

ASSEMBLY, No. 2474

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2012

Sponsored by:

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

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District 34 (Essex and Passaic)

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Assemblymen Wolfe and McGuckin

SYNOPSIS

Ends transitional energy facilities assessment (TEFA), caps State use portion of State energy tax revenues and ensures balance of such State revenues are paid annually as municipal aid.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/25/2012)

1 AN ACT concerning certain energy tax revenues, ending the
2 transitional energy facilities assessment and capping the State's
3 skimming of energy tax revenues, amending P.L.1997, c.162,
4 P.L.1997, c.167 and repealing section 3 of P.L.1997, c.167.

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

8
9 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
10 read as follows:

11 67. a. As used in this section:

12 "Base rates" means the rates, including minimum bills, charged
13 for utility commodities or service subject to the board's jurisdiction,
14 other than the rates charged under a utility's levelized energy
15 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
16 clause, hereinafter "LGAC," or equivalent rate provision;

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

19 "Manufacturing facility" means a facility:

20 (1) with respect to which the owner of the facility shall have
21 entered into an off-tariff rate agreement with an electric public
22 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
23 et seq.);

24 (2) that manufactures products made from using "postconsumer
25 material," as that term is defined in section 247.3 of title 40, Code
26 of Federal Regulations, and other recovered material feedstocks that
27 meet the requirements of the Comprehensive Procurement
28 Guideline For Products Containing Recovered Materials as
29 promulgated by the United States Environmental Protection Agency
30 in section 247.1 et seq. of title 40, Code of Federal Regulations,
31 pursuant to the "Resource Conservation and Recovery Act,"
32 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
33 13101, issued by the President of the United States on September
34 14, 1998, provided that at least 75 percent of the manufacturing
35 facility's total annual sales dollar volume of such products that are
36 produced in New Jersey meet the recycled content standards within
37 such guidelines;

38 (3) for which a "comprehensive energy audit," as that term is
39 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have
40 been undertaken within 90 days after the effective date of P.L.2007,
41 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
42 effective energy efficiency and conservation measures as part of the
43 efforts to reduce energy costs;

44 (4) that has been in operation in this State for at least 25 years as
45 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

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 (5) at which at least 800 employees are employed on the first
2 business or work day after the expiration of such off-tariff rate
3 agreement;

4 "Postconsumer material manufacturing facility" means a facility
5 that:

6 (1) received service under an electric public utility rate schedule
7 that applied only to the owner of the facility on January 1, 2004;

8 (2) manufactures products made from "postconsumer material,"
9 as that term is defined in 40 C.F.R. s.247.3; provided however, that
10 not less than 75 percent of the facility's total annual sales dollar
11 volume of such products produced in this State meet the definition
12 of "postconsumer material";

13 (3) completed a "comprehensive energy audit," as that term is
14 defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not
15 more than 48 months before but not later than 90 days after the
16 effective date of P.L.2009, c.90 (C.52:27D-489a et al.); and

17 (4) employed, individually or collectively with affiliated
18 facilities, not less than 150 employees in this State on April 1,
19 2009;

20 "Sales and use tax" means the sales and use tax liability
21 computed on sales and use of energy and utility service as defined
22 in section 2 of P.L.1966, c.30 (C.54:32B-2);

23 "Utility" means a public utility subject to regulation by the board
24 pursuant to Title 48 of the Revised Statutes; and

25 "Utility service" means the supply, transmission, distribution or
26 transportation of electricity, natural gas or telecommunications
27 services or any combination of such commodities, processes or
28 services.

29 b. No later than 60 days after the date this act is enacted, each
30 electric, gas and telecommunications utility subject to the
31 provisions of this act shall file with the board, and shall
32 simultaneously provide copies to the Director of the Division of the
33 Ratepayer Advocate, revised tariffs and such other supporting
34 schedules, narrative and documentation required by this act, as set
35 forth in this section, to reflect in the utility's rates the changes in tax
36 liability effected pursuant to this act. No later than 90 days after the
37 date of the utility's filing, and after determining that the filing and
38 the rate changes provided for therein are in compliance with the
39 provisions of this act, the board shall approve the utility's filing and
40 associated rates for billing to the utility's customers, effective for
41 utility service rendered on and after January 1, 1998. If the board
42 determines that the utility's filing and the associated rate changes
43 provided for therein are not in compliance with the provisions of
44 this act, the board shall require the utility to amend or otherwise
45 modify its filing to render it in compliance. The board may also
46 permit the rates provided for in the utility's filing to be implemented
47 on an interim basis pending the board's final determination in the
48 event the board, in its discretion, determines that due to the filing's

1 complexity, or for other valid reasons, including but not limited to
2 the enactment of this act after June 30, 1997, additional time is
3 needed for the board to complete its review of the filing. If the
4 rates approved by the board upon its final determination are less
5 than the rates implemented on an interim basis, the difference shall
6 be refunded to the utility's customers with interest computed in
7 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
8 implemented pursuant to this act shall not constitute a fixing of
9 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
10 requirements set forth in that section.

