

**ASSEMBLY, No. 3442**

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**STATE OF NEW JERSEY**

**214th LEGISLATURE**

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INTRODUCED OCTOBER 25, 2010

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

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**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Co-Sponsored by:**

**Assemblymen Giblin, Amodeo, Wisniewski and Conners**

**SYNOPSIS**

Establishes a long-term capacity agreement pilot program to promote construction of qualified in-State electric generation facilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2010)**

1 AN ACT establishing a long-term capacity agreement pilot program  
2 to promote construction of qualified in-State electric generation  
3 facilities, amending and supplementing P.L.1999, c.23.

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

7  
8 1. The Legislature finds and declares:

9 a. In 2007, PJM Interconnection, L.L.C., the firm that manages  
10 the regional electric power grid, changed the method of procuring  
11 capacity in the wholesale electricity market with the  
12 implementation of the reliability pricing model which, as estimated  
13 by the Board of Public Utilities, costs New Jersey ratepayers an  
14 additional \$1 billion per year for capacity;

15 b. The PJM reliability pricing model created additional barriers  
16 to entry for new, efficient generators, by imposing a one to three  
17 year term requirement for contracts entered into by new entrants.  
18 The maximum three-year term is insufficient to support the project  
19 financing necessary to develop new, efficient generation within the  
20 State;

21 c. The PJM reliability pricing model continues to undergo  
22 structural changes that make it unreliable as an indicator of the true  
23 cost of capacity and therefore unreliable as an incentive for  
24 developing new generation;

25 d. To alleviate the cost burden and barriers to new entry  
26 created by the PJM reliability pricing model, the construction of  
27 new, efficient, in-State generation must be fostered by State policy  
28 to avoid higher electricity prices, higher congestion, and reliability  
29 concerns;

30 e. Due to PJM's lack of authority to order new generation as a  
31 means to mitigate local electrical system reliability concerns and  
32 solve other issues related to the lack of local generation, and since  
33 only PJM has the authority to order transmission system upgrades  
34 and expansions to mitigate electrical system reliability concerns  
35 caused by transmission system overloads or the lack of local  
36 generation being developed, New Jersey continues to send jobs and  
37 investment out-of-state to upgrade the transmission system to the  
38 west of New Jersey to ensure a reliable supply of electricity and  
39 capacity from generators located outside of New Jersey;

40 f. As a result of a lack of new, efficient, in-State electric  
41 generating facilities, New Jersey has become more reliant on out-  
42 of-state coal-fired power plants;

43 g. The PJM State of the Market Report for 2009 by the PJM  
44 Independent Market Monitor states that there over 11,000

**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 megawatts ("MW") of coal-fired units at risk of retirement due to  
2 their inability to cover their avoided costs;

3 h. Many of New Jersey's in-State generating facilities, as a  
4 result of new emission reduction requirements, will need to have  
5 installed new emissions control technology or retire them by April  
6 30, 2015. In one instance, the rule will have a significant impact on  
7 New Jersey's in-State fleet of electric generation facilities, as the  
8 rule imposes nitrogen oxide ("NOx") emission limits that will likely  
9 require the retirement of up to 102 combustion turbines,  
10 representing approximately 2,800 MW, and five older New Jersey  
11 steam electric generating units, representing approximately 800  
12 MW, by April 30, 2015;

13 i. New Jersey's in-State fleet of electric generation facilities  
14 are aging, with over 50 percent of these facilities being more than  
15 30 years old and over 70 percent being more than 20 years old; and

16 j. Fostering and incentivizing the development of new in-State  
17 electric generation facilities will assist the State's economic  
18 development by creating numerous opportunities for employment in  
19 the energy sector while helping to reduce the cost and volatility of  
20 electricity prices in New Jersey.

21

22 2. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read  
23 as follows:

24 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

25 "Assignee" means a person to which an electric public utility or  
26 another assignee assigns, sells or transfers, other than as security,  
27 all or a portion of its right to or interest in bondable transition  
28 property. Except as specifically provided in P.L.1999, c.23  
29 (C.48:3-49 et al.), an assignee shall not be subject to the public  
30 utility requirements of Title 48 or any rules or regulations adopted  
31 pursuant thereto;

32 "Base residual auction" means the auction conducted by PJM, as  
33 part of PJM's reliability pricing model, three years prior to the start of  
34 the delivery year to secure electrical capacity as necessary to satisfy  
35 the capacity requirements for that delivery year;

36 "Basic gas supply service" means gas supply service that is  
37 provided to any customer that has not chosen an alternative gas  
38 supplier, whether or not the customer has received offers as to  
39 competitive supply options, including, but not limited to, any  
40 customer that cannot obtain such service for any reason, including  
41 non-payment for services. Basic gas supply service is not a  
42 competitive service and shall be fully regulated by the board;

