

ASSEMBLY, No. 275

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Requires electric utility bills to separately list the amount of State sales tax, societal benefits charge and transitional energy facility unit rate assessment surcharge.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning bills for electric public utility service, and
2 amending various sections of statutory law.

3

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

6

7 1. Section 14 of P.L.1966, c.30 (C.54:32B-14) is amended to
8 read as follows:

9 14. (a) Every person required to collect any tax imposed by this
10 act shall be personally liable for the tax imposed, collected or
11 required to be collected under this act. Any such person shall have
12 the same right in respect to collecting the tax from that person's
13 customer or in respect to non-payment of the tax by the customer as
14 if the tax were a part of the purchase price of the property or
15 service, amusement charge or rent, as the case may be, and payable
16 at the same time; provided, however, that the director shall be
17 joined as a party in any action or proceeding brought to collect the
18 tax.

19 (b) Where any customer has failed to pay a tax imposed by this
20 act to the person required to collect the same, then in addition to all
21 other rights, obligations and remedies provided, such tax shall be
22 payable by the customer directly to the director and it shall be the
23 duty of the customer to file a return with the director and to pay the
24 tax to the director within 20 days of the date the tax was required to
25 be paid.

26 (c) The director may, whenever the director deems it necessary
27 for the proper enforcement of this act, provide by regulation that
28 customers shall file returns and pay directly to the director any tax
29 herein imposed, at such times as returns are required to be filed and
30 payment over made by persons required to collect the tax.

31 (d) No person required to collect any tax imposed by this act
32 shall advertise or hold out to any person or to the public in general,
33 in any manner, directly or indirectly, that the tax is not considered
34 as an element in the price, amusement charge or rent payable by the
35 customer, or except as provided by subsection (f) of this section that
36 the person required to collect the tax will pay the tax, that the tax
37 will not be separately charged and stated to the customer or that the
38 tax will be refunded to the customer. Upon written application duly
39 made and proof duly presented to the satisfaction of the director
40 showing that in the particular business of the person required to
41 collect the tax it would be impractical for the seller to separately
42 charge the tax to the customer, the director may waive the
43 application of the requirement herein as to such seller.

44 (e) **【All】** Except as otherwise provided by this section, all
45 sellers of energy or utility service shall include the tax imposed by

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 the "Sales and Use Tax Act" within the purchase price of the
2 tangible personal property or service.

3 (f) A vendor other than a vendor subject to subsection (e) of this
4 section making retail sales of tangible personal property or sales of
5 services may advertise that the vendor will pay the tax for the
6 customer subject to the conditions of this subsection. An electric
7 public utility, electric power supplier, electric power generator or
8 other seller of electric generation or distribution service to end-use
9 retail customers in this State shall include on periodic bills for such
10 services, as applicable, rendered to a customer, the amount of the
11 tax imposed by the "Sales and Use Tax Act" attributable to that
12 customer, and such amount shall be listed separately from the
13 purchase price of the electric generation or distribution services
14 rendered to that customer.

15 (1) The advertising shall indicate that the vendor is, in fact,
16 paying the tax for the customer and shall not indicate or imply that
17 the sale or charge is exempt from taxation.

18 (2) Notwithstanding the provisions of section 12 of
19 P.L.1966, c.30 (C.54:32B-12) to the contrary, any sales slip,
20 invoice, receipt or other statement or memorandum of the price or
21 service charge paid or payable given to the customer shall state that
22 the tax will be paid by the vendor; provided however that such
23 record shall be otherwise subject to the provisions of section 12 of
24 P.L.1966, c.30 (C.54:32B-12).

25 (3) The vendor shall pay the amount of tax due on the retail sale
26 or service receipt, as determined pursuant to section 4 of
27 P.L.1966, c.30 (C.54:32B-4), as trustee for and on account of the
28 State, and shall have the same liability for that amount of tax
29 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-
30 1 et seq.), as for an amount collected from a customer.

