

CHAPTER 24

AN ACT concerning government energy aggregation, amending and supplementing P.L.1999, c.23, and repealing section 44 of P.L.1999, c.23.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.48:3-93.1 Establishment, operation of government energy aggregation program.

1. A government aggregator that is a municipality or a county may establish and operate a government energy aggregation program pursuant either to the provisions of the rules and regulations adopted by the Board of Public Utilities pursuant to section 2 of P.L.2003, c.24 (C.48:3-93.2) or to the provisions of P.L.1999, c.23 (C.48:3-49 et seq). As used in this section "government aggregator" and "government energy aggregation program" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

C.48:3-93.2 Rules, regulations relative to government energy aggregation.

2. a. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary notwithstanding, within 90 days of the effective date of P.L.2003, c.24 (C.48:3-93.1 et al.) the Board of Public Utilities shall adopt rules and regulations authorizing an electric public utility or a gas public utility, upon the request of the governing body of a county or municipality, to assist a government aggregator that is a municipality or a county in establishing a government energy aggregation program. The rules and regulations adopted pursuant to this section shall be effective as rules and regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and shall, thereafter, be amended, adopted or readopted by the board pursuant to the provisions of the "Administrative Procedure Act." The rules and regulations adopted pursuant to this section shall set forth a process for the establishment of a government energy aggregation that (1) requires a government aggregator that is a municipality or a county to establish a government energy aggregation program by ordinance or resolution, as appropriate, and to award a contract for the government energy aggregation program to a licensed electric power supplier or licensed gas supplier pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), provided, however, that such an award may be made on the basis of the most advantageous proposal, price and other factors considered; (2) includes residential customers on an opt-out basis prior to the solicitation of bids from a licensed electric power supplier or licensed gas supplier and non-residential customers on an opt-in basis; (3) requires an electric public utility or gas public utility, as the case may be, to notify utility customers, after the adoption of an ordinance or resolution, of the proposed government energy aggregation program and of the customer's right to decline to participate in the program; (4) requires an electric public utility or a gas public utility, as the case may be, to provide appropriate customer information to a government aggregator that is a municipality or a county after the government aggregator has awarded a contract for a government energy aggregation program to a licensed electric power supplier or licensed gas supplier, as the case may be; (5) provides that an electric public utility or a gas public utility shall exercise reasonable care in the disclosure of customer information pursuant to this section but shall not be responsible for errors or omissions in the preparation or the content of the customer information; (6) provides that an electric public utility or gas public utility shall not disclose to any governing body, licensed electric power supplier or licensed gas supplier the name, load profile, or any other customer information about a non-residential customer prior to that non-residential customer opting in to the government energy aggregation program; and (7) authorizes electric public utilities and gas public utilities to prioritize requests made by governing bodies pursuant to this section.

b. The rules and regulations adopted by the board pursuant to this section shall provide for the recovery by an electric public utility or a gas public utility of all reasonable costs incurred by the electric public utility or gas public utility in implementing a government energy aggregation and all reasonable costs incurred in assisting a governing body considering a government energy aggregation program. The rules and regulations shall provide that the costs allowed to be recovered pursuant to this subsection shall be recovered on a timely basis from the governing body or government energy aggregator that is a municipality or a county, as the case may be. No electric public utility or gas public utility shall be required to seek recovery of costs for a government energy aggregation program or costs for assisting a governing body

considering a government energy aggregation program from the electric public utility's or gas public utility's shareholders or ratepayers.

c. As used in this section "government aggregator," "government energy aggregation program," "electric power supplier" and "gas supplier" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

3. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as follows:

C.48:3-85 Consumer protection standards.

36. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim consumer protection standards for electric power suppliers or gas suppliers, within 90 days of February 9, 1999, including, but not limited to, standards for collections, credit, contracts, authorized changes of an energy consumer's electric power supplier or gas supplier, for the prohibition of discriminatory marketing, for advertising and for disclosure. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; have the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an electric power supplier, gas supplier or private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

(2) Standards for the prohibition of discriminatory marketing standards shall provide at a minimum that a decision made by an electric power supplier or a gas supplier to accept or reject a customer shall not be based on race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location. The board shall adopt reporting requirements to monitor compliance with such standards.