43 "Basic generation service" or "BGS" means electric generation  
44 service that is provided, to any customer that has not chosen an  
45 alternative electric power supplier, whether or not the customer has  
46 received offers for competitive supply options, including, but not  
47 limited to, any customer that cannot obtain such service from an  
48 electric power supplier for any reason, including non-payment for

1 services. Basic generation service is not a competitive service and  
2 shall be fully regulated by the board;

3 "Basic generation service provider" or "provider" means a  
4 provider of basic generation service;

5 "Basic generation service transition costs" means the amount by  
6 which the payments by an electric public utility for the procurement  
7 of power for basic generation service and related ancillary and  
8 administrative costs exceeds the net revenues from the basic  
9 generation service charge established by the board pursuant to  
10 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,  
11 together with interest on the balance at the board-approved rate, that  
12 is reflected in a deferred balance account approved by the board in  
13 an order addressing the electric public utility's unbundled rates,  
14 stranded costs, and restructuring filings pursuant to P.L.1999, c.23  
15 (C.48:3-49 et al.). Basic generation service transition costs shall  
16 include, but are not limited to, costs of purchases from the spot  
17 market, bilateral contracts, contracts with non-utility generators,  
18 parting contracts with the purchaser of the electric public utility's  
19 divested generation assets, short-term advance purchases, and  
20 financial instruments such as hedging, forward contracts, and  
21 options. Basic generation service transition costs shall also include  
22 the payments by an electric public utility pursuant to a competitive  
23 procurement process for basic generation service supply during the  
24 transition period, and costs of any such process used to procure the  
25 basic generation service supply;

26 "Board" means the New Jersey Board of Public Utilities or any  
27 successor agency;

28 "Bondable stranded costs" means any stranded costs or basic  
29 generation service transition costs of an electric public utility  
30 approved by the board for recovery pursuant to the provisions of  
31 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the  
32 board: (1) the cost of retiring existing debt or equity capital of the  
33 electric public utility, including accrued interest, premium and other  
34 fees, costs and charges relating thereto, with the proceeds of the  
35 financing of bondable transition property; (2) if requested by an  
36 electric public utility in its application for a bondable stranded costs  
37 rate order, federal, State and local tax liabilities associated with  
38 stranded costs recovery or basic generation service transition cost  
39 recovery or the transfer or financing of such property or both,  
40 including taxes, whose recovery period is modified by the effect of  
41 a stranded costs recovery order, a bondable stranded costs rate order  
42 or both; and (3) the costs incurred to issue, service or refinance  
43 transition bonds, including interest, acquisition or redemption  
44 premium, and other financing costs, whether paid upon issuance or  
45 over the life of the transition bonds, including, but not limited to,  
46 credit enhancements, service charges, overcollateralization, interest  
47 rate cap, swap or collar, yield maintenance, maturity guarantee or  
48 other hedging agreements, equity investments, operating costs and

1 other related fees, costs and charges, or to assign, sell or otherwise  
2 transfer bondable transition property;

3 "Bondable stranded costs rate order" means one or more  
4 irrevocable written orders issued by the board pursuant to P.L.1999,  
5 c.23 (C.48:3-49 et al.) which determines the amount of bondable  
6 stranded costs and the initial amount of transition bond charges  
7 authorized to be imposed to recover such bondable stranded costs,  
8 including the costs to be financed from the proceeds of the  
9 transition bonds, as well as on-going costs associated with servicing  
10 and credit enhancing the transition bonds, and provides the electric  
11 public utility specific authority to issue or cause to be issued,  
12 directly or indirectly, transition bonds through a financing entity  
13 and related matters as provided in P.L.1999, c.23, which order shall  
14 become effective immediately upon the written consent of the  
15 related electric public utility to such order as provided in P.L.1999,  
16 c.23;

17 "Bondable transition property" means the property consisting of  
18 the irrevocable right to charge, collect and receive, and be paid  
19 from collections of, transition bond charges in the amount necessary  
20 to provide for the full recovery of bondable stranded costs which  
21 are determined to be recoverable in a bondable stranded costs rate  
22 order, all rights of the related electric public utility under such  
23 bondable stranded costs rate order including, without limitation, all  
24 rights to obtain periodic adjustments of the related transition bond  
25 charges pursuant to subsection b. of section 15 of P.L.1999, c.23  
26 (C.48:3-64), and all revenues, collections, payments, money and  
27 proceeds arising under, or with respect to, all of the foregoing;

28 "British thermal unit" or "Btu" means the amount of heat  
29 required to increase the temperature of one pound of water by one  
30 degree Fahrenheit;