31 (g) No person required to collect any tax imposed by this act
32 shall be held liable for having charged and collected the incorrect
33 amount of sales and use tax by reason of reliance on erroneous data
34 provided by the director with respect to tax rates, boundaries or
35 taxing jurisdiction assignments or contained in the taxability matrix.

36 (h) In connection with a purchaser's request from a seller of
37 over-collected sales or use taxes, a seller shall be presumed to have
38 a reasonable business practice, if in the collection of such sales or
39 use taxes, the seller: (1) uses either a provider or a system,
40 including a proprietary system, that is certified by the State; and (2)
41 has remitted to the State all taxes collected less any deductions,
42 credits, or collection allowances.

43 (i) No purchaser shall be held liable for any tax, interest or
44 penalty for failure to pay the correct amount of tax by reason of:

45 (1) the reliance of the purchaser's seller or certified service
46 provider on erroneous data provided by the director with respect to
47 tax rates, boundaries or taxing jurisdiction assignments or contained
48 in the taxability matrix;

1 (2) the reliance of the purchaser holding a direct pay permit on
2 erroneous data provided by the director with respect to tax rates,
3 boundaries or taxing jurisdiction assignments or contained in the
4 taxability matrix;

5 (3) the reliance of the purchaser on erroneous data provided by
6 the director with respect to the taxability matrix; or

7 (4) the reliance of a purchaser using databases of taxing
8 jurisdiction assignments on erroneous data provided by the director
9 with respect to tax rates, boundaries or taxing jurisdiction
10 assignments, provided however that, to the extent that the director
11 provides or certifies an address-based database for assigning tax
12 rates and jurisdictions and upon appropriate notice, no relief from
13 liability shall be allowed for errors resulting from reliance on a zip
14 code database for assigning tax rates and jurisdictions.

15 Provided however, that as to the relief from liability for tax, the
16 relief from liability for tax by reason of reliance on the taxability
17 matrix shall be limited to the director's erroneous classification in
18 the taxability matrix of terms "taxable" or "exempt," "included in
19 sales price" or "excluded from sales price" or "included in the
20 definition" or "excluded from the definition."

21 (cf: P.L.2008, c.123, s.13)

22
23 2. Section 12 of P.L.1999, c.23 (C.48:3-60) is amended to read
24 as follows:

25 12. a. Simultaneously with the starting date for the
26 implementation of retail choice as determined by the board pursuant
27 to subsection a. of section 5 of this act, the board shall permit each
28 electric public utility and gas public utility to recover some or all of
29 the following costs through a societal benefits charge that shall be
30 collected as a non-bypassable charge imposed on all electric public
31 utility customers and gas public utility customers, as appropriate:

32 (1) The costs for the social programs for which rate recovery
33 was approved by the board prior to April 30, 1997. For the purpose
34 of establishing initial unbundled rates pursuant to section 4 of this
35 act, the societal benefits charge shall be set to recover the same
36 level of social program costs as is being collected in the bundled
37 rates of the electric public utility on the effective date of this act.
38 The board may subsequently order, pursuant to its rules and
39 regulations, an increase or decrease in the societal benefits charge
40 to reflect changes in the costs to the utility of administering existing
41 social programs. Nothing in this act shall be construed to abolish or
42 change any social program required by statute or board order or rule
43 or regulation to be provided by an electric public utility. Any such
44 social program shall continue to be provided by the utility until
45 otherwise provided by law, unless the board determines that it is no
46 longer appropriate for the electric public utility to provide the
47 program, or the board chooses to modify the program;

48 (2) Nuclear plant decommissioning costs;

