

SENATE, No. 1407

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Eliminates demand side management programs from cost recovery through societal benefits charge.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the societal benefits charge and amending and
2 repealing 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 12 of P.L.1999, c.23 (C.48:3-60) is amended to read
8 as follows:

9 12. a. Simultaneously with the starting date for the
10 implementation of retail choice as determined by the board pursuant
11 to subsection a. of section 5 of **[this act]** P.L.1999, c.23 (C.48:3-
12 53), the board shall permit each electric public utility and gas public
13 utility to recover some or all of the following costs through a
14 societal benefits charge that shall be collected as a non-bypassable
15 charge imposed on all electric public utility customers and gas
16 public utility customers, as appropriate:

17 (1) The costs for the social programs for which rate recovery
18 was approved by the board prior to April 30, 1997. For the purpose
19 of establishing initial unbundled rates pursuant to section 4 of **[this**
20 **act]** P.L.1999, c.23 (C.48:3-52), the societal benefits charge shall
21 be set to recover the same level of social program costs as is being
22 collected in the bundled rates of the electric public utility on the
23 effective date of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.). The
24 board may subsequently order, pursuant to its rules and regulations,
25 an increase or decrease in the societal benefits charge to reflect
26 changes in the costs to the utility of administering existing social
27 programs. Nothing in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.)
28 shall be construed to abolish or change any social program required
29 by statute **[or]** , board order **[or]** , rule , or regulation to be
30 provided by an electric public utility. Any **[such]** social program
31 shall continue to be provided by the utility until otherwise provided
32 by law, unless the board determines that it is no longer appropriate
33 for the electric public utility to provide the program, or the board
34 chooses to modify the program;

35 (2) Nuclear plant decommissioning costs;

36 (3) **[The costs of demand side management programs that were**
37 approved by the board pursuant to its demand side management
38 regulations prior to April 30, 1997. For the purpose of establishing
39 initial unbundled rates pursuant to section 4 of this act, the societal
40 benefits charge shall be set to recover the same level of demand
41 side management program costs as is being collected in the bundled
42 rates of the electric public utility on the effective date of this act.
43 Within four months of the effective date of this act, and every four
44 years thereafter, the board shall initiate a proceeding and cause to
45 be undertaken a comprehensive resource analysis of energy

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 programs, and within eight months of initiating such proceeding
2 and after notice, provision of the opportunity for public comment,
3 and public hearing, the board, in consultation with the Department
4 of Environmental Protection, shall determine the appropriate level
5 of funding for energy efficiency and Class I renewable energy
6 programs that provide environmental benefits above and beyond
7 those provided by standard offer or similar programs in effect as of
8 the effective date of this act; provided that the funding for such
9 programs be no less than 50 **【%】** percent of the total Statewide
10 amount being collected in public electric and gas utility rates for
11 demand side management programs on the effective date of this act
12 for an initial period of four years from the issuance of the first
13 comprehensive resource analysis following the effective date of this
14 act, and provided that 25 **【%】** percent of this amount shall be used
15 to provide funding for Class I renewable energy projects in the
16 State. In each of the following fifth through eighth years, the
17 Statewide funding for such programs shall be no less than 50
18 percent of the total Statewide amount being collected in public
19 electric and gas utility rates for demand side management programs
20 on the effective date of this act, except that as additional funds are
21 made available as a result of the expiration of past standard offer or
22 similar commitments, the minimum amount of funding for such
23 programs shall increase by an additional amount equal to 50 percent
24 of the additional funds made available, until the minimum amount
25 of funding dedicated to such programs reaches \$140,000,000 total.
26 After the eighth year the board shall make a determination as to the
27 appropriate level of funding for these programs. Such programs
28 shall include a program to provide financial incentives for the
29 installation of Class I renewable energy projects in the State, and
30 the board, in consultation with the Department of Environmental
31 Protection, shall determine the level and total amount of such
32 incentives as well as the renewable technologies eligible for such
33 incentives which shall include, at a minimum, photovoltaic, wind,
34 and fuel cells. The board shall simultaneously determine, as a result
35 of the comprehensive resource analysis, the programs to be funded
36 by the societal benefits charge, the level of cost recovery and
37 performance incentives for old and new programs and whether the
38 recovery of demand side management programs' costs currently
39 approved by the board may be reduced or extended over a longer
40 period of time. The board shall make these determinations taking
41 into consideration existing market barriers and environmental
42 benefits, with the objective of transforming markets, capturing lost
43 opportunities, making energy services more affordable for low
44 income customers and eliminating subsidies for programs that can
45 be delivered in the marketplace without electric public utility and
46 gas public utility customer funding **】** (Deleted by amendment, P.L. ,
47 c. (C.) (pending before the Legislature as this bill);

