

P.L.2012, CHAPTER 55, *approved September 19, 2012*  
Assembly Committee Substitute for  
Assembly, Nos. 2313 and 2564

1 AN ACT concerning energy savings improvement programs,  
2 amending various parts of the statutory law, and supplementing  
3 Title 52 of the Revised Statutes.

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

7  
8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to  
9 read as follows:

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

23 (2) A board of education facility alteration required to properly  
24 implement other energy efficiency or energy conservation  
25 measures, or both, may be included as part of an energy savings  
26 services contract, in which case, notwithstanding any other  
27 provision of law, rule, regulation, or order to the contrary, the  
28 facility alteration may be undertaken or supervised by the energy  
29 services company performing the energy savings services contract  
30 if:

31 (a) the total cost of the improvement does not exceed 15 percent  
32 of the total cost of the work to be performed under the energy  
33 savings services contract; and

34 (b) (i) the improvement is necessary to conform to a law, rule,  
35 or regulation, or order, or (ii) an analysis within an approved  
36 proposal, or the board of education, at the time of the award of the  
37 proposal, demonstrates that there is an economic advantage to the  
38 board of education implementing the improvement as part of the

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

Matter underlined thus is new matter.

1 energy savings services contract, and the savings rationale for the  
2 improvement is documented and supported by reasonable  
3 justification.

4 b. (1) To be eligible to enter into an energy savings services  
5 contract, an energy services company shall be a commercial entity  
6 that is qualified to provide energy savings services in accordance  
7 with the provisions of this section. A board of education may  
8 determine to enter into an energy savings services contract either  
9 through public advertising for bids and the receipt of bids therefor  
10 or through competitive contracting in lieu of public bidding in the  
11 manner provided by sections 45 through 49 of P.L.1999, c.440  
12 (C.18A:18A-4.1 et seq.).

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

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

34 (3) (a) An energy services company may be designated as the  
35 general contractor for improvements to be made pursuant to an  
36 energy savings plan, provided that the hiring of subcontractors that  
37 are required to be classified pursuant to subparagraph (a) of  
38 paragraph (2) of this subsection shall be performed in accordance  
39 with the procedures and requirements set forth pursuant to the  
40 public bidding requirements of the board of education. A contract  
41 with an energy savings company shall include, but not be limited to:  
42 preparation of an energy savings plan; the responsibilities of the  
43 parties for project schedules, installations, performance and quality,  
44 payment of subcontractors, project completion, commissioning,  
45 savings implementation; a requirement that the savings to be  
46 achieved by energy conservation measures be verified upon  
47 commissioning of the improvements; allocation of State and federal

1 rebates and tax credits; and any other provisions deemed necessary  
2 by the parties.

3 (b) All workers performing public works activities for  
4 subcontractors awarded contracts by an energy services company  
5 pursuant to this section shall be paid prevailing wages in  
6 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,  
7 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with  
8 the provisions of "The Public Works Contractor Registration Act,"  
9 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately  
10 classified as contractors by the Division of Property Management  
11 and Construction shall be eligible to be awarded a contract as a  
12 subcontractor of an energy services company under this section for  
13 performing public works activities pursuant to regulations adopted  
14 by the Division of Property Management and Construction.

15 (c) In order to expedite communications with an energy services  
16 company and facilitate the implementation of an energy savings  
17 improvement program, a board of education may designate or  
18 appoint an employee of the board of education with decision-  
19 making authority to coordinate with the energy services company  
20 and to address issues associated with the implementation of an  
21 energy savings improvement program as they arise, provided that  
22 any decision requiring a change order shall be made only upon the  
23 approval of the board of education.

24 (4) Except as provided in paragraph (5) of this subsection, a  
25 subsidiary or wholly-owned or partially-owned affiliate of the  
26 energy services company shall not be an eligible contractor or  
27 subcontractor under an energy savings services 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. Each contract to be  
39 entered into pursuant to this section between a board of education  
40 and an energy services company that is the manufacturer of direct  
41 digital control systems where such direct digital control systems are  
42 treated as proprietary goods as part of the contract, shall first be  
43 reviewed and approved by the Board of Public Utilities for the  
44 purpose of affirming the reasonableness of such allowance price. If  
45 the board does not disapprove of the contract within 14 days of  
46 receipt thereof, the contract shall be deemed approved.

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

4 (1) An energy savings improvement program may be financed  
5 through a lease-purchase agreement between a board of education  
6 and an energy services company or other public or private entity.  
7 Under a lease-purchase agreement, ownership of the energy savings  
8 equipment or improved facilities shall pass to the board of  
9 education when all lease payments have been made.  
10 Notwithstanding the provisions of section 46 of P.L.1999, c.440  
11 (C.18A:18A-4.2) or any other law to the contrary, the duration of  
12 such a lease-purchase agreement shall not exceed 15 years, except  
13 that the duration of a lease purchase agreement for a combined heat  
14 and power or cogeneration project shall not exceed 20 years. For  
15 the purposes of this paragraph, the duration of the repayment term  
16 of a lease-purchase agreement shall commence on the date upon  
17 which construction and installation of the energy savings  
18 equipment, “combined heat and power facility” or “cogeneration  
19 facility,” as those terms are defined pursuant to section 3 of  
20 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures  
21 undertaken pursuant to the energy savings plan, have been  
22 completed.

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

31 (3) A board of education may arrange for incurring energy  
32 savings obligations to finance an energy savings improvement  
33 program. Energy savings obligations may be funded through  
34 appropriations for utility services in the annual budget of the board  
35 and may be issued as refunding bonds pursuant to P.L.1969, c.130  
36 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation  
37 notes as may be necessary, provided that all such bonds and notes  
38 mature within the periods authorized for such energy savings  
39 obligations. Energy savings obligations may be issued either  
40 through the board of education or another public agency authorized  
41 to undertake financing on behalf of the board.

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

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

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

16 (2) To implement an energy savings improvement program, a  
17 board of education shall develop an energy savings plan that  
18 consists of one or more energy conservation measures. The plan  
19 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 greenhouse gas reductions resulting from those  
24 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 by the governing body, the  
44 board of education shall contract with a qualified third party to  
45 verify the projected energy savings to be realized from the proposed  
46 program have been calculated as required by subsection e. of this  
47 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 board of education  
4 maintains its own website, it shall also post the plan on that site.  
5 The Board of Public Utilities may require periodic reporting  
6 concerning the 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 board of education who is properly  
20 trained and qualified to perform such work.

21 e. (1) (a) 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 (b) During the procurement phase of an energy savings  
37 improvement program, an energy service company's proposal  
38 submitted in response to a request for proposal shall not include a  
39 savings calculation that assumes, includes, or references capital cost  
40 avoidance savings, the current or projected value of a "solar  
41 renewable energy certificate," as defined pursuant to section 3 of  
42 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
43 attributes or benefits of whatever nature that derive from the  
44 generation of renewable energy, and any costs or discounts  
45 associated with maintenance services, an energy savings guarantee,  
46 or third party verification of energy conservation measures and  
47 energy savings. The calculation of energy savings shall utilize and

1 specifically reference as a benchmark the actual demand and energy  
2 components of the public utility tariff rate applicable to the board of  
3 education then in effect, and not a blended rate that aggregates,  
4 combines, or restates in any manner the distinct demand and energy  
5 components of the public utility tariff rate into a single combined or  
6 restated tariff rate. If an energy services company submits a  
7 proposal to a board of education that does not calculate projected  
8 energy savings in the manner required by this subsection, such  
9 proposal shall be rejected by the board of education.