(3) Advertising standards for electric power suppliers or gas suppliers shall provide, at a minimum, that optional charges to the consumer will not be added to any advertised cost per kilowatt hour or per therm, and that the only unit of measurement that may be used in advertisements is cost per kilowatt hour or per therm, unless otherwise approved by the board. If an electric power supplier or gas supplier does not advertise using cost per kilowatt hour or per therm, the electric power supplier or gas supplier shall provide, at the consumer's request, an estimate of the cost per kilowatt hour or per therm. Any optional charges to the consumer shall be identified separately and denoted as optional.

(4) Credit standards shall include, at a minimum, that the credit requirements used to make offer decisions must be the same for all residential customers and that electric power suppliers, gas suppliers and private aggregators not impose unreasonable income or credit requirements.

(5) Billing standards shall include, at a minimum, provisions prohibiting electric public utilities, gas public utilities, electric power suppliers and gas suppliers from charging a fee to residential customers for either the commencement or termination of electric generation service or gas supply service.

b. (1) Except as provided in paragraph (2) of this subsection, an electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell or transfer

individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage and electric power payment history, to a third party without the consent of the customer.

(2) (a) An electric public utility or a gas public utility may disclose and provide, in an electronic format, which may include a CD rom, diskette, and other format as determined by the board, without the consent of a residential customer, a residential customer's name, rate class, and account number, to a government aggregator that is a municipality or a county, or to an energy agent acting as a consultant to a government aggregator that is a municipality or a county, if the customer information is to be used to establish a government energy aggregation program pursuant to sections 42, 43 and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94). The number of residential customers and their rate class, and the load profile of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c. 23 (C.48:3-94) may be disclosed pursuant to this paragraph prior to the request by the government aggregator for bids pursuant to paragraph (1) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address, and account number of a residential customer and the name, address and account number of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c. 23 (C.48:3-94) may be disclosed pursuant to this paragraph upon the awarding of a contract to a licensed power supplier or licensed gas supplier pursuant to paragraph (2) of subsection b. of section 45 of P.L.1999, c.23. Any customer information disclosed pursuant to this paragraph shall not be considered a government record for the purposes of, and shall be exempt from the provisions of P.L.2001, c.404.

(b) An electric public utility or a gas public utility disclosing customer information pursuant to this paragraph shall exercise reasonable care in the preparation of this customer information, but shall not be responsible for errors or omissions in the preparation or the content of the customer information.

(c) Any person using any information disclosed pursuant to this paragraph for any purpose other than to establish a government energy aggregation program pursuant to sections 42, 43 and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject to the provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

(d) The role of an electric public utility or a gas public utility in a government energy aggregation program established pursuant to P.L.1999, c. 23 shall be limited to the provisions of this paragraph.

(3) Whenever any individual proprietary information is disclosed, sold or transferred, pursuant to paragraph (1) or paragraph (2) of subsection b. of this section, it shall be used only for the provision of continued electric generation service, electric related service, gas supply service or gas related service to that customer. In the case of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of such services.

(4) Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall, within 90 days of the effective date of P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations including, without limitation, Chapter 4 of Title 14 of the New Jersey Administrative Code (Energy Competition Standards), to determine their consistency with the provisions of section 36 of P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-92) and section 45 of P.L.1999, c.23 (C.48:3-94), shall repeal or modify any regulations that are inconsistent with the provisions thereof and shall adopt regulations and standards implementing the provisions thereof permitting disclosure of customer information without the consent of the customer including, without limitation, provisions for the development of a board-approved agreement between the disclosing party and the receiving party and the creation of a mechanism for the recovery by the disclosing electric public utility or gas public utility of its reasonable incremental costs of providing such information if such costs are not covered in an existing third party supplier agreement.