1 (3) The costs of demand side management programs that were
2 approved by the board pursuant to its demand side management
3 regulations prior to April 30, 1997. For the purpose of establishing
4 initial unbundled rates pursuant to section 4 of this act, the societal
5 benefits charge shall be set to recover the same level of demand
6 side management program costs as is being collected in the bundled
7 rates of the electric public utility on the effective date of this act.
8 Within four months of the effective date of this act, and every four
9 years thereafter, the board shall initiate a proceeding and cause to
10 be undertaken a comprehensive resource analysis of energy
11 programs, and within eight months of initiating such proceeding
12 and after notice, provision of the opportunity for public comment,
13 and public hearing, the board, in consultation with the Department
14 of Environmental Protection, shall determine the appropriate level
15 of funding for energy efficiency and Class I renewable energy
16 programs that provide environmental benefits above and beyond
17 those provided by standard offer or similar programs in effect as of
18 the effective date of this act; provided that the funding for such
19 programs be no less than 50% of the total Statewide amount being
20 collected in public electric and gas utility rates for demand side
21 management programs on the effective date of this act for an initial
22 period of four years from the issuance of the first comprehensive
23 resource analysis following the effective date of this act, and
24 provided that 25% of this amount shall be used to provide funding
25 for Class I renewable energy projects in the State. In each of the
26 following fifth through eighth years, the Statewide funding for such
27 programs shall be no less than 50 percent of the total Statewide
28 amount being collected in public electric and gas utility rates for
29 demand side management programs on the effective date of this act,
30 except that as additional funds are made available as a result of the
31 expiration of past standard offer or similar commitments, the
32 minimum amount of funding for such programs shall increase by
33 an additional amount equal to 50 percent of the additional funds
34 made available, until the minimum amount of funding dedicated to
35 such programs reaches \$140,000,000 total. After the eighth year
36 the board shall make a determination as to the appropriate level of
37 funding for these programs. Such programs shall include a program
38 to provide financial incentives for the installation of Class I
39 renewable energy projects in the State, and the board, in
40 consultation with the Department of Environmental Protection, shall
41 determine the level and total amount of such incentives as well as
42 the renewable technologies eligible for such incentives which shall
43 include, at a minimum, photovoltaic, wind, and fuel cells. The
44 board shall simultaneously determine, as a result of the
45 comprehensive resource analysis, the programs to be funded by the
46 societal benefits charge, the level of cost recovery and performance
47 incentives for old and new programs and whether the recovery of
48 demand side management programs' costs currently approved by the

1 board may be reduced or extended over a longer period of time.
2 The board shall make these determinations taking into consideration
3 existing market barriers and environmental benefits, with the
4 objective of transforming markets, capturing lost opportunities,
5 making energy services more affordable for low income customers
6 and eliminating subsidies for programs that can be delivered in the
7 marketplace without electric public utility and gas public utility
8 customer funding;

9 (4) Manufactured gas plant remediation costs, which shall be
10 determined initially in a manner consistent with mechanisms in the
11 remediation adjustment clauses for the electric public utility and gas
12 public utility adopted by the board; and

13 (5) The cost, of consumer education, as determined by the
14 board, which shall be in an amount that, together with the consumer
15 education surcharge imposed on electric power supplier license fees
16 pursuant to subsection h. of section 29 of this act and the consumer
17 education surcharge imposed on gas supplier license fees pursuant
18 to subsection g. of section 30 of this act, shall be sufficient to fund
19 the consumer education program established pursuant to section 36
20 of this act.

21 b. There is established in the Board of Public Utilities a
22 nonlapsing fund to be known as the "Universal Service Fund." The
23 board shall determine: the level of funding and the appropriate
24 administration of the fund; the purposes and programs to be funded
25 with monies from the fund; which social programs shall be provided
26 by an electric public utility as part of the provision of its regulated
27 services which provide a public benefit; whether the funds
28 appropriated to fund the "Lifeline Credit Program" established
29 pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants'
30 Lifeline Assistance Program" established pursuant to P.L.1981,
31 c.210 (C.48:2-29.31 et seq.), the funds received pursuant to the Low
32 Income Home Energy Assistance Program established pursuant to
33 42 U.S.C. s. 8621 et seq., and funds collected by electric and natural
34 gas utilities, as authorized by the board, to offset uncollectible
35 electricity and natural gas bills should be deposited in the fund; and
36 whether new charges should be imposed to fund new or expanded
37 social programs.