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

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

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

32 (3) When an energy services company is awarded an energy  
33 savings services contract to provide or perform goods or services  
34 for the purpose of enabling a board of education to conserve energy  
35 through energy efficiency equipment, including a “combined heat  
36 and power facility” as that term is defined pursuant to section 3 of  
37 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract  
38 shall extend for a term of up to 15 years for energy efficiency  
39 projects, and for up to 20 years for a combined heat and power  
40 facility after construction completion. If a board of education shall  
41 elect to contract with an energy services company for an energy  
42 savings guarantee in connection with a contract awarded pursuant to  
43 this section, such guarantee may extend for a term of up to 15 years  
44 for energy efficiency projects, or up to 20 years for a combined heat  
45 and power facility after construction completion.

46 g. As used in this section:

1 "direct digital control systems" means the devices and  
2 computerized control equipment that contain software and computer  
3 interfaces that perform the logic that control a building's heating,  
4 ventilating, and air conditioning system. Direct digital controls  
5 shall be open protocol format and shall meet the interoperability  
6 guidelines established by the American Society of Heating,  
7 Refrigerating and Air-Conditioning Engineers;

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

16 "energy related capital improvement" means a capital  
17 improvement that uses energy but does not result in a reduction of  
18 energy use;

19 "energy saving obligation" means a bond, note or other  
20 agreement evidencing the obligation to repay borrowed funds  
21 incurred in order to finance energy saving improvements;

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

29 "energy savings improvement program" means an initiative of a  
30 board of education to implement energy conservation measures in  
31 existing facilities, provided that the value of the energy savings  
32 resulting from the program will be sufficient to cover the cost of the  
33 program's energy conservation measures;

34 "energy savings plan" means the document that describes the  
35 actions to be taken to implement the energy savings improvement  
36 program;

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

44 "energy services company" means a commercial entity that is  
45 qualified to develop and implement an energy savings plan in  
46 accordance with the provisions of this section;

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

3 "water conservation measure" means an alteration to a facility or  
4 equipment that reduces water consumption, maximizes the  
5 efficiency of water use, or reduces water loss.

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

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

28 (cf: P.L.2009, c.4, s.1)

29  
30 2. Section 4 of P.L.2009, c.4 (C.18A:65A-1) is amended to  
31 read as follows:

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

1 colleges; shall apply to any contracts awarded pursuant to this  
2 section to the extent that the provisions of such law are not  
3 inconsistent with any provision of this section.

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

7 (2) An educational facility alteration required to properly  
8 implement other energy efficiency or energy conservation  
9 measures, or both, may be included as part of an energy savings  
10 services contract, in which case, notwithstanding any other  
11 provision of law, rule, regulation, or order to the contrary, the  
12 facility alteration may be undertaken or supervised by the energy  
13 services company performing the energy savings services contract  
14 if:

15 (a) the total cost of the improvement does not exceed 15 percent  
16 of the total cost of the work to be performed under the energy  
17 savings services contract; and

18 (b) (i) the improvement is necessary to conform to a law, rule,  
19 or regulation, or order, or (ii) an analysis within an approved  
20 proposal, or the board of trustees, at the time of the award of the  
21 proposal, demonstrates that there is an economic advantage to the  
22 board of trustees implementing the improvement as part of the  
23 energy savings services contract, and the savings rationale for the  
24 improvement is documented and supported by reasonable  
25 justification.

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

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

46 (b) Individuals or organizations performing energy audits,  
47 acting as commissioning agents, or conducting verification of

1 energy savings plans, implementation of energy conservation  
2 measures, or verifying guarantees shall be prequalified by the  
3 Division of Property Management and Construction in the  
4 Department of the Treasury to perform their work under an energy  
5 savings improvement program.

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

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

28 (b) All workers performing public works activities for  
29 subcontractors awarded contracts by an energy services company  
30 pursuant to this section shall be paid prevailing wages in  
31 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,  
32 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with  
33 the provisions of "The Public Works Contractor Registration Act,"  
34 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately  
35 classified as contractors by the Division of Property Management  
36 and Construction shall be eligible to be awarded a contract as a  
37 subcontractor of an energy services company under this section for  
38 performing public works activities pursuant to regulations adopted  
39 by the Division of Property Management and Construction.

40 (c) In order to expedite communications with an energy services  
41 company and facilitate the implementation of an energy savings  
42 improvement program, a board of trustees may designate or appoint  
43 an employee of the public institution of higher education with  
44 decision-making authority to coordinate with the energy services  
45 company and to address issues associated with the implementation  
46 of an energy savings improvement program as they arise, provided  
47 that any decision requiring a change order shall be made only upon

1 the approval of the board of trustees of the public institution of  
2 higher education.

3 (4) **【Except as provided in paragraph (5) of this subsection, a】**  
4 **A** subsidiary or wholly-owned or partially-owned affiliate of the  
5 energy services company shall not be an eligible contractor or  
6 subcontractor under an energy savings services contract.

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

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

21 (1) An energy savings improvement program may be financed  
22 through a lease-purchase agreement between a board of trustees and  
23 an energy services company or other public or private entity. Under  
24 a lease-purchase agreement, ownership of the energy savings  
25 equipment or improved facilities shall pass to the board of trustees  
26 when all lease payments have been made. Notwithstanding the  
27 provisions of any other law to the contrary, the duration of such a  
28 lease-purchase agreement shall not exceed 15 years, except that the  
29 duration of a lease purchase agreement for a combined heat and  
30 power or cogeneration project shall not exceed 20 years. For the  
31 purposes of this paragraph, the duration of the repayment term of a  
32 lease-purchase agreement shall commence on the date upon which  
33 construction and installation of the energy savings equipment,  
34 “combined heat and power facility” or “cogeneration facility,” as  
35 those terms are defined pursuant to section 3 of P.L.1999, c.23  
36 (C.48:3-51), or other energy conservation measures undertaken  
37 pursuant to the energy savings plan, have been completed.

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

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

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

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

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

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

40 (b) describe the energy conservation measures that will  
41 comprise the program;

42 (c) estimate greenhouse gas reductions resulting from those  
43 energy savings;

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

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

1 Utilities and standards adopted by the Board of Public Utilities  
2 pursuant to this section. The calculation shall include all applicable  
3 State and federal rebates and tax credits, but shall not include the  
4 cost of an energy audit and the cost of verifying energy savings.  
5 The calculation shall state which party has made application for  
6 rebates and credits and how these applications translate into energy  
7 savings.

8 (b) During the procurement phase of an energy savings  
9 improvement program, an energy service company's proposal  
10 submitted in response to a request for proposal shall not include a  
11 savings calculation that assumes, includes, or references capital cost  
12 avoidance savings, the current or projected value of a "solar  
13 renewable energy certificate," as defined pursuant to section 3 of  
14 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
15 attributes or benefits of whatever nature that derive from the  
16 generation of renewable energy, and any costs or discounts  
17 associated with maintenance services, an energy savings guarantee,  
18 or third party verification of energy conservation measures and  
19 energy savings. The calculation of energy savings shall utilize and  
20 specifically reference as a benchmark the actual demand and energy  
21 components of the public utility tariff rate applicable to the board of  
22 trustees then in effect, and not a blended rate that aggregates,  
23 combines, or restates in any manner the distinct demand and energy  
24 components of the public utility tariff rate into a single combined or  
25 restated tariff rate. If an energy services company submits a  
26 proposal to a board of trustees that does not calculate projected  
27 energy savings in the manner required by this subsection, such  
28 proposal shall be rejected by the board of trustees.

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

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

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

4 (3) When an energy services company is awarded an energy  
5 savings services contract to provide or perform goods or services  
6 for the purpose of enabling a board of trustees to conserve energy  
7 through energy efficiency equipment, including a “combined heat  
8 and power facility” as that term is defined pursuant to section 3 of  
9 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract  
10 shall extend for a term of up to 15 years for energy efficiency  
11 projects, and for up to 20 years for a combined heat and power  
12 facility after construction completion. If a board of trustees shall  
13 elect to contract with an energy services company for an energy  
14 savings guarantee in connection with a contract awarded pursuant to  
15 this section, such guarantee may extend for a term of up to 15 years  
16 for energy efficiency projects, or up to 20 years for a combined heat  
17 and power facility after construction completion.

