;

23 g. Driver education courses provided by licensed driver
24 education schools;

25 h. At the option of the board of education, any good or service
26 that is exempt from bidding pursuant to N.J.S.18A:18A-5;

27 i. Laboratory testing services;

28 j. Concessions;

29 k. The operation, management or administration of other
30 services, with the approval of the Division of Local Government
31 Services in the Department of Community Affairs.

32 Any purpose included herein shall not be considered by a board
33 of education as an extraordinary unspecifiable service pursuant to
34 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

35 (cf: P.L.1999, c.440, s.45)

36

37 3. N.J.S.18A:18A-42 is amended to read as follows:

38 18A:18A-42. All contracts for the provision or performance of
39 goods or services shall be awarded for a period not to exceed 24
40 consecutive months, except that contracts for professional services
41 pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall
42 be awarded for a period not to exceed 12 consecutive months. Any
43 board of education may award a contract for longer periods of time
44 as follows:

45 a. Supplying of:

46 (1) Fuel for heating purposes, for any term not exceeding in the
47 aggregate, three years;

- 1 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles
2 or equipment, for any term not exceeding in the aggregate, three
3 years;
- 4 (3) Thermal energy produced by a cogeneration facility, for use
5 for heating or air conditioning or both, for any term not exceeding
6 40 years, when the contract is approved by the Board of Public
7 Utilities. For the purposes of this paragraph, "cogeneration" means
8 the simultaneous production in one facility of electric power and
9 other forms of useful energy such as heating or process steam; or
- 10 b. Plowing and removal of snow and ice, for any term not
11 exceeding in the aggregate, three years; or
- 12 c. Collection and disposal of garbage and refuse, for any term
13 not exceeding in the aggregate, three years; or
- 14 d. Data processing service, for any term of not more than seven
15 years; or
- 16 e. Insurance, including the purchase of insurance coverages,
17 insurance consultant or administrative services, and including
18 participation in a joint self-insurance fund, risk management
19 program or related services provided by a school board insurance
20 group, or participation in an insurance fund established by a county
21 pursuant to N.J.S.40A:10-6, or a joint insurance fund established
22 pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of
23 not more than three years; or
- 24 f. Leasing or servicing of automobiles, motor vehicles,
25 electronic communications equipment, machinery and equipment of
26 every nature and kind and textbooks and non-consumable
27 instructional materials, for any term not exceeding in the aggregate,
28 five years; except that contracts for the leasing of school buses may
29 be awarded for any term not exceeding in the aggregate ten years.
30 Contracts awarded pursuant to this subsection shall be awarded only
31 subject to and in accordance with rules and regulations promulgated
32 by the State Board of Education; or
- 33 g. Supplying of any product or the rendering of any service by
34 a company providing voice, data, transmission or switching
35 services, for a term not exceeding five years; or
- 36 h. (Deleted by amendment, P.L.1999, c.440.)
- 37 i. Driver education instruction conducted by private, licensed
38 driver education schools, for any term not exceeding in the
39 aggregate, three years; or
- 40 j. [The provision or performance of goods or services for the
41 purpose of conserving energy through energy efficiency equipment
42 or demand response equipment, including combined heat and power
43 facilities, in, at, or adjacent to, buildings owned by any local board
44 of education, the entire price of which shall be established as a
45 percentage of the resultant savings in energy costs, for a term not to
46 exceed 15 years; except that these contracts shall be entered into
47 only subject to and in accordance with guidelines promulgated by
-

1 the Board of Public Utilities establishing a methodology for
2 computing energy cost savings. As used in this subsection,
3 "combined heat and power facilities" means facilities designed to
4 produce both heat and electricity from a single heat source; or]
5 (Deleted by amendment, P.L. , c. (pending before the Legislature
6 as this bill)).

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

13 l. Laundry service and the rental, supply and cleaning of
14 uniforms for any term of not more than three years; or

15 m. Food supplies and food services for any term of not more
16 than three years; or

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

22 o. The provision or performance of goods or services for the
23 purpose of producing class I renewable energy, as that term is
24 defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent
25 to, buildings owned by any local board of education, the entire price
26 of which is to be established as a percentage of the resultant savings
27 in energy costs, for a term not to exceed 15 years; provided,
28 however, that these contracts shall be entered into only subject to
29 and in accordance with guidelines promulgated by the Board of
30 Public Utilities establishing a methodology for computing energy
31 cost savings and energy generation costs.

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

1 All multiyear leases and contracts entered into pursuant to this
2 section, including any two-year or one-year extensions, except
3 contracts for insurance coverages, insurance consultant or
4 administrative services, participation or membership in a joint self-
5 insurance fund, risk management programs or related services of a
6 school board insurance group, participation in an insurance fund
7 established by a county pursuant to N.J.S.40A:10-6 or contracts for
8 thermal energy authorized pursuant to subsection a. above, and
9 contracts for the provision or performance of goods or services to
10 promote energy conservation through ¹[energy efficiency
11 equipment or demand response equipment, including combined heat
12 and power facilities, authorized pursuant to subsection j. of this
13 section, or]¹ the production of class I renewable energy, authorized
14 pursuant to subsection o. of this section, shall contain a clause
15 making them subject to the availability and appropriation annually
16 of sufficient funds as may be required to meet the extended
17 obligation, or contain an annual cancellation clause. All contracts
18 shall cease to have effect at the end of the contracted period and
19 shall not be extended by any mechanism or provision, unless in
20 conformance with the "Public School Contracts Law,"
21 N.J.S.18A:18A-1 et seq., except that a contract may be extended by
22 mutual agreement of the parties to the contract when a board of
23 education has commenced rebidding prior to the time the contract
24 expires or when the awarding of a contract is pending at the time
25 the contract expires.

26 (cf: P.L.2008, c.83, s.1)

27
28 **¹[II. PUBLIC INSTITUTIONS OF HIGHER**
29 **EDUCATION]¹**

30 4. (New section) a. The board of trustees of a public
31 institution of higher education may implement an energy savings
32 improvement program in the manner provided by this section
33 whenever it determines that the savings generated from reduced
34 energy use from the program will be sufficient to cover the cost of
35 the program's energy conservation measures as set forth in an
36 energy savings plan. Under such a program, a board of trustees may
37 enter into an energy savings services contract with an energy
38 services company to implement the program or the board may
39 authorize separate contracts to implement the program. The
40 provisions of: N.J.S.18A:64-1 et seq., in the case of any State
41 college; P.L.1995, c.400 (C.18A:64E-12 et seq.), in the case of the
42 New Jersey Institute of Technology; N.J.S.18A:65-1 et seq., in the
43 case of Rutgers, the State University; P.L.1970, c.102 (C.18A:64G-
44 1 et seq.), in the case of the University of Medicine and Dentistry of
45 New Jersey; and N.J.S.18A:64A-1 et seq., in the case of the county
46 colleges; shall apply to any contracts awarded pursuant to this

1 section to the extent that the provisions of such law are not
2 inconsistent with any provision of this section.

3 In the case of Rutgers, the State University, references in this
4 section to the board of trustees shall mean the Rutgers board of
5 governors.

6 b. (1) To be eligible to enter into an energy savings services
7 contract, an energy services company shall be a commercial entity
8 that is qualified to provide energy savings services in accordance
9 with the provisions of this section. A public institution of higher
10 education may enter into an energy savings services contract
11 through public advertising for bids and the receipt of bids therefor.

12 (2) (a) Public works activities performed under an energy
13 savings improvement program shall be subject to all requirements
14 regarding public bidding, bid security, performance guarantees,
15 insurance and other public contracting requirements that are
16 applicable to public works contracts, to the extent not inconsistent
17 with this section. A general contractor, energy services company
18 serving as general contractor, or any subcontractor hired for the
19 furnishing of plumbing and gas fitting and all kindred work, and of
20 steam and hot water heating and ventilating apparatus, steam power
21 plants and kindred work, and electrical work, structural steel and
22 ornamental work, shall be classified by the Division of Property
23 Management and Construction in the Department of the Treasury in
24 order to perform public works activities under an energy savings
25 improvement program.

26 (b) Individuals or organizations performing energy audits,
27 acting as commissioning agents, or conducting verification of
28 energy savings plans, implementation of energy conservation
29 measures, or verifying guarantees shall be prequalified by the
30 Division of Property Management and Construction in the
31 Department of the Treasury to perform their work under an energy
32 savings improvement program.

33 (c) Where there is a need for compatibility of a direct digital
34 control system with previously installed control systems and
35 equipment, the bid specifications may include a requirement for
36 proprietary goods, and if so included, the bid specification shall set
37 forth an allowance price for its supply which shall be used by all
38 bidders in the public bidding process.

39 (3) An energy services company may be designated as the
40 general contractor for improvements to be made pursuant to an
41 energy savings plan ¹, provided that the hiring of subcontractors
42 that are required to be classified pursuant to subparagraph (a) of
43 paragraph (2) of this subsection shall be performed pursuant to the
44 public bidding requirements of the board of trustees¹. A contract
45 with an energy savings company shall include, but not be limited to:
46 preparation of an energy savings plan, the responsibilities of the
47 parties for project schedules, installations, performance and quality,

1 payment of subcontractors, project completion, commissioning,
2 savings implementation; a requirement that the savings to be
3 achieved by energy conservation measures be verified upon
4 commissioning of the improvements; allocation of State and federal
5 rebates and tax credits; and any other provisions deemed necessary
6 by the parties.

7 (4) Except as provided in paragraph (5) of this subsection, a
8 subsidiary or wholly-owned or partially-owned affiliate of the
9 energy ¹[service] services¹ company shall not be an eligible
10 contractor or subcontractor under an energy savings services
11 contract.

12 (5) When the energy services company is the manufacturer of
13 direct digital control systems and contracts with the board of
14 trustees to provide a guaranteed energy savings option pursuant to
15 subsection f. of this section, the specification of such direct digital
16 control systems may be treated as proprietary goods and if so
17 treated, the bid specification shall set forth an allowance price for
18 its supply by the energy services company which shall be used by
19 all bidders in the public bidding process. Direct digital controls
20 shall be open protocol format and shall meet the interoperability
21 guidelines established by the American Society of Heating,
22 Refrigerating and Air-Conditioning Engineers.

23 c. An energy savings improvement program may be financed
24 through a lease-purchase agreement or through the issuance of
25 energy savings obligations pursuant to this subsection.

26 (1) An energy savings improvement program may be financed
27 through a lease-purchase agreement between a board of trustees and
28 an energy ¹[service] services¹ company or other public or private
29 entity. Under a lease-purchase agreement, ownership of the energy
30 savings equipment or improved facilities shall pass to the board of
31 trustees when all lease payments have been made. Notwithstanding
32 the provisions of any other law to the contrary, the duration of such
33 a lease-purchase agreement shall not exceed 15 years, except that
34 the duration of a lease purchase agreement for a combined heat and
35 power or cogeneration project shall not exceed 20 years.

36 (2) Any lease-purchase or other agreement entered into in
37 connection with an energy savings improvement program may be a
38 general obligation of the public institution of higher education
39 pursuant to this subsection, and may contain: a clause making it
40 subject to the availability and appropriation annually of sufficient
41 funds as may be required to meet the extended obligation; and a
42 non-substitution clause maintaining that if the agreement is
43 terminated for non-appropriation, the board of trustees may not
44 replace the leased equipment or facilities with equipment or
45 facilities that perform the same or similar functions.