31 "Broker" means a duly licensed electric power supplier that  
32 assumes the contractual and legal responsibility for the sale of  
33 electric generation service, transmission or other services to end-use  
34 retail customers, but does not take title to any of the power sold, or  
35 a duly licensed gas supplier that assumes the contractual and legal  
36 obligation to provide gas supply service to end-use retail customers,  
37 but does not take title to the gas;

38 "Buydown" means an arrangement or arrangements involving the  
39 buyer and seller in a given power purchase contract and, in some  
40 cases third parties, for consideration to be given by the buyer in  
41 order to effectuate a reduction in the pricing, or the restructuring of  
42 other terms to reduce the overall cost of the power contract, for the  
43 remaining succeeding period of the purchased power arrangement  
44 or arrangements;

45 "Buyout" means an arrangement or arrangements involving the  
46 buyer and seller in a given power purchase contract and, in some  
47 cases third parties, for consideration to be given by the buyer in  
48 order to effectuate a termination of such power purchase contract;

1 "Class I renewable energy" means electric energy produced from  
2 solar technologies, photovoltaic technologies, wind energy, fuel  
3 cells, geothermal technologies, wave or tidal action, and methane  
4 gas from landfills or a biomass facility, provided that the biomass is  
5 cultivated and harvested in a sustainable manner;

6 "Class II renewable energy" means electric energy produced at a  
7 resource recovery facility or hydropower facility, provided that  
8 such facility is located where retail competition is permitted and  
9 provided further that the Commissioner of Environmental  
10 Protection has determined that such facility meets the highest  
11 environmental standards and minimizes any impacts to the  
12 environment and local communities;

13 "Co-generation" means the sequential production of electricity  
14 and steam or other forms of useful energy used for industrial or  
15 commercial heating and cooling purposes;

16 "Combined heat and power facility" or "co-generation facility"  
17 means a generation facility which produces electric energy, steam,  
18 or other forms of useful energy such as heat, which are used for  
19 industrial or commercial heating or cooling purposes. A combined  
20 heat and power facility or co-generation facility shall not be  
21 considered a public utility;

22 "Competitive service" means any service offered by an electric  
23 public utility or a gas public utility that the board determines to be  
24 competitive pursuant to section 8 or section 10 of P.L.1999, c.23  
25 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

26 "Commercial and industrial energy pricing class customer" or  
27 "CIEP class customer" means that group of non-residential  
28 customers with high peak demand, as determined by periodic board  
29 order, which either is eligible or which would be eligible, as  
30 determined by periodic board order, to receive funds from the Retail  
31 Margin Fund established pursuant to section 9 of P.L.1999, c.23  
32 (C.48:3-57) and for which basic generation service is hourly-priced;

33 "Comprehensive resource analysis" means an analysis including,  
34 but not limited to, an assessment of existing market barriers to the  
35 implementation of energy efficiency and renewable technologies  
36 that are not or cannot be delivered to customers through a  
37 competitive marketplace;

38 "Customer" means any person that is an end user and is  
39 connected to any part of the transmission and distribution system  
40 within an electric public utility's service territory or a gas public  
41 utility's service territory within this State;

42 "Customer account service" means metering, billing, or such  
43 other administrative activity associated with maintaining a customer  
44 account;

45 "Delivery year" or "DY" means the 12-month period from June  
46 1st through May 31st and shall be numbered according to the  
47 calendar year in which it ends;

1 "Demand side management" means the management of customer  
2 demand for energy service through the implementation of cost-  
3 effective energy efficiency technologies, including, but not limited  
4 to, installed conservation, load management and energy efficiency  
5 measures on and in the residential, commercial, industrial,  
6 institutional and governmental premises and facilities in this State;

7 "Electric generation service" means the provision of retail  
8 electric energy and capacity which is generated off-site from the  
9 location at which the consumption of such electric energy and  
10 capacity is metered for retail billing purposes, including agreements  
11 and arrangements related thereto;

12 "Electric power generator" means an entity that proposes to  
13 construct, own, lease or operate, or currently owns, leases or  
14 operates, an electric power production facility that will sell or does  
15 sell at least 90 percent of its output, either directly or through a  
16 marketer, to a customer or customers located at sites that are not on  
17 or contiguous to the site on which the facility will be located or is  
18 located. The designation of an entity as an electric power generator  
19 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in  
20 and of itself, affect the entity's status as an exempt wholesale  
21 generator under the Public Utility Holding Company Act of 1935,  
22 15 U.S.C. s.79 et seq.;

23 "Electric power supplier" means a person or entity that is duly  
24 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et  
25 al.) to offer and to assume the contractual and legal responsibility to  
26 provide electric generation service to retail customers, and includes  
27 load serving entities, marketers and brokers that offer or provide  
28 electric generation service to retail customers. The term excludes an  
29 electric public utility that provides electric generation service only  
30 as a basic generation service pursuant to section 9 of P.L.1999, c.23  
31 (C.48:3-57);