18 g. As used in this section:

19 "direct digital control systems" means the devices and  
20 computerized control equipment that contain software and computer  
21 interfaces that perform the logic that control a building's heating,  
22 ventilating, and air conditioning system. Direct digital controls  
23 shall be open protocol format and shall meet the interoperability  
24 guidelines established by the American Society of Heating,  
25 Refrigerating and Air-Conditioning Engineers;

26 "educational facility" means a structure suitable for use as a  
27 dormitory, dining hall, student union, administrative building,  
28 academic building, library, laboratory, research facility, classroom,  
29 athletic facility, health care facility, teaching hospital, and parking,  
30 maintenance, storage or utility facility or energy conservation  
31 measures and other structures or facilities related thereto or required  
32 or useful for the instruction of students or the conducting of  
33 research or the operation of an institution for higher education, and  
34 public libraries, and the necessary and usual attendant and related  
35 facilities and equipment, but shall not include any facility used or to  
36 be used for sectarian instruction or as a place for religious worship;

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 institution of higher education to implement energy  
13 conservation measures in existing facilities, provided that the value  
14 of the energy savings resulting from the program will be sufficient  
15 to cover the cost of the 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 works activities" means any work subject to the  
30 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

31 "water conservation measure" means an alteration to a facility or  
32 equipment that reduces water consumption, maximizes the  
33 efficiency of water use, or reduces water loss.

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

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

1 thereafter be amended, adopted or re-adopted in accordance with  
2 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).  
3 (cf: P.L.2009, c.4, s.4)

4  
5 3. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to  
6 read as follows:

7 6. a. (1) A contracting unit, as defined in P.L.1971, c.198  
8 (C.40A:11-1 et seq.), may implement an energy savings  
9 improvement program in the manner provided by this section  
10 whenever it determines that the savings generated from reduced  
11 energy use from the program will be sufficient to cover the cost of  
12 the program's energy conservation measures as set forth in an  
13 energy savings plan. Under such a program, a contracting unit may  
14 enter into an energy savings services contract with an energy  
15 services company to implement the program or the contracting unit  
16 may authorize separate contracts to implement the program. The  
17 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to  
18 any contracts awarded pursuant to this section to the extent that the  
19 provisions of such law are not inconsistent with any provision of  
20 this section.

21 (2) A contracting unit facility alteration required to properly  
22 implement other energy efficiency or energy conservation  
23 measures, or both, may be included as part of an energy savings  
24 services contract, in which case, notwithstanding any other  
25 provision of law, rule, regulation, or order to the contrary, the  
26 facility alteration may be undertaken or supervised by the energy  
27 services company performing the energy savings services contract  
28 if:

29 (a) the total cost of the improvement does not exceed 15 percent  
30 of the total cost of the work to be performed under the energy  
31 savings services contract; and

32 (b) (i) the improvement is necessary to conform to a law, rule,  
33 or regulation, or order, or (ii) an analysis within an approved  
34 proposal, or the contracting unit, at the time of the award of the  
35 proposal, demonstrates that there is an economic advantage to the  
36 contracting unit implementing the improvement as part of the  
37 energy savings services contract, and the savings rationale for the  
38 improvement is documented and supported by reasonable  
39 justification.

40 b. (1) To be eligible to enter into an energy savings services  
41 contract, an energy services company shall be a commercial entity  
42 that is qualified to provide energy savings services in accordance  
43 with the provisions of this section. A contracting unit may  
44 determine to enter into an energy savings services contract either  
45 through public advertising for bids and the receipt of bids therefor  
46 or through competitive contracting in lieu of public bidding in the

1 manner provided by sections 1 through 5 of P.L.1999, c.440  
2 (C.40A:11-4.1 et seq.).

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

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

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

40 (b) All workers performing public works activities for  
41 subcontractors awarded contracts by an energy services company  
42 pursuant to this section shall be paid prevailing wages in  
43 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,  
44 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with  
45 the provisions of "The Public Works Contractor Registration Act,"  
46 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately  
47 classified as contractors by the Division of Property Management

1 and Construction shall be eligible to be awarded a contract as a  
2 subcontractor of an energy services company under this section for  
3 performing public works activities pursuant to regulations adopted  
4 by the Division of Property Management and Construction.

5 (c) In order to expedite communications with an energy services  
6 company and facilitate the implementation of an energy savings  
7 improvement program, a contracting unit may designate or appoint  
8 an employee of the contracting unit with decision-making authority  
9 to coordinate with the energy services company and to address  
10 issues associated with the implementation of an energy savings  
11 improvement program as they arise, provided that any decision  
12 requiring a change order shall be made only upon the approval of  
13 the contracting unit.

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

18 (5) When the energy services company is the manufacturer of  
19 direct digital control systems and contracts with the contracting unit  
20 to provide a guaranteed energy savings option pursuant to  
21 subsection f. of this section, the specification of such direct digital  
22 control systems may be treated as proprietary goods and if so  
23 treated, the bid specification shall set forth an allowance price for  
24 its supply by the energy services company which shall be used by  
25 all bidders in the public bidding process. Direct digital controls  
26 shall be open protocol format and shall meet the interoperability  
27 guidelines established by the American Society of Heating,  
28 Refrigerating and Air-Conditioning Engineers. Each contract to be  
29 entered into pursuant to this section between a contracting unit and  
30 an energy services company that is the manufacturer of direct  
31 digital control systems where such direct digital control systems are  
32 treated as proprietary goods as part of the contract, shall first be  
33 reviewed and approved by the Board of Public Utilities for the  
34 purpose of affirming the reasonableness of such allowance price. If  
35 the board does not disapprove of the contract within 14 days of  
36 receipt thereof, the contract shall be deemed approved.

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

40 (1) An energy savings improvement program may be financed  
41 through a lease-purchase agreement between a contracting unit and  
42 an energy services company or other public or private entity. Under  
43 a lease-purchase agreement, ownership of the energy savings  
44 equipment or improved facilities shall pass to the contracting unit  
45 when all lease payments have been made. Notwithstanding the  
46 provisions of any other law to the contrary, the duration of such a  
47 lease-purchase agreement shall not exceed 15 years, except that the

1 duration of a lease purchase agreement for a combined heat and  
2 power or cogeneration project shall not exceed 20 years. For the  
3 purposes of this paragraph, the duration of the repayment term of a  
4 lease-purchase agreement shall commence on the date upon which  
5 construction and installation of the energy savings equipment,  
6 “combined heat and power facility” or “cogeneration facility,” as  
7 those terms are defined pursuant to section 3 of P.L.1999, c.23  
8 (C.48:3-51), or other energy conservation measures undertaken  
9 pursuant to the energy savings plan, have been completed.

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

18 (3) A contracting unit may arrange for incurring energy savings  
19 obligations to finance an energy savings improvement program.  
20 Energy savings obligations may be funded through appropriations  
21 for utility services in the annual budget of the contracting unit and  
22 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et  
23 seq., including the issuance of bond anticipation notes as may be  
24 necessary, provided that all such bonds and notes mature within the  
25 periods authorized for such energy savings obligations. Energy  
26 savings obligations may be issued either through the contracting  
27 unit or another public agency authorized to undertake financing on  
28 behalf of the unit.

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

41 d. (1) The energy audit component of an energy savings  
42 improvement program shall be conducted either by the contracting  
43 unit or by a qualified independent third party retained by the  
44 governing body for that purpose. It shall not be conducted by an  
45 energy services company subsequently hired to develop an energy  
46 savings improvement program. The energy audit shall identify the  
47 current energy use of any or all facilities and energy conservation

1 measures that can be implemented in which the energy savings and  
2 energy efficiency could be realized and maximized.