(5) An electric power supplier, a gas supplier, a gas public utility or an electric public utility may use individual proprietary information that it has obtained by virtue of its provision

of electric generation service, electric related service, gas supply service or gas related service to:

(a) Initiate, render, bill and collect for such services to the extent otherwise authorized to provide billing and collection services;

(b) Protect the rights or property of the electric power supplier, gas supplier or public utility; and

(c) Protect consumers of such services and other electric power suppliers, gas suppliers or electric and gas public utilities from fraudulent, abusive or unlawful use of, or subscription to, such services.

c. The board shall establish and maintain a database for the purpose of recording customer complaints concerning electric and gas public utilities, electric power suppliers, gas suppliers, private aggregators, and energy agents.

d. The board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall establish, or cause to be established, a multi-lingual electric and gas consumer education program. The goal of the consumer education program shall be to educate residential, small business, and special needs consumers about the implications for consumers of the restructuring of the electric power and gas industries. The consumer education program shall include, but need not be limited to, the dissemination of information to enable consumers to make informed choices among available electricity and gas services and suppliers, and the communication to consumers of the consumer protection provisions of this act.

The board shall ensure the neutrality of the content and message of advertisements and materials.

The board shall promulgate standards for the recovery of consumer education program costs from customers which include reasonable measures and criteria to judge the success of the program in enhancing customer understanding of retail choice.

e. (Deleted by amendment, P.L.2003, c.24).

4. Section 43 of P.L.1999, c.23 (C.48:3-92) is amended to read as follows:

C.48:3-92 Government energy aggregation programs.

43. Government energy aggregation programs shall be subject to the following provisions:

a. A contract between a government aggregator and a licensed electric power supplier or licensed gas supplier shall include the following provisions:

(1) The specific responsibilities of the government aggregator and the licensed electric power supplier or licensed gas supplier;

(2) The charges, rates, fees, or formulas to be used to determine the charges, rates or fees, to be charged to the energy consumers electing to receive electric generation service or gas supply service pursuant to the government energy aggregation program;

(3) The method and procedures to be followed by the licensed electric power supplier or licensed gas supplier to enroll and educate energy consumers concerning the provisions of the aggregation program;

(4) The proposed terms and conditions of a standard contract between energy consumers and the licensed electric power supplier or licensed gas supplier including, but not necessarily limited to:

(a) The allocation of the risks in connection with the provision of such services between the licensed electric power supplier or licensed gas supplier and the energy consumers receiving such services;

(b) The terms of the proposed contract;

(c) The allocation of the risks associated with circumstances or occurrences beyond the control of the parties to the contract;

(d) Default and remedies; and

(e) The allocation of any penalties that may be imposed by any electric public utility or gas public utility as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the licensed electric power supplier or licensed gas supplier;

(5) The use of government aggregator resources, equipment, systems or employees

in connection with such services;

(6) The term of the contract with the government aggregator;

(7) A provision indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a resident of the government aggregator and the licensed electric power supplier or licensed gas supplier;

(8) The requirements for the provision of a performance bond by the licensed electric power supplier or licensed gas supplier, if so required by the government aggregator;

(9) Procedures to ensure that participation in the aggregation program is consistent with the provisions of this act and with rules and regulations adopted by the board;

(10) Terms and conditions applicable to consumer protection as provided in rules and regulations adopted by the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety;

(11) A requirement that certain communications between a licensed electric power supplier and a licensed gas supplier and a customer be in a non-English language, as appropriate; and

(12) Such other terms and conditions as the government aggregator deems necessary.

b. The award of a contract for a government energy aggregation program shall be based on the most advantageous proposal, price and other factors considered. The governing body shall only award a contract for service to residential customers where the rate is the same as or lower than the price of basic generation service pursuant to section 9 of P.L.1999, c.23 (C.48:3-57), plus the pro-rata value of the cost of compliance with the renewable energy portfolio standards imposed pursuant to this act derived from a non-utility generation contract with an electric public utility and transferred by the electric public utility to a supplier of basic generation service or basic gas supply service pursuant to section 10 of P.L.1999, c.23 (C.48:3-58), as determined by the board. The governing body may award a contract for electric generation service where the rate is higher than the price of basic generation service as determined by the board pursuant to section 9 of P.L.1999, c.23, plus the pro-rata value of the cost of compliance with the renewable energy portfolio standards imposed pursuant to this act derived from a non-utility generation contract with an electric public utility and transferred by the electric public utility to a supplier of basic generation service, provided that the award is for electricity the percentage of which that is derived from verifiable Class I or Class II renewable energy as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51) is greater than the percentage of Class I and Class II renewable energy required pursuant to subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87), and that the customers are informed, in a manner determined by the board secretary, that such a higher rate is under consideration by the governing body.

