with the plans of the United States volunteer life-saving corps in this State;

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

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

Government Energy Aggregation Programs, 31. Establish programs and procedures pursuant to which the municipality may act as an government aggregator pursuant to sections 40 through 45 of P.L.1999, c.23 (C.48:3-89 through C.48:3-84). Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality acting as a government aggregator pursuant to P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating any form of public utility service pursuant to R.S.40:62-1 et seq., to the extent such municipality is solely engaged in the provision of such aggregation service and not otherwise owning or operating any plant or facility for the production or distribution of gas, electricity, steam or other product as provided in R.S.40:62-12.

48. N.J.S.12A:9-103 is amended to read as follows:

Perfection of security interests in multiple state transactions.

12A:9-103. Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by subchapter 3 of this chapter to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of 12A:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without the knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, ASCUS.1301 et seq., as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection d. of 12A:8-110.

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in subsection e. of 12A:8-110.

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

(7) Notwithstanding subsection (3) of this section, the law of this State shall govern the perfection and the effect of perfection of any security interest in bondable transition property.

49. N.J.S.12A:9-105 is amended to read as follows:

Definitions and index of definitions.

12A:9-105. Definitions and Index of Definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (12A:1-201), and a receipt of the kind described in subsection (2) of 12A:7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (12A:9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in 12A:3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Bondable transition property" shall have the meaning set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account." 12A:9-106.

"Attach." 12A:9-203.

"Commodity contract." 12A:9-115.

"Commodity customer." 12A:9-115.

"Commodity intermediary." 12A:9-115.

"Construction mortgage." 12A:9-313 (1).

"Consumer goods." 12A:9-109 (1).
"Control." 12A:9-115.
"Equipment." 12A:9-109 (2).
"Farm products." 12A:9-109 (3).
"Fixture." 12A:9-313(1).
"Fixture filing." 12A:9-313(1).
"General intangibles." 12A:9-106.
"Inventory." 12A:9-109 (4).
"Investment property." 12A:9-115.
"Lien creditor." 12A:9-301 (3).
"Proceeds." 12A:9-306 (1).
"Purchase money security interest." 12A:9-107.
"United States." 12A:9-103 (3).
(3) The following definitions in other chapters apply to this chapter:
"Broker." 12A:8-102.
"Certificated security." 12A:8-102.
"Check." 12A:3-104.
"Clearing corporation." 12A:8-102.
"Contract for sale." 12A:2-106.
"Control." 12A:8-106.
"Delivery." 12A:8-301.
"Entitlement holder." 12A:8-102.
"Financial asset." 12A:8-102.
"Holder in due course." 12A:3-302.
"Letter of Credit." 12A:5-102.
"Note." 12A:3-104.
"Proceeds of a letter of credit." 12A:5-114.
"Sale." 12A:2-106.
"Securities intermediary." 12A:8-102.
"Security." 12A:8-102.
"Security certificate." 12A:8-102.
"Security entitlement." 12A:8-102.
"Uncertificated security." 12A:8-102.
(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

50. N.J.S.12A:9-403 is amended to read as follows:

Filing of financing statement.
12A:9-403. (1) Presentation for filing of a financing statement, tender of the filing fee and acceptance of the statement by the filing officer constitute filing under this chapter.
(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.
(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person

other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of 12A:9-405, including payment of the required fee.

Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. A financing statement covering collateral which is or is to become a fixture or fixtures, or crops growing or to be grown, shall also be indexed in the name of the record owner of the realty.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement or any amendment of either shall be $25.00.

(6) A real estate mortgage which is effective as a fixture filing under subsection (6) of 12A:9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate. If a filed financing statement relates to a security interest in bondable transition property and the financing statement so states, it is effective until a termination statement is filed.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of 12A:9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this State provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

C.48:3-63 Proceeds of transition bonds not considered income to utility; tax consequences of sale of assets.