38 c. An electric public utility, electric power supplier, electric
39 power generator or other seller of electric generation or distribution
40 services to end-use retail customers in this State shall include on
41 periodic bills for such services, as applicable, rendered to a
42 customer, the amount of societal benefits charge imposed pursuant
43 to subsection a. of this section attributable to that customer, and
44 such amount shall be listed separately from the purchase price of
45 the electric generation or distribution services rendered to that
46 customer.

47 (cf: P.L.1999, c.23, s.12)

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

3 67. a. As used in this section:

4 "Base rates" means the rates, including minimum bills, charged
5 for utility commodities or service subject to the board's jurisdiction,
6 other than the rates charged under a utility's levelized energy
7 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
8 clause, hereinafter "LGAC," or equivalent rate provision;

9 "Base year" means the calendar year 1996;

10 "Board" means the Board of Public Utilities;

11 "Manufacturing facility" means a facility:

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

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

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

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

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

41 "Postconsumer material manufacturing facility" means a facility
42 that:

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

45 (2) manufactures products made from "postconsumer material,"
46 as that term is defined in 40 C.F.R. s.247.3; provided however, that
47 not less than 75 percent of the facility's total annual sales dollar

1 volume of such products produced in this State meet the definition
2 of "postconsumer material";

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

7 (4) employed, individually or collectively with affiliated
8 facilities, not less than 150 employees in this State on April 1,
9 2009;

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

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

15 "Utility service" means the supply, transmission, distribution or
16 transportation of electricity, natural gas or telecommunications
17 services or any combination of such commodities, processes or
18 services.

19 b. No later than 60 days after the date this act is enacted, each
20 electric, gas and telecommunications utility subject to the
21 provisions of this act shall file with the board, and shall
22 simultaneously provide copies to the Director of the Division of the
23 Ratepayer Advocate, revised tariffs and such other supporting
24 schedules, narrative and documentation required by this act, as set
25 forth in this section, to reflect in the utility's rates the changes in tax
26 liability effected pursuant to this act. No later than 90 days after the
27 date of the utility's filing, and after determining that the filing and
28 the rate changes provided for therein are in compliance with the
29 provisions of this act, the board shall approve the utility's filing and
30 associated rates for billing to the utility's customers, effective for
31 utility service rendered on and after January 1, 1998. If the board
32 determines that the utility's filing and the associated rate changes
33 provided for therein are not in compliance with the provisions of
34 this act, the board shall require the utility to amend or otherwise
35 modify its filing to render it in compliance. The board may also
36 permit the rates provided for in the utility's filing to be implemented
37 on an interim basis pending the board's final determination in the
38 event the board, in its discretion, determines that due to the filing's
39 complexity, or for other valid reasons, including but not limited to
40 the enactment of this act after June 30, 1997, additional time is
41 needed for the board to complete its review of the filing. If the
42 rates approved by the board upon its final determination are less
43 than the rates implemented on an interim basis, the difference shall
44 be refunded to the utility's customers with interest computed in
45 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
46 implemented pursuant to this act shall not constitute a fixing of
47 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
48 requirements set forth in that section.

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

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

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

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

38 The utility shall also include a calculation of its rate of return on
39 common equity achieved in the base year, both as booked and as
40 adjusted in accordance with the foregoing. The calculation shall be
41 made employing the methodology set forth in N.J.A.C.14:12-
42 4.2(b)1, and shall separately show the effect of reflecting
43 adjustments to the calculation, if any, that may have been employed
44 historically in establishing the utility's rate of return on common
45 equity allowed for ratemaking purposes. The utility's filing shall
46 also include copies of its audited financial statements for the base
47 year and associated quarterly and other reports filed with the
48 Securities and Exchange Commission.

