

SENATE, No. 2461

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MAY 9, 2022

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

The "New Jersey Town Center Microgrid Pilot Program Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the provision of electric supply to critical
2 facilities through microgrids.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Town Center Microgrid Pilot Program Act."

9
10 2. As used in this act:

11 "Board" means the New Jersey Board of Public Utilities or any
12 successor agency.

13 "Critical facilities" means buildings and facilities that are
14 essential for the delivery of vital services or protection of a
15 community.

16 "Department" means the New Jersey Department of
17 Environmental Protection.

18 "Developer" means an entity that enters into an agreement with a
19 pilot agency for the design, financing, construction, and operation,
20 or any combination thereof, of a supply of electrical power pursuant
21 to this act.

22 "Distributed energy resource" or "DER" means one or more
23 electric power generation, management, or storage technologies,
24 excluding diesel fuel technologies, located in a pilot agency, that is
25 capable of providing the standard energy needs of a building or
26 structure, or group of buildings or structures, if the normal source of
27 electricity is disrupted due to a power outage.

28 "Division" means the Division of Local Government Services in
29 the Department of Community Affairs.

30 "Electrical distribution company" means a public utility, as that
31 term is defined in R.S.48:2-13, holding a franchise from the Board
32 of Public Utilities to provide electric distribution service, and
33 whose electrical distribution service territory includes the pilot
34 agency.

35 "Microgrid" means a group of interconnected electrical supply
36 loads and distributed energy resources within clearly defined
37 electrical boundaries that acts as a single controllable entity with
38 respect to the grid. A microgrid can connect and disconnect from
39 the grid to enable it to operate in both grid-connected or island-
40 mode.

41 "Microgrid tariff" means a tariff approved by the board for the
42 purpose of facilitating the development and operation of a TCDER
43 Microgrid, and which tariff may provide waivers of law and rules,
44 and impose conditions which the board determines to be necessary
45 and appropriate to facilitate the development and operation of a
46 TCDER Microgrid. A microgrid tariff shall not be construed as
47 establishing a precedent with regard to any other tariff subject to
48 board approval.

1 “Offtaker” means a party purchasing energy and related products
2 that are produced and delivered from a TCDER Microgrid.

3 “Pilot agency” means a municipal, county, or State government
4 entity that participated in the Board of Public Utilities’ TCDER
5 Microgrid Feasibility Study Program and was informed by the
6 board to have met the feasibility study program requirements.

7 “Power purchase agreement” means a contract, between a pilot
8 agency and a developer, for the supply of electrical power from a
9 distributed energy resource to critical facilities through a TCDER
10 Microgrid, which contract may reference a project agreement for
11 the development of a distributed energy resource.

12 “Project” means a TCDER Microgrid being developed by a pilot
13 agency pursuant to this act.

14 “Project agreement” means a contract, between a pilot agency
15 and a developer, setting forth terms and conditions related to: the
16 scope and location of the project, ownership rights, rights-of-way
17 access, land leases, insurance and bonding, fees and taxes,
18 operation, financing, and related issues not included in the terms
19 and conditions of the power purchase agreement. A project
20 agreement may address the terms of a proposed microgrid tariff and
21 may be conditioned on approval of the tariff. A project agreement
22 shall not relax or modify any applicable requirement for approval
23 under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1
24 et seq.).

25 “Town Center Distributed Energy Resources Microgrid” or
26 “TCDER Microgrid” means critical facilities within the municipal
27 boundary of a pilot agency that are connected as a microgrid to one
28 or more distributed energy resources.

29

30 3. a. Pursuant to the provisions of this act, and notwithstanding
31 the provisions of any other law, rule, or regulation to the contrary,
32 for the purpose of developing a Town Center Distributed Energy
33 Resources Microgrid to supply electrical power for critical
34 facilities, a pilot agency may enter into a project agreement and a
35 power purchase agreement with a developer.

36 b. A pilot agency and a developer may enter into a power
37 purchase agreement under this act for a term not to exceed 20 years,
38 subject to the review and approval of the Division of Local
39 Government Services and the Board of Public Utilities.

40 (1) The Division of Local Government Services shall have the
41 duty and power to review and approve financial matters and risks
42 presented by a power purchase agreement.