46 (3) A board of trustees may arrange for incurring energy savings
47 obligations to finance an energy savings improvement program and

1 may enter into any agreement with the New Jersey Educational
2 Facilities Authority or other persons in connection with the issuance
3 by the authority of its obligations on behalf of the public institution
4 of higher education in order to finance the institution's energy
5 savings improvement program. Energy savings obligations may be
6 funded through appropriations for utility services in the annual
7 budget of the board, or incurred as a general obligation of the public
8 institution of higher education in connection with the issuance by
9 the New Jersey Educational Facilities Authority of bonds or notes
10 pursuant to N.J.S.18A:72A-2 et seq., or, in the case of a county
11 college, by a sponsoring county as a refunding bond pursuant to
12 ¹[P.L.1978, c.36 (C.40A:2-52 et seq.)] N.J.S.40A:2-52 et seq.¹,
13 including the issuance of bond anticipation notes as may be
14 necessary, provided that all such bonds and notes mature within the
15 periods authorized for such energy savings obligations.

16 (4) Lease-purchase agreements and energy savings obligations
17 shall not be used to finance maintenance, guarantees, or verification
18 of guarantees of energy conservation measures. Lease-purchase
19 agreements and energy savings obligations may be used to finance
20 the cost of an energy audit or the cost of verification of energy
21 savings as part of adopting an energy savings plan. Maturity
22 schedules of lease-purchase agreements or energy savings
23 obligations must exceed the estimated useful life of the individual
24 energy conservation measures.

25 d. (1) The energy audit component of an energy savings
26 improvement program shall be conducted either by the board of
27 trustees or by a qualified third party retained by the board for that
28 purpose. It shall not be conducted by an energy services company
29 subsequently hired to develop an energy savings improvement
30 program. The energy audit shall identify the current energy use of
31 any or all facilities and energy conservation measures that can be
32 implemented in which the energy savings and energy efficiency
33 could be realized and maximized.

34 (2) To implement an energy savings improvement program, a
35 board of trustees shall develop an energy savings plan that consists
36 of one or more energy conservation measures. The plan shall:

37 (a) contain the results of an energy audit;

38 (b) describe the energy conservation measures that will
39 comprise the program;

40 (c) estimate ¹[of]¹ greenhouse gas reductions resulting from
41 those energy savings;

42 (d) identify all design and compliance issues that require the
43 professional services of an architect or engineer and identify who
44 will provide these services;

45 (e) include an assessment of risks involved in the successful
46 implementation of the plan;

1 (f) identify the eligibility for, and costs and revenues associated
2 with the PJM Independent System Operator for demand response
3 and curtailable service activities;

4 (g) include schedules showing calculations of all costs of
5 implementing the proposed energy conservation measures and the
6 projected energy savings;

7 (h) identify maintenance requirements necessary to ensure
8 continued energy savings, and describe how they will be fulfilled;
9 and

10 (i) if developed by an energy services company, a description
11 of, and cost estimates of an energy savings guarantee.

12 All professionals providing engineering services under the plan
13 shall have errors and omissions insurance.

14 (3) Prior to the adoption of the plan, the board of trustees shall
15 contract with a qualified third party to verify the projected energy
16 savings to be realized from the proposed program have been
17 calculated as required by subsection e. of this section.

18 (4) Upon adoption, the plan shall be submitted to the Board of
19 Public Utilities, which shall post it on the Internet on a public
20 webpage maintained for such purpose. If the board of trustees
21 maintains its own website, it shall also post the plan on that site.
22 The Board of Public Utilities may require periodic reporting
23 concerning the implementation of the plan.

24 (5) Verification by a qualified third party shall be required when
25 energy conservation measures are placed in service or
26 commissioned, to ensure the savings projected in the energy savings
27 plan shall be achieved.

28 (6) Energy-related capital improvements that do not reduce
29 energy usage may be included in an energy savings improvement
30 program but the cost of such improvements shall not be financed as
31 a lease-purchase or through energy savings obligations authorized
32 by subsection c. of this section. Nothing herein is intended to
33 prevent the financing of such capital improvements through
34 otherwise authorized means.

35 (7) A qualified third party when required by this subsection may
36 include an employee of the public institution of higher education
37 who is properly trained and qualified to perform such work.

38 e. (1) The calculation of energy savings for the purposes of
39 determining that the energy savings resulting from the program will
40 be sufficient to cover the cost of the program's energy conservation
41 measures, as provided in subsection a. of this section, shall involve
42 determination of the dollar amount saved through implementation
43 of an energy savings improvement program using the guidelines of
44 the International Performance Measurement and Verification
45 Protocol or other protocols approved by the Board of Public
46 Utilities and standards adopted by the Board of Public Utilities
47 pursuant to this section. The calculation shall include all applicable

1 State and federal rebates and tax credits, but shall not include the
2 cost of an energy audit and the cost of verifying energy savings.
3 The calculation shall state which party has made application for
4 rebates and credits and how these applications translate into energy
5 savings.

6 (2) For the purposes of this section, the Board of Public Utilities
7 shall adopt standards and uniform values for interest rates and
8 escalation of labor, electricity, oil, and gas, as well as standards for
9 presenting these costs in a life cycle and net present value format,
10 standards for the presentation of obligations for carbon reductions,
11 and other standards that the board may determine necessary.

12 f. (1) When an energy ¹[service] services¹ company is
13 awarded an energy savings services contract, it shall offer the board
14 of trustees the option to purchase, for an additional amount, an
15 energy savings guarantee. The guarantee, if accepted by a separate
16 vote of the board of trustees, shall insure that the energy savings
17 resulting from the energy savings improvement program,
18 determined periodically over the duration of the guarantee, will be
19 sufficient to defray all payments required to be made pursuant to
20 the lease-purchase agreement or energy savings obligation, and if
21 the savings are not sufficient, the energy ¹[service] services¹
22 company will reimburse the board of trustees for any additional
23 amounts. Annual costs of a guarantee shall not be financed or
24 included as costs in an energy savings plan but shall be fully
25 disclosed in an energy savings plan.

26 (2) When a guaranteed energy savings option is purchased, the
27 contract shall require a qualified third party to verify the energy
28 savings at intervals established by the parties.

29 g. As used in this section:

30 “direct digital control systems” ¹[mean] means¹ the devices and
31 computerized control equipment that contain software and computer
32 interfaces that perform the logic that control a building’s heating,
33 ventilating, and air conditioning system. Direct digital controls
34 shall be open protocol format and shall meet the interoperability
35 guidelines established by the American Society of Heating,
36 Refrigerating and Air-Conditioning Engineers.

37 “educational facility” means a structure suitable for use as a
38 dormitory, dining hall, student union, administrative building,
39 academic building, library, laboratory, research facility, classroom,
40 athletic facility, health care facility, teaching hospital, and parking
41 maintenance storage or utility facility or energy conservation
42 measures and other structures or facilities related thereto or required
43 or useful for the instruction of students or the conducting of
44 research or the operation of an institution for higher education, and
45 public libraries, and the necessary and usual attendant and related
46 facilities and equipment, but shall not include any facility used or to
47 be used for sectarian instruction or as a place for religious worship;

1 “energy conservation measure” means an improvement that
2 results in reduced energy use, including, but not limited to,
3 installation of energy efficient equipment; demand response
4 equipment; combined heat and power systems; facilities for the
5 production of renewable energy; water conservation measures
6 fixtures or facilities; building envelope improvements that are part
7 of an energy savings improvement program; and related control
8 systems for each of the foregoing;

9 “energy related capital improvement” means a capital
10 improvement that uses energy but does not result in a reduction of
11 energy use;

12 “energy saving obligation” means a bond, note or other
13 agreement evidencing the obligation to repay borrowed funds
14 incurred in order to finance energy saving improvements;

15 “energy savings” means a measured reduction in fuel, energy
16 operating or maintenance costs resulting from the implementation
17 of one or more energy conservation measures services when
18 compared with an established baseline of previous fuel, energy,
19 operating or maintenance costs, including, but not limited to, future
20 capital replacement expenditures avoided as a result of equipment
21 installed or services performed as part of an energy savings plan;

22 “energy savings improvement program” means an initiative of a
23 public institution of higher education to implement energy
24 conservation measures in existing facilities, provided that the value
25 of the energy savings resulting from the program will be sufficient
26 to cover the cost of the program’s energy conservation measures;

27 “energy savings plan” means the document that describes the
28 actions to be taken to implement the energy savings improvement
29 program;

30 “energy savings services contract” means a contract with an
31 energy savings company to develop an energy savings plan, prepare
32 bid specifications, manage the performance, provision,
33 construction, and installation of energy conservation measures by
34 subcontractors, to offer a guarantee of energy savings derived from
35 the implementation of an energy savings plan, and may include a
36 provision to manage the bidding process;

37 “energy services company” means a commercial entity that is
38 qualified to develop and implement an energy savings plan in
39 accordance with the provisions of this section;

40 “public works activities” means any work subject to the
41 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

42 “water conservation measure” means an alteration to a facility or
43 equipment that reduces water consumption, maximizes the
44 efficiency of water use, or reduces water loss.

45 h. (1) The State Treasurer and the Board of Public Utilities
46 may take such action as is deemed necessary and consistent with the
47 intent of this section to implement its provisions.

1 (2) The State Treasurer and the Board of Public Utilities may
2 adopt implementation guidelines or directives, and adopt such
3 administrative rules, pursuant to the "Administrative Procedure
4 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
5 implementation of those agencies' respective responsibilities under
6 this section, except that notwithstanding any provision of P.L.1968,
7 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer and
8 the Board of Public Utilities may adopt, immediately upon filing
9 with the Office of Administrative Law, such rules and regulations
10 as deemed necessary to implement the provisions of this act which
11 shall be effective for a period not to exceed 12 months and shall
12 thereafter be amended, adopted or re-adopted in accordance with
13 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
14

15 5. ¹[N.J.S.18A:64A-25.28] Section 28 of P.L.1982, c.189
16 (C.18A:64A-25.28)¹ is amended to read as follows:

17 28. Duration of certain contracts. A county college may only
18 enter into a contract exceeding 24 consecutive months for the:

19 a. Supplying of:

20 (1) Fuel for heating purposes for any term not exceeding in the
21 aggregate three years; or

22 (2) Fuel or oil for use in automobiles, autobuses, motor vehicles
23 or equipment for any term not exceeding in the aggregate three
24 years; or

25 b. Plowing and removal of snow and ice for any term not
26 exceeding in the aggregate three years; or

27 c. Collection and disposal of garbage and refuse for any term
28 not exceeding in the aggregate three years; or

29 d. Providing goods or services for the use, support or
30 maintenance of proprietary computer hardware, software
31 peripherals and system development for the hardware for any term
32 of not more than five years; or

33 e. Insurance, including the purchase of insurance coverages,
34 insurance consultant or administrative services, and including
35 participation in a joint self-insurance fund, risk management
36 programs or related services provided by a county college insurance
37 group, or participation in an insurance fund established by a county
38 pursuant to N.J.S.40A:10-6, for any term of not more than three
39 years; or