11 c. As of the effective date of the rate changes implemented
12 pursuant to this act, and except for rates applicable to sales that
13 were or are currently exempt from the unit-based energy taxes
14 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
15 and rates applicable to sales to which section 59 of P.L.1997, c.162
16 (C.48:2-21.31) applies, the board shall remove from the base rates
17 of each electric public utility and gas public utility the unit tax rates
18 included therein for the recovery of those unit-based energy taxes,
19 and include therein provision for the recovery of corporation
20 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
21 seq.), and additionally shall authorize the collection of the sales and
22 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
23 follows:

24 (1) The base rates of each gas and electric utility shall be
25 reduced by the amount of the unit-based energy taxes per
26 kilowatthour or per therm included therein.

27 (2) The provision for corporation business tax initially included
28 in the base rates of each gas and electric utility shall be based on the
29 utility's after-tax net income earned in the base year as booked,
30 unless the board determines, in its discretion, that such income as
31 booked is unusually high or low or otherwise unrepresentative of
32 the utility's prospective net income, in which case the utility's base
33 year net income shall be adjusted as determined by the board.

34 To permit the board to make this determination, in addition to
35 including in its filing schedules showing its net income earned in
36 the base year as booked, the utility shall include adjustments to such
37 booked income to eliminate the effect of revenues, expenses and
38 extraordinary or other charges that are non-recurring, atypical, or
39 both, including, but not limited to an adjustment to eliminate the
40 effect of unusually hot or cold weather, and that would otherwise
41 make the utility's base year net income unusually high or low or
42 otherwise unrepresentative of the utility's prospective net income.
43 If the adjustment is being made to eliminate the effect of unusually
44 hot or cold weather, associated revenue and expense adjustments
45 shall also be made. Subject to the board's approval, such adjusted
46 income shall be the basis for the calculation of the initial provision
47 for corporation business tax to be included in the utility's base rates.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatthour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

25

27

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

44 "Rs" means the corporation business tax rate, expressed as a
45 decimal;

48 "Re" equals $R_s + R_f(1-R_s)$.

1 The utility shall account for the changes in tax liability provided
2 for by this act effective January 1, 1998. Such accounting shall
3 include the recording on the utility's income statement and balance
4 sheet of deferred corporation business tax defined, for book
5 accounting purposes, as differences in corporation business tax
6 expense arising from timing differences in the recognition of
7 revenue and expenses for book and tax purposes.

8 (3) When billed to the utility's customers, the adjusted base rate
9 charges determined pursuant to paragraphs (1), (2), and (4) of this
10 subsection, and the charges determined pursuant to the utility's
11 levelized energy adjustment clause, levelized gas adjustment clause,
12 or both, as determined both upon the effective date of the rate
13 changes authorized by this act and as revised prospectively in
14 accordance with the utility's tariff filed with and approved by the
15 board, and the transitional energy facility assessment unit rate
16 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
17 accordance with subsection d. of this section, shall be increased by
18 an amount determined by multiplying such charges by the sales and
19 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
20 addition to the utility's rates for service included in its tariff, for
21 informational purposes the tariff shall include such rates after
22 application of the sales and use tax authorized by this section.

23 (4) The utility's filing with the board to implement the rate
24 changes provided for by this act shall include an analysis,
25 description, and quantification of the effect of the changes in rates
26 and tax payments implemented pursuant to this act on the utility's
27 requirement for cash working capital, and if such requirement is
28 less than the cash working capital allowed for the collection and
29 payment of unit-based energy taxes formerly imposed pursuant to
30 P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base
31 rates in effect prior to the rate changes implemented pursuant to this
32 act, and to the extent the working capital reduction is not offset by a
33 reduction in net deferred taxes as provided for below, such base
34 rates shall be reduced by the reduction in the utility's revenue
35 requirement associated with the remaining reduction in the working
36 capital requirement not so offset, if any. The reduction in working
37 capital shall be determined by using the same methodology
38 employed in establishing the working capital allowance related to
39 unit-based energy taxes reflected in the utility's base rates in effect
40 prior to the rate changes implemented pursuant to this act. The
41 reduction in the utility's revenue requirement associated with the
42 reduced working capital requirement shall be calculated using the
43 utility's last overall rate of return allowed by the board, including
44 provision for federal income taxes and the corporation business tax
45 implemented pursuant to this act payable on the equity portion of
46 the return, and shall be implemented on the effective date of the rate
47 changes provided for, and in the manner set forth in paragraph (2)
48 of this subsection.

1 If the utility's requirement for cash working capital is increased
2 as a result of the changes in rates and tax payments implemented
3 pursuant to this act, the utility may accrue carrying costs, calculated
4 at its last overall rate of return allowed by the board and applied on
5 a simple annual interest basis without compounding, on the
6 increased working capital requirement and request recovery of such
7 carrying costs in a rate proceeding before the board.

8 The working capital-related base rate changes and carrying cost
9 accruals shall be subject to the board's approval, and shall not be
10 included in the determination of the TEFA unit tax surcharges
11 provided for in subsection d. of this section.