32 "Electric public utility" means a public utility, as that term is  
33 defined in R.S.48:2-13, that transmits and distributes electricity to  
34 end users within this State;

35 "Electric related service" means a service that is directly related  
36 to the consumption of electricity by an end user, including, but not  
37 limited to, the installation of demand side management measures at  
38 the end user's premises, the maintenance, repair or replacement of  
39 appliances, lighting, motors or other energy-consuming devices at  
40 the end user's premises, and the provision of energy consumption  
41 measurement and billing services;

42 "Electronic signature" means an electronic sound, symbol or  
43 process, attached to, or logically associated with, a contract or other  
44 record, and executed or adopted by a person with the intent to sign  
45 the record;

46 "Eligible generator" means a developer of a new, natural gas  
47 fired, combined-cycle electric power generating facility with a net  
48 summer output rating of 100 megawatts or larger, that is physically

1 located within the State of New Jersey, and that commences  
2 construction after the effective date of P.L. , c. (C. )  
3 (pending before the Legislature as this bill);

4 "Energy agent" means a person that is duly registered pursuant to  
5 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the  
6 sale of retail electricity or electric related services or retail gas  
7 supply or gas related services between government aggregators or  
8 private aggregators and electric power suppliers or gas suppliers,  
9 but does not take title to the electric or gas sold;

10 "Energy consumer" means a business or residential consumer of  
11 electric generation service or gas supply service located within the  
12 territorial jurisdiction of a government aggregator;

13 "Energy efficiency portfolio standard" means a requirement to  
14 procure a specified amount of energy efficiency or demand side  
15 management resources as a means of managing and reducing energy  
16 usage and demand by customers;

17 "Energy year" or "EY" means the 12-month period from June 1st  
18 through May 31st and shall be numbered according to the calendar  
19 year in which it ends;

20 "Federal Energy Regulatory Commission" or "FERC" means the  
21 federal agency established pursuant to 42 U.S.C. s.7171 et seq. to  
22 regulate the interstate transmission of electricity, natural gas, and  
23 oil;

24 "Financing entity" means an electric public utility, a special  
25 purpose entity, or any other assignee of bondable transition  
26 property, which issues transition bonds. Except as specifically  
27 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity  
28 which is not itself an electric public utility shall not be subject to  
29 the public utility requirements of Title 48 or any rules or regulations  
30 adopted pursuant thereto;

31 "Gas public utility" means a public utility, as that term is defined  
32 in R.S.48:2-13, that distributes gas to end users within this State;

33 "Gas related service" means a service that is directly related to  
34 the consumption of gas by an end user, including, but not limited to,  
35 the installation of demand side management measures at the end  
36 user's premises, the maintenance, repair or replacement of  
37 appliances or other energy-consuming devices at the end user's  
38 premises, and the provision of energy consumption measurement  
39 and billing services;

40 "Gas supplier" means a person that is duly licensed pursuant to  
41 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and  
42 assume the contractual and legal obligation to provide gas supply  
43 service to retail customers, and includes, but is not limited to,  
44 marketers and brokers. A non-public utility affiliate of a public  
45 utility holding company may be a gas supplier, but a gas public  
46 utility or any subsidiary of a gas utility is not a gas supplier. In the  
47 event that a gas public utility is not part of a holding company legal  
48 structure, a related competitive business segment of that gas public



1 utility may be a gas supplier, provided that related competitive  
2 business segment is structurally separated from the gas public  
3 utility, and provided that the interactions between the gas public  
4 utility and the related competitive business segment are subject to  
5 the affiliate relations standards adopted by the board pursuant to  
6 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

7 "Gas supply service" means the provision to customers of the  
8 retail commodity of gas, but does not include any regulated  
9 distribution service;

10 "Government aggregator" means any government entity subject  
11 to the requirements of the "Local Public Contracts Law," P.L.1971,  
12 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"  
13 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"  
14 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written  
15 contract with a licensed electric power supplier or a licensed gas  
16 supplier for: (1) the provision of electric generation service, electric  
17 related service, gas supply service, or gas related service for its own  
18 use or the use of other government aggregators; or (2) if a  
19 municipal or county government, the provision of electric  
20 generation service or gas supply service on behalf of business or  
21 residential customers within its territorial jurisdiction;

22 "Government energy aggregation program" means a program and  
23 procedure pursuant to which a government aggregator enters into a  
24 written contract for the provision of electric generation service or  
25 gas supply service on behalf of business or residential customers  
26 within its territorial jurisdiction;

27 "Governmental entity" means any federal, state, municipal, local  
28 or other governmental department, commission, board, agency,  
29 court, authority or instrumentality having competent jurisdiction;