40 f. Leasing or service of automobiles, motor vehicles, electronic
41 communications equipment, machinery and equipment of every
42 nature and kind for any term not exceeding in the aggregate five
43 years; or

44 g. Supplying of any product or rendering of any service by a
45 company providing voice, data, transmission or switching services,
46 for a term not exceeding five years; or

- 1 h. The providing of food supplies and services, including food
2 supplies and management contracts for student centers, dining
3 rooms and cafeterias, for a term not exceeding three years; or
- 4 i. **【The performance of work or services or the furnishing of**
5 **materials or supplies for the purpose of conserving energy through**
6 **energy efficiency equipment or demand response equipment,**
7 **including combined heat and power facilities, in, at, or adjacent to,**
8 **buildings owned by, or operations conducted by, the contracting**
9 **unit, the entire price of which is to be established as a percentage of**
10 **the resultant savings in energy costs, for a term not exceeding 15**
11 **years; provided that a contract is entered into only subject to and in**
12 **accordance with guidelines promulgated by the Board of Public**
13 **Utilities establishing a methodology for computing energy cost**
14 **savings. As used in this subsection, "combined heat and power**
15 **facilities" means facilities designed to produce both heat and**
16 **electricity from a single heat source; or】** (Deleted by amendment,
17 P.L. , c. '1.】 (pending before the Legislature as this bill)).
- 18 j. Any single project for the construction, reconstruction or
19 rehabilitation of a public building, structure or facility, or a public
20 works project including the retention of the services of an architect
21 or engineer in connection with the project, for the length of time
22 necessary for the completion of the actual construction; or
- 23 k. The management and operation of bookstores for a term not
24 exceeding five years; or
- 25 l. Custodial or janitorial services for any term not exceeding in
26 the aggregate three years; or
- 27 m. Child care services for a term not exceeding three years; or
- 28 n. Security services for a term not exceeding three years; or
- 29 o. Ground maintenance services for a term not exceeding three
30 years; or
- 31 p. Laundering, dry-cleaning or rental of uniforms for a term not
32 exceeding three years; or
- 33 q. **【The performance of work or services or the furnishing of**
34 **materials and supplies for the purpose of producing class I**
35 **renewable energy, as that term is defined in section 3 of P.L.1999,**
36 **c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or**
37 **operations conducted by, the contracting unit, the entire price of**
38 **which is to be established as a percentage of the resultant savings in**
39 **energy costs, for a term not to exceed 15 years; provided, however,**
40 **that these contracts shall be entered into only subject to and in**
41 **accordance with guidelines promulgated by the Board of Public**
42 **Utilities establishing a methodology for computing energy cost**
43 **savings and energy generation costs.】** '【(Deleted by amendment,
44 P.L. , c. . (pending before the Legislature as this bill)).】 The
45 performance of work or services or the furnishing of materials and
46 supplies for the purpose of producing class I renewable energy, as
47 that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or

1 adjacent to, buildings owned by, or operations conducted by, the
2 contracting unit, the entire price of which is to be established as a
3 percentage of the resultant savings in energy costs, for a term not to
4 exceed 15 years; provided, however, that these contracts shall be
5 entered into only subject to and in accordance with guidelines
6 promulgated by the Board of Public Utilities establishing a
7 methodology for computing energy cost savings and energy
8 generation costs.¹

9 All multi-year leases and contracts entered into pursuant to this
10 section, except contracts and agreements for the provision of work
11 or the supplying of equipment to promote energy conservation
12 through ¹[energy efficiency equipment or demand response
13 equipment, including combined heat and power facilities, and
14 authorized pursuant to subsection i. of this section, or]¹ the
15 production of class I renewable energy and authorized pursuant to
16 subsection q. of this section, and except contracts for insurance
17 coverages, insurance consultant or administrative services,
18 participation or membership in a joint self-insurance fund, risk
19 management programs or related services of a county college
20 insurance group, and participation in an insurance fund established
21 by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund
22 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall
23 contain a clause making them subject to the availability and
24 appropriation annually of sufficient funds to meet the extended
25 obligation or contain an annual cancellation clause.

26 (cf: P.L.2008, c.83, s.2)

27

28 **¹[III. LOCAL GOVERNMENT]¹**

29 6. (New section) a. A contracting unit, as defined in P.L.1971,
30 c.198 (C.40A:11-1 et seq.), may implement an energy savings
31 improvement program in the manner provided by this section
32 whenever it determines that the savings generated from reduced
33 energy use from the program will be sufficient to cover the cost of
34 the program's energy conservation measures as set forth in an
35 energy savings plan. Under such a program, a contracting unit may
36 enter into an energy savings services contract with an energy
37 services company to implement the program or the contracting unit
38 may authorize separate contracts to implement the program. The
39 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
40 any contracts awarded pursuant to this section to the extent that the
41 provisions of such law are not inconsistent with any provision of
42 this section.

43 b. (1) To be eligible to enter into an energy savings services
44 contract, an energy services company shall be a commercial entity
45 that is qualified to provide energy savings services in accordance
46 with the provisions of this section. A contracting unit may
47 determine to enter into an energy savings services contract either

1 through public advertising for bids and the receipt of bids therefor
2 or through competitive contracting in lieu of public bidding in the
3 manner provided by sections 1 through 5 of P.L.1999, c.440
4 (C.40A:11-4.1 et seq.).

5 (2) (a) Public works activities performed under an energy
6 savings improvement program shall be subject to all requirements
7 regarding public bidding, bid security, performance guarantees,
8 insurance and other public contracting requirements that are
9 applicable to public works contracts, to the extent not inconsistent
10 with this section. A general contractor, energy services company
11 serving as general contractor, or any subcontractor hired for the
12 furnishing of plumbing and gas fitting and all kindred work, and of
13 steam and hot water heating and ventilating apparatus, steam power
14 plants and kindred work, and electrical work, structural steel and
15 ornamental iron work, shall be classified by the Division of
16 Property Management and Construction in the Department of the
17 Treasury in order to perform public works activities under an
18 energy savings improvement program.

19 (b) Individuals or organizations performing energy audits,
20 acting as commissioning agents, or conducting verification of
21 energy savings plans, implementation of energy conservation
22 measures, or verifying guarantees shall be prequalified by the
23 Division of Property Management and Construction in the
24 Department of the Treasury to perform their work under an energy
25 savings improvement program.

26 (3) An energy services company may be designated as the
27 general contractor for improvements to be made pursuant to an
28 energy savings plan ¹, provided that the hiring of subcontractors
29 that are required to be classified pursuant to subparagraph (a) of
30 paragraph (2) of this subsection shall be performed pursuant to the
31 public bidding requirements of the contracting unit¹. A contract
32 with an energy savings company shall include, but not be limited to:
33 preparation of an energy savings plan; the responsibilities of the
34 parties for project schedules, installations, performance and quality,
35 payment of subcontractors, project completion, commissioning,
36 savings implementation; a requirement that the savings to be
37 achieved by energy conservation measures be verified upon
38 commissioning of the improvements; allocation of State and federal
39 rebates and tax credits; and any other provisions deemed necessary
40 by the parties.

41 (4) Except as provided in paragraph (5) of this subsection, a
42 subsidiary or wholly-owned or partially-owned affiliate of the
43 energy ¹~~service~~ services¹ company shall not be an eligible
44 contractor or subcontractor under an energy savings services
45 contract.

46 (5) When the energy services company is the manufacturer of
47 direct digital control systems and contracts with the contracting unit

1 to provide a guaranteed energy savings option pursuant to
2 subsection f. of this section, the specification of such direct digital
3 control systems may be treated ¹['a] as¹ proprietary goods and if so
4 treated, the bid specification shall set forth an allowance price for
5 its supply by the energy services company which shall be used by
6 all bidders in the public bidding process. Direct digital controls
7 shall be open protocol format and shall meet the interoperability
8 guidelines established by the American Society of Heating,
9 Refrigerating and Air-Conditioning Engineers.

10 c. An energy savings improvement program may be financed
11 through a lease-purchase agreement or through the issuance of
12 energy savings obligations pursuant to this subsection.

13 (1) An energy savings improvement program may be financed
14 through a lease-purchase agreement between a contracting unit and
15 an energy ¹['service] services¹ company or other public or private
16 entity. Under a lease-purchase agreement, ownership of the energy
17 savings equipment or improved facilities shall pass to the
18 contracting unit when all lease payments have been made.
19 Notwithstanding the provisions of any other law to the contrary, the
20 duration of such a lease-purchase agreement shall not exceed 15
21 years, except that the duration of a lease purchase agreement for a
22 combined heat and power or cogeneration project shall not exceed
23 20 years.

24 (2) Any lease-purchase agreement entered into pursuant to this
25 subsection, may contain: a clause making it subject to the
26 availability and appropriation annually of sufficient funds as may
27 be required to meet the extended obligation; and a non-substitution
28 clause maintaining that if the agreement is terminated for non-
29 appropriation, the contracting unit may not replace the leased
30 equipment or facilities with equipment or facilities that perform the
31 same or similar functions.

32 (3) A contracting unit may arrange for incurring energy savings
33 obligations to finance an energy savings improvement program.
34 Energy savings obligations may be funded through appropriations
35 for utility services in the annual budget of the contracting unit and
36 may be issued as refunding bonds pursuant to ¹['P.L.1978, c.36
37 (C.40A:2-52 et seq.)'] N.J.S.40A:2-52 et seq.¹, including the
38 issuance of bond anticipation notes as may be necessary, provided
39 that all such bonds and notes mature within the periods authorized
40 for such energy savings obligations. Energy savings obligations
41 may be issued either through the contracting unit or another public
42 agency authorized to undertake financing on behalf of the unit.

43 (4) Lease-purchase agreements and energy savings obligations
44 shall not be used to finance maintenance, guarantees, or verification
45 of guarantees of energy conservation measures. Lease-purchase
46 agreements and energy savings obligations may be used to finance
47 the cost of an energy audit or the cost of verification of energy

1 savings as part of adopting an energy savings plan.
2 Notwithstanding any law to the contrary, lease-purchase agreements
3 and energy savings certificates shall not be excepted from any
4 budget or tax levy limitation otherwise provided by law. Maturity
5 schedules of lease-purchase agreements or energy savings
6 obligations must exceed the estimated useful life of the individual
7 energy conservation measures.

8 d. (1) The energy audit component of an energy savings
9 improvement program shall be conducted either by the contracting
10 unit or by a qualified independent third party retained by the
11 governing body for that purpose. It shall not be conducted by an
12 energy services company subsequently hired to develop an energy
13 savings improvement program. The energy audit shall identify the
14 current energy use of any or all facilities and energy conservation
15 measures that can be implemented in which the energy savings and
16 energy efficiency could be realized and maximized.