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:

$$A\ e,\ g = \frac{(I\ e,\ g) \times (Rs/(1-Re))}{(Br\ e,\ g)}$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"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;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and

"Re" equals $Rs + Rf(1-Rs)$.

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

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the

1 board, and the transitional energy facility assessment unit rate
2 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
3 accordance with subsection d. of this section, shall be increased by
4 an amount determined by multiplying such charges by the sales and
5 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
6 addition to the utility's rates for service included in its tariff, for
7 informational purposes the tariff shall include such rates after
8 application of the sales and use tax authorized by this section.

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

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

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

46 The utility's filing with the board to implement the rate changes
47 provided for by this act shall also include an analysis, description
48 and quantification of net deferred taxes. For the purposes of this

1 section, "net deferred taxes" means deferred corporation business
2 taxes, net of federal deferred income taxes, associated with the tax
3 and rate changes implemented pursuant to this act, including
4 deferred corporation business tax recorded in accordance with
5 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
6 calendar year in which this act takes effect and for each year of the
7 tax life of the asset giving rise to the deferred corporation business
8 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

9 If the change in such net deferred taxes projected for the calendar
10 year in which the rate changes implemented pursuant to this act take
11 effect is negative and if the utility's requirement for working capital
12 is reduced as a result of the changes in rates and tax payments
13 implemented pursuant to this act, the working capital-related rate
14 reduction that otherwise would have been implemented pursuant to
15 this subsection shall be treated as set forth in subparagraph (a) or
16 (b) of this paragraph. For the purposes of this act, a change in net
17 deferred taxes is considered negative when it reduces an existing
18 deferred tax liability or creates a deferred tax asset on the utility's
19 balance sheet. An appropriate rate adjustment for the working
20 capital impacts of this act, reflecting all relevant facts and
21 circumstances at the time of the adjustment, shall be made in the
22 year when the earlier of the following events occur:

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

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

35 (ii) The accumulated balance of such negative net deferred taxes
36 shall include net deferred taxes associated with all assets and
37 liabilities originally placed in service by the utility and held by the
38 utility or a company affiliated with the utility regardless of whether
39 or not such assets continue to be subject to regulation by the New
40 Jersey Board of Public Utilities.

41 (b) The year in which both an appropriate working capital
42 adjustment and the accumulated balance of negative deferred taxes,
43 as described in sub-subparagraph (ii) of subparagraph (a) of this
44 paragraph (4), are reflected in the utility's rate base in a rate
45 proceeding before the board. It is the intent of this section to fully
46 compensate utilities on a present value basis, for the carrying costs
47 associated with negative net deferred taxes arising as a result of this
48 act, and to remit to ratepayers any credit due them as a result of any

1 overcompensation as may have occurred due to the treatment of
2 working capital and deferred taxes as set forth herein or in
3 subparagraph (a) of this paragraph (4). At the time the above base
4 rate adjustment is made, an analysis shall be made to determine if
5 such carrying costs have been or will be fully recovered pursuant to
6 the intent of this provision and any additional credit or charge to
7 ratepayers to adjust for ratepayer overpayments or underpayments,
8 if any shall be addressed.

9 If the change in net deferred taxes is positive, the increase shall
10 be added to, or increase, the reduction in the utility's requirement
11 for working capital if the requirement is reduced as a result of the
12 rate and tax payment changes implemented pursuant to this act, or
13 subtracted from the working capital requirement if it is increased,
14 and the resultant net working capital requirement shall be reflected
15 in rates or accrue carrying costs in the same manner as prescribed
16 for changes in the utility's requirement for working capital above.