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

5 (5) The cost, of consumer education, as determined by the
6 board, which shall be in an amount that, together with the consumer
7 education surcharge imposed on electric power supplier license fees
8 pursuant to subsection h. of section 29 of **[this act]** P.L.1999, c.23
9 (C.48:3-78) and the consumer education surcharge imposed on gas
10 supplier license fees pursuant to subsection g. of section 30 of **[this**
11 **act]** P.L.1999, c.23 (C.48:3-79), shall be sufficient to fund the
12 consumer education program established pursuant to section 36 of
13 **[this act]** P.L.1999, c.23 (C.48:3-85).

14 b. There is established in the Board of Public Utilities a
15 nonlapsing fund to be known as the "Universal Service Fund." The
16 board shall determine: the level of funding and the appropriate
17 administration of the fund; the purposes and programs to be funded
18 with monies from the fund; which social programs shall be provided
19 by an electric public utility as part of the provision of its regulated
20 services which provide a public benefit; whether the funds
21 appropriated to fund the "Lifeline Credit Program" established
22 pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants'
23 Lifeline Assistance Program" established pursuant to P.L.1981,
24 c.210 **[(C.48:2-29.31 et seq.)]** (C.48:2-29.30 et seq.), the funds
25 received pursuant to the Low Income Home Energy Assistance
26 Program established pursuant to 42 U.S.C. s.8621 et seq., and funds
27 collected by electric and **[natural]** gas public utilities, as authorized
28 by the board, to offset uncollectible **[electricity]** electric and
29 **[natural]** gas public utility bills should be deposited in the fund;
30 and whether new charges should be imposed to fund new or
31 expanded social programs.

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

33
34 2. Section 13 of P.L.2007, c.340 (C.48:3-98.1) is amended to
35 read as follows:

36 13. a. Notwithstanding the provisions of any other law **[or]** ,
37 rule **[or]** , order, or regulation to the contrary:

38 (1) an electric public utility or a gas public utility may provide
39 and invest in energy efficiency and conservation programs in its
40 respective service territory on a regulated basis pursuant to this
41 section, regardless of whether the energy efficiency or conservation
42 program involves facilities on the utility side or customer side of
43 the point of interconnection;

44 (2) an electric public utility or a gas public utility may invest in
45 Class I renewable energy resources, or offer Class I renewable
46 energy programs on a regulated basis pursuant to this section,

1 regardless of whether the renewable energy resource is located on
2 the utility side or customer side of the point of interconnection; and
3 (3) the board may provide funding for energy efficiency,
4 conservation, and renewable energy improvements through the
5 [societal benefits charge established pursuant to section 12 of
6 P.L.1999, c.23 (C.48:3-60), the] retail margin on certain hourly-
7 priced and larger non-residential customers pursuant to the board's
8 continuing regulation of basic generation service pursuant to
9 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57) [,] or
10 other monies appropriated for such purposes. The board may also
11 direct electric public utilities and gas public utilities to undertake
12 energy efficiency, conservation, and renewable energy
13 improvements, and shall allow the recovery of program costs and
14 incentive rate treatment pursuant to subsection b. of this section.