43 (2) The Board of Public Utilities shall have the duty and power
44 to:

45 (a) review and approve electrical supply and distribution matters
46 of a power purchase agreement;

47 (b) provide guidance concerning offtaker rates and fees that are
48 necessary for a proposed power purchase agreement; and

1 (c) adopt a microgrid tariff affecting an electrical distribution
2 company in order to facilitate the development of a project.

3 c. The board and the division shall each establish application
4 forms and processes for approvals under this act, however, the
5 board and the division may establish a joint application form and
6 process for approvals.

7 d. (1) The division shall assist a pilot agency in developing a
8 private agency's developer procurement process or request for
9 proposals to ensure that the process or proposals reflects the
10 necessary knowledge, experience, financial capacity, and expertise
11 to develop, construct, and operate an energy supply facility in New
12 Jersey.

13 (2) The board shall assist a pilot agency in evaluating provisions
14 of a proposed power purchase agreement and tariff, including but
15 not limited to, assistance in matters of energy pricing, maintenance,
16 termination of the agreement, removal of infrastructure, assignment
17 of contract, cybersecurity, liability insurance, electrical system
18 connection and interfaces, and system upgrades.

19 e. A pilot agency may submit to the division a request for a
20 waiver of specific provisions of law that are within the division's
21 jurisdiction. The division may grant a request for a waiver and may
22 adopt alternative provisions upon a finding of public need for the
23 project and general consistency with the applicable provisions of
24 law if the division determines that enforcing the requirements
25 sought to be waived are not necessary to protect the overall public
26 interest and may compromise the viability of the proposed project.

27 f. The board and the division may each take actions not
28 specifically authorized by this act that the board or division deems
29 reasonable, prudent, and necessary to accomplish the purposes of
30 this act if those actions are consistent with the purposes of this act
31 and address issues not specifically covered by this act. For the
32 purpose of this subsection, the purposes of this act are to encourage
33 energy efficiency, reliability, resiliency, sound technical
34 development and operation, while ensuring the fiscal integrity of
35 each pilot agency and developer with regard to a power purchase
36 agreement and project agreement.

37
38 4. Notwithstanding the provisions of the "Local Public
39 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and of rules
40 and regulations promulgated thereunder to the contrary, a pilot
41 agency may solicit proposals for the development of a TCDER
42 Microgrid project, and enter into a project agreement and a power
43 purchase agreement in the following manner:

44 a. A pilot agency shall publish notice of the availability of
45 request for proposal documentation at least 30 days prior to the date
46 established for the submission of proposals in at least one
47 newspaper of general circulation in the jurisdiction or service area
48 of the pilot agency to be served under the terms of the proposed

1 agreements and by posting notice on the website of the pilot
2 agency. A pilot agency shall promptly provide request for proposal
3 documentation to any known prospective developers upon
4 publication and to any others upon request. The request for
5 proposals shall also be posted on the pilot agency's internet website
6 on a page normally used for advertisement of bids.

7 b. A prospective developer may submit a proposal, which shall
8 include all the information required by the request for proposals. A
9 pilot agency may disqualify a prospective developer's proposal
10 from consideration if the prospective developer does not comply
11 with a requirement set forth in the request for proposals. A pilot
12 agency may hold an informational meeting to discuss a proposed
13 project and answer questions so long as the meeting is open to all
14 prospective developers. A pilot agency may host an Internet
15 website to answer questions submitted by prospective developers.

16 c. A pilot agency shall conduct a preliminary review of the
17 proposals received from prospective developers to determine which
18 proposals meet the minimum qualifications and standards. The
19 review of proposals shall be conducted in a manner that avoids
20 disclosure of the contents of a proposal to prospective developers
21 that submitted competing proposals. A pilot agency may conduct
22 discussions with a prospective developer that submitted a qualified
23 proposal for the purpose of clarifying information submitted in the
24 proposal. After completing a preliminary review of the proposals
25 submitted by prospective developers, a pilot agency may revise its
26 request for proposal documentation if the pilot agency
27 simultaneously provides notice of the revision to each prospective
28 developer that submitted a proposal and provides a uniform and
29 reasonable period of time within which a prospective developer that
30 submitted a proposal may submit a revised proposal to the pilot
31 agency.