c. No concession fees, finders' fees, or other direct monetary benefit shall be paid to any government aggregator by, or on behalf of, a licensed electric power supplier or licensed gas supplier or broker or energy agent as a result of the contract.

d. A licensed electric power supplier or licensed gas supplier shall be subject to the prohibitions against political contributions in accordance with the provisions of R.S.19:34-45.

e. A government aggregator may enter into more than one contract for the provision of electric generation service and gas supply service, provided, however that the governing body indicates in each contract which is the default provider if a customer does not choose one of the providers.

f. A county government acting as a government aggregator shall not enter into a contract for the provision of a government energy aggregation program that is in competition with any existing contract of any government aggregator within its territorial jurisdiction.

(1) A county government may enter into a contract for a government energy aggregation program only if one or more constituent municipalities in the county adopt an ordinance authorizing the county to enter into such a contract.

(2) A county government energy aggregation program shall only be conducted for residential and business customers located within the constituent municipalities that have approved participation in the county's government energy aggregation program.

5. Section 45 of P.L.1999, c.23 (C.48:3-94) is amended to read as follows:

C.48:3-94 Operation of government energy aggregation program.

45. a. (1) A government aggregator that is a municipality or a county may operate a government energy aggregation program that provides for the aggregation of residential electric generation service or gas supply service, non-residential electric generation service or gas supply service on a voluntary basis, and appliance repair services for residential and non-residential customers on a voluntary basis, either separately or bundled, in accordance with the provisions of this section.

(2) Electric generation service or gas supply service for residential customers within the municipality or county and for non-residential customers on a voluntary basis, and for appliance repair services for residential and non-residential customers on a voluntary basis, may be aggregated together with electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for the government aggregator's own facilities or with other government aggregators, provided that each governing body adopts an ordinance in the case of a municipality, or resolution in the case of a county, after notice and public hearing, indicating its intent to solicit bids for the provision of electric generation service or gas supply service, either separately or bundled, and for appliance repair services on a voluntary basis at a separate price and by separate bid solicitation, as the case may be, which approval shall require passage by a majority vote of the full membership of the governing body.

(3) If an ordinance or resolution adopted pursuant to paragraph (2) of this subsection would include non-residential customers in a government energy aggregation program on a voluntary basis, the adoption of the ordinance or resolution shall be accompanied by a public notice that non-residential customers will be included in the government energy aggregation program if they contact the appropriate governing body within 30 days of the adoption of the ordinance or resolution stating their affirmative choice to be included in the government energy aggregation program.

(4) (a) If an ordinance or resolution adopted pursuant to paragraph (2) of this subsection would include appliance repair services for residential or non-residential customers on a voluntary basis at a separate price and by separate bid solicitation, the adoption of the ordinance or resolution shall be accompanied by a public notice that residential or non-residential customers may receive appliance repair services if they contact the appropriate governing body within 30 days of the adoption of the ordinance or resolution stating their affirmative choice to receive appliance repair services under the government energy aggregation program.

(b) The Board of Public Utilities shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations determining the manner in which electric related services and gas related services, other than appliance repair services, shall be included in government energy aggregation programs.

(5) A government energy aggregation program shall be structured to provide that each residential or non-residential customer, as the case may be, shall receive electric generation service or gas supply service from one licensed electric power supplier or one licensed gas supplier, as the case may be.