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

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

25 (a) An amount per kilowatthour or per therm determined by
26 multiplying the total revenue received in the base year from sales to
27 which that unit tax rate would have been applicable by the factor
28 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
29 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
30 dividing the result by the kilowatthours or therms billed in that unit
31 tax rate class in the base year; and

32 (b) An amount per kilowatthour or per therm determined by
33 dividing the revenue that would have been received in the base year
34 from the inclusion, in the manner prescribed in paragraph (2) of
35 subsection c. of this section, of the corporation business tax in the
36 rates applicable to sales billed in that unit tax rate class by the
37 kilowatthours or therms billed in that rate class. In each case, the
38 determination shall reflect the effect of adjustments that affect the
39 level of sales and revenue, if any, as provided in subsection c. of
40 this section. Of the resultant rate per kilowatthour or per therm, the
41 portion for recovery of the utility's transitional energy facilities
42 assessment liability shall be determined by multiplying such rate by
43 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
44 expressed as a decimal.

45 The TEFA unit rate surcharges shall constitute non-bypassable
46 wires and/or mains charges of the utility, and shall be applied to all
47 sales within the customer classes to which they apply, regardless of

1 whether such customers are purchasing bundled or unbundled
2 services from the utility, but shall not be applied to sales:

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

7 (ii) for a period of seven years commencing on the first day after
8 the expiration of an off-tariff rate agreement, entered into or
9 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
10 21.24 et seq.), to a manufacturing facility for use or consumption
11 directly and primarily in the production of tangible personal
12 property, other than energy, and

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

17 Notwithstanding the provisions of the exemption provided in
18 sub-subparagraph (ii) and sub-subparagraph (iii) of subparagraph
19 (b) of paragraph (1) of subsection d. of this section, the TEFA unit
20 rate surcharge shall be applied to the sales to the owner of the
21 manufacturing facility or the postconsumer material manufacturing
22 facility and the owner shall be refunded an amount equal to the
23 TEFA unit rate surcharge paid by the filing, within 30 days
24 following the close of a calendar quarter in which the exemption
25 applies, of a claim with the Director of the Division of Taxation in
26 the Department of the Treasury for a refund of the TEFA unit rate
27 surcharge paid, which refund shall be paid within 60 days of the
28 refund claim being filed. Proof of claim for refund shall be made
29 by the submission of such records and other documentation as the
30 director may require. If the owner of the manufacturing facility or
31 the postconsumer material manufacturing facility at any time during
32 the exemption period provided in sub-subparagraph (ii) or sub-
33 subparagraph (iii) of subparagraph (b) of paragraph (1) of
34 subsection d. of this section relocates the manufacturing facility to a
35 location outside of this State, the owner shall pay to the director the
36 amount of TEFA unit rate surcharge for which an exemption shall
37 have been allowed and refund obtained under this section. The
38 State Treasurer shall notify the director of the relocation of a
39 manufacturing facility or a postconsumer material manufacturing
40 facility to a location outside of this State, and the director shall
41 issue a tax assessment for the recapture of tax, equal to the amount
42 of TEFA unit rate surcharge for which an exemption shall have
43 been allowed and refund obtained under this section. The recapture
44 of tax shall be a State tax subject to the State Uniform Tax
45 Procedure Law, R.S.54:48-1 et seq., and shall be deposited in the
46 General Fund.

47 If, following the effective date of this act, a customer taking
48 bundled service from the utility shall elect to obtain its

1 requirements from another supplier and take transportation or
 2 wheeling service from the utility, the TEFA unit rate surcharge
 3 applicable to the bundled service shall continue to apply to the
 4 transportation or wheeling service. The TEFA components of the
 5 unit rate surcharges determined pursuant to this subsection (the
 6 components of the surcharges remaining after deducting the
 7 provision for corporation business tax included therein) shall be
 8 used to determine the transitional energy facility assessment
 9 liability pursuant to sections 36 through 49 of
 10 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

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

15	January 1, 1999,	20%
16	January 1, 2000,	40%
17	January 1, 2001,	60%

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

21 (a) The sum of the estimated, or actual when known, (i) TEFA
 22 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
 23 107), and sales and use taxes collected and corporation business
 24 taxes booked for the year 1998 by the gas and electric utilities and
 25 other entities subject to the TEFA provisions of this act (the year
 26 1998 liability), and (ii) the TEFA liabilities of those utilities and
 27 entities in all years following the year 1998 through the year in
 28 which a determination is being made pursuant to this subsection
 29 (the determination year); and