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

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

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

9 (c) estimate greenhouse gas reductions resulting from those  
10 energy savings;

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

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

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

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

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

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

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

29 (3) Prior to the adoption of the plan, the contracting unit shall  
30 contract with a qualified third party to verify the projected energy  
31 savings to be realized from the proposed program have been  
32 calculated as required by subsection e. of this 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 contracting unit  
36 maintains its own website, it shall also post the plan on that site.  
37 The board may require periodic reporting concerning the  
38 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 contracting unit who is properly trained  
5 and qualified to perform such work.

6 e. (1) (a) 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 (b) During the procurement phase of an energy savings  
22 improvement program, an energy service company's proposal  
23 submitted in response to a request for proposal shall not include a  
24 savings calculation that assumes, includes, or references capital cost  
25 avoidance savings, the current or projected value of a "solar  
26 renewable energy certificate," as defined pursuant to section 3 of  
27 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
28 attributes or benefits of whatever nature that derive from the  
29 generation of renewable energy, and any costs or discounts  
30 associated with maintenance services, an energy savings guarantee,  
31 or third party verification of energy conservation measures and  
32 energy savings. The calculation of energy savings shall utilize and  
33 specifically reference as a benchmark the actual demand and energy  
34 components of the public utility tariff rate applicable to the  
35 contracting unit then in effect, and not a blended rate that  
36 aggregates, combines, or restates in any manner the distinct demand  
37 and energy components of the public utility tariff rate into a single  
38 combined or restated tariff rate. If an energy services company  
39 submits a proposal to a contracting unit that does not calculate  
40 projected energy savings in the manner required by this subsection,  
41 such proposal shall be rejected by the contracting unit.

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

1 f. (1) When an energy services company is awarded an energy  
2 savings services contract, it shall offer the contracting unit the  
3 option to purchase, for an additional amount, an energy savings  
4 guarantee. The guarantee, if accepted by a separate vote of the  
5 governing body of the contracting unit, shall insure that the energy  
6 savings resulting from the energy savings improvement program,  
7 determined periodically over the duration of the guarantee, will be  
8 sufficient to defray all payments required to be made pursuant to  
9 the lease-purchase agreement or energy savings obligation, and if  
10 the savings are not sufficient, the energy services company will  
11 reimburse the contracting unit for any additional amounts. Annual  
12 costs of a guarantee shall not be financed or included as costs in an  
13 energy savings plan but shall be fully disclosed in an energy  
14 savings plan.

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

18 (3) When an energy services company is awarded an energy  
19 savings services contract to provide or perform goods or services  
20 for the purpose of enabling a contracting unit to conserve energy  
21 through energy efficiency equipment, including a “combined heat  
22 and power facility” as that term is defined pursuant to section 3 of  
23 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract  
24 shall extend for a term of up to 15 years for energy efficiency  
25 projects, and for up to 20 years for a combined heat and power  
26 facility after construction completion. If a contracting unit shall  
27 elect to contract with an energy services company for an energy  
28 savings guarantee in connection with a contract awarded pursuant to  
29 this section, such guarantee may extend for a term of up to 15 years  
30 for energy efficiency projects, or up to 20 years for a combined heat  
31 and power facility after construction completion.

32 g. As used in this section:

33 "direct digital control systems" means the devices and  
34 computerized control equipment that contain software and computer  
35 interfaces that perform the logic that control a building's heating,  
36 ventilating, and air conditioning system. Direct digital controls  
37 shall be open protocol format and shall meet the interoperability  
38 guidelines established by the American Society of Heating,  
39 Refrigerating and Air-Conditioning Engineers;

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

1 "energy related capital improvement" means a capital  
2 improvement that uses energy but does not result in a reduction of  
3 energy use;

4 "energy saving obligation" means a bond, note or other  
5 agreement evidencing the obligation to repay borrowed funds  
6 incurred in order to finance energy saving improvements;

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

14 "energy savings improvement program" means an initiative of a  
15 contracting unit to implement energy conservation measures in  
16 existing facilities, provided that the value of the energy savings  
17 resulting from the program will be sufficient to cover the cost of the  
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the  
20 actions to be taken to implement the energy savings improvement  
21 program;

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

29 "energy services company" means a commercial entity that is  
30 qualified to develop and implement an energy savings plan in  
31 accordance with the provisions of this section;

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

34 "water conservation measure" means an alteration to a facility or  
35 equipment that reduces water consumption, maximizes the  
36 efficiency of water use, or reduces water loss.

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

42 (2) The Director of the Division of Local Government Services  
43 in the Department of Community Affairs, the State Treasurer, and  
44 the Board of Public Utilities may adopt implementation guidelines  
45 or directives, and adopt such administrative rules, pursuant to the  
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
47 seq.), as are necessary for the implementation of those agencies'

1 respective responsibilities under this section, except that  
2 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et  
3 seq.) to the contrary, the Director of the Division of Local  
4 Government Services in the Department of Community Affairs, the  
5 State Treasurer, and the Board of Public Utilities may adopt,  
6 immediately upon filing with the Office of Administrative Law,  
7 such rules and regulations as deemed necessary to implement the  
8 provisions of this act which shall be effective for a period not to  
9 exceed 12 months and shall thereafter be amended, adopted or re-  
10 adopted in accordance with the provisions of P.L.1968, c.410  
11 (C.52:14B-1 et seq.).  
12 (cf: P.L.2009, c.4, s.6)

13  
14 4. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read  
15 as follows:

16 9. a. (1) A State contracting agency, as defined in this section,  
17 may implement an energy savings improvement program in the  
18 manner provided by this section whenever it determines that the  
19 savings generated from reduced energy use from the program will  
20 be sufficient to cover the cost of the program's energy conservation  
21 measures as set forth in an energy savings plan. Under such a  
22 program, a contracting agency may enter into an energy savings  
23 services contract with an energy services company to implement the  
24 program or the contracting agency may authorize separate contracts  
25 to implement the program. The provisions of Title 52 of the  
26 Revised Statutes shall apply to any contracts awarded pursuant to  
27 this section to the extent that the provisions of such law are not  
28 inconsistent with any provision of this section.

29 (2) A State contracting agency facility alteration required to  
30 properly implement other energy efficiency or energy conservation  
31 measures, or both, may be included as part of an energy savings  
32 services contract, in which case, notwithstanding any other  
33 provision of law, rule, regulation, or order to the contrary, the  
34 facility alteration may be undertaken or supervised by the energy  
35 services company performing the energy savings services contract  
36 if:

37 (a) the total cost of the improvement does not exceed 15 percent  
38 of the total cost of the work to be performed under the energy  
39 savings services contract; and

40 (b) (i) the improvement is necessary to conform to a law, rule,  
41 or regulation, or order, or (ii) an analysis within an approved  
42 proposal, or the State contracting agency, at the time of the award  
43 of the proposal, demonstrates that there is an economic advantage to  
44 the State contracting agency implementing the improvement as part  
45 of the energy savings services contract, and the savings rationale for  
46 the improvement is documented and supported by reasonable  
47 justification.

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

7       (2) (a) Public works activities performed under an energy  
8 savings improvement program shall be subject to all requirements  
9 regarding public bidding, bid security, performance guarantees,  
10 insurance and other public contracting requirements that are  
11 applicable to public works contracts, to the extent not inconsistent  
12 with this section. A general contractor, energy services company  
13 serving as general contractor, or any subcontractor hired for the  
14 furnishing of plumbing and gas fitting and all kindred work, and of  
15 steam and hot water heating and ventilating apparatus, steam power  
16 plants and kindred work, and electrical work, structural steel and  
17 ornamental iron work, shall be classified by the Division of  
18 Property Management and Construction in the Department of the  
19 Treasury in order to perform public works activities under an  
20 energy savings improvement program. A general contractor, energy  
21 services company serving as general contractor, or any  
22 subcontractor hired for the furnishing of electrical work shall use  
23 only electrical contractors licensed by the State, pursuant to  
24 P.L.1962, c.162 (C.45:5A-1 et seq.), to perform electrical work  
25 under an energy savings improvement program. Electrical work  
26 shall include, but not be limited to, the wiring of temperature and  
27 energy management controls, the installation of control systems,  
28 and the retrofitting of any lighting equipment.