12 The utility's filing with the board to implement the rate changes
13 provided for by this act shall also include an analysis, description
14 and quantification of net deferred taxes. For the purposes of this
15 section, "net deferred taxes" means deferred corporation business
16 taxes, net of federal deferred income taxes, associated with the tax
17 and rate changes implemented pursuant to this act, including
18 deferred corporation business tax recorded in accordance with
19 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
20 calendar year in which this act takes effect and for each year of the
21 tax life of the asset giving rise to the deferred corporation business
22 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

23 If the change in such net deferred taxes projected for the calendar
24 year in which the rate changes implemented pursuant to this act take
25 effect is negative and if the utility's requirement for working capital
26 is reduced as a result of the changes in rates and tax payments
27 implemented pursuant to this act, the working capital-related rate
28 reduction that otherwise would have been implemented pursuant to
29 this subsection shall be treated as set forth in subparagraph (a) or
30 (b) of this paragraph. For the purposes of this act, a change in net
31 deferred taxes is considered negative when it reduces an existing
32 deferred tax liability or creates a deferred tax asset on the utility's
33 balance sheet. An appropriate rate adjustment for the working
34 capital impacts of this act, reflecting all relevant facts and
35 circumstances at the time of the adjustment, shall be made in the
36 year when the earlier of the following events occur:

37 (a) The year in which the reduction in carrying costs assumed
38 for the rate reduction for working capital that would have been
39 made but for this paragraph is no longer required to offset, on a
40 present value basis, the annual carrying costs calculated on the
41 accumulated balance of negative net deferred taxes projected to be
42 recorded by the utility, its successors and assigns, over the tax life
43 of the single asset account giving rise to such net deferred taxes
44 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the
45 purposes of this subparagraph (a):

46 (i) Carrying costs and present values are to be computed using
47 the weighted average after-tax rate of return approved by the board
48 in the utility's last base rate proceeding.

1 (ii) The accumulated balance of such negative net deferred taxes
2 shall include net deferred taxes associated with all assets and
3 liabilities originally placed in service by the utility and held by the
4 utility or a company affiliated with the utility regardless of whether
5 or not such assets continue to be subject to regulation by the New
6 Jersey Board of Public Utilities.

7 (b) The year in which both an appropriate working capital
8 adjustment and the accumulated balance of negative deferred taxes,
9 as described in sub-subparagraph (ii) of subparagraph (a) of this
10 paragraph (4), are reflected in the utility's rate base in a rate
11 proceeding before the board. It is the intent of this section to fully
12 compensate utilities on a present value basis, for the carrying costs
13 associated with negative net deferred taxes arising as a result of this
14 act, and to remit to ratepayers any credit due them as a result of any
15 overcompensation as may have occurred due to the treatment of
16 working capital and deferred taxes as set forth herein or in
17 subparagraph (a) of this paragraph (4). At the time the above base
18 rate adjustment is made, an analysis shall be made to determine if
19 such carrying costs have been or will be fully recovered pursuant to
20 the intent of this provision and any additional credit or charge to
21 ratepayers to adjust for ratepayer overpayments or underpayments,
22 if any shall be addressed.

23 If the change in net deferred taxes is positive, the increase shall
24 be added to, or increase, the reduction in the utility's requirement
25 for working capital if the requirement is reduced as a result of the
26 rate and tax payment changes implemented pursuant to this act, or
27 subtracted from the working capital requirement if it is increased,
28 and the resultant net working capital requirement shall be reflected
29 in rates or accrue carrying costs in the same manner as prescribed
30 for changes in the utility's requirement for working capital above.

31 The deferred tax-related rate changes or carrying cost accruals
32 shall be subject to the board's approval and shall not be included in
33 the determination of the TEFA unit rate surcharges provided for in
34 subsection d. of this section.

35 d. (1) Electric and gas utilities shall file, for the board's review
36 and approval, initial TEFA unit rate surcharges determined by
37 deducting from each unit-based energy tax unit tax rate effective
38 January 1, 1997 the following:

39 (a) An amount per kilowatthour or per therm determined by
40 multiplying the total revenue received in the base year from sales to
41 which that unit tax rate would have been applicable by the factor
42 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
43 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
44 dividing the result by the kilowatthours or therms billed in that unit
45 tax rate class in the base year; and

46 (b) An amount per kilowatthour or per therm determined by
47 dividing the revenue that would have been received in the base year
48 from the inclusion, in the manner prescribed in paragraph (2) of

1 subsection c. of this section, of the corporation business tax in the
2 rates applicable to sales billed in that unit tax rate class by the
3 kilowatthours or therms billed in that rate class. In each case, the
4 determination shall reflect the effect of adjustments that affect the
5 level of sales and revenue, if any, as provided in subsection c. of
6 this section. Of the resultant rate per kilowatthour or per therm, the
7 portion for recovery of the utility's transitional energy facilities
8 assessment liability shall be determined by multiplying such rate by
9 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
10 expressed as a decimal.