32 d. (1) A pilot agency shall appoint the agency's purchasing
33 agent, legal counsel, engineer, administrator, or other qualified
34 person, to evaluate submitted proposals in accordance with the
35 methodology set forth in the request for proposals. The governing
36 body may create a committee to assist the evaluating appointee in
37 the effort. After completing the evaluation of submitted proposals,
38 the person appointed to evaluate proposals shall prepare a report
39 explaining the evaluations and making recommendations, which
40 may include recommending the award of a contract or contracts to a
41 prospective developer. The report shall list each prospective
42 developer and shall summarize each submitted proposal. The report
43 shall rank prospective developers in order of preference, and may
44 recommend the selection of a developer. If the report recommends
45 the selection of a developer, the report shall clearly state the reasons
46 for recommending selection of the prospective developer over other
47 prospective developers.

1 (2) The pilot agency shall make the report available to the
2 public, and to each prospective developer that submitted a proposal,
3 at least 48 hours prior to announcing selection of a prospective
4 developer and entering into negotiations with the selected
5 prospective developer.

6 (3) After receipt and review of the report, and at least 48 hours
7 after making the report available to the public and each prospective
8 developer, the governing body of a pilot agency may, by resolution,
9 select a prospective developer and authorize the pilot agency to
10 enter into negotiations for a power purchase agreement with the
11 selected prospective developer. If the governing body selects a
12 prospective developer other than the highest ranked developer, the
13 governing body shall include an explanation for doing so in the
14 resolution.

15 (4) The governing body of a pilot agency may reject all
16 proposals for any of the reasons set forth in section 21 of P.L.1999,
17 c.440 (C.40A:11-13.2).

18 e. (1) A pilot agency shall negotiate a preliminary project
19 agreement and a preliminary power purchase agreement with the
20 selected prospective developer.

21 (2) If a pilot agency is unable to negotiate satisfactory
22 preliminary agreements with the selected prospective developer, the
23 pilot agency may, by resolution, abandon negotiations with that
24 prospective developer and select the next-highest-ranked
25 prospective developer. The pilot agency shall notify each
26 prospective developer that submitted a proposal of the selection of
27 the next-highest-ranked prospective developer at least 48 hours
28 prior to commencing negotiations with the next-highest-ranked
29 prospective developer.

30 (3) A pilot agency, the selected prospective developer, and the
31 applicable electrical distribution company shall consult on issues
32 relevant to the development and operation of a proposed project,
33 and shall negotiate the provisions of a proposed microgrid tariff for
34 the purpose of enabling a proposed project to operate in a manner
35 consistent with sound distribution grid engineering, safety
36 requirements, economics, and cross-subsidy standards. An
37 electrical distribution company shall not unreasonably withhold its
38 agreement to a proposed microgrid tariff and shall negotiate in good
39 faith with the pilot agency and the selected prospective developer in
40 order to facilitate the proposed project. The terms and conditions of
41 the proposed microgrid tariff shall be contingent upon approval by
42 the board.

43 (a) If the pilot agency, the selected prospective developer, and
44 the applicable electrical distribution company agree to the
45 provisions of a proposed microgrid tariff, the electrical distribution
46 company shall submit the proposed microgrid tariff to the board for
47 the board's approval.

1 (b) If the pilot agency, the selected prospective developer, and
2 the applicable electrical distribution company cannot agree on all
3 necessary provisions of a proposed microgrid tariff, the electrical
4 distribution company shall provide the pilot agency and the selected
5 prospective developer a written statement setting forth each issue
6 necessary to be addressed in the tariff, indicating whether the
7 parties have agreed on each issue, and explaining the electrical
8 distribution company's recommendations on each issue of
9 disagreement. In this instance, the application for review and
10 approval of the proposed agreement, submitted pursuant to
11 subsection h. of this section, shall include the pilot agency's
12 recommendations and the selected prospective developer's
13 recommendations on each issue of disagreement together with the
14 electrical distribution company's written statement on the proposed
15 microgrid tariff. As part of its action on the application, the board
16 shall consider the submitted recommendations on each issue of
17 disagreement and make a determination to resolve each issue.

18 (4) After satisfactory completion of negotiations with a
19 prospective developer, a pilot agency shall set forth in a written
20 document a summary of the terms and conditions of the proposed
21 agreements and shall, upon request, make this document available
22 to the public along with the proposed agreements.