51. a. All proceeds received from the issuance of transition bonds shall not be considered income to the electric public utility or gas public utility for the purposes of the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or the "New Jersey Gross Income Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.).

b. The Director of the Division of Taxation in the Department of the Treasury is authorized to issue regulations regarding the determination of profit or loss related to the sale of assets which have been deemed to be part of stranded costs pursuant to sections 13 and 14 of this act for purposes of computing the corporation business tax to which the utility is subject.

52. R.S.48:2-13 is amended to read as follows:

Powers of board; public utility defined; exemptions from jurisdiction.

48:2-13. a. The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court

whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

b. Nothing contained in this Title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over any vehicles engaged in ridesharing arrangements with a maximum carrying capacity of not more than 15 passengers, including the driver, where the transportation of passengers is incidental to the purpose of the driver or any vehicles engaged in the transportation of passengers for hire in the manner and form commonly called taxicab service unless such service becomes or is held out to be regular service between stated termini; hotel buses used exclusively for the transportation of hotel patrons to or from local railroad or other common carrier stations, including local airports, or bus employed solely for transporting school children and teachers, to and from school, or any autobus with a carrying capacity of not more than 10 passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities within any county of the fifth or sixth class, which route in either case does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route.

c. Except as provided in section 7 of P.L.1995, c.101 (C.58:26-25), the board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

d. Unless otherwise specifically provided pursuant to P.L.1999, c.23 (48:3-49 et al.), all services necessary for the transmission and distribution of electricity and gas, including but not limited to safety, reliability, metering, meter reading and billing, shall remain the jurisdiction of the Board of Public Utilities. The board shall also maintain the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State as prescribed by the board or any other federal or multi-jurisdictional agency responsible for reliability and capacity in the State.

e. Notwithstanding the provisions of subsection a. of this section, the board shall have the authority to classify as regulated the sale of any thermal energy service by a cogenerator or district heating system, for the purpose of providing heating or cooling to a residential dwelling if, after notice and hearing, it determines that the customer does not have sufficient space on its property to install an alternative source of equivalent thermal energy, there is no contract governing the provision of thermal energy service for the relevant period of time, and that sufficient competition is no longer present, based upon consideration of such factors as: ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area. Upon such a classification, the board may determine such rates for the thermal energy service for the purpose of providing heating or cooling to a residential dwelling as it finds to be consistent with the prevailing cost of alternative sources of thermal energy in similar situations. The board, however, shall continue to monitor the thermal energy service to such residential dwellings and, whenever the board finds that the thermal energy service has again become sufficiently competitive pursuant to the criteria listed above, the board shall cease to regulate the sale or production of the service. The board shall not have the authority to regulate the sale or production of steam or any other form of thermal energy, including hot and chilled water, to non-residential customers.

f. Nothing contained in this Title shall extend the powers of the board to include supervision and regulation of, or jurisdiction and control over, an entity engaged in the provision

or use of sewage effluent for the purpose of providing a cooling medium to an end user or end users on a single site, which provision results in the conservation of potable water which would otherwise have been used for such purposes.

53. Section 3 of P.L.1995, c.180 (C.48:2-21.26) is amended to read as follows:

C.48:2-21.26 Standards for off-tariff rate agreement.

3. a. No later than October 18, 1995 and notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Board of Public Utilities shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, specific standards regarding minimum prices, confidentiality standards, maximum contract duration, filing requirements, and such other standards as the board may determine are necessary for off-tariff rate agreements consistent with this act. Any subsequent modification of the standards that is adopted by the board shall be adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. After the adoption by the board of specific standards pursuant to subsection a. of this section, an electric public utility may, within seven years of July 20, 1995, enter into an off-tariff rate agreement with an individual retail customer pursuant to the provisions of sections 3 and 4 of P.L.1995, c.180 (C.48:2-21.26 and 48:2-21.27). The provisions of sections 3 and 4 shall not apply to an off-tariff rate agreement entered into by an electric public utility after that seven-year period, except as otherwise provided by the board. Notwithstanding the seven-year limitation imposed pursuant to this subsection, an off-tariff rate agreement that is entered into during that seven-year period shall remain in effect until its expiration pursuant to the terms of the agreement.