17 (2) To implement an energy savings improvement program, a
18 contracting unit shall develop a plan that consists of one or more
19 energy conservation measures. The plan shall:

20 (a) contain the results of an energy audit;

21 (b) describe the energy conservation measures that will
22 comprise the program;

23 (c) estimate ¹[of] ¹ greenhouse gas reductions resulting from
24 those energy savings;

25 (d) identify all design and compliance issues that require the
26 professional services of an architect or engineer and identify who
27 will provide these services;

28 (e) include an assessment of risks involved in the successful
29 implementation of the plan;

30 (f) identify the eligibility for, and costs and revenues associated
31 with the PJM Independent System Operator for demand response
32 and curtailable service activities;

33 (g) include schedules showing calculations of all costs of
34 implementing the proposed energy conservation measures and the
35 projected energy savings;

36 (h) identify maintenance requirements necessary to ensure
37 continued energy savings, and describe how they will be fulfilled;
38 and

39 (i) if developed by an energy services company, a description
40 of, and cost estimates of an energy savings guarantee.

41 All professionals providing engineering services under the plan
42 shall have errors and omissions insurance.

43 (3) Prior to the adoption of the plan, the contracting unit shall
44 contract with a qualified third party to verify the projected energy
45 savings to be realized from the proposed program have been
46 calculated as required by subsection e. of this section.

1 (4) Upon adoption, the plan shall be submitted to the Board of
2 Public Utilities, which shall post it on the Internet on a public
3 webpage maintained for such purpose. If the contracting unit
4 maintains its own website, it shall also post the plan on that site.
5 The board may require periodic reporting concerning the
6 implementation of the plan.

7 (5) Verification by a qualified third party shall be required when
8 energy conservation measures are placed in service or
9 commissioned, to ensure the savings projected in the energy savings
10 plan shall be achieved.

11 (6) Energy-related capital improvements that do not reduce
12 energy usage may be included in an energy savings improvement
13 program but the cost of such improvements shall not be financed as
14 a lease-purchase or through energy savings obligations authorized
15 by subsection c. of this section. Nothing herein is intended to
16 prevent financing of such capital improvements through otherwise
17 authorized means.

18 (7) A qualified third party when required by this subsection may
19 include an employee of the contracting unit who is properly trained
20 and qualified to perform such work.

21 e. (1) The calculation of energy savings for the purposes of
22 determining that the energy savings resulting from the program will
23 be sufficient to cover the cost of the program's energy conservation
24 measures, as provided in subsection a. of this section, shall involve
25 determination of the dollar amount saved through implementation
26 of an energy savings improvement program using the guidelines of
27 the International Performance Measurement and Verification
28 Protocol or other protocols approved by the Board of Public
29 Utilities and standards adopted by the Board of Public Utilities
30 pursuant to this section. The calculation shall include all applicable
31 State and federal rebates and tax credits, but shall not include the
32 cost of an energy audit and the cost of verifying energy savings.
33 The calculation shall state which party has made application for
34 rebates and credits and how these applications translate into energy
35 savings.

36 (2) For the purposes of this section, the Board of Public Utilities
37 shall adopt standards and uniform values for interest rates and
38 escalation of labor, electricity, oil, and gas, as well as standards for
39 presenting these costs in a life cycle and net present value format,
40 standards for the presentation of obligations for carbon reductions,
41 and other standards that the board may determine necessary.

42 f. (1) When an energy ¹[service] services¹ company is
43 awarded an energy savings services contract, it shall offer the
44 contracting unit the option to purchase, for an additional amount, an
45 energy savings guarantee. The guarantee, if accepted by a separate
46 vote of the governing body of the contracting unit, shall insure that
47 the energy savings resulting from the energy savings improvement

1 program, determined periodically over the duration of the
2 guarantee, will be sufficient to defray all payments required to be
3 made pursuant to the lease-purchase agreement or energy savings
4 obligation, and if the savings are not sufficient, the energy service
5 company will reimburse the contracting unit for any additional
6 amounts. Annual costs of a guarantee shall not be financed or
7 included as costs in an energy savings plan but shall be fully
8 disclosed in an energy savings plan.

9 (2) When a guaranteed energy savings option is purchased, the
10 contract shall require a qualified third party to verify the energy
11 savings at intervals established by the parties.

12 g. As used in this section:

13 “direct digital control systems” ¹[mean] means¹ the devices and
14 computerized control equipment that contain software and computer
15 interfaces that perform the logic that control a building’s heating,
16 ventilating, and air conditioning system. Direct digital controls
17 shall be open protocol format and shall meet the interoperability
18 guidelines established by the American Society of Heating,
19 Refrigerating and Air-Conditioning Engineers.

20 “energy conservation measure” means an improvement that
21 results in reduced energy use, including, but not limited to,
22 installation of energy efficient equipment; demand response
23 equipment; combined heat and power systems; facilities for the
24 production of renewable energy; water conservation measures
25 fixtures or facilities; building envelope improvements that are part
26 of an energy savings improvement program; and related control
27 systems for each of the foregoing;

28 “energy related capital improvement” means a capital
29 improvement that uses energy but does not result in a reduction of
30 energy use;

31 “energy saving obligation” means a bond, note or other
32 agreement evidencing the obligation to repay borrowed funds
33 incurred in order to finance energy saving improvements;

34 “energy savings” means a measured reduction in fuel, energy
35 operating or maintenance costs resulting from the implementation
36 of one or more energy conservation measures services when
37 compared with an established baseline of previous fuel, energy,
38 operating or maintenance costs, including, but not limited to, future
39 capital replacement expenditures avoided as a result of equipment
40 installed or services performed as part of an energy savings plan;

41 “energy savings improvement program” means an initiative of a
42 contracting unit to implement energy conservation measures in
43 existing facilities, provided that the value of the energy savings
44 resulting from the program will be sufficient to cover the cost of the
45 program’s energy conservation measures;

1 “energy savings plan” means the document that describes the
2 actions to be taken to implement the energy savings improvement
3 program;

4 “energy savings services contract” means a contract with an
5 energy savings company to develop an energy savings plan, prepare
6 bid specifications, manage the performance, provision,
7 construction, and installation of energy conservation measures by
8 subcontractors, to offer a guarantee of energy savings derived from
9 the implementation of an energy savings plan, and may include a
10 provision to manage the bidding process;

11 “energy services company” means a commercial entity that is
12 qualified to develop and implement an energy savings plan in
13 accordance with the provisions of this section;

14 “public works activities” means any work subject to the
15 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

16 “water conservation measure” means an alteration to a facility or
17 equipment that reduces water consumption, maximizes the
18 efficiency of water use, or reduces water loss.

19 h. (1) The Director of the Division of Local Government
20 Services in the Department of Community Affairs, the State
21 Treasurer, and the Board of Public Utilities may take such action as
22 is deemed necessary and consistent with the intent of this section to
23 implement its provisions.

24 (2) The Director of the Division of Local Government Services
25 in the Department of Community Affairs, the State Treasurer, and
26 the Board of Public Utilities may adopt implementation guidelines
27 or directives, and adopt such administrative rules, pursuant to the
28 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
29 seq.), as are necessary for the implementation of those agencies’
30 respective responsibilities under this section, except that
31 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
32 seq.) to the contrary, the Director of the Division of Local
33 Government Services in the Department of Community Affairs, the
34 State Treasurer, and the Board of Public Utilities may adopt,
35 immediately upon filing with the Office of Administrative Law,
36 such rules and regulations as deemed necessary to implement the
37 provisions of this act which shall be effective for a period not to
38 exceed 12 months and shall thereafter be amended, adopted or re-
39 adopted in accordance with the provisions of P.L.1968, c.410
40 (C.52:14B-1 et seq.).

41
42 7. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to
43 read as follows:

44 1. Notwithstanding the provisions of any law, rule or regulation
45 to the contrary, competitive contracting may be used by local
46 contracting units in lieu of public bidding for procurement of

- 1 specialized goods and services the price of which exceeds the bid
2 threshold, for the following purposes:
- 3 a. The purchase or licensing of proprietary computer software
4 designed for contracting unit purposes, which may include
5 hardware intended for use with the proprietary software. This
6 subsection shall not be utilized for the purpose of acquiring general
7 purpose computer hardware or software;
- 8 b. The hiring of a for-profit entity or a not-for-profit entity
9 incorporated under Title 15A of the New Jersey Statutes for the
10 purpose of:
- 11 (1) the operation and management of a wastewater treatment
12 system or a water supply or distribution facility of the type
13 described in subsection (37) of section 15 of P.L.1971, c.198
14 (C.40A:11-15), provided that competitive contracting shall not be
15 used as a means of awarding contracts pursuant to P.L.1985, c.37
16 (C.58:26-1 et seq.) and P.L.1985, c.72 (C.58:27-1 et seq.);
- 17 (2) the operation, management or administration of recreation or
18 social service facilities or programs, which shall not include the
19 administration of benefits under the Work First New Jersey
20 program established pursuant to P.L.1997, c.38 (C.44:10-55 et
21 seq.), or under General Assistance; or
- 22 (3) the operation, management or administration of data
23 processing services;
- 24 c. **Services performed by an energy services company,**
25 **including the design, measurement, financing and maintenance of**
26 **energy savings equipment or renovations, which result in payment**
27 **derived, in whole or in part, from the sale of verified energy savings**
28 **over the term of an agreement with a public utility or subsidiary,**
29 **but not the provision or performance of the physical improvements**
30 **that result in energy savings, provided that such savings are**
31 **calculated pursuant to guidelines promulgated by the Board of**
32 **Public Utilities and further provided that the Local Finance Board**
33 **shall find that the terms and conditions of any financing agreement**
34 **are reasonable;】 (Deleted by amendment, P.L. , c. (pending
35 before the Legislature as this bill)).**
- 36 d. Homemaker--home health services;
- 37 e. Laboratory testing services;
- 38 f. Emergency medical services;
- 39 g. Contracted food services;
- 40 h. Performance of patient care services by contracted medical
41 staff at county hospitals, correctional facilities and long-term care
42 facilities;
- 43 i. At the option of the governing body of the contracting unit,
44 any good or service that is exempt from bidding pursuant to section
45 5 of P.L.1971, c.198 (C.40A:11-5);
- 46 j. Concessions;

1 k. The operation, management or administration of other
2 services, with the approval of the Director of the Division of Local
3 Government Services.

4 Any purpose included herein shall not be considered by a
5 contracting unit as an extraordinary unspecifiable service pursuant
6 to paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198
7 (C.40A:11-5).