(6) Any residential or non-residential customer receiving electric generation service or gas supply service from a licensed electric power supplier or a licensed gas supplier prior to the establishment of a government energy aggregation program pursuant to this section shall be exempt from a government energy aggregation program established pursuant to this section. Under no circumstance shall a residential or non-residential customer's affirmative choice to be included in a government energy aggregation program abrogate the existing terms of an electric power or gas supply contract between a non-residential customer and a licensed electric power supplier or licensed gas supplier.

b. (1) The governing body shall commence public bidding pursuant to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) to receive bids from a licensed electric power supplier or licensed gas supplier, as appropriate, for electric generation service or gas supply service at one or more projected load levels, either separately or bundled, for customers within the municipality or county, and if appropriate, for any appliance repair services at a separate price and by separate bid solicitation, and for electric generation service, electric related service, gas supply service or gas related service, either separately or bundled,

for the government aggregator's own facilities. Thirty days prior to the commencement of public bidding the governing body shall transmit the bid notice and all bidding documents to the board and the Division of the Ratepayer Advocate for review. The board and the Division of the Ratepayer Advocate shall have 15 days to review the bid notice and bidding documents and provide comments to the governing body, which may accept or reject the comments.

(2) Upon receipt of the bids, the governing body shall evaluate the proposals. The governing body shall select a licensed electric power supplier or licensed gas supplier, or both, based on the most advantageous proposal, price and other factors considered. The governing body shall only select a licensed electric power supplier or licensed gas supplier to be awarded a contract for service where the rate is the same as or lower than the price of basic generation service pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) plus the pro-rata value of the cost of compliance with the renewable energy portfolio standards imposed pursuant to this act derived from a non-utility generation contract with an electric public utility and transferred by the electric public utility to a supplier of basic generation service or basic gas supply service pursuant to section 10 of P.L.1999, c.23 (C.48:3-58), as determined by the board. The governing body may award a contract for electric generation service where the rate is higher than the price of basic generation service as determined by the board pursuant to section 9 of P.L.1999, c.23 plus the pro-rata value of the cost of compliance with the renewable energy portfolio standards imposed pursuant to this act derived from a non-utility generation contract with an electric public utility and transferred by the electric public utility to a supplier of basic generation service, provided that the award is for electricity the percentage of which that is derived from verifiable Class I or Class II renewable energy as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51) is greater than the percentage of Class I and Class II renewable energy required pursuant to subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87), and that the customers are informed, in a manner determined by the board secretary, that such a higher rate is under consideration by the governing body.

c. Upon selection of a licensed electric power supplier or licensed gas supplier, or both, pursuant to subsection b. of this section, the governing body shall enter into a written agreement with the selected licensed supplier. The written agreement shall include:

(1) the contract with the selected licensed electric power supplier or licensed gas supplier, or both, for the government aggregator's own load; and

(2) a contract form which shall comply with and include the requirements of subsection a. of section 43 of P.L.1999, c.23 (C.48:3-92).

The governing body shall transmit a copy of the written agreement to the board and the Division of the Ratepayer Advocate, each of which shall have 15 days to review the written agreement and provide comments to the governing body, which may accept or reject the comments.

d. (Deleted by amendment, P.L.2003, c.24).

e. (1) After entering into the agreement pursuant to section c. of this section, the governing body shall provide written individual notice to customers advising them of their individual right to affirmatively decline participation in the government energy aggregation program, and providing 30 days for customers to respond to the governing body of their decision to affirmatively decline participation in the government energy aggregation program and providing them with the price and other factors allowing the customer to compare the government energy aggregation program to other alternatives; and

(2) upon expiration of the 30-day period required pursuant to paragraph (1) of this subsection, the governing body shall determine the number and identity of customers who did not affirmatively decline to participate in the government energy aggregation program.

(3) The governing body shall then authorize the selected licensed electric power supplier or licensed gas supplier, or both, to enroll each customer within the municipality or county who did not initially affirmatively decline to be part of a government energy aggregation program pursuant to the provisions of paragraph (1) of subsection e. of this section.

(4) The Board of Public Utilities shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations regarding service for residential and non-residential customers in municipalities and counties in which government

energy aggregation programs have been established providing for the notification to new customers of the availability of the established government energy aggregation program and their option to enroll in the program, and establishing a process by which customers that have been enrolled in a government energy aggregation program and that move to a new location where that same government energy aggregation program is available may consent to continue in the program without reverting to basic generation service or basic gas service. The rules and regulations adopted by the board pursuant to this section shall provide for the recovery by an electric public utility or a gas public utility of all reasonable costs incurred by the electric public utility or gas public utility in complying with the regulations adopted pursuant to this section.