c. An off-tariff rate agreement shall be filed with the board a minimum of 30 days prior to its effective date along with sufficient information to demonstrate that the off-tariff rate agreement meets the conditions established in subsection d. of this section and the standards established pursuant to subsection a. of this section. The entire agreement shall be available to the public, except that a public utility may petition the board to keep confidential certain parts of the agreement or supporting documentation that are competitively sensitive. Upon petition by the public utility, the board may classify as confidential any part of the agreement that is found to contain competitively sensitive information that, if revealed, would harm the competitive position of either party to the agreement. A copy of the off-tariff rate agreement and supporting information shall be served simultaneously upon the Director of the Division of the Ratepayer Advocate, or its successor agency. The staff of the board and the division shall have full access to all portions of the agreement and to any supporting documentation, subject to a standard non-disclosure agreement to be approved by the board. The board or its staff shall review the agreement, and upon review the board may delay its implementation if it requires additional time to review the agreement or shall disapprove the agreement upon a finding that it does not meet the conditions established in subsection d. of this section and the standards established pursuant to subsection a. of this section. If the board does not issue notice that it is delaying implementation for further review or that it disapproves the agreement, the utility may implement the off-tariff rate agreement.

An off-tariff rate agreement implemented pursuant to this subsection shall not include any reduction in the gross receipts and franchise tax or a successor tax pursuant to P.L.1997, c.162 (C.54:30A-100 et seq.).

d. An off-tariff rate agreement implemented pursuant to this section prior to the effective date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53) may establish a price for electricity to a retail customer that is different from, but in no case higher than, that specified in the utility's current cost-of-service based tariff rate otherwise applicable to that customer. An off-tariff rate agreement implemented pursuant to this section on or after the effective date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53) may establish a price for the transmission or distribution of electricity to a retail customer that is different from, but in no case higher than, that specified in the electric public utility's current cost-of-service based tariff rate for transmission or distribution

service otherwise applicable to that customer. An off-tariff rate agreement shall be subject to the following conditions:

(1) There shall be no retroactive recovery by the utility from its general ratepayer base of any revenue erosion that occurs prior to the conclusion of the utility's next base rate case. Subsequent to the conclusion of the utility's next base rate case, any such recovery shall be prospective only and in accordance with section 4 of P.L.1995, c.180 (C.48:2-21.27).

(2) In no event shall any customer be required to enter into an off-tariff rate agreement.

(3) An off-tariff rate for electricity at a minimum shall equal the sum of the following:

(a) the electric public utility's marginal cost to provide transmission or distribution service to the customer over the term of the off-tariff rate agreement,

(b) the per kilowatt hour contribution to the societal benefits charge, market transition charge, and transition bond charge, as established pursuant to P.L.1999, c.23 (C.48:3-49 et al.) and otherwise chargeable under the standard applicable rate schedule, and

(c) a floor margin to be specified by the board pursuant to subsection a. of this section, which shall constitute the minimum contribution by an off-tariff customer toward a public utility's fixed transmission and distribution costs.

(4) Evidence of a comprehensive energy audit of the customer's facility must be submitted to the utility prior to the effective date of the off-tariff rate agreement, in order to ensure that the customer has evaluated cost-effective energy efficiency and demand side management measures at its facility as part of its efforts to reduce electricity costs.

(5) The term of the off-tariff rate agreement shall not exceed a maximum number of years, to be specified by the board pursuant to subsection a. of this section, except that the term of an off-tariff rate agreement may exceed the maximum contract term established by the board, only with the prior review and approval of the board on a case by case basis.

(6) The electric public utility shall not make the provision of any competitive service or basic generation service offered by the public utility or its related competitive business segment to the customer a pre-condition to the offering of or agreement to an off-tariff rate agreement.