8 (cf: P.L.1999, c.440, s.1)

9
10 8. 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 such
35 contract is in conformance with a district solid waste management
36 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and
37 with the approval of the Division of Local Government Services in
38 the Department of Community Affairs and the Department of
39 Environmental Protection. The contracting unit shall award the
40 contract to the highest responsible bidder, notwithstanding that the
41 contract price may be in excess of the amount of any necessarily
42 related administrative expenses; except that if the contract requires
43 the contracting unit to expend funds only, the contracting unit shall
44 award the contract to the lowest responsible bidder. The approval
45 by the Division of Local Government Services of public bidding
46 requirements shall not be required for those contracts exempted
47 therefrom pursuant to section 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 automobiles, motor vehicles,
13 machinery and equipment of every nature and kind, for a period not
14 to exceed five years; provided, however, such contracts shall be
15 awarded only subject to and in accordance with the rules and
16 regulations promulgated by the Director of the Division of Local
17 Government Services in the Department of Community Affairs;

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

21 (9) Any single project for the construction, reconstruction or
22 rehabilitation of any public building, structure or facility, or any
23 public works project, including the retention of the services of any
24 architect or engineer in connection therewith, for the length of time
25 authorized and necessary for the completion of the actual
26 construction;

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

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

33 (12) **【**The provision or performance of goods or services for the
34 purpose of conserving energy through energy efficiency equipment
35 or demand response equipment, including combined heat and power
36 facilities, in, at, or adjacent to, buildings owned by, or operations
37 conducted by, the contracting unit, the entire price of which to be
38 established as a percentage of the resultant savings in energy costs,
39 for a term not to exceed 15 years; provided, however, that such
40 contracts shall be entered into only subject to and in accordance
41 with guidelines promulgated by the Board of Public Utilities
42 establishing a methodology for computing energy cost savings. As
43 used in this subsection, "combined heat and power facilities" means
44 facilities designed to produce both heat and electricity from a single
45 heat source;**】** (Deleted by amendment, P.L. , c. (pending before
46 the Legislature as this bill)).

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

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

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

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

44 (17) The provision of resource recovery services by a qualified
45 vendor, the disposal of the solid waste delivered for disposal which
46 cannot be processed by a resource recovery facility or the residual
47 ash generated at a resource recovery facility, including hazardous

1 waste and recovered metals and other materials for reuse, or the
2 design, financing, construction, operation or maintenance of a
3 resource recovery facility for a period not to exceed 40 years when
4 the contract is approved by the Division of Local Government
5 Services in the Department of Community Affairs, and the
6 Department of Environmental Protection pursuant to P.L.1985, c.38
7 (C.13:1E-136 et al.); and when the resource recovery facility is in
8 conformance with a district solid waste management plan approved
9 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
10 this subsection, "resource recovery facility" means a solid waste
11 facility constructed and operated for the incineration of solid waste
12 for energy production and the recovery of metals and other
13 materials for reuse; or a mechanized composting facility, or any
14 other facility constructed or operated for the collection, separation,
15 recycling, and recovery of metals, glass, paper, and other materials
16 for reuse or for energy production; and "residual ash" means the
17 bottom ash, fly ash, or any combination thereof, resulting from the
18 combustion of solid waste at a resource recovery facility;

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

32 (19) The provision of wastewater treatment services or the
33 designing, financing, construction, operation, or maintenance, or
34 any combination thereof, of a wastewater treatment system, or any
35 component part or parts thereof, for a period not to exceed 40 years,
36 when the contract for these services is approved by the Division of
37 Local Government Services in the Department of Community
38 Affairs and the Department of Environmental Protection pursuant to
39 P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals
40 shall be required for those contracts otherwise exempted pursuant to
41 subsection (36) or (43) of this section. For the purposes of this
42 subsection, "wastewater treatment services" means any services
43 provided by a wastewater treatment system, and "wastewater
44 treatment system" means equipment, plants, structures, machinery,
45 apparatus, or land, or any combination thereof, acquired, used,
46 constructed, or operated for the storage, collection, reduction,
47 recycling, reclamation, disposal, separation, or other treatment of

1 wastewater or sewage sludge, or for the final disposal of residues
2 resulting from the treatment of wastewater, including, but not
3 limited to, pumping and ventilating stations, facilities, plants and
4 works, connections, outfall sewers, interceptors, trunk lines, and
5 other personal property and appurtenances necessary for their
6 operation;

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

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

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

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

16 (24) The purchase of electricity or administrative or dispatching
17 services related to the transmission of such electricity, from a
18 supplier of electricity subject to the jurisdiction of a federal
19 regulatory agency, from a qualifying small power producing facility
20 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or
21 from any supplier of electricity within any regional transmission
22 organization or independent system operator or from such
23 organization or operator or their successors, by a contracting unit
24 engaged in the generation of electricity for retail sale, as of May 24,
25 1991, for a term not to exceed 40 years, or by a contracting unit
26 engaged solely in the distribution of electricity for retail sale for a
27 term not to exceed ten years, except that a contract with a
28 contracting unit, engaged solely in the distribution of electricity for
29 retail sale, in excess of ten years, shall require the written approval
30 of the Director of the Division of Local Government Services. If
31 the director fails to respond in writing to the contracting unit within
32 10 business days, the contract shall be deemed approved;

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

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

40 (27) The provision of transportation services to elderly, disabled
41 or indigent persons for any term of not more than three years. For
42 the purposes of this subsection, "elderly persons" means persons
43 who are 60 years of age or older. "Disabled persons" means
44 persons of any age who, by reason of illness, injury, age, congenital
45 malfunction, or other permanent or temporary incapacity or
46 disability, are unable, without special facilities or special planning
47 or design to utilize mass transportation facilities and services as

1 effectively as persons who are not so affected. "Indigent persons"
2 means persons of any age whose income does not exceed 100
3 percent of the poverty level, adjusted for family size, established
4 and adjusted under section 673(2) of subtitle B, the "Community
5 Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

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

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

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

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

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

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

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

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

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

46 (37) The operation and management of a facility under a license
47 issued or permit approved by the Department of Environmental

1 Protection, including a wastewater treatment system or a water
2 supply or distribution facility, as the case may be, for any term of
3 not more than ten years. For the purposes of this subsection,
4 "wastewater treatment system" refers to facilities operated or
5 maintained for the storage, collection, reduction, disposal, or other
6 treatment of wastewater or sewage sludge, remediation of
7 groundwater contamination, stormwater runoff, or the final disposal
8 of residues resulting from the treatment of wastewater; and "water
9 supply or distribution facility" refers to facilities operated or
10 maintained for augmenting the natural water resources of the State,
11 increasing the supply of water, conserving existing water resources,
12 or distributing water to users;

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

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

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

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

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

26 (43) A contract between the governing body of a city of the first
27 class and a duly incorporated nonprofit association for the provision
28 of water supply services as defined in subsection (16) of this
29 section, or wastewater treatment services as defined in subsection
30 (19) of this section, may be entered into for a period not to exceed
31 40 years;

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

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

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

16 All multiyear leases and contracts entered into pursuant to this
17 section, including any two-year or one-year extensions, except
18 contracts involving the supplying of electricity for the purpose of
19 lighting public streets and contracts for thermal energy authorized
20 pursuant to subsection (1) above, construction contracts authorized
21 pursuant to subsection (9) above, contracts for the provision or
22 performance of goods or services or the supplying of equipment to
23 promote energy conservation through ¹[energy efficiency
24 equipment or demand response equipment, including combined heat
25 and power facilities, authorized pursuant to subsection (12) above,
26 or]¹ the production of class I renewable energy or class II
27 renewable energy authorized pursuant to subsection (45) above,
28 contracts for water supply services or for a water supply facility, or
29 any component part or parts thereof authorized pursuant to
30 subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts
31 for resource recovery services or a resource recovery facility
32 authorized pursuant to subsection (17) above, contracts for the sale
33 of energy produced by a resource recovery facility authorized
34 pursuant to subsection (18) above, contracts for wastewater
35 treatment services or for a wastewater treatment system or any
36 component part or parts thereof authorized pursuant to subsection
37 (19), (36), (37) or (43) above, and contracts for the purchase of
38 electricity or administrative or dispatching services related to the
39 transmission of such electricity authorized pursuant to subsection
40 (24) above and contracts for the purchase of electricity generated
41 from a power production facility that is fueled by methane gas
42 authorized pursuant to subsection (44) above, shall contain a clause
43 making them subject to the availability and appropriation annually
44 of sufficient funds as may be required to meet the extended
45 obligation, or contain an annual cancellation clause.

46 The Division of Local Government Services in the Department
47 of Community Affairs shall adopt and promulgate rules and

1 regulations concerning the methods of accounting for all contracts
2 that do not coincide with the fiscal year.

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

11 (cf: P.L.2008, c.83, s.3)

12

13 **'[IV. STATE AGENCIES]'**

14 9. (New section) a. A State contracting agency, as defined in
15 this section, may implement an energy savings improvement
16 program in the manner provided by this section whenever it
17 determines that the savings generated from reduced energy use from
18 the program will be sufficient to cover the cost of the program's
19 energy conservation measures as set forth in an energy savings plan.
20 Under such a program, a contracting agency may enter into an
21 energy savings services contract with an energy services company
22 to implement the program or the contracting agency may authorize
23 separate contracts to implement the program. The provisions of
24 Title 52 of the Revised Statutes shall apply to any contracts
25 awarded pursuant to this section to the extent that the provisions of
26 such law are not inconsistent with any provision of this section.

27 b. (1) To be eligible to enter into an energy savings services
28 contract, an energy services company shall be a commercial entity
29 that is qualified to provide energy savings services in accordance
30 with the provisions of this section. A State contracting agency may
31 determine to enter into an energy savings services contract through
32 public advertising for bids and the receipt of bids therefor.

33 (2) (a) Public works activities performed under an energy
34 savings improvement program shall be subject to all requirements
35 regarding public bidding, bid security, performance guarantees,
36 insurance and other public contracting requirements that are
37 applicable to public works contracts, to the extent not inconsistent
38 with this section. A general contractor, energy services company
39 serving as general contractor, or any subcontractor hired for the
40 furnishing of plumbing and gas fitting and all kindred work, and of
41 steam and hot water heating and ventilating apparatus, steam power
42 plants and kindred work, and electrical work, structural steel and
43 ornamental iron work, shall be classified by the Division of
44 Property Management and Construction in the Department of the
45 Treasury in order to perform public works activities under an
46 energy savings improvement program.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan ¹, provided that the hiring of subcontractors
11 that are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed pursuant to the
13 public bidding requirements of the State contracting agency¹. A
14 contract with an energy savings company shall include, but not be
15 limited to: preparation of an energy savings plan, the
16 responsibilities of the parties for project schedules, installations,
17 performance and quality, payment of subcontractors, project
18 completion, commissioning, savings implementation; a requirement
19 that the savings to be achieved by energy conservation measures be
20 verified upon commissioning of the improvements; allocation of
21 State and federal rebates and tax credits; and any other provisions
22 deemed necessary by the parties.

23 (4) Except as provided in paragraph (5) of this subsection, a
24 subsidiary or wholly-owned or partially-owned affiliate of the
25 energy ¹**[service]** services¹ company shall not be an eligible
26 contractor or subcontractor under an energy savings services
27 contract.

28 (5) When the energy services company is the manufacturer of
29 direct digital control systems and contracts with the contracting
30 agency to provide a guaranteed energy savings option pursuant to
31 subsection f. of this section, the specification of such direct digital
32 control systems may be treated as proprietary goods and if so
33 treated, the bid specification shall set forth an allowance price for
34 its supply by the energy services company which shall be used by
35 all bidders in the public bidding process. Direct digital controls
36 shall be open protocol format and shall meet the interoperability
37 guidelines established by the American Society of Heating,
38 Refrigerating and Air-Conditioning Engineers.

39 c. In addition to existing authorization of a State agency to
40 enter into lease-purchase agreements or to issue obligations to
41 finance the costs of an energy savings improvement program, a
42 contracting agency is hereby authorized to finance the costs of an
43 energy savings improvement program by entering into a lease
44 purchase agreement. Any financing mechanism shall be
45 administered in a manner consistent with this subsection insofar as
46 it does not conflict with the provisions of other law that applies to
47 the contracting agency.