11 The TEFA unit rate surcharges shall constitute non-bypassable
12 wires and/or mains charges of the utility, and shall be applied to all
13 sales within the customer classes to which they apply, regardless of
14 whether such customers are purchasing bundled or unbundled
15 services from the utility, but shall not be applied to sales:

16 (i) that were or are currently exempt from unit-based energy
17 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
18 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
19 applies,

20 (ii) for a period of seven years commencing on the first day after
21 the expiration of an off-tariff rate agreement, entered into or
22 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
23 21.24 et seq.), to a manufacturing facility for use or consumption
24 directly and primarily in the production of tangible personal
25 property, other than energy, and

26 (iii) for a period of seven years beginning on January 1, 2010, to
27 a postconsumer material manufacturing facility for use or
28 consumption directly and primarily in the production of tangible
29 personal property, other than energy.

30 Notwithstanding the provisions of the exemption provided in
31 sub-subparagraph (ii) and sub-subparagraph (iii) of subparagraph
32 (b) of paragraph (1) of subsection d. of this section, the TEFA unit
33 rate surcharge shall be applied to the sales to the owner of the
34 manufacturing facility or the postconsumer material manufacturing
35 facility and the owner shall be refunded an amount equal to the
36 TEFA unit rate surcharge paid by the filing, within 30 days
37 following the close of a calendar quarter in which the exemption
38 applies, of a claim with the Director of the Division of Taxation in
39 the Department of the Treasury for a refund of the TEFA unit rate
40 surcharge paid, which refund shall be paid within 60 days of the
41 refund claim being filed. Proof of claim for refund shall be made
42 by the submission of such records and other documentation as the
43 director may require. If the owner of the manufacturing facility or
44 the postconsumer material manufacturing facility at any time during
45 the exemption period provided in sub-subparagraph (ii) or sub-
46 subparagraph (iii) of subparagraph (b) of paragraph (1) of
47 subsection d. of this section relocates the manufacturing facility to a
48 location outside of this State, the owner shall pay to the director the

1 amount of TEFA unit rate surcharge for which an exemption shall
2 have been allowed and refund obtained under this section. The
3 State Treasurer shall notify the director of the relocation of a
4 manufacturing facility or a postconsumer material manufacturing
5 facility to a location outside of this State, and the director shall
6 issue a tax assessment for the recapture of tax, equal to the amount
7 of TEFA unit rate surcharge for which an exemption shall have
8 been allowed and refund obtained under this section. The recapture
9 of tax shall be a State tax subject to the State Uniform Tax
10 Procedure Law, R.S.54:48-1 et seq., and shall be deposited in the
11 General Fund.

12 If, following the effective date of this act, a customer taking
13 bundled service from the utility shall elect to obtain its
14 requirements from another supplier and take transportation or
15 wheeling service from the utility, the TEFA unit rate surcharge
16 applicable to the bundled service shall continue to apply to the
17 transportation or wheeling service. The TEFA components of the
18 unit rate surcharges determined pursuant to this subsection (the
19 components of the surcharges remaining after deducting the
20 provision for corporation business tax included therein) shall be
21 used to determine the transitional energy facility assessment
22 liability pursuant to sections 36 through 49 of P.L.1997, c.162
23 (C.54:30A-100 through C.54:30A-113).

24 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
25 subsection, the initial TEFA unit rate surcharges are to be reduced
26 annually on January 1, 1999 through January 1, 2001 by the
27 following percentages:

28	January 1, 1999,	20%
29	January 1, 2000,	40%
30	January 1, 2001,	60%

31 (3) For each year beginning with calendar year 1998 and ending
32 with calendar year 2001, the TEFA surcharge adjustment shall be
33 determined as the difference between:

34 (a) The sum of the estimated, or actual when known, (i) TEFA
35 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
36 107), and sales and use taxes collected and corporation business
37 taxes booked for the year 1998 by the gas and electric utilities and
38 other entities subject to the TEFA provisions of this act (the year
39 1998 liability), and (ii) the TEFA liabilities of those utilities and
40 entities in all years following the year 1998 through the year in
41 which a determination is being made pursuant to this subsection
42 (the determination year); and

43 (b) The sum of (i) the total of each remitter's base year liability,
44 as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii)
45 the cumulative TEFA obligation, defined as the sum through the
46 determination year of the amounts calculated by multiplying, for the
47 applicable year, the percentage in the second column of the
48 following table:

1	Determination Year	% of
2		Year 1998
3		TEFA
4	-----	
5	1999	80%
6	2000	60%
7		
8	by the Year 1998 TEFA,	
9	where the Year 1998 TEFA is calculated as the total of each	
10	remitter's base year liability less the sales and use taxes collected	
11	and the corporation business taxes booked for the privilege period	
12	ending in calendar year 1998 by the gas and electric utilities and	
13	other entities subject to the TEFA provisions of this act. For	
14	purposes of this subsection, the amounts assumed for the	
15	determination year, including the year 1998 liability when first	
16	determined for the purposes of this subsection, shall be estimates	
17	based on nine months of actual data through and including the	
18	month of September, and three months of data forecast for the	
19	months of October through December.	
20	(4) If the TEFA surcharge adjustment determined for the	
21	determination year is positive (that is, if the amount determined	
22	pursuant to subparagraph (a) of paragraph (3) of this subsection is	
23	greater than the amount determined pursuant to subparagraph (b) of	
24	paragraph (3) of this subsection), no reduction shall be made in the	
25	reduction in the TEFA unit rate surcharges provided for in	
26	paragraph (2) of this subsection for the year following the	
27	determination year. If the TEFA surcharge adjustment is negative,	
28	the reduction in the TEFA unit rate surcharges that otherwise would	
29	have been implemented on January 1 of the year following the	
30	determination year pursuant to paragraph (2) of this subsection shall	
31	be reduced by an amount (by percentage points) equal to the	
32	percentage the TEFA surcharge adjustment is of the total of the	
33	base year transitional energy facility assessment of all remitters, as	
34	defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided	
35	however, that such reduction in the reduction in the TEFA unit rate	
36	surcharges shall not exceed the percentage shown in paragraph (2)	
37	of this subsection for that year; and provided further that in the first	
38	two years, that such reduction shall not exceed 10 percentage points	
39	for each year.	
40	(5) (a) The TEFA unit rate surcharges for calendar years 2002	
41	through 2011 shall be the same as the TEFA unit rate surcharges in	
42	effect for calendar year 2001.	
43	(b) The TEFA unit rate surcharges in effect for calendar year	
44	2011 shall be reduced on January 1, 2012 【and January 1, 2013】 by	
45	【the following percentages:	
46	January 1, 2012 】	25% ₂
47	【January 1, 2013	50%】

1 e. The utility's filing with the board to implement the rate
2 changes provided for by this act shall include proof of revenue
3 schedules that show for each rate schedule included in the utility's
4 tariff, aggregated by unit-based energy tax unit tax classes, the
5 number of customers billed under the rate schedule, the billing
6 determinants of such customers (i.e. the kilowatts of billing demand
7 and kilowatthours of electric energy consumed, and the million
8 cubic feet/deca-therm subject to gas capacity-related charges and
9 deca-therm of gas consumed) and the associated revenue, both as
10 booked in the base year and on a pro forma basis reflecting the rate
11 changes implemented pursuant to this act. The proof of revenue
12 shall additionally show the amount of unit-based energy taxes
13 included in the base year revenue as booked, the unit-based energy
14 taxes that would have been collected at the unit-based energy tax
15 unit tax rates effective January 1, 1997, if different, as well as the
16 corporation business tax, sales and use tax and transitional energy
17 facility assessment revenue that would have been collected or
18 received on a pro forma basis if the rates implemented pursuant to
19 this act had been in effect in the base year.

20 f. The board may, in its discretion, permit the rate changes
21 provided for in this act to be implemented as part of a pending base
22 rate case or other proceeding in which the utility's rates are to be
23 changed, provided that the effective date of the changes is not
24 delayed beyond the date on which the changes would have been
25 implemented under subsection c. of this section. The board may
26 also, pursuant to its powers provided by law, permit or require
27 further modifications in the implementation of this section to
28 address unforeseen consequences arising out of the implementation
29 of this act.

30 g. Customers of the utility who are exempt from the sales and
31 use tax imposed on sales of gas and/or electricity or as a result of
32 rate changes occurring prior to the effective date of this act or for
33 other valid reasons are due a refund of sales or use tax inadvertently
34 imposed on such customers as a result of implementing the rate
35 changes provided for by this act shall file with the State Treasurer
36 to obtain such refunds. The State Treasurer shall promptly notify
37 the utility of customers granted refunds under this provision in
38 order to prevent additional collections of the sales and use tax from
39 such customers.

40 h. Public utilities providing telecommunications service
41 regulated by the board shall file for the board's review and approval
42 revised tariffs that eliminate from the rates applicable to such
43 service the excise tax liability included therein pursuant to
44 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
45 corporation business tax calculated using the methodology used in
46 calculating the adjustment factor set forth in paragraph (2) of
47 subsection c. of this section. Subsection d. of this section shall not
48 apply to telecommunication utilities, and telecommunication

1 utilities subject to a plan of regulation other than rate base/rate of
2 return shall additionally not be required to file the rate of return
3 information required by paragraph (2) of subsection c. Such
4 utilities shall, however, include a narrative and/or other
5 documentation as required by the board to support the
6 reasonableness of the after-tax income, which may be adjusted to
7 eliminate the effect of non-recurring or other atypical events, on
8 which the corporate business tax inclusion in rates is based.
9 Telecommunications utilities shall comply with all other applicable
10 provisions of this section.

11 i. (1) The board shall not adjust the rates of a public utility, as
12 provided in subsections c. and d. of this section, for a purchase by a
13 cogenerator of natural gas and the transportation of that gas, that is
14 exempt from sales and use tax pursuant to paragraph (2) of
15 subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).
16 The board shall not allocate, in any future rate case, any sales and
17 use tax, corporation business tax, or transitional energy facility
18 assessment to rates for this purpose.