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

36	Determination Year	% of
37		Year 1998
38		TEFA
39	-----	-----
40	1999	80%
41	2000	60%

42 by the Year 1998 TEFA,
 43 where the Year 1998 TEFA is calculated as the total of each
 44 remitter's base year liability less the sales and use taxes collected
 45 and the corporation business taxes booked for the privilege period
 46 ending in calendar year 1998 by the gas and electric utilities and
 47 other entities subject to the TEFA provisions of this act. For
 48 purposes of this subsection, the amounts assumed for the

1 determination year, including the year 1998 liability when first
2 determined for the purposes of this subsection, shall be estimates
3 based on nine months of actual data through and including the
4 month of September, and three months of data forecast for the
5 months of October through December.

6 (4) If the TEFA surcharge adjustment determined for the
7 determination year is positive (that is, if the amount determined
8 pursuant to subparagraph (a) of paragraph (3) of this subsection is
9 greater than the amount determined pursuant to subparagraph (b) of
10 paragraph (3) of this subsection), no reduction shall be made in the
11 reduction in the TEFA unit rate surcharges provided for in
12 paragraph (2) of this subsection for the year following the
13 determination year. If the TEFA surcharge adjustment is negative,
14 the reduction in the TEFA unit rate surcharges that otherwise would
15 have been implemented on January 1 of the year following the
16 determination year pursuant to paragraph (2) of this subsection shall
17 be reduced by an amount (by percentage points) equal to the
18 percentage the TEFA surcharge adjustment is of the total of the
19 base year transitional energy facility assessment of all remitters, as
20 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
21 however, that such reduction in the reduction in the TEFA unit rate
22 surcharges shall not exceed the percentage shown in paragraph (2)
23 of this subsection for that year; and provided further that in the first
24 two years, that such reduction shall not exceed 10 percentage points
25 for each year.

26 (5) (a) The TEFA unit rate surcharges for calendar years 2002
27 through 2011 shall be the same as the TEFA unit rate surcharges in
28 effect for calendar year 2001.

29 (b) The TEFA unit rate surcharges in effect for calendar year
30 2011 shall be reduced on January 1, 2012 and January 1, 2013 by
31 the following percentages:

32 January 1, 2012 25%

33 January 1, 2013 50%

34 e. The utility's filing with the board to implement the rate
35 changes provided for by this act shall include proof of revenue
36 schedules that show for each rate schedule included in the utility's
37 tariff, aggregated by unit-based energy tax unit tax classes, the
38 number of customers billed under the rate schedule, the billing
39 determinants of such customers (i.e. the kilowatts of billing demand
40 and kilowatthours of electric energy consumed, and the million
41 cubic feet/deca-therm subject to gas capacity-related charges and
42 deca-therm of gas consumed) and the associated revenue, both as
43 booked in the base year and on a pro forma basis reflecting the rate
44 changes implemented pursuant to this act. The proof of revenue
45 shall additionally show the amount of unit-based energy taxes
46 included in the base year revenue as booked, the unit-based energy
47 taxes that would have been collected at the unit-based energy tax
48 unit tax rates effective January 1, 1997, if different, as well as the

1 corporation business tax, sales and use tax and transitional energy
2 facility assessment revenue that would have been collected or
3 received on a pro forma basis if the rates implemented pursuant to
4 this act had been in effect in the base year.

5 f. The board may, in its discretion, permit the rate changes
6 provided for in this act to be implemented as part of a pending base
7 rate case or other proceeding in which the utility's rates are to be
8 changed, provided that the effective date of the changes is not
9 delayed beyond the date on which the changes would have been
10 implemented under subsection c. of this section. The board may
11 also, pursuant to its powers provided by law, permit or require
12 further modifications in the implementation of this section to
13 address unforeseen consequences arising out of the implementation
14 of this act.