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

36       (3) (a) An energy services company may be designated as the  
37 general contractor for improvements to be made pursuant to an  
38 energy savings plan, provided that the hiring of subcontractors that  
39 are required to be classified pursuant to subparagraph (a) of  
40 paragraph (2) of this subsection shall be performed in accordance  
41 with the procedures and requirements set forth pursuant to **[the**  
42 **public bidding requirements of the State contracting agency]**  
43 subparagraph (b) of this paragraph. A contract with an energy  
44 savings company shall include, but not be limited to: preparation of  
45 an energy savings plan, the responsibilities of the parties for project  
46 schedules, installations, performance and quality, payment of  
47 subcontractors, project completion, commissioning, savings

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

5 (b) Notwithstanding any other law or regulation to the contrary,  
6 an energy services company shall select, in accordance with the  
7 procedures and requirements set forth pursuant to the public bidding  
8 process of the State contracting agency, only those subcontractors  
9 that have been pre-qualified by the Division of Property  
10 Management and Construction as eligible to submit bids. In pre-  
11 qualifying subcontractors for eligibility, the division shall create  
12 one or more pools of subcontractors based on the value and  
13 complexity of the work to be undertaken under an energy savings  
14 improvement program. The pre-qualification pools shall include  
15 subcontractors having the following qualifications:

16 (i) the financial means and ability to complete the required work;

17 (ii) the experience, capability, and skills necessary to complete  
18 the work required of energy savings improvement program projects;  
19 and

20 (iii) a record of experience conducting similar work in a timely  
21 fashion.

22 Each subcontractor chosen by the energy services company shall  
23 certify that all employees have completed a registered  
24 apprenticeship program that provided each trainee with combined  
25 classroom and on-the-job training under the direct and close  
26 supervision of a highly skilled worker in an occupation recognized  
27 as an apprenticeable trade, registered by the Office of  
28 Apprenticeship of the United States Department of Labor and  
29 meeting the standards established by the office, or registered by a  
30 State apprenticeship agency recognized by the office. The energy  
31 services company shall then select from the eligible pools of  
32 prequalified subcontractors. All workers performing public works  
33 activities for subcontractors awarded contracts by an energy  
34 services company pursuant to this section shall be paid prevailing  
35 wages in accordance with the "New Jersey Prevailing Wage Act,"  
36 P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall  
37 comply with the provisions of "The Public Works Contractor  
38 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only  
39 firms appropriately classified as contractors by the Division of  
40 Property Management and Construction shall be eligible to be  
41 awarded a contract as a subcontractor of an energy services  
42 company under this section for performing public works activities  
43 pursuant to regulations adopted by the Division of Property  
44 Management and Construction.

45 (c) In order to expedite communications with an energy services  
46 company and facilitate the implementation of an energy savings  
47 improvement program, a State contracting agency may designate or

1 appoint an employee of the State contracting agency with decision-  
2 making authority to coordinate with the energy services company  
3 and to address issues associated with the implementation of an  
4 energy savings improvement program as they arise, provided that  
5 any decision requiring a change order shall be made only upon the  
6 approval of the State contracting agency.

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

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

22 c. In addition to existing authorization of a State agency to  
23 enter into lease-purchase agreements or to issue obligations to  
24 finance the costs of an energy savings improvement program, a  
25 contracting agency is hereby authorized to finance the costs of an  
26 energy savings improvement program by entering into a lease  
27 purchase agreement. Any financing mechanism shall be  
28 administered in a manner consistent with this subsection insofar as  
29 it does not conflict with the provisions of other law that applies to  
30 the contracting agency.

31 (1) An energy savings improvement program may be financed  
32 through a lease-purchase agreement between a State contracting  
33 agency and an energy services company or other public or private  
34 entity. Under a lease-purchase agreement, ownership of the energy  
35 savings equipment or improved facilities shall pass to the  
36 contracting agency or the client agency responsible for the facility  
37 when all lease payments have been made. Notwithstanding the  
38 provisions of any other law to the contrary, the duration of such a  
39 lease-purchase agreement shall not exceed 15 years, except that the  
40 duration of a lease purchase agreement for a combined heat and  
41 power or cogeneration project shall not exceed 20 years. For the  
42 purposes of this paragraph, the duration of the repayment term of a  
43 lease-purchase agreement shall commence on the date upon which  
44 construction and installation of the energy savings equipment,  
45 “combined heat and power facility” or “cogeneration facility,” as  
46 those terms are defined pursuant to section 3 of P.L.1999, c.23

1 (C.48:3-51), or other energy conservation measures undertaken  
2 pursuant to the energy savings plan, have been completed.

3 (2) Lease-purchase agreements and energy savings obligations  
4 shall not be used to finance maintenance, guarantees, or verification  
5 of guarantees of energy conservation measures. Lease-purchase  
6 agreements may be used to finance the cost of an energy audit or  
7 the cost of verification of energy savings as part of adopting an  
8 energy savings plan. Maturity schedules of lease-purchase  
9 agreements **[must]** shall not exceed the estimated average useful  
10 life of the **[individual]** energy conservation measures.

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

20 (2) To implement an energy savings improvement program, a  
21 contracting agency shall develop an energy savings plan that  
22 consists of one or more energy conservation measures. The plan  
23 shall:

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

25 (b) describe the energy conservation measures that will  
26 comprise the program;

27 (c) estimate greenhouse gas reductions resulting from those  
28 energy savings;

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

32 (e) include an assessment of risks involved in the successful  
33 implementation of the plan;

34 (f) identify the eligibility for, and costs and revenues associated  
35 with the PJM Independent System Operator for demand response  
36 and curtailable service activities;

37 (g) include schedules showing calculations of all costs of  
38 implementing the proposed energy conservation measures and the  
39 projected energy savings;

40 (h) identify maintenance requirements necessary to ensure  
41 continued energy savings, and describe how they will be fulfilled;  
42 and

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

45 All professionals providing engineering services under the plan  
46 shall have errors and omissions insurance.

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

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

11 (5) Verification by a qualified third party shall be required when  
12 energy conservation measures are placed in service or  
13 commissioned, to ensure the savings projected in the energy savings  
14 plan shall be achieved.

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

22 (7) A qualified third party when required by this subsection may  
23 include an employee of the State contracting agency who is  
24 properly trained and qualified to perform such work.

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

40 (b) During the procurement phase of an energy savings  
41 improvement program, an energy service company's proposal  
42 submitted in response to a request for proposal shall not include a  
43 savings calculation that assumes, includes, or references capital cost  
44 avoidance savings, the current or projected value of a "solar  
45 renewable energy certificate," as defined pursuant to section 3 of  
46 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
47 attributes or benefits of whatever nature that derive from the

1 generation of renewable energy, and any costs or discounts  
2 associated with maintenance services, an energy savings guarantee,  
3 or third party verification of energy conservation measures and  
4 energy savings. The calculation of energy savings shall utilize and  
5 specifically reference as a benchmark the actual demand and energy  
6 components of the public utility tariff rate applicable to the State  
7 contracting agency then in effect, and not a blended rate that  
8 aggregates, combines, or restates in any manner the distinct demand  
9 and energy components of the public utility tariff rate into a single  
10 combined or restated tariff rate. If an energy services company  
11 submits a proposal to a State contracting agency that does not  
12 calculate projected energy savings in the manner required by this  
13 subsection, such proposal shall be rejected by the State contracting  
14 agency.