1 (1) An energy savings improvement program may be financed
2 through a lease-purchase agreement between a State contracting
3 agency and an energy ¹[service] services¹ company or other public
4 or private entity. Under a lease-purchase agreement, ownership of
5 the energy savings equipment or improved facilities shall pass to
6 the contracting agency or the client agency responsible for the
7 facility when all lease payments have been made. Notwithstanding
8 the provisions of any other law to the contrary, the duration of such
9 a lease-purchase agreement shall not exceed 15 years, except that
10 the duration of a lease purchase agreement for a combined heat and
11 power or cogeneration project shall not exceed 20 years.

12 (2) Lease-purchase agreements and energy savings obligations
13 shall not be used to finance maintenance, guarantees, or verification
14 of guarantees of energy conservation measures. Lease-purchase
15 agreements may be used to finance the cost of an energy audit or
16 the cost of verification of energy savings as part of adopting an
17 energy savings plan. Maturity schedules of lease-purchase
18 agreements must exceed the estimated useful life of the individual
19 energy conservation measures.

20 d. (1) The energy audit component of an energy savings
21 improvement program shall be conducted either by the contracting
22 agency or by a qualified independent third party retained by the
23 contracting agency for that purpose. It shall not be conducted by an
24 energy services company subsequently hired to develop an energy
25 savings improvement program. The energy audit shall identify the
26 current energy use of any or all facilities and energy conservation
27 measures that can be implemented in which the energy savings and
28 energy efficiency could be realized and maximized.

29 (2) To implement an energy savings improvement program, a
30 contracting agency shall develop an energy savings plan that
31 consists of one or more energy conservation measures. The plan
32 shall:

- 33 (a) contain the results of an energy audit;
- 34 (b) describe the energy conservation measures that will
35 comprise the program;
- 36 (c) estimate ¹[of]¹ greenhouse gas reductions resulting from
37 those energy savings;
- 38 (d) identify all design and compliance issues that require the
39 professional services of an architect or engineer and identify who
40 will provide these services;
- 41 (e) include an assessment of risks involved in the successful
42 implementation of the plan;
- 43 (f) identify the eligibility for, and costs and revenues associated
44 with the PJM Independent System Operator for demand response
45 and curtailable service activities;

- 1 (g) include schedules showing calculations of all costs of
2 implementing the proposed energy conservation measures and the
3 projected energy savings;
- 4 (h) identify maintenance requirements necessary to ensure
5 continued energy savings, and describe how they will be fulfilled;
6 and
- 7 (i) if developed by an energy services company, a description
8 of, and cost estimates of an energy savings guarantee.
- 9 All professionals providing engineering services under the plan
10 shall have errors and omissions insurance.
- 11 (3) Prior to the adoption of the plan, the contracting agency
12 shall contract with a qualified third party to verify the projected
13 energy savings to be realized from the proposed program have been
14 calculated as required by subsection e. of this section.
- 15 (4) Upon adoption, the plan shall be submitted to the Board of
16 Public Utilities, which shall post it on the Internet on a public
17 webpage maintained for such purpose. If the contracting agency
18 maintains its own website, it shall also post the plan on that site.
19 The Board of Public Utilities may require periodic reporting
20 concerning the implementation of the plan.
- 21 (5) Verification by a qualified third party shall be required when
22 energy conservation measures are placed in service or
23 commissioned, to ensure the savings projected in the energy savings
24 plan shall be achieved.
- 25 (6) Energy-related capital improvements that do not reduce
26 energy usage may be included in an energy savings improvement
27 program but the cost of such improvements shall not be financed as
28 a lease-purchase or through energy savings obligations authorized
29 by subsection c. of this section. Nothing herein is intended to
30 prevent financing of such capital improvements through otherwise
31 authorized means.
- 32 (7) A qualified third party when required by this subsection may
33 include an employee of the State contracting agency who is
34 properly trained and qualified to perform such work.
- 35 e. (1) The calculation of energy savings for the purposes of
36 determining that the energy savings resulting from the program will
37 be sufficient to cover the cost of the program's energy conservation
38 measures, as provided in subsection a. of this section, shall involve
39 determination of the dollar amount saved through implementation
40 of an energy savings improvement program using the guidelines of
41 the International Performance Measurement and Verification
42 Protocol or other protocols approved by the Board of Public
43 Utilities and standards adopted by the Board of Public Utilities
44 pursuant to this section. The calculation shall include all applicable
45 State and federal rebates and tax credits, but shall not include the
46 cost of an energy audit and the cost of verifying energy savings.
47 The calculation shall state which party has made application for

1 rebates and credits and how these applications translate into energy
2 savings.

3 (2) For the purposes of this section, the Board of Public Utilities
4 shall adopt standards and uniform values for interest rates and
5 escalation of labor, electricity, oil, and gas, as well as standards for
6 presenting these costs in a life cycle and net present value format,
7 standards for the presentation of obligations for carbon reductions,
8 and other standards that the board may determine necessary.

9 f. (1) When an energy ¹[service] services¹ company is
10 awarded an energy savings services contract, it shall offer the
11 contracting agency the option to purchase, for an additional amount,
12 an energy savings guarantee. The guarantee, if accepted by the
13 contracting agency, shall insure that the energy savings resulting
14 from the energy savings improvement program, determined
15 periodically over the duration of the guarantee, will be sufficient to
16 defray all payments required to be made pursuant to the lease-
17 purchase agreement or energy savings obligation, and if the savings
18 are not sufficient, the energy service company will reimburse the
19 contracting agency for any additional amounts. Annual costs of a
20 guarantee shall not be financed or included as costs in an energy
21 savings plan but shall be fully disclosed in an energy savings plan.

22 (2) When a guaranteed energy savings option is purchased, the
23 contract shall require a qualified third party to verify the energy
24 savings at intervals established by the parties.

25 g. As used in this section:

26 “direct digital control systems” ¹[mean] means¹ the devices and
27 computerized control equipment that contain software and computer
28 interfaces that perform the logic that control a building’s heating,
29 ventilating, and air conditioning system. Direct digital controls
30 shall be open protocol format and shall meet the interoperability
31 guidelines established by the American Society of Heating,
32 Refrigerating and Air-Conditioning Engineers.

33 “energy conservation measure” means an improvement that
34 results in reduced energy use, including, but not limited to,
35 installation of energy efficient equipment; demand response
36 equipment; combined heat and power systems; facilities for the
37 production of renewable energy; water conservation measures
38 fixtures or facilities; building envelope improvements that are part
39 of an energy savings improvement program; and related control
40 systems for each of the foregoing;

41 “energy related capital improvement” means a capital
42 improvement that uses energy but does not result in a reduction of
43 energy use;

44 “energy savings” means a measured reduction in fuel, energy
45 operating or maintenance costs resulting from the implementation
46 of one or more energy conservation measures services when
47 compared with an established baseline of previous fuel, energy,

1 operating or maintenance costs, including, but not limited to, future
2 capital replacement expenditures avoided as a result of equipment
3 installed or services performed as part of an energy savings plan;

4 “energy savings improvement program” means an initiative of a
5 State contracting agency to implement energy conservation
6 measures in existing facilities, provided that the value of the energy
7 savings resulting from the program will be sufficient to cover the
8 cost of the program’s energy conservation measures;

9 “energy savings plan” means the document that describes the
10 actions to be taken to implement the energy savings improvement
11 program;

12 “energy savings services contract” means a contract with an
13 energy savings company to develop an energy savings plan, prepare
14 bid specifications, manage the performance, provision,
15 construction, and installation of energy conservation measures by
16 subcontractors, to offer a guarantee of energy savings derived from
17 the implementation of an energy savings plan, and may include a
18 provision to manage the bidding process;

19 “energy services company” means a commercial entity that is
20 qualified to develop and implement an energy savings plan in
21 accordance with the provisions of this section;

22 “public works activities” means any work subject to the
23 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

24 “State contracting agency” or “contracting agency” means any of
25 the principal departments in the Executive Branch of State
26 Government, and any division, board, bureau, office, commission or
27 other instrumentality created by a principal department; and

28 “water conservation measure” means an alteration to a facility or
29 equipment that reduces water consumption, maximizes the
30 efficiency of water use, or reduces water loss.

31 h. (1) The State Treasurer and the Board of Public Utilities
32 may take such action as is deemed necessary and consistent with the
33 intent of this section to implement its provisions.

34 (2) The State Treasurer and the Board of Public Utilities may
35 adopt implementation guidelines or directives, and adopt such
36 administrative rules, pursuant to the “Administrative Procedure
37 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
38 implementation of those agencies’ respective responsibilities under
39 this section, except that notwithstanding any provision of P.L.1968,
40 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
41 the Board of Public Utilities may adopt, immediately upon filing
42 with the Office of Administrative Law, such rules and regulations
43 as deemed necessary to implement the provisions of this act which
44 shall be effective for a period not to exceed 12 months and shall
45 thereafter be amended, adopted or re-adopted in accordance with
46 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

1 **'[V. OTHER AGENCIES]'**

2 10. (New section) a. A public agency, as defined in this section,
3 may implement an energy savings improvement program in the
4 manner provided by this section whenever it determines that the
5 savings generated from reduced energy use from the program will
6 be sufficient to cover the cost of the program's energy conservation
7 measures as set forth in an energy savings plan. Under such a
8 program, a public agency may enter into an energy savings services
9 contract with an energy services company to implement the
10 program or the public agency may authorize separate contracts to
11 implement the program. The provisions of any other law applicable
12 to a public agency shall apply to any contracts awarded pursuant to
13 this section to the extent that the provisions of such law are not
14 inconsistent with any provision of this section.

15 b. (1) To be eligible to enter into an energy savings services
16 contract, an energy services company shall be a commercial entity
17 that is qualified to provide public agencies with energy savings
18 services in accordance with the provisions of this section. A public
19 agency may determine to enter into an energy savings services
20 contract shall be awarded through a procedure that results in the
21 award of a contract to a vendor determined by the public agency to
22 be the most advantageous, price and other factors considered.

23 (2) (a) Public works activities performed under an energy
24 savings improvement program shall be subject to all requirements
25 regarding public bidding, bid security, performance guarantees,
26 insurance and other public contracting requirements that are
27 applicable to public works contracts, to the extent not inconsistent
28 with this section. A general contractor, energy services company
29 serving as general contractor, or any subcontractor hired for the
30 furnishing of plumbing and gas fitting and all kindred work, and of
31 steam and hot water heating and ventilating apparatus, steam power
32 plants and kindred work, and electrical work, structural steel and
33 ornamental iron work shall be classified by the Division of Property
34 Management and Construction in the Department of the Treasury in
35 order to perform public works activities under an energy savings
36 improvement program.

37 (b) Individuals or organizations performing energy audits,
38 acting as commissioning agents, or conducting verification of
39 energy savings plans, implementation of energy conservation
40 measures, or verifying guarantees shall be prequalified by the
41 Division of Property Management and Construction in the
42 Department of the Treasury to perform their work under an energy
43 savings improvement program.