f. The licensed electric power supplier or licensed gas supplier, or both, selected pursuant to the provisions of this section shall be subject to the provisions of section 37 of this act.

g. Whenever the process results in a change of provider of energy or of price to program participants, the governing body shall give residential customers notice, as determined by the board, of their right to decline continued participation.

h. A government aggregator that is a county may implement the provisions of this section only as authorized pursuant to the provisions of subsection f. of section 43 of this act.

i. The provisions of this section shall only apply to government energy aggregation programs for residential customers and to non-residential customers on a voluntary basis.

j. Nothing in this section shall preclude a government energy aggregation program from including non-residential customers as participants on a voluntary basis and in a clear and consistent manner.

k. Nothing in this section shall preclude a residential customer who did not affirmatively decline to participate in a government energy aggregation program from switching electric service to another electric power supplier or to basic generation service pursuant to regulations adopted by the board.

C.48:3-93.3 Contribution to campaign, candidates, office holders; restrictions; enforcement.

6. a. The provisions of any law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a government aggregator that is a municipality or a county shall not award a contract to a licensed electric power supplier, a licensed gas supplier, or appliance repair service provider if the licensed electric power supplier, licensed gas supplier, or appliance repair service provider has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a campaign committee of any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any State, county or municipal party committee or legislative leadership committee, in excess of the thresholds specified in subsection c. of this section within one calendar year immediately proceeding commencement of negotiations for the contract.

b. No licensed electric power supplier, licensed gas supplier, or appliance repair service provider which enters into negotiations for, or agrees to, any contract with a government aggregator that is a municipality or a county shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any State, county or municipal party committee or legislative leadership committee, between the commencement of negotiations for and the later of the termination of negotiations or the completion of the contract.

c. Any individual included within the definition of a licensed electric power supplier, licensed gas supplier, or appliance repair service provider pursuant to subsection o. of this section may annually contribute a maximum of \$250 for any purpose to any candidate for the office of Governor or for the office of member of the Legislature, or \$500 to any State, county or municipal party committee or legislative leadership committee, without violating subsection a. of this section. However, any group of individuals meeting the definition of a licensed electric power supplier, a licensed gas supplier, or appliance repair service provider pursuant to subsection o. of this section, in the aggregate shall not annually contribute for any purpose in excess of \$5,000 to all candidates for the office of Governor or for the office of member of the Legislature and officeholders with ultimate responsibility for the awarding of the contract, and

all State, county and municipal political parties and legislative leadership committees combined, without violating subsection a. of this section.

d. For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be any elected official of the governing body of the municipality or county serving as the government aggregator.

e. No contribution of money or other thing of value, including in-kind contributions, made by a licensed electric power supplier, a licensed gas supplier, or appliance repair service provider to any candidate for the office of Governor or for the office of member of the Legislature or State, county or municipal party committee or legislative leadership committee shall be deemed a violation of section a. of this section nor shall an agreement for property, goods or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the licensed electric power supplier, licensed gas supplier, or appliance repair service provider prior to the effective date of P.L.2003, c.24 (C.48:3-93.1 et al.).

f. (1) Prior to awarding any contract to a licensed electric power supplier, a licensed gas supplier, or appliance repair service provider, a government aggregator that is a municipality or a county shall receive a sworn statement from the licensed electric power supplier, licensed gas supplier, or appliance repair service provider made under penalty of perjury that the licensed electric power supplier, licensed gas supplier, or appliance repair service provider has not made a contribution in violation of subsection a. of this section.

(2) A licensed electric power supplier, licensed gas supplier, and appliance repair service provider shall have a continuing duty to report any violations of this section that may occur during the negotiation of duration of the contract.

g. Candidates for the office of Governor or for the office of member of the Legislature, and State and county party committees and legislative leadership committees shall use reasonable efforts to notify contributors and potential contributors that contributions, including in-kind contributions, from a licensed electric power supplier, a licensed gas supplier, or appliance repair service provider and certain individuals associated with a licensed electric power supplier, licensed gas supplier, or appliance repair service provider may affect the ability of the licensed electric power supplier, licensed gas supplier, or appliance repair service provider to contract or continue to contract with a government aggregator that is a municipality or a county. Such reasonable efforts shall include, but need not be limited to, notification in written fundraising solicitations or donor information request forms or other fundraising solicitation materials. The failure of a licensed electric power supplier, licensed gas supplier, or appliance repair service provider to receive the notice prescribed in this subsection shall not be a defense to a violation of subsection a. of this section.