(7) The utility shall submit any information required by the filing requirements established pursuant to subsection a. of this section.

e. Each electric public utility shall file with the board and the Director of the Division of the Ratepayer Advocate, on a periodic basis to be determined by the board, a report, which shall be made available to the public, that includes the number of off-tariff rate contracts implemented, the aggregate expected revenues and margins derived thereunder, and an estimate of the aggregate differential between the revenues produced under the off-tariff rate agreements and the revenues that would have been produced under a standard board-approved tariff rate, so that the board can evaluate the total impact of off-tariff rate agreements on the financial integrity of the utility and on its ratepayers.

f. Upon notice and hearing, the board may suspend an electric public utility's implementation of additional off-tariff rate agreements based upon information in the report filed pursuant to subsection e. of this section or with other good cause. The board may suspend additional off-tariff rate agreements during the pendency of any such hearings.

54. Section 4 of P.L.1995, c.180 (C.48:2-21.27) is amended to read as follows:

C.48:2-21.27 Base rate case proceedings.

4. a. An electric public utility that enters into an off-tariff rate agreement pursuant to section 3 of P.L.1995, c.180 (C.48:2-21.26) shall not recover through rates any revenue erosion that occurs between the effective date of the agreement and the conclusion of the public utility's next base rate case.

b. As part of a base rate case proceeding, an electric public utility may request prospective recovery of a portion of the quantifiable revenue erosion resulting from an existing off-tariff rate agreement with a customer that previously purchased power from the utility under a tariff set by the board. Whenever a public utility requests partial recovery of revenue erosion from an off-tariff rate agreement, and notwithstanding any provision of subsection c. of section 3 of P.L.1995, c.180 (C.48:2-21.26) to the contrary, the entire agreement shall be available to the

public, except that a public utility may petition the board to keep confidential certain parts of the agreement or supporting documentation that are competitively sensitive. Upon petition by the public utility, and after an opportunity for all interested parties to comment, the board may classify as confidential any part of the agreement that is found to contain competitively sensitive information that, if revealed, would harm the competitive position of either party to the agreement. An intervenor in the base rate case proceeding may request access to information that has been classified as confidential. The board shall grant such access, subject to an executed non-disclosure agreement, if the board determines that the intervenor's interest cannot be pursued fully in the base rate case proceeding without access to the information and that the intervenor is not a direct competitor of either party to the agreement.

c. In a base rate case proceeding at which an electric public utility requests, pursuant to subsection b. of this section, prospective recovery of revenue erosion, the board may approve prospective recovery of 50 percent of the revenue erosion occurring after the conclusion of that base rate case proceeding, in order to ensure that ratepayers shall not bear a greater portion of the revenue erosion resulting from the off-tariff rate agreement than the public utility, if the board determines that:

(1) All appropriate offsetting financial adjustments, including but not limited to sales growth, standby and backup sales to the customer, are credited to the revenue requirement calculation and that the utility is not already achieving a fair and reasonable rate of return;

(2) The utility has developed and implemented a corporate strategy to lower its cost of delivering power;

(3) Ratepayers are paying lower rates with the implementation of an off-tariff rate agreement for a particular customer than without such implementation, because the off-tariff rate agreement allowed the utility to continue to maintain the customer and thus to continue to receive the customer's contribution to the fixed transmission and distribution costs of the electric public utility. A determination that the public utility's ratepayers are paying lower rates with the implementation of an off-tariff rate agreement prior to the effective date of P.L.1999, c.23 (C.48:3-49 et al.) will therefore include a finding that the customer receiving the off-tariff rate:

(a) Had a viable alternative source of power deliverable to its site and, had it not received the off-tariff rate, would have ceased to obtain its power primarily from the public utility; or

(b) Would have relocated its facility outside of the State to a location where power could be obtained at a lower cost, had it not received the off-tariff rate.

A determination that the public utility's ratepayers are paying lower rates with the implementation of an off-tariff rate agreement on or after the effective date of P.L.1999, c.23 (C.48:3-49 et al.) will therefore include a finding that the customer receiving the off-tariff rate would have relocated its facility outside of the State to a location where it could have obtained delivered power at a lower cost, had it not received the off-tariff rate; and

(4) The utility and the customer have otherwise complied with the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.) and the off-tariff rate standards adopted by the board pursuant to subsection a. of section 3 of P.L.1995, c.180 (C.48:2-21.26).