15 g. Customers of the utility who are exempt from the sales and
16 use tax imposed on sales of gas and/or electricity or as a result of
17 rate changes occurring prior to the effective date of this act or for
18 other valid reasons are due a refund of sales or use tax inadvertently
19 imposed on such customers as a result of implementing the rate
20 changes provided for by this act shall file with the State Treasurer
21 to obtain such refunds. The State Treasurer shall promptly notify
22 the utility of customers granted refunds under this provision in
23 order to prevent additional collections of the sales and use tax from
24 such customers.

25 h. Public utilities providing telecommunications service
26 regulated by the board shall file for the board's review and approval
27 revised tariffs that eliminate from the rates applicable to such
28 service the excise tax liability included therein pursuant to
29 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
30 corporation business tax calculated using the methodology used in
31 calculating the adjustment factor set forth in paragraph (2) of
32 subsection c. of this section. Subsection d. of this section shall not
33 apply to telecommunication utilities, and telecommunication
34 utilities subject to a plan of regulation other than rate base/rate of
35 return shall additionally not be required to file the rate of return
36 information required by paragraph (2) of subsection c. Such
37 utilities shall, however, include a narrative and/or other
38 documentation as required by the board to support the
39 reasonableness of the after-tax income, which may be adjusted to
40 eliminate the effect of non-recurring or other atypical events, on
41 which the corporate business tax inclusion in rates is based.
42 Telecommunications utilities shall comply with all other applicable
43 provisions of this section.

44 i. (1) The board shall not adjust the rates of a public utility, as
45 provided in subsections c. and d. of this section, for a purchase by a
46 cogenerator of natural gas and the transportation of that gas, that is
47 exempt from sales and use tax pursuant to paragraph (2) of
48 subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

1 The board shall not allocate, in any future rate case, any sales and
2 use tax, corporation business tax, or transitional energy facility
3 assessment to rates for this purpose.

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

9 (3) For the purposes of this section, "cogenerator" means a
10 person or business entity that owns or operates a cogeneration
11 facility in the State of New Jersey, which facility is a plant,
12 installation or other structure whose primary purpose is the
13 sequential production of electricity and steam or other forms of
14 useful energy which are used for industrial, commercial, heating or
15 cooling purposes, and which is designated by the Federal Energy
16 Regulatory Commission, or its successor, as a "qualifying facility"
17 pursuant to the provisions of the "Public Utility Regulatory Policies
18 Act of 1978," Pub.L.95-617.

19 j. An electric public utility, electric power supplier, electric
20 power generator or other seller of electric generation or distribution
21 services to end-use retail customers in this State shall include on
22 periodic bills for such services, as applicable, rendered to a
23 customer, the amount of transitional energy facility assessment unit
24 rate surcharge imposed pursuant to subsection d. of this section
25 attributable to that customer, and such amount shall be listed
26 separately from the purchase price of the electric generation or
27 distribution services rendered to that customer.

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

29

30 4. This act shall take effect on the first day of the sixth month
31 following enactment.

32

33

34

STATEMENT

35

36 This bill provides that an electric public utility, electric power
37 supplier, electric power generator or other seller of electric
38 generation or distribution services, as applicable, shall include the
39 amount of the tax imposed by the "Sales and Use Tax Act," the
40 amount of the societal benefits charge (SBC) and the amount of the
41 transitional energy facility assessment (TEFA) surcharge
42 attributable to each customer, as separate items on periodic bills for
43 electric generation or distribution service rendered to each customer
44 in this State.

45 Under current law, sellers of electric generation or distribution
46 service are not required to include the amount of State sales and use
47 tax attributable to a customer as a separate item on periodic bills for
48 such services rendered to a customer. There is also no requirement

1 under current law to list the amount of SBC and TEFA amounts as
2 separate items on a customer's electric utility service bill.

3 This bill is intended to inform customers about the amount of
4 State sales and use tax, SBC and TEFA amounts they are paying as
5 part of the total amount of their electric utility bills.