h. A licensed electric power supplier, licensed gas supplier, appliance repair service provider, candidate for the office of Governor or for the office of member of the Legislature, an officeholder or a State, county or municipal party committee or legislative leadership committee may cure a violation of subsection a. of this section if, within 30 days after the election for which a contribution is made the licensed electric power supplier, licensed gas supplier, or appliance repair service provider seeks and receives reimbursement of a contribution from the candidate for the office of Governor or for the office of member of the Legislature or State, county or municipal political party or legislative leadership committee.

i. It shall be a breach of the terms of a contract for a licensed electric power supplier, licensed gas supplier, or appliance repair service provider to violate subsection a. of this section or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, and any such licensed electric power supplier, licensed gas supplier, or appliance repair service provider shall be subject to penalties prescribed in subsection k. of this section and any other penalties prescribed by law.

j. No person shall make and no person, other than a candidate or an official representative of the candidate committee or joint candidates committee of the candidate, shall accept any contribution on the condition or with the agreement that it will be contributed to any other particular candidate, subject to penalties prescribed in subsection k. of this section and any other penalties prescribed by law. The expenditure of funds received by a person shall be made at the

sole discretion of the recipient person.

k. Any licensed electric power supplier, licensed gas supplier, or appliance repair service provider who knowingly fails to reveal a contribution made in violation of subsection a. of this section, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future energy aggregation program contracts for a period of four calendar years from the date of the determination of violation, and shall have any contract with the State then in effect immediately terminated.

l. The governing body of a county or municipality shall have the option to promulgate and implement its own ordinances restricting campaign contributions by licensed electric power suppliers and licensed gas suppliers.

m. (1) Any licensed electric power supplier, licensed gas supplier, or appliance repair service provider making a contribution to any candidate, committee, or political party shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission setting forth all political contributions made during the 12 months prior to the reporting deadline.

(2) The Election Law Enforcement Commission shall prescribe forms and procedures for the reporting required in paragraph (1) of this subsection which, at a minimum, shall require the following information:

(a) The names and addresses of the licensed electric power supplier, licensed gas supplier, or appliance repair service provider making the contributions, and the amount contributed;

(b) The name of the candidate committee or political party receiving the contribution; and

(c) The amount of money received from a government aggregator that is a municipality or a county.

n. The Election Law Enforcement Commission shall maintain a list of such reports for public inspection both at the commission's office and through the commission's electronic disclosure Web site.

o. (1) For purposes of this section, "electric power supplier" and "gas supplier" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51), and shall include all principals who own 10 percent or more of the equity in an entity that is an electric power supplier or a gas supplier, partners, and all officers in the aggregate employed by the entity, as well as any subsidiaries directly controlled by the entity. "Appliance repair service provider" means any person or entity engaged in the maintenance, repair or replacement of appliances and providing such services as part of a government energy aggregation program pursuant to P.L.1999, c.23, and shall include all principals who own more than 10 percent or more of the equity in an entity which is an appliance more than 10 percent or more of the equity in an entity which is an appliance repair service provider, partners, and all officers in the aggregate employed by the entity, as well as any subsidiaries directly controlled by the entity. "Contract" shall mean a contract between a government aggregator that is a municipality or a county for a government energy aggregation program entered into pursuant to the provisions of section 2 of P.L.2003, c.24 (C.48:3-93.2) or the provisions of P.L.1999, c.23.

(2) For the purposes of this section, "contribution," "in-kind contribution," "other thing of value," "candidate," "candidate committee," "joint candidates committee," "legislative leadership committee," "State, county or municipal political party" and "State, county or municipal party committee" shall have the meanings set forth in the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.).

Repealer.

7. Section 44 of P.L.1999, c.23 (C.48:3-93) is repealed.

8. This act shall take effect immediately.

Approved February 27, 2003.