19 (2) The board shall adjust the rates, as provided in subsection c.
20 of this section, for a purchase by a cogenerator of any quantity of
21 natural gas and the transportation of that gas that is not exempt from
22 sales and use tax pursuant to paragraph (2) of subsection b. of
23 section 26 of P.L.1997, c.162 (C.54:32B-8.46).

24 (3) For the purposes of this section, "cogenerator" means a
25 person or business entity that owns or operates a cogeneration
26 facility in the State of New Jersey, which facility is a plant,
27 installation or other structure whose primary purpose is the
28 sequential production of electricity and steam or other forms of
29 useful energy which are used for industrial, commercial, heating or
30 cooling purposes, and which is designated by the Federal Energy
31 Regulatory Commission, or its successor, as a "qualifying facility"
32 pursuant to the provisions of the "Public Utility Regulatory Policies
33 Act of 1978," Pub.L.95-617.

34 (cf: P.L.2009, c.90, s.51)

35

36 2. Section 38 of P.L.1997, c.167 (C.54:30A-102) is amended to
37 read as follows:

38 38. Each remitter's transitional energy facility assessment shall
39 be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-
40 21.34). Under no circumstances shall an assessment be made under
41 this act for any year commencing after December 31, **[2013]** 2012.

42 (cf: P.L.2008, c.32, s.2)

43

44 3. Section 2 of P.L.1997, c.167 (C.52:27D-439) is amended to
45 read as follows:

46 2. a. **[Commencing July 1, 1997 there]** There is established
47 the "Energy Tax Receipts Property Tax Relief Fund" as a special
48 dedicated fund in the State Treasury into which there shall be

1 credited annually **【**, commencing in State fiscal year 1998,**】** the sum
2 of **【**\$740,000,000 or the amount determined pursuant to subsection
3 e. of this section**】** the total annual revenue from the following: net
4 payments under the "Sales and Use Tax Act," P.L.1966, c.30
5 (C.54:32B-1 et seq.) from sales and use of energy or utility services,
6 net payments under the Corporation Business Tax Act (1945),
7 P.L.1945, c.162 (C.54:10A-1 et seq.) from gas, electric, and gas and
8 electric public utilities, whether municipal or otherwise, that were
9 subject to tax pursuant to the provisions of P.L.1940, c.5
10 (C.54:30A-49 et seq.) prior to January 1, 1998, net payments under
11 the Corporation Business Tax Act (1945), P.L.1945, c.162
12 (C.54:10A-1 et seq.) from telecommunications public utilities that
13 were subject to tax pursuant to the provisions of P.L.1940, c.4
14 (C.54:30A-16 et seq.) as of April 1, 1997, net payments under
15 P.L.1940, c.5 (C.54:30A-49 et seq.) from sewerage and water
16 corporations, and net payments under the "Transitional Energy
17 Facility Assessment Act," P.L.1997, c.162 (C.54:30A-100 through
18 C.54:30A-113), **【and such sums from】** but net of \$403,000,000
19 from those sources, which amount, but no greater amount thereof,
20 may be credited to the General Fund as **【**may be necessary to
21 provide that the annual amount credited to the fund shall equal
22 \$740,000,000 or the amount determined pursuant to subsection e. of
23 this section**】** general State revenue.

24 b. **【**Notwithstanding the provisions of P.L.1940, c.4
25 (C.54:30A-16 et seq.), P.L.1940, c.5 (C.54:30A-49 et seq.) and any
26 other provision of law concerning the apportionment and
27 distribution by the State of taxes paid by public utilities,

28 (1)**】** There shall be paid **【**during the State fiscal year 1998 and**】**
29 during each fiscal year **【**thereafter**】** from the "Energy Tax Receipts
30 Property Tax Relief Fund" to the municipalities of the State **【**the
31 sum of \$740,000,000 or**】** the amount determined pursuant to
32 subsection e. of this section.

33 **【**(2) A portion of the \$740,000,000 or the amount determined
34 pursuant to subsection e. of this section shall be allocated in a
35 manner that provides that each municipality shall receive an amount
36 not less than the largest annual amount received or to be received
37 by the municipality from:

38 (a) the distribution of \$685,000,000 from the proceeds of the
39 public utilities franchise and gross receipts taxes under P.L.1940,
40 c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.)
41 in calendar year 1994, 1995 or 1996; or

42 (b) the distribution of \$685,000,000 from the proceeds of the
43 public utilities franchise and gross receipts taxes under P.L.1940,
44 c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.)
45 or from taxes and assessments collected in replacement of such
46 taxes as released by the Division of Local Government Services in
47 the Department of Community Affairs as fiscal year 1998 estimated

1 franchise and gross receipts taxes State aid distributions by
2 municipality prior to the certification of apportionment of such
3 funds by the Director of the Division of Taxation and the amounts
4 required pursuant to subsection d. of this section.