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

21 f. (1) When an energy services company is awarded an energy  
22 savings services contract, it shall offer the contracting agency the  
23 option to purchase, for an additional amount, an energy savings  
24 guarantee. The guarantee, if accepted by the contracting agency,  
25 shall insure that the energy savings resulting from the energy  
26 savings improvement program, determined periodically over the  
27 duration of the guarantee, will be sufficient to defray all payments  
28 required to be made pursuant to the lease-purchase agreement or  
29 energy savings obligation, and if the savings are not sufficient, the  
30 energy services company will reimburse the contracting agency for  
31 any additional amounts. Annual costs of a guarantee shall not be  
32 financed or included as costs in an energy savings plan but shall be  
33 fully disclosed in an energy savings plan.

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

37 (3) When an energy services company is awarded an energy  
38 savings services contract to provide or perform goods or services  
39 for the purpose of enabling a State contracting agency to conserve  
40 energy through energy efficiency equipment, including a “combined  
41 heat and power facility” as that term is defined pursuant to section 3  
42 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract  
43 shall extend for a term of up to 15 years for energy efficiency  
44 projects, and for up to 20 years for a combined heat and power  
45 facility after construction completion. If a State contracting agency  
46 shall elect to contract with an energy services company for an  
47 energy savings guarantee in connection with a contract awarded

1 pursuant to this section, such guarantee may extend for a term of up  
2 to 15 years for energy efficiency projects, or up to 20 years for a  
3 combined heat and power facility after construction completion.

4 g. As used in this section:

5 ["direct digital control systems" means the devices and  
6 computerized control equipment that contain software and computer  
7 interfaces that perform the logic that control a building's heating,  
8 ventilating, and air conditioning system. Direct digital controls  
9 shall be open protocol format and shall meet the interoperability  
10 guidelines established by the American Society of Heating,  
11 Refrigerating and Air-Conditioning Engineers;]

12 "energy conservation measure" means an improvement that  
13 results in reduced energy use, including, but not limited to,  
14 installation of energy efficient equipment; demand response  
15 equipment; combined heat and power systems; facilities for the  
16 production of renewable energy; water conservation measures,  
17 fixtures or facilities; building envelope improvements that are part  
18 of an energy savings improvement program; and related control  
19 systems for each of the foregoing;

20 "energy related capital improvement" means a capital  
21 improvement that uses energy but does not result in a reduction of  
22 energy use;

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

30 "energy savings improvement program" means an initiative of a  
31 State contracting agency to implement energy conservation  
32 measures in existing facilities, provided that the value of the energy  
33 savings resulting from the program will be sufficient to cover the  
34 cost of the program's energy conservation measures;

35 "energy savings plan" means the document that describes the  
36 actions to be taken to implement the energy savings improvement  
37 program;

38 "energy savings services contract" means a contract with an  
39 energy savings company to develop an energy savings plan, prepare  
40 bid specifications, manage the performance, provision,  
41 construction, and installation of energy conservation measures by  
42 subcontractors, to offer a guarantee of energy savings derived from  
43 the implementation of an energy savings plan, and may include a  
44 provision to manage the bidding process;

45 "energy services company" means a commercial entity that is  
46 qualified to develop and implement an energy savings plan in  
47 accordance with the provisions of this section;

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

3 "State contracting agency" or "contracting agency" means any of  
4 the principal departments in the Executive Branch of State  
5 Government, and any division, board, bureau, office, commission or  
6 other instrumentality created by a principal department; and

7 "water conservation measure" means an alteration to a facility or  
8 equipment that reduces water consumption, maximizes the  
9 efficiency of water use, or reduces water loss.

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

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

26 (cf: P.L.2009, c.4, s.9)

27  
28 5. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to read  
29 as follows:

30 10. a. (1) A public agency, as defined in this section, may  
31 implement an energy savings improvement program in the manner  
32 provided by this section whenever it determines that the savings  
33 generated from reduced energy use from the program will be  
34 sufficient to cover the cost of the program's energy conservation  
35 measures as set forth in an energy savings plan. Under such a  
36 program, a public agency may enter into an energy savings services  
37 contract with an energy services company to implement the  
38 program or the public agency may authorize separate contracts to  
39 implement the program. The provisions of any other law applicable  
40 to a public agency shall apply to any contracts awarded pursuant to  
41 this section to the extent that the provisions of such law are not  
42 inconsistent with any provision of this section.

43 (2) A public agency facility alteration required to properly  
44 implement other energy efficiency or energy conservation  
45 measures, or both, may be included as part of an energy savings  
46 services contract, in which case, notwithstanding any other  
47 provision of law, rule, regulation, or order to the contrary, the

1 facility alteration may be undertaken or supervised by the energy  
2 services company performing the energy savings services contract  
3 if:

4 (a) the total cost of the improvement does not exceed 15 percent  
5 of the total cost of the work to be performed under the energy  
6 savings services contract; and

7 (b) (i) the improvement is necessary to conform to a law, rule,  
8 or regulation, or order, or (ii) an analysis within an approved  
9 proposal, or the public agency, at the time of the award of the  
10 proposal, demonstrates that there is an economic advantage to the  
11 public agency implementing the improvement as part of the energy  
12 savings services contract, and the savings rationale for the  
13 improvement is documented and supported by reasonable  
14 justification.

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 which shall be awarded through a procedure that results in  
21 the award of a contract to a vendor determined by the public agency  
22 to 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) (a) An energy services company may be designated as the  
45 general contractor for improvements to be made pursuant to an  
46 energy savings plan, provided that the hiring of subcontractors that  
47 are required to be classified pursuant to subparagraph (a) of

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

13 (b) All workers performing public works activities for  
14 subcontractors awarded contracts by an energy services company  
15 pursuant to this section shall be paid prevailing wages in  
16 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,  
17 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with  
18 the provisions of "The Public Works Contractor Registration Act,"  
19 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately  
20 classified as contractors by the Division of Property Management  
21 and Construction shall be eligible to be awarded a contract as a  
22 subcontractor of an energy services company under this section for  
23 performing public works activities pursuant to regulations adopted  
24 by the Division of Property Management and Construction.

25 (c) In order to expedite communications with an energy services  
26 company and facilitate the implementation of an energy savings  
27 improvement program, a public agency may designate or appoint an  
28 employee of the public agency with decision-making authority to  
29 coordinate with the energy services company and to address issues  
30 associated with the implementation of an energy savings  
31 improvement program as they arise, provided that any decision  
32 requiring a change order shall be made only upon the approval of  
33 the public agency.

34 (4) Except as provided in paragraph (5) of this subsection, a  
35 subsidiary or wholly-owned or partially-owned affiliate of the  
36 energy services company shall not be an eligible contractor or  
37 subcontractor under an energy savings services contract.

38 (5) When the energy services company is the manufacturer of  
39 direct digital control systems and contracts with the public agency  
40 to provide a guaranteed energy savings option pursuant to  
41 subsection f. of this section, the specification of such direct digital  
42 control systems may be treated as proprietary goods and if so  
43 treated, the bid specification shall set forth an allowance price for  
44 its supply by the energy services company which shall be used by  
45 all bidders in the public bidding process. Direct digital controls  
46 shall be open protocol format and shall meet the interoperability  
47 guidelines established by the American Society of Heating,

1 Refrigerating and Air-Conditioning Engineers. Each contract to be  
2 entered into pursuant to this section between a public agency and an  
3 energy services company that is the manufacturer of direct digital  
4 control systems where such direct digital control systems are treated  
5 as proprietary goods as part of the contract, shall first be reviewed  
6 and approved by the Board of Public Utilities for the purpose of  
7 affirming the reasonableness of such allowance price. If the board  
8 does not disapprove of the contract within 14 days of receipt  
9 thereof, the contract shall be deemed approved.