30 "Greenhouse gas emissions portfolio standard" means a  
31 requirement that addresses or limits the amount of carbon dioxide  
32 emissions indirectly resulting from the use of electricity as applied  
33 to any electric power suppliers and basic generation service  
34 providers of electricity;

35 "Leakage" means an increase in greenhouse gas emissions  
36 related to generation sources located outside of the State that are not  
37 subject to a state, interstate or regional greenhouse gas emissions  
38 cap or standard that applies to generation sources located within the  
39 State;

40 "Long-term capacity agreement pilot program" or "LCAPP"  
41 means a one-time pilot program established by the board that is  
42 limited to participation by eligible generators, to seek offers no later  
43 than February 4, 2011, for financially-settled standard offer  
44 capacity agreements that extend for a term of not less than 15 years,  
45 to quickly and safely construct new, natural gas fired, combined-  
46 cycle electric power generating facilities with a net summer output  
47 rating of 100 megawatts or larger within the State;

1 "Market transition charge" means a charge imposed pursuant to  
2 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public  
3 utility, at a level determined by the board, on the electric public  
4 utility customers for a limited duration transition period to recover  
5 stranded costs created as a result of the introduction of electric  
6 power supply competition pursuant to the provisions of P.L.1999,  
7 c.23 (C.48:3-49 et al.);

8 "Marketer" means a duly licensed electric power supplier that  
9 takes title to electric energy and capacity, transmission and other  
10 services from electric power generators and other wholesale  
11 suppliers and then assumes the contractual and legal obligation to  
12 provide electric generation service, and may include transmission  
13 and other services, to an end-use retail customer or customers, or a  
14 duly licensed gas supplier that takes title to gas and then assumes  
15 the contractual and legal obligation to provide gas supply service to  
16 an end-use customer or customers;

17 "Net proceeds" means proceeds less transaction and other related  
18 costs as determined by the board;

19 "Net revenues" means revenues less related expenses, including  
20 applicable taxes, as determined by the board;

21 "Offshore wind energy" means electric energy produced by a  
22 qualified offshore wind project;

23 "Offshore wind renewable energy certificate" or "OREC" means  
24 a certificate, issued by the board or its designee, representing the  
25 environmental attributes of one megawatt hour of electric  
26 generation from a qualified offshore wind project;

27 "Off-site end use thermal energy services customer" means an  
28 end use customer that purchases thermal energy services from an  
29 on-site generation facility, combined heat and power facility, or co-  
30 generation facility, and that is located on property that is separated  
31 from the property on which the on-site generation facility,  
32 combined heat and power facility, or co-generation facility is  
33 located by more than one easement, public thoroughfare, or  
34 transportation or utility-owned right-of-way;

35 "On-site generation facility" means a generation facility, and  
36 equipment and services appurtenant to electric sales by such facility  
37 to the end use customer located on the property or on property  
38 contiguous to the property on which the end user is located. An on-  
39 site generation facility shall not be considered a public utility. The  
40 property of the end use customer and the property on which the on-  
41 site generation facility is located shall be considered contiguous if  
42 they are geographically located next to each other, but may be  
43 otherwise separated by an easement, public thoroughfare,  
44 transportation or utility-owned right-of-way, or if the end use  
45 customer is purchasing thermal energy services produced by the on-  
46 site generation facility, for use for heating or cooling, or both,  
47 regardless of whether the customer is located on property that is  
48 separated from the property on which the on-site generation facility

1 is located by more than one easement, public thoroughfare, or  
2 transportation or utility-owned right-of-way;

3 "Person" means an individual, partnership, corporation,  
4 association, trust, limited liability company, governmental entity or  
5 other legal entity;

6 "PJM Interconnection, L.L.C." or "PJM" means the privately-  
7 held, limited liability corporation that is a FERC-approved Regional  
8 Transmission Organization that manages the regional, high-voltage  
9 electricity grid serving all or parts of 13 states including New Jersey  
10 and the District of Columbia, operates the regional competitive  
11 wholesale electric market, manages the regional transmission  
12 planning process, and establishes systems and rules to ensure that  
13 the regional and in-State energy markets operate fairly and  
14 efficiently;

15 "Private aggregator" means a non-government aggregator that is  
16 a duly-organized business or non-profit organization authorized to  
17 do business in this State that enters into a contract with a duly  
18 licensed electric power supplier for the purchase of electric energy  
19 and capacity, or with a duly licensed gas supplier for the purchase  
20 of gas supply service, on behalf of multiple end-use customers by  
21 combining the loads of those customers;