44 (3) An energy services company may be designated as the
45 general contractor for improvements to be made pursuant to an
46 energy savings plan ¹, provided that the hiring of subcontractors
47 that are required to be classified pursuant to subparagraph (a) of

1 paragraph (2) of this subsection shall be performed pursuant to the
2 public bidding requirements of the public agency¹. A contract with
3 an energy savings company shall include, but not be limited to:
4 preparation of an energy savings plan; the responsibilities of the
5 parties for project schedules, installations, performance and quality,
6 payment of subcontractors, project completion, commissioning,
7 savings implementation; a requirement that the savings to be
8 achieved by energy conservation measures be verified upon
9 commissioning of the improvements; allocation of State and federal
10 rebates and tax credits; and any other provisions deemed necessary
11 by the parties.

12 (4) Except as provided in paragraph (5) of this subsection, a
13 subsidiary or wholly-owned or partially-owned affiliate of the
14 energy ¹service services¹ company shall not be an eligible
15 contractor or subcontractor under an energy savings services
16 contract.

17 (5) When the energy services company is the manufacturer of
18 direct digital control systems and contracts with the public agency
19 to provide a guaranteed energy savings option pursuant to
20 subsection f. of this section, the specification of such direct digital
21 control systems may be treated as propriety goods and if so treated,
22 the bid specification shall set forth an allowance price for its supply
23 by the energy services company which shall be used by all bidders
24 in the public bidding process. Direct digital controls shall be open
25 protocol format and shall meet the interoperability guidelines
26 established by the American Society of Heating, Refrigerating and
27 Air-Conditioning Engineers.

28 c. In addition to existing authorization of a public agency to
29 enter into lease-purchase agreements or to issue obligations to
30 finance the costs of an energy savings improvement program, a
31 public agency is hereby authorized to finance the costs of an energy
32 savings improvement program by entering into a lease purchase
33 agreement or by issuing energy savings obligations pursuant to this
34 subsection. Any financing mechanism shall be administered in a
35 manner consistent with this subsection insofar as it does not conflict
36 with the provisions of other law that applies to the public agency.

37 (1) An energy savings improvement program may be financed
38 through a lease-purchase agreement between a public agency and an
39 energy ¹service services¹ company or other public or private
40 entity. Under a lease-purchase agreement, ownership of the energy
41 savings equipment or improved facilities shall pass to the public
42 agency when all lease payments have been made. Notwithstanding
43 the provisions of any other law to the contrary, the duration of such
44 a lease-purchase agreement shall not exceed 15 years, except that
45 the duration of a lease purchase agreement for a combined heat and
46 power or cogeneration project shall not exceed 20 years.

1 (2) A public agency may arrange for incurring energy savings
2 obligations to finance an energy savings improvement program.
3 Energy savings obligations may be funded through appropriations
4 for utility services in the annual budget of the public agency and
5 may be issued as refunding bonds, including the issuance of bond
6 anticipation notes as may be necessary, provided that all such bonds
7 and notes mature within the periods authorized for such energy
8 savings obligations. Energy savings obligations may be issued
9 either through the public agency or another public agency
10 authorized to undertake financing on behalf of the public agency.

11 (3) Lease-purchase agreements and energy savings obligations
12 shall not be used to finance maintenance, guarantees, or verification
13 of guarantees of energy conservation measures. Lease-purchase
14 agreements and energy savings obligations may be used to finance
15 the cost of an energy audit or the cost of verification of energy
16 savings as part of adopting an energy savings plan.
17 Notwithstanding any law to the contrary, lease-purchase agreements
18 and energy savings certificates shall not be excepted from any
19 budget or tax levy limitation otherwise provided by law. Maturity
20 schedules of lease-purchase agreements or energy savings
21 obligations must exceed the estimated useful life of the individual
22 energy conservation measures.

23 d. (1) The energy audit component of an energy savings
24 improvement program shall be conducted either by the public
25 agency or by a qualified independent third party retained by the
26 board for that purpose. It shall not be conducted by an energy
27 services company subsequently hired to develop an energy savings
28 improvement program. The energy audit shall identify the current
29 energy use of any or all facilities and energy conservation measures
30 that can be implemented in which the energy savings and energy
31 efficiency could be realized and maximized.

32 (2) To implement a program, a public agency shall develop
33 ¹[a] an energy savings plan that consists of one or more energy
34 conservation measures. The plan shall:

35 (a) contain the results of an energy audit;

36 (b) describe the energy conservation measures that will
37 comprise the program;

38 (c) estimate ¹[of] greenhouse gas reductions resulting from
39 those energy savings;

40 (d) identify all design and compliance issues that require the
41 professional services of an architect or engineer and identify who
42 will provide these services;

43 (e) include an assessment of risks involved in the successful
44 implementation of the plan;

45 (f) identify the eligibility for, and costs and revenues associated
46 with the PJM Independent System Operator for demand response
47 and curtailable service activities;

1 (g) include schedules showing calculations of all costs of
2 implementing the proposed energy conservation measures and the
3 projected energy savings;

4 (h) identify maintenance requirements necessary to ensure
5 continued energy savings, and describe how they will be fulfilled;
6 and

7 (i) if developed by an energy services company, a description
8 of, and cost estimates of an energy savings guarantee.

9 All professionals providing engineering services under the plan
10 shall have errors and omissions insurance.

11 (3) Prior to the adoption of the plan, the public agency shall
12 contract with a qualified third party to verify the projected energy
13 savings to be realized from the proposed program have been
14 calculated as required by subsection e. of this section.

15 (4) Upon adoption, the plan shall be submitted to the Board of
16 Public Utilities, which shall post it on the Internet on a public
17 webpage maintained for such purpose. If the public agency
18 maintains its own website, it shall also post the plan on that site.
19 The board may require periodic reporting concerning the
20 implementation of the plan.

21 (5) Verification by a qualified third party shall be required when
22 energy conservation measures are placed in service or
23 commissioned, to ensure the savings projected in the energy savings
24 plan shall be achieved.

25 (6) Energy-related capital improvements that do not reduce
26 energy usage may be included in an energy savings improvement
27 program but the cost of such improvements shall not be financed as
28 a lease-purchase or through energy savings obligations authorized
29 by subsection c. of this section. Nothing herein is intended to
30 prevent financing of such capital improvements through otherwise
31 authorized means.

32 (7) A qualified third party when required by this subsection may
33 include an employee of the public agency who is properly trained
34 and qualified to perform such work.

35 e. (1) The calculation of energy savings for the purposes of
36 determining that the energy savings resulting from the program will
37 be sufficient to cover the cost of the program's energy conservation
38 measures, as provided in subsection a. of this section, shall involve
39 determination of the dollar amount saved through implementation
40 of an energy savings improvement program using the guidelines of
41 the International Performance Measurement and Verification
42 Protocol or other protocols approved by the Board of Public
43 Utilities and standards adopted by the Board of Public Utilities
44 pursuant to this section. The calculation shall include all applicable
45 State and federal rebates and tax credits, but shall not include the
46 cost of an energy audit and the cost of verifying energy savings.
47 The calculation shall state which party has made application for

1 rebates and credits and how these applications translate into energy
2 savings.

3 (2) For the purposes of this section, the Board of Public Utilities
4 shall adopt standards and uniform values for interest rates and
5 escalation of labor, electricity, oil, and gas, as well as standards for
6 presenting these costs in a life cycle and net present value format,
7 standards for the presentation of obligations for carbon reductions,
8 and other standards that the board may determine necessary.

9 f. (1) When an energy ¹~~service~~ services¹ company is
10 awarded an energy savings services contract, it shall offer the
11 public agency the option to purchase, for an additional amount, an
12 energy savings guarantee. The guarantee, if accepted by a separate
13 vote of the governing body of the public agency, shall insure that
14 the energy savings of the public agency resulting from the energy
15 savings improvement program, determined periodically over the
16 duration of the guarantee, will be sufficient to defray all payments
17 required to be made pursuant to the lease-purchase agreement or
18 energy savings obligation, and if the savings are not sufficient, the
19 energy ¹~~service~~ services¹ company will reimburse the public
20 agency for any additional amounts. Annual costs of a guarantee
21 shall not be financed or included as costs in an energy savings plan
22 but shall be fully disclosed in an energy savings plan.

23 (2) When a guaranteed energy savings option is purchased, the
24 contract shall require a qualified third party to verify the energy
25 savings at intervals established by the parties.

26 (3) When a guaranteed energy savings option is not purchased,
27 the energy savings services contract shall not include maintenance
28 services provided by the energy ¹~~service~~ services¹ company.

29 g. As used in this section:

30 “direct digital control systems” ¹~~mean~~ means¹ the devices and
31 computerized control equipment that contain software and computer
32 interfaces that perform the logic that control a building’s heating,
33 ventilating, and air conditioning system. Direct digital controls
34 shall be open protocol format and shall meet the interoperability
35 guidelines established by the American Society of Heating,
36 Refrigerating and Air-Conditioning Engineers.

37 “energy conservation measure” means an improvement that
38 results in reduced energy use, including, but not limited to,
39 installation of energy efficient equipment; demand response
40 equipment; combined heat and power systems; facilities for the
41 production of renewable energy; water conservation measures
42 fixtures or facilities; building envelope improvements that are part
43 of an energy savings improvement program; and related control
44 systems for each of the foregoing;

45 “energy related capital improvement” means a capital
46 improvement that uses energy but does not result in a reduction of
47 energy use;

1 “energy saving obligation” means a bond, note or other
2 agreement evidencing the obligation to repay borrowed funds
3 incurred in order to finance energy saving improvements;

4 “energy savings” means a measured reduction in fuel, energy
5 operating or maintenance costs resulting from the implementation
6 of one or more energy conservation measures services when
7 compared with an established baseline of previous fuel, energy,
8 operating or maintenance costs, including, but not limited to, future
9 capital replacement expenditures avoided as a result of equipment
10 installed or services performed as part of an energy savings plan;

11 “energy savings improvement program” means an initiative of a
12 public agency to implement energy conservation measures in
13 existing facilities, provided that the value of the energy savings
14 resulting from the program will be sufficient to cover the cost of the
15 program’s energy conservation measures;

16 “energy savings plan” means the document that describes the
17 actions to be taken to implement the energy savings improvement
18 program;

19 “energy savings services contract” means a contract with an
20 energy savings company to develop an energy savings plan, prepare
21 bid specifications, manage the performance, provision,
22 construction, and installation of energy conservation measures by
23 subcontractors, to offer a guarantee of energy savings derived from
24 the implementation of an energy savings plan, and may include a
25 provision to manage the bidding process;

26 “energy services company” means a commercial entity that is
27 qualified to develop and implement an energy savings plan in
28 accordance with the provisions of this section;

29 “public agency” means any government entity that is authorized
30 to expend public funds and enter into contracts which is not
31 otherwise authorized to implement an energy savings improvement
32 program pursuant to sections 1, 4, 5, 7, or 10 of P.L. , c. (C.)
33 (pending before the Legislature as this bill).

34 “public works activities” means any work subject to the
35 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

36 “water conservation measure” means an alteration to a facility or
37 equipment that reduces water consumption, maximizes the
38 efficiency of water use, or reduces water loss.