10 c. In addition to existing authorization of a public agency to  
11 enter into lease-purchase agreements or to issue obligations to  
12 finance the costs of an energy savings improvement program, a  
13 public agency is hereby authorized to finance the costs of an energy  
14 savings improvement program by entering into a lease purchase  
15 agreement or by issuing energy savings obligations pursuant to this  
16 subsection. Any financing mechanism shall be administered in a  
17 manner consistent with this subsection insofar as it does not conflict  
18 with the provisions of other law that applies to the public agency.

19 (1) An energy savings improvement program may be financed  
20 through a lease-purchase agreement between a public agency and an  
21 energy services company or other public or private entity. Under a  
22 lease-purchase agreement, ownership of the energy savings  
23 equipment or improved facilities shall pass to the public agency  
24 when all lease payments have been made. Notwithstanding the  
25 provisions of any other law to the contrary, the duration of such a  
26 lease-purchase agreement shall not exceed 15 years, except that the  
27 duration of a lease purchase agreement for a combined heat and  
28 power or cogeneration project shall not exceed 20 years. For the  
29 purposes of this paragraph, the duration of the repayment term of a  
30 lease-purchase agreement shall commence on the date upon which  
31 construction and installation of the energy savings equipment,  
32 “combined heat and power facility” or “cogeneration facility,” as  
33 those terms are defined pursuant to section 3 of P.L.1999, c.23  
34 (C.48:3-51), or other energy conservation measures undertaken  
35 pursuant to the energy savings plan, have been completed.

36 (2) A public agency may arrange for incurring energy savings  
37 obligations to finance an energy savings improvement program.  
38 Energy savings obligations may be funded through appropriations  
39 for utility services in the annual budget of the public agency and  
40 may be issued as refunding bonds, including the issuance of bond  
41 anticipation notes as may be necessary, provided that all such bonds  
42 and notes mature within the periods authorized for such energy  
43 savings obligations. Energy savings obligations may be issued  
44 either through the public agency or another public agency  
45 authorized to undertake financing on behalf of the public agency.

46 (3) Lease-purchase agreements and energy savings obligations  
47 shall not be used to finance maintenance, guarantees, or verification

1 of guarantees of energy conservation measures. Lease-purchase  
2 agreements and energy savings obligations may be used to finance  
3 the cost of an energy audit or the cost of verification of energy  
4 savings as part of adopting an energy savings plan.  
5 Notwithstanding any law to the contrary, lease-purchase agreements  
6 and energy savings certificates shall not be excepted from any  
7 budget or tax levy limitation otherwise provided by law. Maturity  
8 schedules of lease-purchase agreements or energy savings  
9 obligations **[must]** shall not exceed the estimated average useful  
10 life of the **[individual]** energy conservation measures.

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

20 (2) To implement a program, a public agency shall develop an  
21 energy savings plan that consists of one or more energy  
22 conservation measures. The plan shall: (a) contain the results of an  
23 energy audit;

24 (b) describe the energy conservation measures that will  
25 comprise the program;

26 (c) estimate greenhouse gas reductions resulting from those  
27 energy savings;

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

31 (e) include an assessment of risks involved in the successful  
32 implementation of the plan;

33 (f) identify the eligibility for, and costs and revenues associated  
34 with the PJM Independent System Operator for demand response  
35 and curtailable service activities;

36 (g) include schedules showing calculations of all costs of  
37 implementing the proposed energy conservation measures and the  
38 projected energy savings;

39 (h) identify maintenance requirements necessary to ensure  
40 continued energy savings, and describe how they will be fulfilled;  
41 and

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

44 All professionals providing engineering services under the plan  
45 shall have errors and omissions insurance.

46 (3) Prior to the adoption of the plan, the public agency shall  
47 contract with a qualified third party to verify the projected energy

1 savings to be realized from the proposed program have been  
2 calculated as required by subsection e. of this section.

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

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

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

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

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

38 (b) During the procurement phase of an energy savings  
39 improvement program, an energy service company's proposal  
40 submitted in response to a request for proposal shall not include a  
41 savings calculation that assumes, includes, or references capital cost  
42 avoidance savings, the current or projected value of a "solar  
43 renewable energy certificate," as defined pursuant to section 3 of  
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
45 attributes or benefits of whatever nature that derive from the  
46 generation of renewable energy, and any costs or discounts  
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and  
2 energy savings. The calculation of energy savings shall utilize and  
3 specifically reference as a benchmark the actual demand and energy  
4 components of the public utility tariff rate applicable to the public  
5 agency then in effect, and not a blended rate that aggregates,  
6 combines, or restates in any manner the distinct demand and energy  
7 components of the public utility tariff rate into a single combined or  
8 restated tariff rate. If an energy services company submits a  
9 proposal to a public agency that does not calculate projected energy  
10 savings in the manner required by this subsection, such proposal  
11 shall be rejected by the public agency.

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

18 f. (1) When an energy services company is awarded an energy  
19 savings services contract, it shall offer the public agency the option  
20 to purchase, for an additional amount, an energy savings guarantee.  
21 The guarantee, if accepted by a separate vote of the governing body  
22 of the public agency, shall insure that the energy savings of the  
23 public agency resulting from the energy savings improvement  
24 program, determined periodically over the duration of the  
25 guarantee, will be sufficient to defray all payments required to be  
26 made pursuant to the lease-purchase agreement or energy savings  
27 obligation, and if the savings are not sufficient, the energy services  
28 company will reimburse the public agency for any additional  
29 amounts. Annual costs of a guarantee shall not be financed or  
30 included as costs in an energy savings plan but shall be fully  
31 disclosed in an energy savings plan.

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

35 (3) When a guaranteed energy savings option is not purchased,  
36 the energy savings services contract shall not include maintenance  
37 services provided by the energy services company.

38 (4) When an energy services company is awarded an energy  
39 savings services contract to provide or perform goods or services  
40 for the purpose of enabling a public agency to conserve energy  
41 through energy efficiency equipment, including a “combined heat  
42 and power facility” as that term is defined pursuant to section 3 of  
43 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract  
44 shall extend for a term of up to 15 years for energy efficiency  
45 projects, and for up to 20 years for a combined heat and power  
46 facility after construction completion. If a public agency shall elect  
47 to contract with an energy services company for an energy savings

1 guarantee in connection with a contract awarded pursuant to this  
2 section, such guarantee may extend for a term of up to 15 years for  
3 energy efficiency projects, or up to 20 years for a combined heat  
4 and power facility after construction completion.

5 g. As used in this section:

6 "direct digital control systems" means the devices and  
7 computerized control equipment that contain software and computer  
8 interfaces that perform the logic that control a building's heating,  
9 ventilating, and air conditioning system. Direct digital controls  
10 shall be open protocol format and shall meet the interoperability  
11 guidelines established by the American Society of Heating,  
12 Refrigerating and Air-Conditioning Engineers;

13 "energy conservation measure" means an improvement that  
14 results in reduced energy use, including, but not limited to,  
15 installation of energy efficient equipment; demand response  
16 equipment; combined heat and power systems; facilities for the  
17 production of renewable energy; water conservation measures,  
18 fixtures or facilities; building envelope improvements that are part  
19 of an energy savings improvement program; and related control  
20 systems for each of the foregoing;

21 "energy related capital improvement" means a capital  
22 improvement that uses energy but does not result in a reduction of  
23 energy use;

24 "energy saving obligation" means a bond, note or other  
25 agreement evidencing the obligation to repay borrowed funds  
26 incurred in order to finance energy saving improvements;

27 "energy savings" means a measured reduction in fuel, energy,  
28 operating or maintenance costs resulting from the implementation  
29 of one or more energy conservation measures services when  
30 compared with an established baseline of previous fuel, energy,  
31 operating or maintenance costs, including, but not limited to, future  
32 capital replacement expenditures avoided as a result of equipment  
33 installed or services performed as part of an energy savings plan;

34 "energy savings improvement program" means an initiative of a  
35 public agency to implement energy conservation measures in  
36 existing facilities, provided that the value of the energy savings  
37 resulting from the program will be sufficient to cover the cost of the  
38 program's energy conservation measures;

39 "energy savings plan" means the document that describes the  
40 actions to be taken to implement the energy savings improvement  
41 program;

42 "energy savings services contract" means a contract with an  
43 energy savings company to develop an energy savings plan, prepare  
44 bid specifications, manage the performance, provision,  
45 construction, and installation of energy conservation measures by  
46 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a  
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is  
4 qualified to develop and implement an energy savings plan in  
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized  
7 to expend public funds and enter into contracts which is not  
8 otherwise authorized to implement an energy savings improvement  
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4  
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

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

13 "water conservation measure" means an alteration to a facility or  
14 equipment that reduces water consumption, maximizes the  
15 efficiency of water use, or reduces water loss.