22 "Public utility holding company" means: (1) any company that,  
23 directly or indirectly, owns, controls, or holds with power to vote,  
24 ten percent or more of the outstanding voting securities of an  
25 electric public utility or a gas public utility or of a company which  
26 is a public utility holding company by virtue of this definition,  
27 unless the Securities and Exchange Commission, or its successor,  
28 by order declares such company not to be a public utility holding  
29 company under the Public Utility Holding Company Act of 1935,  
30 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the  
31 Securities and Exchange Commission, or its successor, determines,  
32 after notice and opportunity for hearing, directly or indirectly, to  
33 exercise, either alone or pursuant to an arrangement or  
34 understanding with one or more other persons, such a controlling  
35 influence over the management or policies of an electric public  
36 utility or a gas public utility or public utility holding company as to  
37 make it necessary or appropriate in the public interest or for the  
38 protection of investors or consumers that such person be subject to  
39 the obligations, duties, and liabilities imposed in the Public Utility  
40 Holding Company Act of 1935 or its successor;

41 "Qualified offshore wind project" means a wind turbine  
42 electricity generation facility in the Atlantic Ocean and connected  
43 to the electric transmission system in this State, and includes the  
44 associated transmission-related interconnection facilities and  
45 equipment, and approved by the board pursuant to section 3 of  
46 P.L.2010, c.57 (C.48:3-87.1);

47 "Regulatory asset" means an asset recorded on the books of an  
48 electric public utility or gas public utility pursuant to the Statement

1 of Financial Accounting Standards, No. 71, entitled "Accounting for  
2 the Effects of Certain Types of Regulation," or any successor  
3 standard and as deemed recoverable by the board;

4 "Related competitive business segment of an electric public  
5 utility or gas public utility" means any business venture of an  
6 electric public utility or gas public utility including, but not limited  
7 to, functionally separate business units, joint ventures, and  
8 partnerships, that offers to provide or provides competitive services;

9 "Related competitive business segment of a public utility holding  
10 company" means any business venture of a public utility holding  
11 company, including, but not limited to, functionally separate  
12 business units, joint ventures, and partnerships and subsidiaries, that  
13 offers to provide or provides competitive services, but does not  
14 include any related competitive business segments of an electric  
15 public utility or gas public utility;

16 "Reliability pricing model" or "RPM" means PJM's capacity-  
17 market model, and its successors, that secures capacity on behalf of  
18 electric load serving entities to satisfy load obligations not satisfied  
19 through the output of electric generation facilities owned by those  
20 entities;

21 "Renewable energy certificate" or "REC" means a certificate  
22 representing the environmental benefits or attributes of one  
23 megawatt-hour of generation from a generating facility that  
24 produces Class I or Class II renewable energy, but shall not include  
25 a solar renewable energy certificate or an offshore wind renewable  
26 energy certificate;

27 "Resource clearing price" or "RCP" means the clearing price  
28 established for the applicable locational deliverability area by the  
29 base residual auction conducted by PJM as part of PJM's reliability  
30 pricing model;

31 "Resource recovery facility" means a solid waste facility  
32 constructed and operated for the incineration of solid waste for  
33 energy production and the recovery of metals and other materials  
34 for reuse;

35 "Restructuring related costs" means reasonably incurred costs  
36 directly related to the restructuring of the electric power industry,  
37 including the closure, sale, functional separation and divestiture of  
38 generation and other competitive utility assets by a public utility, or  
39 the provision of competitive services as such costs are determined  
40 by the board, and which are not stranded costs as defined in  
41 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited  
42 to, investments in management information systems, and which  
43 shall include expenses related to employees affected by  
44 restructuring which result in efficiencies and which result in  
45 benefits to ratepayers, such as training or retraining at the level  
46 equivalent to one year's training at a vocational or technical school  
47 or county community college, the provision of severance pay of two  
48 weeks of base pay for each year of full-time employment, and a

1 maximum of 24 months' continued health care coverage. Except as  
2 to expenses related to employees affected by restructuring,  
3 "restructuring related costs" shall not include going forward costs;

4 "Retail choice" means the ability of retail customers to shop for  
5 electric generation or gas supply service from electric power or gas  
6 suppliers, or opt to receive basic generation service or basic gas  
7 service, and the ability of an electric power or gas supplier to offer  
8 electric generation service or gas supply service to retail customers,  
9 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

10 "Retail margin" means an amount, reflecting differences in  
11 prices that electric power suppliers and electric public utilities may  
12 charge in providing electric generation service and basic generation  
13 service, respectively, to retail customers, excluding residential  
14 customers, which the board may authorize to be charged to  
15 categories of basic generation service customers of electric public  
16 utilities in this State, other than residential customers, under the  
17 board's continuing regulation of basic generation service pursuant to  
18 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
19 purpose of promoting a competitive retail market for the supply of  
20 electricity;