55. Section 5 of P.L.1995, c.180 (C.48:2-21.28) is amended to read as follows:

C.48:2-21.28 Petitions for alternative forms of regulation; NJSAVEprogram.

5. a. An electric or gas public utility may petition the Board of Public Utilities to be regulated under an alternative form of regulation for its distribution system only, for the setting of prices for all or a portion of its retail customer base, or for the purpose of creating incentives consistent with the provisions of this act without changing the rate reductions for the sustained period as set forth under section 4 of P.L.1999, c.23 (C.48:3-52), no earlier than 12 months after the starting date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53). The public utility shall submit its plan for an alternative form of regulation with its petition. The public utility shall also file its petition and plan concurrently with the Director of the Division of the Ratepayer Advocate, or its successor. The public utility shall provide, within 15 days of the filing of its petition and plan, notice of the specific filing to the clerk of each municipality, to the clerk of each board of Chosen Freeholders, and to each county executive,

in the service territory of the public utility. The public utility shall also provide, within 15 days of the filing, public notice to its customers of the filing, either by notice in a newspaper that has a general circulation in its service territory or by bill inserts as directed by the board. The board shall review the plan and may approve the plan, or approve it with modifications, if the board finds, after notice and hearing, that the plan will provide benefits to customers of the public utility, and that the plan meets the following standards:

(1) Will further the State's objective of producing lower rates for New Jersey consumers;

(2) Will provide incentives for the utility to lower its costs and rates;

(3) Will provide incentives to improve utility efficiency and productivity;

(4) Will foster the long-term delivery of electricity or natural gas in a manner that will improve the quality and choices of service;

(5) Includes a mechanism for the board to monitor and review the plan on a periodic basis over its term and to take appropriate actions if it is found that the plan is not achieving its intended results;

(6) Will maintain or improve pre-existing service quality standards, except that an individual customer may agree to accept lower quality service. A public utility shall continue to provide safe, adequate and proper service pursuant to R.S.48:2-23;

(7) Will not result in cross-subsidization among or between groups of utility customers, or between the portion of the utility's business or operations subject to the alternative form of regulation and the portion of the utility's business or operations that is not subject to the alternative form of regulation;

(8) Will reduce regulatory delay and cost;

(9) Is in the public interest and will produce just and reasonable rates;

(10) Will enhance economic development in the State;

(11) Will not discourage energy efficiency or distributed generation as alternatives to distribution plant investment and will explore ways to remove the linkage between retail throughput and the recovery of fixed and stranded costs; and

(12) Is otherwise consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.).

In preparation for the development of such plans, each electric public utility shall begin to collect distribution cost data that will be needed to evaluate accurately alternatives to traditional infrastructure investments.

b. Consistent with the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.), and provided that the plan meets the standards established in subsection a. of this section, the board may approve a plan for an alternative form of regulation that permits a gas or electric public utility to establish a rate for a group of retail customers without a finding of rate base and reasonable rate of return pursuant to the pre-existing provisions of Title 48 of the Revised Statutes, if the board determines that the rate being charged by the utility to a retail customer is no lower than a minimum price that is determined by the board to prevent anti-competitive pricing and that:

(1) The group of customers has access to a competitive market for supply of power to its site and that market pricing of delivery services for that group of customers is thereby appropriate; or

(2) The group of customers has otherwise voluntarily agreed in writing to accept a price that has not been established based upon rate base and reasonable rate of return standards pursuant to Title 48 of the Revised Statutes; or

(3) At the time of the plan's approval, the level of retail prices of the utility for the group of customers is determined to be reasonably reflective of the level necessary to produce a fair and reasonable rate of return pursuant to a current evaluation under pre-existing standards of Title 48 of the Revised Statutes, and that the plan provides mechanisms for prospective adjustments to rates that will track trends in utility rates.