39 h. (1) The State Treasurer and the Board of Public Utilities
40 may take such action as is deemed necessary and consistent with the
41 intent of this section to implement its provisions.

42 (2) The State Treasurer and the Board of Public Utilities may
43 adopt implementation guidelines or directives, and adopt such
44 administrative rules, pursuant to the “Administrative Procedure
45 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
46 implementation of those agencies’ respective responsibilities under
47 this section , except that notwithstanding any provision of P.L.1968,

1 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
2 Division of Local Government Services in the Department of
3 Community Affairs, the State Treasurer, and the Board of Public
4 Utilities may adopt, immediately upon filing with the Office of
5 Administrative Law, such rules and regulations as deemed
6 necessary to implement the provisions of this act which shall be
7 effective for a period not to exceed 12 months and shall thereafter
8 be amended, adopted or re-adopted in accordance with the
9 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

10

11 11. This act shall take effect on the 60th day after the date of
12 enactment, except that public agencies may take such anticipatory
13 administrative action in advance thereof as may be necessary for the
14 implementation of this act.

1 refunding bond, to fund all or part of the energy conservation
2 measures or water conservation measures, or both. The contract for
3 third party financing may be separate from the guaranteed energy
4 savings contract.

5 e. An improvement that is not causally connected to an energy
6 conservation measure or water conservation measure may be
7 included in a guaranteed energy savings contract if:

8 (1) the total value of the improvement does not exceed 15% of
9 the total value of the work to be performed under the guaranteed
10 energy savings contract; and

11 (2) (a) the improvement is necessary to conform to a law, or a
12 rule or regulation adopted pursuant thereto, or an ordinance or
13 resolution, as appropriate; or

14 (b) an analysis within the successful proposal or by the
15 governmental entity at the time of the award demonstrates that there
16 is an economic advantage to the governmental entity implementing
17 the improvement as part of the guaranteed energy savings contract,
18 and the savings justification for the improvement is documented by
19 industry engineering standards.

20 f. A facility alteration required to properly implement other
21 energy conservation measures or water conservation measures, or
22 both, may be included as part of a guaranteed energy savings
23 contract. In that case, notwithstanding any other provision of law,
24 or rule or regulation adopted pursuant thereto, to the contrary, the
25 facility alteration may be undertaken or supervised by the qualified
26 provider performing the guaranteed energy savings contract.

27
28 5. This act shall take effect immediately.

29
30
31 SPONSOR'S STATEMENT

32
33 This bill establishes procedures to allow the use of competitive
34 contracting procedures by governmental entities to enter into
35 guaranteed energy savings contracts. A "guaranteed energy savings
36 contract" means a contract, entered into pursuant to the provisions
37 of this bill upon enactment into law, for the evaluation and
38 recommendation of energy savings, energy conservation measures,
39 water conservation measures, or a combination thereof, and for
40 implementation of one or more such measures.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1185

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Assembly Telecommunications and Utilities Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1185.

As reported, the purpose of this substitute is to protect the environment by reducing the release of greenhouse gases, promote national energy independence by reducing public entities' consumption of energy, and save public funds. It would authorize a public entity at any level of government to implement an energy savings improvement program. Under such a program, a public entity could contract with an energy services company for the implementation of energy conservation measures through a lease-purchase agreement having a duration of not more than 15 years, or 20 years in certain cases. The money saved by reducing the public entity's energy expenses would defray the cost of energy-saving infrastructure improvements. This would allow the State, counties, municipalities, school districts, independent authorities, and public colleges and universities to benefit from the acquisition of new, efficient heating, ventilation, and air conditioning equipment, as well as other energy-saving improvements such as insulation and more efficient lighting, without the need for large upfront capital expenditures.

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1185

with Senate Floor Amendments
(Proposed By Senator SMITH)

ADOPTED: DECEMBER 15, 2008

These amendments are intended to clarify that the hiring of subcontractors by an energy services company designated as the general contractor for energy savings plan improvements shall be performed pursuant to the public bidding requirements of the appropriate governmental entity.

The amendments make various other changes including the deletion of certain language referring to subsections that are deleted from N.J.S.18A:-42 concerning the duration of certain contracts entered into by boards of education, and from section 28 of P.L.1982, c.189 (C.18A:64A-25.28) concerning certain county college contracts.

The amendments also insert subsection q. of section 28 of P.L.1982, c.189 (C.18A:64A-25.28) to ensure that contracts for producing class I renewable energy remain exempt from the two-year limitation on the duration of county college contracts.

The amendments also make certain technical corrections to make the Assembly Committee Substitute for Assembly Bill No. 1185 identical to the Senate Committee Substitute for Senate Bill No. 1537, including spelling changes and legal citations.

1 e. An improvement that is not causally connected to an energy
2 conservation measure or water conservation measure may be
3 included in a guaranteed energy savings contract if:

4 (1) the total value of the improvement does not exceed 15% of
5 the total value of the work to be performed under the guaranteed
6 energy savings contract; and

7 (2) (a) the improvement is necessary to conform to a law, or a
8 rule or regulation adopted pursuant thereto, or an ordinance or
9 resolution, as appropriate; or

10 (b) an analysis within the successful proposal or by the
11 governmental entity at the time of the award demonstrates that there
12 is an economic advantage to the governmental entity implementing
13 the improvement as part of the guaranteed energy savings contract,
14 and the savings justification for the improvement is documented by
15 industry engineering standards.

16 f. A facility alteration required to properly implement other
17 energy conservation measures or water conservation measures, or
18 both, may be included as part of a guaranteed energy savings
19 contract. In that case, notwithstanding any other provision of law,
20 or rule or regulation adopted pursuant thereto, to the contrary, the
21 facility alteration may be undertaken or supervised by the qualified
22 provider performing the guaranteed energy savings contract.

23

24 5. This act shall take effect immediately.

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26

27

SPONSOR'S STATEMENT

28

29 This bill establishes procedures to allow the use of competitive
30 contracting procedures by governmental entities to enter into
31 guaranteed energy savings contracts. A "guaranteed energy savings
32 contract" means a contract, entered into pursuant to the provisions
33 of this bill upon enactment into law, for the evaluation and
34 recommendation of energy savings, energy conservation measures,
35 water conservation measures, or a combination thereof, and for
36 implementation of one or more such measures.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

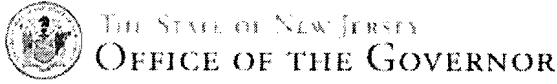
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1537

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1537.

As substituted, this bill would authorize the State, counties, municipalities, school districts, independent authorities, and public colleges and universities to implement an energy savings improvement program. Under such a program, these public entities could contract with an energy services company for the implementation of energy conservation measures through a lease-purchase agreement having a duration of not more than 15 years, or 20 years if for a combined heat and power or cogeneration project. The money saved by reducing the public entities' energy expenses would defray the cost of energy-saving infrastructure improvements. This would allow public entities to benefit from the acquisition of new, efficient heating, ventilation, and air conditioning equipment, as well as other energy-saving improvements such as insulation and more efficient lighting, without the need for large upfront capital expenditures. The purpose of this substitute bill is to protect the environment by reducing the release of greenhouse gases, promote national energy independence by reducing public entities' consumption of energy, and to save public funds.



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JON S. CORZINE
Governor

For Immediate Release:
Date: January 21 2009

For More Information:
Robert Corrales

Phone: 609-777-2600

Governor Signs Legislation Implementing Energy Savings Improvement Programs

Trenton - Governor Jon S. Corzine today signed legislation encouraging public entities, including the State, counties, municipalities, school districts, and public colleges, to implement energy savings improvement programs. The bill, A1185/ S 1537, will help public agencies reduce their energy consumption and realize financial savings.

"The bill I am signing is a win-win for our State," said Governor Corzine. "Towns, schools, counties and public colleges can now become more energy efficient and save money when they retrofit their buildings and enter into long-term energy contracts with no additional costs.

"At the same time, our larger Energy Master Plan goals as a State are also being fulfilled. Not only will this new law help reduce our carbon emissions, it will make local government more cost-efficient and create jobs immediately to limit the impact of the recession on New Jersey."

Through the new program, public organizations will be able to contract with energy services companies to implement the energy saving measures. The money saved through the reduction in energy expenses will defray the cost of energy infrastructure improvements. Public agencies will have the ability to benefit from the acquisition of new, efficient heating, ventilation, and air conditioning equipment, as well as other energy-saving improvements without the need for large upfront capital expenditures.

"As we look for new and creative ways to overcome the national economic crisis, we cannot ignore the benefits of green construction in New Jersey," said Senator Bob Smith, (D-Middlesex, Somerset), and Chairman of the Senate Environment Committee. "This new law allows public agencies to capitalize on proven cost savings to jump-start the State's green economy. By allowing public agencies to tap into cost-neutral start-up capital, we can show to the world the benefits - both economic and environmental - of going green and supporting green construction in the Garden State."

"Even the best-laid plans to replace outdated and energy-inefficient heating, air-conditioning or other large capital expenditures can go by the wayside because of tremendous upfront costs," said Assemblywoman Sheila Y. Oliver (D-Essex). "But the costs of continuing to use energy-gulping systems gets passed directly to homeowners in higher property taxes. We need to promote partnerships that can lead to direct energy savings and protect taxpayers."

"The cost of operating energy-inefficient buildings impacts everyone," said Assemblywoman Pamela R. Lampitt (D-Camden). "As the annual energy savings from these programs grow, more and more buildings can be rehabilitated to make them cost-efficient and make their operation less costly to taxpayers."

In April 2006, Governor Corzine signed Executive Order 11 centralizing State government's own energy efficiency, energy use reduction, and energy procurement by creating the Office of Energy Savings within Treasury. The overarching goal of the Office for the State is to reduce energy usage by 10 percent by 2012 and by 25 percent by 2020.

Currently, there are 26 energy efficiency projects in progress through the Office of Energy Savings, ranging from energy audits to construction and installation of new equipment.

"Investing in energy savings is an important way for us to protect the environment while simultaneously safeguarding taxpayer money," said Assemblyman Upendra J. Chivukula (D-Middlesex). "Reducing the release of greenhouse gases, promoting energy independence and saving public money is a winning situation all-around."

"Ensuring public buildings meet the highest levels of energy efficiency and environmental sustainability simply makes sense," said Assemblyman Wayne P.

DeAngelo (D-Mercer/Middlesex). "This is the right thing to do for taxpayers, the economy and the environment."

Primary sponsors of the legislation in the Assembly were Assemblywomen Sheila Y. Oliver (D-Essex, Passaic) and Pamela R. Lampitt (D-Camden) and Assemblymen David W. Wolfe (D-Monmouth, Ocean), Upendra J. Chivukula (D-Middlesex, Somerset), Wayne DeAngelo (D-Mercer, Middlesex), Joseph Vas (D-Middlesex) and John F. McKeon (D-Essex). Primary sponsors in the Senate were Senators Bob Smith (D-Middlesex, Somerset) and Christopher Bateman (R-Morris, Somerset)

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Photos from Governor Corzine's public events are available
in the Governor's Newsroom section on the State of New Jersey web page, <http://www.nj.gov/governor/news/>

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