15 b. An electric public utility or a gas public utility seeking cost
16 recovery for any program pursuant to this section shall file a
17 petition with the board to request cost recovery. In determining the
18 recovery by electric public utilities and gas public utilities of
19 program costs for any program implemented pursuant to this
20 section, the board may take into account the potential for job
21 creation from such programs, the effect on competition for such
22 programs, existing market barriers, environmental benefits, and the
23 availability of such programs in the marketplace. Unless the board
24 issues a written order within 180 days after the filing of the petition
25 approving, modifying or denying the requested recovery, the
26 recovery requested by the utility shall be granted effective on the
27 181st day after the filing without further order by the board.
28 Ratemaking treatment may include placing appropriate technology
29 and program cost investments in the respective utility's rate base, or
30 recovering the utility's technology and program costs through
31 another ratemaking methodology approved by the board [,
32 including, but not limited to, the societal benefits charge established
33 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60)]. All electric
34 public utility and gas public utility investment in energy efficiency
35 and conservation programs or Class I renewable energy programs
36 may be eligible for rate treatment approved by the board, including
37 a return on equity, or other incentives or rate mechanisms that
38 decouple utility revenue from sales of electricity and gas.

39 c. Within 120 days after the date of enactment of P.L.2007,
40 c.340 (C.26:2C-45 et al.), the board shall issue an order that allows
41 electric public utilities and gas public utilities to offer energy
42 efficiency and conservation programs, to invest in Class I
43 renewable energy resources, and to offer Class I renewable energy
44 programs in their respective service territories on a regulated basis.
45 The board's order shall be reflected in rules and regulations
46 thereafter to be adopted by the board pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 d. As used in this section:

4 "Class I renewable energy program" means any regulated
5 program approved by the board pursuant to this section for the
6 purpose of facilitating the development of Class I renewable energy
7 in the State.

8 "Energy efficiency and conservation program" means any
9 regulated program, including customer and community education
10 and outreach, approved by the board pursuant to this section for the
11 purpose of conserving energy or making the use of electricity or
12 natural gas more efficient by New Jersey consumers, whether
13 residential, commercial, industrial, or governmental agencies.

14 "Program costs" means all reasonable and prudent costs incurred
15 in developing and implementing energy efficiency, conservation, or
16 Class I renewable energy programs approved by the board pursuant
17 to this section. These costs shall include a full return on invested
18 capital and foregone electric and gas distribution fixed cost
19 contributions associated with the implementation of the energy
20 efficiency, conservation, or Class I renewable energy programs
21 until those cost contributions are reflected in base rates following a
22 base rate case if such costs were reasonably and prudently incurred.
23 (cf: P.L.2007, c.340, s.13)

24

25 3. Section 1 of P.L.2007, c.101 (C.54:50-39) is amended to
26 read as follows:

27 1. a. A department or agency of State government, including
28 independent authorities and instrumentalities of the State, shall, as a
29 precondition to the award of business assistance or incentive or as a
30 component of the application for business assistance or incentive as
31 appropriate, require a person to submit a tax clearance certificate
32 issued by the director prior to the department or agency making an
33 award of business assistance or incentive to the person.

34 b. The person applying for business assistance or incentive may
35 apply to the director for a tax clearance certificate and shall provide
36 the director such information in [such] the form as the director may
37 prescribe necessary for the director to determine if the person has
38 satisfied all requirements for filing those State tax and information
39 returns and for paying those State taxes for which they have been
40 liable as taxpayers or as collectors of tax.

41 c. If the director determines that the person has complied with
42 all requirements for filing tax and information returns and for
43 paying or remitting required State taxes and fees, the director shall
44 issue to the person a tax clearance certificate.

45 If the director determines that the person has not filed all
46 required tax and information returns or has not paid all tax,
47 penalties, interest, or fees due, the director shall issue a notice of
48 delinquency or deficiency listing unfiled returns or balances due.

1 The director may require a person to resolve all delinquencies and
2 deficiencies before a tax clearance certificate is issued, or upon
3 review of the total circumstances, the director may issue an interim
4 tax clearance certificate if the director determines to the director's
5 satisfaction that the person will resolve all **such** delinquencies or
6 deficiencies within the time period specified by the director.