5 (3) A portion of the \$740,000,000 or the amount determined
6 pursuant to subsection e. of this section shall be allocated in a
7 manner that provides that each municipality shall receive an amount
8 equal to the difference, if any, between the amount it received
9 pursuant to paragraph (2) of this subsection and the sum of the
10 amounts that the municipality received pursuant to the certification
11 made in the 1997 calendar year released by the Division of Local
12 Government Services in the Department of Community Affairs as
13 the fiscal year 1998 estimated franchise and gross receipts taxes
14 State aid distribution of \$685,000,000 and the certification of the
15 1997 fiscal year distribution of \$45,000,000.

16 (4) The portion of the \$740,000,000 or the amount, not more
17 than \$755,000,000, determined pursuant to subsection e. of this
18 section remaining after the allocations pursuant to paragraphs (2)
19 and (3) of this subsection shall be distributed in proportion to the
20 amounts distributed pursuant to paragraph (2) of this subsection.】

21 c. 【(1)】 The funds distributed pursuant to 【paragraphs (2) and
22 (4) of subsection b. of】 this section shall be distributed annually to
23 municipalities on the following schedule: 【July 15, 35% of the total
24 amount due;】 August 1, 【10%】 45% of the total amount due;
25 September 1, 30% of the total amount due; October 1, 15% of the
26 total amount due; November 1, 5% of the total amount due; and
27 December 1, 5% of the total amount due.

28 【(2)The funds distributed pursuant to paragraph (3) of
29 subsection b. of this section, prior to January 1, 2002 for all
30 municipalities, and distributed after January 1, 2002 for
31 municipalities operating on a State fiscal year basis, shall be
32 distributed annually to those municipalities on or before June 30.
33 The funds distributed after January 1, 2002 pursuant to paragraph
34 (3) of subsection b. of this section to calendar year municipalities
35 shall be distributed annually on or before July 15.】

36 d. 【The allocation set forth in paragraph (2) of subsection b. of
37 this section shall be adjusted to increase each appropriate municipal
38 distribution by the amount necessary to:

39 (1) make corrections to apportionment valuations or distribution
40 values made by the Director of the Division of Taxation in the
41 Department of the Treasury pursuant to R.S.54:30-2; and

42 (2) correct equitable distortions, as determined by the State
43 Treasurer, resulting from the application of section 2 of P.L.1980,
44 c.10 (C.54:30A-24.1) and section 4 of P.L.1980, c.11 (C.54:30A-
45 61.1).

46 The director shall report to the Legislature, on or before July 15,
47 1997, the amount and distribution of the corrections pursuant to

1 paragraphs (1) and (2) of this subsection.】 (Deleted by amendment,
2 P.L. , c.) (pending before the Legislature as this bill)

3 e. **【The】** If the amount credited to the "Energy Tax Receipts
4 Property Tax Relief Fund" **【shall be \$745,000,000 for State fiscal**
5 **year 1999, \$750,000,000 for each of State fiscal years 2000 and**
6 **2001, \$755,000,000 for State fiscal year 2002, and】** for **【each】** a
7 fiscal year 【thereafter the】 is an amount 【equal to】 less than or
8 greater than the amount credited in the prior fiscal year **【multiplied**
9 **by the sum of 1.0 and the index rate or zero, whichever is greater.**
10 **As used in this section, "index rate" means the rate of annual**
11 **percentage increase, rounded to the nearest half-percent, in the**
12 **Implicit Price Deflator for State and Local Government Purchases**
13 **of Goods and Services, computed and published quarterly by the**
14 **United States Department of Commerce, Bureau of Economic**
15 **Analysis, calculating the annual increase therein at the second**
16 **calendar quarter which occurred in the next preceding State fiscal**
17 **year. The Director of the Division of Local Government Services**
18 **shall promulgate annually the index rate to apply in the next**
19 **following State fiscal year which shall be the same as the index rate**
20 **determined pursuant to section 4 of P.L.1983, c.49 (C.40A:4-**
21 **45.1a)】** the amount of aid distributed to a municipality shall be
22 reduced or increased, as the case may be, in proportion to the
23 amount of aid distributed to the municipality in the prior State fiscal
24 year. Any amount of aid distributed to a municipality in excess of
25 the amount distributed to the municipality from the "Energy Tax
26 Receipts Property Tax Relief Fund" during the State fiscal year
27 2002 shall be used solely and exclusively by each municipality for
28 the purpose of reducing the amount the municipality is required to
29 raise by local property tax levy for municipal purposes.

30 f. Notwithstanding any other provision of this section or any
31 other provision of law to the contrary, if any municipality paid a
32 county for an amount for county purposes from the amount it
33 received from its apportionment of taxes according to the
34 limitations on the municipalities apportionment under section 4 of
35 P.L.1980, c.11 (C.54:30A-61.1), the highest amount of that
36 payment during calendar years 1994, 1995, and 1996 shall be paid
37 annually directly to that county by the State Treasurer and be
38 deducted from that municipality's distribution otherwise determined
39 pursuant to paragraph (2) of subsection b. of this section.
40 (cf: P.L.2002, c.3, s.1).