21 "Shopping credit" means an amount deducted from the bill of an  
22 electric public utility customer to reflect the fact that such customer  
23 has switched to an electric power supplier and no longer takes basic  
24 generation service from the electric public utility;

25 "Social program" means a program implemented with board  
26 approval to provide assistance to a group of disadvantaged  
27 customers, to provide protection to consumers, or to accomplish a  
28 particular societal goal, and includes, but is not limited to, the  
29 winter moratorium program, utility practices concerning "bad debt"  
30 customers, low income assistance, deferred payment plans,  
31 weatherization programs, and late payment and deposit policies, but  
32 does not include any demand side management program or any  
33 environmental requirements or controls;

34 "Societal benefits charge" means a charge imposed by an electric  
35 public utility, at a level determined by the board, pursuant to, and in  
36 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

37 "Solar alternative compliance payment" or "SACP" means a  
38 payment of a certain dollar amount per megawatt hour (MWh)  
39 which an electric power supplier or provider may submit to the  
40 board in order to comply with the solar electric generation  
41 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

42 "Solar renewable energy certificate" or "SREC" means a  
43 certificate issued by the board or its designee, representing one  
44 megawatt hour (MWh) of solar energy that is generated by a facility  
45 connected to the distribution system in this State and has value  
46 based upon, and driven by, the energy market;

47 "Standard offer capacity agreement" or "SOCA" means a  
48 financially-settled transaction agreement, approved by board order,

1 that provides for an eligible generator to receive a payment from  
2 one or more electric public utilities, in the event the SOCP is  
3 greater than the RCP for any applicable delivery year, that provides  
4 for such payment to be equal to the difference between the SOCP  
5 and the RCP multiplied by the contract capacity, that provides for a  
6 defined amount of electric capacity for the term of the transaction  
7 of not less than 15 years, and that provides for such payment to be a  
8 fully non-bypassable charge, with such an order, once issued, being  
9 irrevocable;

10 "Standard offer capacity price" or "SOCP" means the capacity  
11 price that is fixed for the term of the SOCA and is the minimum  
12 price to be received by an eligible generator under a board-  
13 approved SOCA;

14 "Stranded cost" means the amount by which the net cost of an  
15 electric public utility's electric generating assets or electric power  
16 purchase commitments, as determined by the board consistent with  
17 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the  
18 market value of those assets or contractual commitments in a  
19 competitive supply marketplace and the costs of buydowns or  
20 buyouts of power purchase contracts;

21 "Stranded costs recovery order" means each order issued by the  
22 board in accordance with subsection c. of section 13 of P.L.1999,  
23 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if  
24 any, the board has determined an electric public utility is eligible to  
25 recover and collect in accordance with the standards set forth in  
26 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery  
27 mechanisms therefor;

28 "Thermal efficiency" means the useful electric energy output of a  
29 facility, plus the useful thermal energy output of the facility,  
30 expressed as a percentage of the total energy input to the facility;

31 "Transition bond charge" means a charge, expressed as an  
32 amount per kilowatt hour, that is authorized by and imposed on  
33 electric public utility ratepayers pursuant to a bondable stranded  
34 costs rate order, as modified at any time pursuant to the provisions  
35 of P.L.1999, c.23 (C.48:3-49 et al.);

36 "Transition bonds" means bonds, notes, certificates of  
37 participation or beneficial interest or other evidences of  
38 indebtedness or ownership issued pursuant to an indenture, contract  
39 or other agreement of an electric public utility or a financing entity,  
40 the proceeds of which are used, directly or indirectly, to recover,  
41 finance or refinance bondable stranded costs and which are, directly  
42 or indirectly, secured by or payable from bondable transition  
43 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to  
44 principal, interest, and acquisition or redemption premium with  
45 respect to transition bonds which are issued in the form of  
46 certificates of participation or beneficial interest or other evidences  
47 of ownership shall refer to the comparable payments on such  
48 securities;

1 "Transition period" means the period from August 1, 1999  
2 through July 31, 2003;

3 "Transmission and distribution system" means, with respect to an  
4 electric public utility, any facility or equipment that is used for the  
5 transmission, distribution or delivery of electricity to the customers  
6 of the electric public utility including, but not limited to, the land,  
7 structures, meters, lines, switches and all other appurtenances  
8 thereof and thereto, owned or controlled by the electric public  
9 utility within this State; and

10 "Universal service" means any service approved by the board  
11 with the purpose of assisting low-income residential customers in  
12 obtaining or retaining electric generation or delivery service.  
13 (cf: P.L.2010, c.57, s.1)