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

d. An alternative regulation plan as provided for in this section shall not include any mechanism for:

(1) Recovery of revenue erosion from other ratepayers; or

(2) A reduction in the gross receipts and franchise tax or a successor tax pursuant to P.L.1997, c.162 (C.54:30A-100 et seq.).

e. The board may require an independent audit or such accounting and reporting systems from electric and gas utilities as are necessary to allow a proper allocation of investments, costs or expenses for all services provided under the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.) that are subject to the jurisdiction of the board.

f. Consistent with the provisions of this section, the Legislature hereby authorizes and directs the New Jersey Economic Development Authority, in conjunction with the Board of Public Utilities, to establish the New Jersey Senior and Alternate Vital Energy (NJ SAVE) program for the purpose of funding capital improvements of natural gas distribution facilities, and for purchase and installation of natural gas heating equipment and appliances located on the premises of homeowners, where those homeowners reside in all-electric homes in age-restricted communities.

The authority may issue bonds on behalf of gas public utilities, the proceeds of which may be used for the purpose of distributing in the form of loans to eligible customers for the purpose of allowing such customers to pay home heating and appliance conversion costs and the customer's contribution, to the extent applicable, to gas distribution system extension costs required to serve those customers.

The gas public utility shall be permitted to assess a meter charge, as approved by the board, to recover the funds to repay loan principal and interest. Monies collected by the gas public utility as a result of such meter charge shall be utilized by the gas public utility to repay the bonds issued by the authority. Nothing in this section shall be construed to relieve the gas public utility of its obligation to repay any bonds issued by the authority.

56. Section 6 of P.L.1995, c.180 (C.48:2-21.29) is amended as follows:

C.48:2-21.29 Reports.

6. The Board of Public Utilities shall submit a report to the Legislature on the implementation of P.L.1995, c.180 (C.48:2-21.24 et seq.) and of the restructuring of the electric power industry pursuant to P.L.1999, c.23 (C.48:3-49 et al.) on December 1 of the third year following the effective date of P.L.1999, c.23 (C.48:3-49 et al.) and every four years thereafter.

C.48:3-96 Standards for inspection, maintenance, repair, replacement of electric equipment, facilities.

57. a. The Board of Public Utilities shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), standards for the inspection, maintenance, repair and replacement of the distribution equipment and facilities of electric public utilities. The standards may be prescriptive standards, performance standards, or both, and shall provide for high quality, safe and reliable service. The board shall also adopt standards for the operation, reliability and safety of such equipment and facilities during periods of emergency or disaster. The board shall adopt a schedule of penalties for violations of these standards.

b. In adopting standards pursuant to this section, the board shall consider cost, local geography and weather, applicable industry codes, national electric industry practices, sound engineering judgment, and past experience.

c. The board shall require each electric public utility to report annually on its compliance with the standards adopted pursuant to this section, and the utility shall make these reports available to the public.

58. Section 10 of P.L.1975, c.291 (C.40:55D-19) is amended to read as follows:

C.40:55D-19 Appeal or petition in certain cases to the Board of Public Utilities.

10. Appeal or petition in certain cases to the Board of Public Public Utilities.

If a public utility, as defined in R.S.48:2-13, or an electric power generator, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken within 35 days after such action without appeal

to the municipal governing body pursuant to section 8 of this act unless such public utility or electric power generator so chooses. In such case appeal to the Board of Public Utilities may be taken within 35 days after action by the governing body. A hearing on the appeal of a public utility to the Board of Public Utilities shall be had on notice to the agency from which the appeal is taken and to all parties primarily concerned, all of whom shall be afforded an opportunity to be heard. If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public, including, but not limited to, in the case of an electric power generator, a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and that no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility or electric power generator may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

This act or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

Nothing in this act shall be construed to restrict the right of any interested party to obtain a review of the action of the municipal agency or of the Board of Public Utilities by any court of competent jurisdiction according to law.

59. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid by any court of competent jurisdiction, the invalidity shall not affect any other provision or the application of this act which can be given effect without the invalid provision or application.

C.48:3-9.7 Construction of act relative to DOT, DEP.

60. a. No provision of this act shall be interpreted or construed in any fashion so as to amend or alter the functions, powers and duties of the Commissioner of Transportation in respect to autobuses, charter and special bus operations, railroads, street railways, traction railways, and subways as transferred to the commissioner by Executive Reorganization filed on October 5, 1978, pursuant to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

b. No provision of this act shall be interpreted or construed in any fashion so as to amend or alter the functions, powers and duties of the Commissioner of Environmental Protection in respect to the commissioner's role in protecting the environment.

61. Section 5 of P.L.1970, c.73 (C.56:9-5) is amended to read as follows:

C.56:9-5 Certain activites permitted.

5. a. This act shall not forbid the existence of trade and professional organizations created for the purpose of mutual help, and not having capital stock, nor forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof not otherwise in violation of this act; nor shall those organizations or members per se be illegal combinations or conspiracies in restraint of trade under the provisions of this act.

b. No provisions of this act shall be construed to make illegal:

(1) The activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of New Jersey or the United States;

(2) The activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the

State of New Jersey or the United States;

(3) The activities of any public utility, as defined in R.S.48:2-13 to the extent that such activities are subject to the jurisdiction of the Board of Public Utilities, the Department of Transportation, the Federal Energy Regulatory Commission, the Federal Communications Commission, the Federal Department of Transportation or the Interstate Commerce Commission, except that this exemption, and that of subsection c. of this section, shall apply to the activities of any electric public utility or gas public utility or any related competitive business segment of an electric public utility or related competitive business segment of a gas public utility, or any public utility holding company or related competitive business segment of a public utility holding company as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), only to the extent such activities are expressly required by and supervised pursuant to State regulation or are required by federal or State law;

(4) The activities, including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangements, of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject to regulation by the Commissioner of Banking and Insurance of this State under, or are permitted, or are authorized by, the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) and the "Department of Insurance Act of 1970," P.L.1970, c.12 (C.17:1C-1 et seq.), provided, however, the provisions of this paragraph (4) shall not apply to private passenger automobile insurance business, except as provided in section 69 of P.L.1990, c.8 (C.17:33B-31);

(5) The bona fide religious and charitable activities of any not for profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(6) The activities engaged in by securities dealers, issuers or agents who are (I) a. licensed by the State of New Jersey under the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.); or (ii) members of the National Association of Securities Dealers, or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the "Securities Exchange Act of 1934," as amended, in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

(7) The activities of any State or national banking institution to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(8) The activities of any state or federal savings and loan association to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(9) The activities of any bona fide not for profit professional association, society or board, licensed and regulated by the courts or any other agency of this State, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services; or

(10) The activities permitted under the provisions of chapter 4 of Title 56 of the Revised Statutes, "An act to regulate the retail sale of motor fuels," P.L.1938, c.163 (C.56:6-1 et seq.), the "Unfair Motor Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.) and the "Unfair Cigarette Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et seq.).

c. This act shall not apply to any activity directed, authorized or permitted by any law of this State that is in conflict or inconsistent with the provisions of this act, and the enactment of this act shall not be deemed to repeal, either expressly or by implication, any such other law in effect on the date of its enactment.

62. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to read as follows:

C.54:32B-8.46 Receipts from sale, wxchange, delivery, use of electricity; purchase or use of

natural gas or utility service.