41
42 4. Section 4 of P.L.1997, c.167 (C.52:27D-441) is amended to
43 read as follows:

44 4. a. The annual appropriations act for each State fiscal year
45 commencing with fiscal year **【1998】** 2013 shall appropriate the full
46 amount credited to the "Energy Tax Receipts Property Tax Relief
47 Fund" pursuant to the provisions of section 2 of P.L.1997, c.167

1 (C.52:27D-439), and distribute to each municipality during the
2 fiscal year **【an amount not less than \$740,000,000 or】** exclusively
3 from the sources credited to the fund pursuant to that section, the
4 amount determined pursuant to subsection e. of section 2 of
5 P.L.1997, c.167 (C.52:27D-439) from the "Energy Tax Receipts
6 Property Tax Relief Fund" pursuant to the provisions of that section
7 **【2 of P.L.1997, c.167 (C.52:27D-439), for the purposes of that**
8 **fund】**.

9 b. If the provisions of subsection a. of this section are not met
10 on the effective date of an annual appropriations act for the State
11 fiscal year, or if an amendment or supplement to an annual
12 appropriations act for the State fiscal year should violate the
13 provisions of subsection a. of this section, the Director of the
14 Division of Budget and Accounting in the Department of the
15 Treasury shall, not later than five days after the enactment of the
16 annual appropriations act, or an amendment or supplement thereto,
17 that violates the provisions of subsection a. of this section, certify to
18 the Director of the Division of Taxation that the requirements of
19 subsection a. of this section have not been met.

20 c. The Director of the Division of Taxation shall, no later than
21 five days after certification by the Director of the Division of
22 Budget and Accounting in the Department of the Treasury pursuant
23 to subsection b. of this section that the provisions of subsection a.
24 of this section have not been met or have been violated by an
25 amendment or supplement to the annual appropriations act, notify
26 all taxpayers that have filed a return under the Corporation Business
27 Tax (1946), P.L.1945, c.162 (C.54:10A-1 et seq.) during the
28 previous calendar year, other than taxpayers that are gas, electric,
29 and gas and electric, or telecommunications public utilities as
30 defined pursuant to subsection (q) of section 4 of P.L.1945, c.162
31 (C.54:10A-4) pursuant to the amendment to that section 4 made in
32 section 2 of P.L.1997, c.162, that the taxpayer shall have no
33 liability pursuant to the provisions of P.L.1945, c.162 for any
34 corporation business tax for the taxpayer's current privilege period,
35 notwithstanding any other provision of law to the contrary.

36 (cf: P.L.1997, c.167, s.4)

37
38 5. Section 3 of P.L.1997, c.167 (C. 52:27D-440) is repealed.

39
40 6. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill puts an end to the practice of overtaxing New Jersey's
46 energy consumers and short changing New Jersey's municipalities.
47 It ends the repeated, extended imposition of the "temporary"
48 transitional energy facilities assessment (TEFA), limits the amount

1 of the State use portion of total annual State energy tax revenues to
2 the amount the State budget "skimmed" in fiscal year 1998, and
3 ensures that the balance of annual State revenues from energy-
4 sector taxes are paid-out annually as municipal aid.

5 TEFA was created in 1997 when the taxation of utilities was
6 shifted from a gross receipts tax to a combination of the corporation
7 business tax and the sales and use tax. The TEFA was established as
8 a transitional mechanism to phase in over several years the net
9 reduction in tax revenue from utilities. Legislation extended the
10 original phase-in schedule in 2001 and again in 2004, 2006 and
11 2008. This bill will end the continuing extension of this
12 "transitional" tax that has become a rather permanent general
13 revenue source that supports the growing State budget and is
14 embedded within electricity and natural gas commodity prices
15 charged to New Jersey consumers.

16 This bill will also limit the amount of the State-use portion of
17 total annual State energy tax revenues. This is the portion of total
18 energy sector-related State tax revenue that the State uses as general
19 revenue to support the annual State budget. The State budget will
20 be limited to retaining the amount "skimmed" in fiscal year 1998,
21 the first year under the 1997 energy tax reform law. In 1998 the
22 State retained \$403 million from energy taxes and distributed \$740
23 million to municipalities. In 2009 the State retained \$926 million,
24 while distributing \$789 million. In 2010, the State retained \$844
25 billion, while distributing \$789 million. In 2011, the State retained
26 \$860 million, while distributing \$789 million. In 2012, the State
27 anticipates retaining \$909 million, while distributing \$789 million.

28 The bill also changes the crediting of these tax revenues to the
29 "Energy Tax Receipts Property Tax Relief Fund," and requires a
30 larger annual appropriation and distribution of tax revenues to
31 municipalities to support local property tax relief. With the price of
32 energy and natural gas rising substantially over the last ten years,
33 along with a steady growth in energy consumption, the related
34 growth in energy-related State revenue has mostly accrued to the
35 support of the growth in State budget spending. This is
36 demonstrated by the over 100% growth in the amount of the annual
37 State retention of this revenue. With the capping of this retention at
38 the 1998 level of \$403 million, and assuming only current levels of
39 revenue, municipal aid from this source will grow by over \$500
40 million. Any future revenue growth, would be distributed for
41 municipal aid to each municipality in proportion to each
42 municipality's prior year State aid distributed from this source.