23 f. Prior to entering into a project agreement and a power
24 purchase agreement with a prospective developer, a pilot agency
25 shall conduct a public hearing on the proposed agreements. The
26 pilot agency shall provide at least 14 days' prior notice of the public
27 hearing by publication in at least one newspaper of general
28 circulation in the jurisdiction or service area of the pilot agency to
29 be served under the terms of the proposed agreement and by posting
30 notice of the public hearing on the website of the pilot agency. The
31 publication shall include notice of the date, time and place of the
32 public hearing, and provide notice of the place and times, or
33 Internet website at which, a member of the public may review the
34 proposed agreements.

35 g. A pilot agency shall produce a verbatim record of the public
36 hearing. The pilot agency shall prepare a written hearing report,
37 which shall include a copy of the proposed agreements, a copy of
38 the statement setting forth the pilot agency's reasons for selecting
39 the proposal, the verbatim record of the public hearing, written
40 statements submitted by interested parties, and a statement prepared
41 by the pilot agency summarizing the major issues raised at the
42 public hearing and the pilot agency's specific responses to those
43 issues. The pilot agency shall make copies of the hearing report
44 available to interested parties upon their request.

45 h. (1) Upon at least 10 days' prior written notice provided after
46 the close of a public hearing on a proposed project agreement and a
47 proposed power purchase agreement, a pilot agency shall submit:

1 (a) an application for review of the proposed project agreement
2 and for review and approval of the proposed power purchase
3 agreement to the division;

4 (b) an application for review of the proposed project agreement
5 and for review and approval of the proposed power purchase
6 agreement and proposed microgrid tariff to the board; and

7 (c) a copy of each application to the Department of
8 Environmental Protection for the department's review and
9 comment.

10 (2) A pilot agency shall submit initial applications within three
11 years of the effective date of this act.

12 i. (1) The division, the board, and the department shall
13 coordinate their reviews, insofar as practicable, and may engage in
14 discussions with each other and the pilot agency to address any
15 concerns. The
16 department shall provide any written comments to the division, the
17 board, and the pilot agency, for their consideration, no later than 45
18 days after the department's receipt of an application, or within 10
19 days of being notified by the division or board of their intent to act
20 on the application.

21 (2) Within 60 days of receipt of an application, the board and
22 the division shall each approve, disapprove, or conditionally
23 approve, the application. The board and the division shall
24 disapprove an application unless it was initially submitted for
25 review within three years of the effective date of this act. If the
26 board or division does not approve, disapprove, or conditionally
27 approve an application within 60 days of receipt, the application
28 shall be deemed approved, unless the public agency agrees to an
29 extension of the period or the application was not submitted within
30 three years of the effective date of this act.

31 (3) If the board or division conditionally approves an
32 application, the board or division shall provide the pilot agency
33 suggested changes or language for a required revision to the
34 proposed agreement or tariff, in writing, inclusion of which would
35 enable the board or division to approve the proposed agreement or
36 tariff.

37 (a) If the board or division determines that the required revision
38 is substantial, the pilot agency shall hold a public hearing on the
39 revision. A substantial revision shall be a change that materially
40 changes the terms and conditions of the proposed agreement or
41 tariff. A pilot agency shall submit a proposed revision to the board,
42 the division, and the department at least 15 days prior to the date of
43 the public hearing.

44 (b) If the board or division determines that the required revision
45 is not substantial, the pilot agency shall submit the proposed
46 revision to the board and the division for approval and to the
47 department for review. The board and the division, at their next
48 public meetings held at least 15 days after submission of a proposed

1 revision, shall either: approve the proposed revision, if it is found to
2 be consistent with the conditions set forth in the conditional
3 approval; or disapprove the proposed revision with a written
4 explanation as to why the revision is not consistent with the
5 conditions set forth in the conditional approval.

6 (4) In its review of an application, the board shall apply the
7 following criteria in determining whether to approve a proposed
8 power purchase agreement and microgrid tariff:

9 (a) The prospective developer has the financial capacity and
10 technical and administrative experience to ensure continuity of
11 service over the term of the agreement and tariff and that the
12 standards and requirements contained in the application documents
13 concerning the financial, technical and administrative capacity of
14 the prospective developer are necessary and sufficient to protect the
15 public interest.