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

19 (2) The State Treasurer and the Board of Public Utilities may  
20 adopt implementation guidelines or directives, and adopt such  
21 administrative rules, pursuant to the "Administrative Procedure  
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the  
23 implementation of those agencies' respective responsibilities under  
24 this section, except that notwithstanding any provision of P.L.1968,  
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the  
26 Division of Local Government Services in the Department of  
27 Community Affairs, the State Treasurer, and the Board of Public  
28 Utilities may adopt, immediately upon filing with the Office of  
29 Administrative Law, such rules and regulations as deemed  
30 necessary to implement the provisions of this act which shall be  
31 effective for a period not to exceed 12 months and shall thereafter  
32 be amended, adopted or re-adopted in accordance with the  
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).  
34 (cf: P.L.2009, c.4, s.10)

35  
36 6. (New section) a. Notwithstanding the provisions to the  
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation  
38 adopted pursuant thereto, where a State contracting agency  
39 implements an energy savings improvement program pursuant to  
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting  
41 agency, prior to entering into an energy savings services contract,  
42 shall use a competitive selection process that ensures that the award  
43 is made to the responsible bidder whose proposal is determined to  
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting  
46 agency from using procurement processes other than those  
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if

1 those processes have been approved by the federal government  
2 under section 801 of the “National Energy Conservation Policy  
3 Act” (42 U.S.C. s.8287).

4 c. The Division of Property Management and Construction in  
5 the Department of the Treasury shall not charge any fee for the  
6 review or approval of an energy savings improvement program  
7 implemented by a State contracting agency pursuant to section 9 of  
8 P.L.2009, c.4 (C.52:34-25).

9  
10 7. (New section) a. The Board of Public Utilities, in  
11 consultation with the State Treasurer and the Commissioner of the  
12 Department of Community Affairs, shall establish, in a form similar  
13 to that prescribed by the "Local Public Contracts Law," P.L.1971,  
14 c.198 (C.40A:11-1 et seq.), a standard request for proposal to be  
15 used for all energy savings improvement program projects to be  
16 undertaken by any State contracting agency or public agency  
17 authorized to implement an energy savings improvement program  
18 pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.),  
19 provided, however, that a State contracting agency or public agency  
20 may use its own request for proposal upon the submission of the  
21 request for proposal to the board. Unless the board disapproves the  
22 request for proposal within 14 days of its receipt from a State  
23 contracting agency or public agency, the request for proposal shall  
24 be deemed approved. No single category contained in the  
25 evaluation criteria of a request for proposal shall weigh more than  
26 25 percent.

27 b. Within 90 days after the effective date of P.L. ,  
28 c. (C. ) (pending before the Legislature as this bill), the Board  
29 of Public Utilities, in consultation with the State Treasurer and the  
30 Commissioner of the Department of Community Affairs, shall  
31 establish, in a form similar to that prescribed by the "Local Public  
32 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard  
33 request for proposal to be used for all energy savings improvement  
34 program projects to be undertaken by any board of education, board  
35 of trustees, or contracting unit authorized to implement an energy  
36 savings improvement program pursuant to the provisions of  
37 P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a  
38 board of education, board of trustees, or contracting unit may use its  
39 own request for proposal upon the submission of the request for  
40 proposal to the Board of Public Utilities. Unless the board  
41 disapproves the request for proposal within 14 days of its receipt  
42 from a board of education, board of trustees, or contracting unit, the  
43 request for proposal shall be deemed approved. No single category  
44 contained in the evaluation criteria of a request for proposal shall  
45 weigh more than 25 percent.

- 1       8. (New section) a. The Board of Public Utilities is designated  
2 as the agency of the State Government responsible for  
3 implementing and enforcing the provisions of P.L.2009, c.4  
4 (C.18A:18A-4.6 et al.) and for responding to requests for assistance  
5 from public entities, including boards of education, boards of  
6 trustees of public institutions of higher education, contracting units,  
7 and public agencies, authorized to implement an energy savings  
8 improvement program pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et  
9 al.).
- 10       b. The board is authorized to investigate, review and take  
11 appropriate action with respect to procurements for energy savings  
12 projects conducted by public agencies, other than State contracting  
13 agencies, pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).
- 14       c. The board shall take such actions as it deems necessary and  
15 appropriate, consistent with the purposes of this section, to  
16 implement and enforce the provisions of P.L.2009, c.4 (C.18A:18A-  
17 4.6 et al.). The authority granted to the board pursuant to this  
18 section to enforce compliance with P.L.2009, c.4 shall include, but  
19 not be limited to:
- 20       (1) modifying a non-conforming request for proposal and any  
21 attachment thereto, whereby the board shall provide written  
22 comments to the public entity when it chooses to modify a non-  
23 conforming request for proposal, outlining any issues and providing  
24 the opportunity for the issues to be remedied;
- 25       (2) (a) modifying or canceling a procurement by a public entity  
26 for an energy savings project, whereby the board, within 14 days of  
27 its receipt of a procurement by a public entity after the procurement  
28 award, may modify or cancel the procurement, otherwise the  
29 procurement shall be deemed approved, and (b) if modifying a  
30 procurement, the board shall provide written comments to the  
31 public entity when it chooses to do so, outlining any issues and  
32 providing the opportunity for the issues to be remedied; and
- 33       (3) withholding State and federal renewable energy and energy  
34 efficiency incentives from an energy savings project.
- 35       d. The board may grant limited exceptions to a local housing  
36 authority, established pursuant to the "Local Housing Authorities  
37 Law," P.L.1938, c.19 or the "Local Redevelopment and Housing  
38 Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy  
39 performance contracting process developed by the United States  
40 Department of Housing and Urban Development for selecting an  
41 energy service company subject to United States Department of  
42 Housing and Urban Development and board review and approval.  
43 The exception shall permit such process to be followed for the  
44 selection of an energy service company, the preparation of the  
45 energy savings improvement program, the selection of energy  
46 savings projects, and third party verification requirements. All  
47 other requirements for bidding and construction shall be consistent

1 with the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). This  
2 limited exception shall permit the preparation of an investment  
3 grade energy savings improvement program audit to replace the  
4 requirement for the traditional energy audit component performed  
5 in advance.

6 e. The board shall undertake a study of the effectiveness of  
7 energy savings improvement programs implemented pursuant to  
8 P.L.2009, c.4 (C.18A:18A-4.6 et al.). Within three years after the  
9 effective date of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill), the board shall prepare a report of its study  
11 and shall provide a copy thereof to the Governor and, pursuant to  
12 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

13

14 9. This act shall take effect immediately.

15

16

17

18

19 Clarifies requests for proposals of public entities implementing  
20 energy savings improvement program contracts.