26. a. Receipts from the sale, exchange, delivery or use of electricity are exempt from the tax imposed under the Sales and Use Tax Act if the electricity:

(1) (a) Is sold by a municipal electric corporation in existence as of December 31, 1995 and used within its municipal boundaries except if the customer is located within a franchise area served by an electric public utility other than the municipal electric corporation. If a municipal electric corporation makes sales of electricity used outside of its municipal boundaries or within a franchise area served by an electric public utility other than the municipal electric corporation, then receipts from those sales of electricity by the municipal electric corporation shall be subject to tax under P.L.1966, c.30; or

(b) Is sold by a municipal electric utility in existence as of December 31, 1995, and used within its municipal boundaries. However, a municipal electric utility's receipts from the sale, exchange, delivery or use of electricity used by customers outside of its municipal boundaries and within its franchise area existing as of December 31, 1995 shall be subject to tax. If a municipal electric utility makes sales of electricity used outside of its franchise area existing as of December 31, 1995, then receipts from those sales of electricity by the municipal electric utility shall be subject to tax under P.L.1966, c.30;

(2) Was generated by a facility located on the user's property or property purchased or leased from the user by the person owning the generation facility and such property is contiguous to the user's property, and the electricity was consumed by the one on-site end user on the user's property, and was not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcated the user's or generation facility owner's otherwise contiguous property or the electricity was consumed by an affiliated user on the same site, or by a non-affiliated user on the same site with an electric distribution system which is integrated and interconnected with the user on or before March 10, 1997; the director may promulgate rules and regulations and issue guidance with respect to all issues related to affiliated users; or

(3) Is sold for resale.

The State Treasurer shall monitor monies deposited into the Energy Tax Receipts Property Tax Relief Fund on an annual basis and may report the results of the State Treasurer's analysis on the fund to the Governor and the Legislature, along with any recommendations on the exemptions in this subsection.

b. Receipts from the purchase or use of the following are exempt from the tax imposed under the Sales and Use Tax Act:

(1) Natural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity; and

(2) Natural gas and utility service that is used for co-generation at any site at which a co-generation facility was in operation on or before March 10, 1997, or for which an application for an operating permit or a construction permit and a certificate of operation in order to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site.

C.40A:11-15.2 Contracts for purchase of electricity for new county corection facility.

63. In the case of construction of a new county correction facility, in addition to the purchase of thermal energy, contracts for the purchase of electricity shall be permitted pursuant to subsection (1)(c) of section 15 of P.L.1971, c.198 (C.40A:11-15).

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

C.40A:11-15 Duration of certain contracts.

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

(1) Supplying of:

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

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

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

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

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

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

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

(6) Insurance, for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed three years; provided, however, such contracts shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

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

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

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

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Environmental Protection establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

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

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those contracts otherwise exempted pursuant to subsection (30), (31), (34) or (35) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

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

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

other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise exempted pursuant to subsection (36) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

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

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

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

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

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

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

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

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

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

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

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to the "County and

Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into no later than January 7, 1995, for any term of not more than forty years;

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

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

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

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

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

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

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

All multiyear leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35) or (37) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36) or (37) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

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

Repealer.

65. The following sections are repealed:

The "Public Utility Accident Fault Determination Act," P.L.1983, c.94 (C.48:2-21.4 et seq.).
P.L.1963, c.114 (C.48:7-7 through 48:7-13).
The "Electric Facility Need Assessment Act," P.L.1983, c.115 (C.48:7-16 through 25).
R.S.48:9-20.
Sections 2, 5.1, 10, 11, 17, 23, and 25 of the "Department of Energy Act," P.L.1977, c.146 (C.52:27F-2, 52:27F-6, 52:27F-12, 52:27F-13, 52:27F-19, 52:27F-26, and 52:27F-28).

66. This act shall take effect immediately, except that, to the extent not already provided for by existing law, the authority of the board to order rate unbundling filings, restructuring filings, and stranded cost filings, perform audits of utility competitive services and take such other regulatory actions, including, but not limited to, the holding of hearings, providing of notice and opportunity for comment, the issuance of orders, and the establishment of standards, including auction standards adopted for application to an electric public utility that is executing a divestiture plan, and to take such other anticipatory regulatory action as it deems necessary to fulfill the purposes or requirements of this act shall apply retroactively to April 1, 1997 provided that the board shall take such actions as may be necessary, if any, to ensure that the requirements of this act are met in all regulatory actions related to this act which were commenced prior to its enactment.

Approved February 9, 1999.