16 (b) The terms of the proposed power purchase agreement and
17 microgrid tariff are not unreasonable. In determining whether the
18 terms of the proposed agreement and tariff are not unreasonable, the
19 board shall review the fees and charges to be charged or assessed
20 under the proposed agreement and tariff to determine that they are
21 reasonable to the pilot agency, taking into consideration all the
22 obligations to be undertaken by the prospective developer and all
23 the benefits to be obtained by the pilot agency. In making this
24 determination, the board shall not use the traditional rate-based rate
25 of return methodology, pursuant to the provisions of Title 48 of the
26 Revised Statutes.

27 (c) The franchise customers of a public utility are protected
28 from the risks of the proposed power purchase agreement and are
29 not subsidizing the agreement. If a prospective developer is not a
30 public utility, the board shall ensure that the terms of the proposed
31 power purchase agreement address the risks the agreement imposes
32 on all offtakers, and that users of electricity who are not part of the
33 TC DER microgrid are not subsidizing the agreement through
34 increased charges, rates, or fees.

35 (d) If a prospective developer is not an electrical distribution
36 company, the prospective developer shall not be subject to laws,
37 rules, and regulations applicable to regulated public utilities, except
38 for the terms and conditions set forth in the applicable microgrid
39 tariff.

40 (e) A microgrid tariff may include, but shall not be limited to,
41 the following:

42 (i) provisions enabling a developer to cross electric public utility
43 rights of way and construct distribution wires and facilities.

44 (ii) provisions enabling an electric public utility to recover costs
45 of switches and related costs of integrating microgrid generated
46 energy into their system.

47 (iii) provisions addressing the assessment of standby, access,
48 and social benefit, market transition fees, rates, or charges.

1 (iv) provisions allowing an electric public utility to own and
2 maintain distribution wiring, switches, and other facilities that
3 connect to or touch their system.

4 (v) provisions ensuring that the cost of the added distribution
5 infrastructure is passed on to the customers of the TCDER
6 Microgrid over the life of that infrastructure.

7 (vi) provisions that supersede other statutes and regulations,
8 upon the board's determination that it is necessary, appropriate, and
9 in the public interest to do so, in order to facilitate the success of
10 the proposed project and power purchase agreement.

11 (5) In its review of an application, the division shall apply the
12 following criteria in determining whether to approve a proposed
13 power purchase agreement:

14 (a) The terms of the proposed power purchase agreement do not
15 materially impair the ability of the pilot agency to punctually pay
16 principal and interest due on its outstanding indebtedness and to
17 supply other essential public improvements and services.

18 (b) The power purchase agreement contains satisfactory
19 provisions addressing:

20 (i) The allocation of the risks of operating and maintaining the
21 microgrid.

22 (ii) The allocation of the financial risks of the power purchase
23 agreement.

24 (iii) The defaulting and termination of the agreement.

25 (iv) The requirements for the provision of a performance bond
26 by the developer, if so required by the pilot agency.

27 The division shall also review and specifically approve any
28 agreement provision pursuant to which a pilot agency may execute
29 a financing instrument for the purposes set forth in the agreement.
30 A bond authorization or other obligation that pledges the full faith
31 and credit of a pilot agency shall be subject to the approval of the
32 Local Finance Board.

33 (6) The board and the division shall assess, and the pilot agency
34 shall pay, a fee equal to the cost incurred by the board or division
35 for an analysis of an application by an independent person who has
36 expertise in the area of electric supply services if during the review
37 of an application the board or division determine that such an
38 analysis is required and a person with the required expertise is not
39 readily available from within any executive department of the State
40 government.

41 (7) If the pilot agency and the developer require amendments to
42 a power purchase agreement after approval of an application by the
43 board and division, the pilot agency shall submit proposed
44 amendments to the board and division for approval and to the
45 department for review. At the next public meeting of the board and
46 of the division convened at least 20 days after receipt of proposed
47 amendments, the board and the division shall determine whether the
48 proposed amendments are substantial. If the amendments are

1 substantial in nature, as determined by either the board or the
2 division, the pilot agency shall conduct a hearing on the proposed
3 revision. Within 45 days of the receipt of proposed amendments
4 that are not determined to be substantial, or within 60 days of the
5 receipt of an application for approval of proposed amendments that
6 are determined to be substantial, the board and division shall
7 approve or conditionally approve the amendments in accordance
8 with the applicable procedures established for approval of an
9 original agreement.