14

15 3. (New section) Notwithstanding any provisions of the  
16 "Administrative Procedure Act," P. L. 1968, c.410 (C.52:14B-1 et  
17 seq.) to the contrary, the board shall, within 10 days of the effective  
18 date of P.L. , c. (C. ) (pending before the Legislature as this  
19 bill), initiate a proceeding on the schedule set forth in this section  
20 allowing such proceeding to be completed to support the  
21 commencement of the LCAPP no later than January 31, 2011, and  
22 shall adopt, after notice, the opportunity for comment, and public  
23 hearing on the schedule set forth in this section, the following  
24 requirements for the LCAPP:

25 a. the establishment of the LCAPP that allows for offering  
26 financially-settled SOCAs for the purpose of facilitating the  
27 development of eligible generators;

28 b. the establishment of the LCAAP on the following schedule:

29 (1) the board shall complete the process to develop the SOCA no  
30 later than January 1, 2011; and

31 (2) SOCAs resulting from this process shall be awarded,  
32 executed and approved by the board with a written board order no  
33 later than February 25, 2011;

34 c. the participation of selected eligible generators with board  
35 approved, executed SOCAs in and clearing of the base residual  
36 auction conducted by PJM and scheduled to commence on May 2,  
37 2011, as part of PJM's reliability pricing model for the delivery  
38 year 2015;

39 d. that it be limited to eligible generators in order to maximize  
40 economic benefits and job creation in the State;

41 e. that electric public utilities shall procure at least 500  
42 megawatts and not more than 1500 megawatts of financially-settled  
43 SOCAs from the eligible generators;

44 f. that no single eligible generator or its affiliate may enter into  
45 more than 900 megawatts of financially-settled standard offer  
46 capacity agreements;

47 g. that eligible generators participating in the LCAPP shall be  
48 required to offer the maximum quantity, in megawatts, of the SOCA

1 at the standard offer price of \$232.75 per megawatt per day, which  
2 represents a discount to the most recent clearing price established  
3 by the base residual auction conducted by the PJM in May, 2010 as  
4 part of the PJM's reliability pricing model;

5 h. that the board select an eligible generator from among the  
6 eligible generators participating in the LCAPP for the award of a  
7 board-approved long-term financially-settled SOCA for a term of  
8 not less than 15 years;.

9 i. that the selection of winning eligible generators give  
10 preference to those eligible generators located in "areas in need of  
11 redevelopment" in accordance with the "Local Redevelopment and  
12 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on  
13 the board's determination, can provide the greatest environmental,  
14 economic, and community benefits, and can demonstrate certainty  
15 of completion of development and permitting activities necessary to  
16 meet the desired in-service date;

17 j. that an eligible generator selected by the board, enter into a  
18 SOCA with each of the State's four electric public utilities provided  
19 that each electric public utility shall pay a load-ratio share of the  
20 SOCA price based upon each electric public utility's annual  
21 forecasted peak demand as determined by PJM;

22 k. that the resulting SOCA shall bind the electric public  
23 utilities to the board approved SOCAs with a selected eligible  
24 generator for not less than 15 years;

25 l. that the selected eligible generators with executed SOCAs  
26 shall offer the capacity, electricity, and ancillary services into the  
27 PJM wholesale markets as required by the PJM market rules;

28 m. that selected eligible generators with executed SOCAs shall  
29 participate in and clear the annual base residual auction conducted  
30 by the PJM as part of PJM's reliability pricing model for each  
31 delivery year of the entire term of the agreement;

32 n. that the board shall order the full recovery of all costs  
33 associated with the electric public utilities' resulting SOCAs from  
34 ratepayers through a non-bypassable, irrevocable charge;

35 (1) notwithstanding any other provision of law, each LCAPP  
36 standard offer capacity agreement shall become irrevocable upon  
37 the issuance of such order; and

38 (2) neither the board or any other governmental entity shall have  
39 the authority, directly or indirectly, legally or equitably, to rescind,  
40 alter, repeal, modify or amend an LCAPP cost rate order, to revalue,  
41 re-evaluate or revise the amount of LCAPP costs, or to determine  
42 that the LCAPP charges or the revenues to recover the LCAPP  
43 charges for such SOCAs are unjust or unreasonable; and

44 o. that the board shall have complete discretion to approve any  
45 and all SOCAs resulting from the LCAPP.

46  
47 4. This act shall take effect immediately.



STATEMENT

This bill establishes a long-term capacity agreement pilot program (hereinafter “LCAPP”) to incentivize the construction of qualified in-State electric generation facilities. The creation of the LCAPP is expected to reduce the cost of energy for New Jersey residents and reduce the State’s dependence on out-of-state generation.

This bill is also intended to further New Jersey’s policy of promoting the use of clean and efficient generation by requiring all eligible generators that participate in the LCAPP to construct clean and efficient generation facilities.

Finally, this bill is intended to promote economic development in the State through the jobs created by the construction and operation, and maintenance of new in-State generation facilities and by the expected reduction in electric energy costs.