10 (8) Any requirement of this section that requires notice in
11 writing to prospective developers may be provided by email in lieu
12 of physical mail.

13
14 5. a. Subject to the provisions of a microgrid tariff approved
15 by the board pursuant to this act, and with the approval of the pilot
16 agency, a developer chosen to supply energy under a power
17 purchase agreement may sell and distribute energy to other critical
18 facilities that are located within the municipal boundary of the pilot
19 agency.

20 b. Pursuant to the "Uniform Shared Services and Consolidation
21 Act," sections 1 through 35 of P.L.2007, c.63 (C.40A:65-1 through
22 C.40A:65-35), a pilot agency may enter into a shared service
23 agreement with a local unit or units for the resale of electrical
24 power purchased under a power purchase agreement.

25 c. A pilot agency may enter into agreements with State or
26 federal entities and not-for profit health care organizations for the
27 resale of electrical power purchased under a power purchase
28 agreement.

29
30 6. The board, in consultation with the division and the
31 department, shall prepare and submit, not later than four years after
32 the effective date of this act, to the Governor and, pursuant to
33 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a
34 report describing the implementation of the "New Jersey Town
35 Center Microgrid Pilot Program Act."

36
37 7. This act shall take effect immediately.

38
39
40 STATEMENT

41
42 This bill would establish the "New Jersey Town Center
43 Microgrid Pilot Program Act," for the purpose of facilitating
44 implementation of a program currently before the New Jersey Board
45 of Public Utilities (BPU). The BPU initiated the Town Center
46 Distributed Energy Resources (TCDER) Microgrid program after
47 Superstorm Sandy in order to help New Jersey become more energy
48 resilient, particularly with respect to critical facilities. A TCDER

1 Microgrid is a cluster of critical facilities within a municipal
2 boundary, which facilities may operate as shelter for the public
3 during and after an emergency event or provide services that are
4 essential to function during and after an emergency situation. A
5 microgrid connects critical facilities with distributed energy
6 resources, which can operate when the main electric grid suffers a
7 power outage.

8 During 2018, the BPU's "Phase I" TC DER Microgrid Feasibility
9 Study Incentive Program funded thirteen Feasibility Studies. During
10 2019, BPU informed twelve Feasibility Study applicants that their
11 studies met program requirements and that they were eligible to
12 apply for the "Phase II" TC DER Microgrid incentive program (one
13 Feasibility Study applicant withdrew from the program). The BPU
14 limited eligibility to apply for the Phase II TC DER Microgrid
15 Incentive Program to those applicants who met the Feasibility Study
16 program requirements.

17 The Phase II TC DER Microgrid Incentive Program provides
18 funding, on a competitive basis, for the design of a TC DER
19 Microgrid, in order to help move projects towards the development
20 and construction phase. Phase II TC DER Microgrid Incentive
21 Program guidelines require applicants to certify that projects are
22 legally permissible, i.e., that they conform to existing law, code,
23 and standing Board Orders. This bill establishes a framework to
24 enable program participants that are unable to move their projects
25 forward due to legal or statutory impediments to do so consistent
26 with this process. Those program participants, defined as "pilot
27 agencies" in the bill, are Atlantic City, Camden County and its
28 utilities authority, Galloway Township, Highland Park Borough,
29 Hoboken City, Hudson County, Middletown Township, Montclair
30 Township, Neptune Township, Paterson City, Trenton City
31 (together with the State Department of Treasury), and Woodbridge
32 Township.

33 Under the bill, a pilot agency may enter into a project agreement,
34 concerning the development of a TC DER Microgrid, and a power
35 purchase agreement, concerning the procurement of electrical
36 power supply for critical facilities. A pilot agency and a developer
37 may enter into a power purchase agreement, for a term not to
38 exceed 20 years, subject to the review and approval of the Division
39 of Local Government Services (DLGS) and the BPU. The DLGS
40 would have power to review and approve financial matters and risks
41 associated with a proposed power purchase agreement. The BPU
42 would have power to: review and approve electrical supply and
43 distribution matters for a proposed power purchase agreement;
44 provide guidance concerning offtaker rates and fees that are
45 necessary for a proposed power purchase agreement; and adopt
46 specifically authorized microgrid tariffs affecting the electrical
47 distribution company in order to facilitate the development of a
48 TC DER Microgrid project.

1 The bill sets forth a procurement process, outside of the "Local
2 Public Contracts Law," for a pilot agency to solicit a developer,
3 with whom it would enter into a project agreement and a power
4 purchase agreement. After completing a request for proposals
5 process, the bill authorizes a pilot agency to select a prospective
6 developer, by resolution, and to enter into negotiations for a power
7 purchase agreement with the selected developer.

8 A pilot agency that intends to enter into a project agreement and
9 a power purchase agreement with a developer must conduct a public
10 hearing on the proposed agreements. Within 30 days after the
11 public hearing, the pilot agency would submit:

- 12 • an application for review of the proposed project agreement
13 and for review and approval of the proposed power purchase
14 agreement to the DLGS;
- 15 • an application for review of the proposed project agreement
16 and for review and approval of the proposed power purchase
17 agreement and proposed microgrid tariff to the BPU; and
- 18 • a copy of each application to the Department of
19 Environmental Protection (DEP) for the department's review
20 and comment.

21 A pilot agency must submit initial applications within three years
22 of the effective date of this bill.

23 The bill directs BPU and DLGS to specify application forms and
24 processes for a pilot agency to seek approvals under the bill. The
25 DLGS would assist pilot agencies in developing procurement
26 processes and requests for proposals. The BPU would assist pilot
27 agencies in evaluating provisions of proposed power purchase
28 agreements and tariffs.

29 The bill would allow a pilot agency to submit to the DLGS a
30 request for a waiver of specific provisions of law that are within the
31 division's jurisdiction. The division may grant a request for a
32 waiver and may adopt alternative provisions upon a finding of
33 public need for the project and general consistency with the
34 applicable provisions of law, if the division determines that
35 enforcing the requirements sought to be waived: is not necessary to
36 protect the overall public interest and may compromise viability of
37 the proposed TCDER microgrid project.

38 The bill would empower the BPU and the DLGS to each take
39 actions not specifically authorized under the bill which the board or
40 division deems reasonable, prudent, and necessary to accomplish
41 the bill's purposes if those actions are consistent with the bill's
42 purposes and address issues not specifically covered by the bill.
43 For this purpose, the bill specifies that the purposes of the bill are to
44 encourage energy efficiency, reliability, resiliency, sound technical
45 development and operation, while ensuring fiscal integrity of each
46 pilot agency and its power purchase or related agreements with a
47 TCDER microgrid developer.

1 The bill directs the DLGS, the BPU, and the DEP to coordinate
2 their reviews, insofar as practicable, and to engage in discussions
3 with each other and the pilot agency to address any concerns.
4 Within 60 days of receipt of an application, the board and the
5 division must each either approve, disapprove, or conditionally
6 approve the application. The board and the division shall
7 disapprove an application unless it was initially submitted for
8 review within three years of the effective date of this act. If the
9 board or division does not approve, disapprove, or conditionally
10 approve an application within 60 days of receipt, the application
11 would be deemed approved, unless the public agency has agreed to
12 an extension of the review period or the application was not
13 submitted within three years of the effective date of this act.

14 If the board or division conditionally approve an application, the
15 board or division must provide the pilot agency suggested language
16 for a required revision to the proposed agreement or tariff, in
17 writing, inclusion of which would enable the board or division to
18 approve the proposed agreement or tariff. If the board or division
19 determines that the required revision is substantial, the pilot agency
20 must hold a public hearing on the revision. The bill provides that a
21 substantial revision would be a change that materially changes the
22 terms and conditions of the proposed agreement or tariff. If the
23 board or division determines that the required revision is not
24 substantial, the pilot agency must submit the proposed revision to
25 the board and the division for approval and to the department for
26 review. The board and the division would approve the proposed
27 revision, if it is found to be consistent with the conditions set forth
28 in the conditional approval, or disapprove the application with a
29 written explanation as to why the revision is not consistent with the
30 conditions set forth in the conditional approval.

31 The bill sets forth criteria that the BPU and the DLGS would
32 apply when determining whether to approve a proposed power
33 purchase agreement and tariff.

34 The bill directs BPU in consultation with the DLGS and the
35 DEP, to prepare a report describing implementation of the bill, and
36 submit the report to the Governor and to the Legislature within four
37 years of the bill's effective date.