7 The director's issuance of a regular or interim tax clearance
8 certificate shall not constitute a waiver of authority to demand
9 resolution of all deficiencies and delinquencies and shall not
10 prevent further audit or the assessment of additional taxes,
11 penalties, interest, or fees as may be provided by law. No
12 additional right to protest or appeal the State tax indebtedness,
13 filing deficiency, or penalties shall be available to any person
14 pursuant to this section.

15 d. As used in this section:

16 "Business assistance or incentive" means monetary or financial
17 assistance in any form, other than a tax credit or tax exemption
18 granted pursuant to a claim made on a tax return filed with the
19 Division of Taxation in the Department of the Treasury, including
20 but not limited to a grant, loan, loan guarantee, or other monetary or
21 financial benefit awarded to a person by a department or agency of
22 State government, including independent authorities and
23 instrumentalities of the State, to assist the person in the conduct or
24 operation of a business, occupation, trade, or profession in the
25 State, in connection with the following programs:

26 (1) the business employment incentive program established
27 pursuant to P.L.1996, c.26 (C.34:1B-124 et al.);

28 (2) the business retention and relocation assistance program
29 established pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

30 (3) the customized training services provided pursuant to
31 section 5 of P.L.1992, c.43 (C.34:15D-5), except for assistance
32 provided to a person pursuant to paragraph (4) of subsection a. of
33 section 1 of P.L.2001, c.152 (C.34:15D-21);

34 (4) **the business, commercial and industrial components of the**
35 **clean energy program administered by the Board of Public**
36 **Utilities** (Deleted by amendment, P.L. , c. (C.) (pending
37 before the Legislature as this bill);

38 (5) the business grant, loan, and loan guarantee programs
39 administered by:

40 (a) the New Jersey Economic Development Authority;

41 (b) the New Jersey Housing and Mortgage Finance Agency; and

42 (c) the Casino Reinvestment Development Authority;

43 (6) the science and technology grants provided by or through the
44 New Jersey Commission on Science and Technology; and

45 (7) any other similar State program that confers a significant
46 monetary or financial benefit upon a business or businesses, as
47 prescribed by the State Treasurer pursuant to regulations
48 promulgated pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), except for assistance provided
2 to a person pursuant to paragraph (4) of subsection a. of section 1 of
3 P.L.2001, c.152 (C.34:15D-21).

4 e. The director may charge and collect an application fee from
5 a person applying for a tax clearance certificate, to reflect the
6 administrative costs, and may charge and collect a reasonable
7 service fee for the provision of any expedited services offered.

8 f. In order to better manage the workload of issuing tax
9 clearance certificates, the director may prescribe a schedule by
10 which tax clearance certificates will initially be issued for only one
11 or more of the programs enumerated as business assistance or
12 incentive, or one or more of the components of one or more of those
13 programs, and by which tax clearance certificate issuance for other
14 programs enumerated, or other components of those programs, will
15 be instituted beginning on dates specified according to the schedule.
16 In prescribing the schedule the director will give due regard to the
17 monetary value of the assistance and incentive offered, the timing
18 of the application process, the number of applicants, and necessary
19 applicant and program administrator notice for a particular program
20 or program component. **【Such a】** The schedule adopted by the
21 director shall be subject to change by the director, but in any case
22 shall provide for issuance of tax clearance certificates for all
23 enumerated programs before January 1, 2009.

24 Notwithstanding any provisions of this section to the contrary,
25 no tax clearance certificate shall be required as a precondition to the
26 award of business assistance or incentive or as a component of the
27 application for business assistance or incentive prior to its
28 program's, or its program's component's, scheduling by the director
29 pursuant to this subsection.

30 g. Notwithstanding any provision of the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
32 contrary, the director may adopt immediately upon filing with the
33 Office of Administrative Law such regulations as the director
34 deems necessary to implement the provisions of this act, which
35 shall be effective for a period not to exceed 180 days following
36 enactment of P.L.2007, c.101 (C.54:50-39) and may thereafter be
37 amended, adopted, or readopted by the director in accordance with
38 the requirements of the "Administrative Procedure Act," P.L.1968,
39 c.410 (C.52:14B-1 et seq.).

40 (cf: P.L.2009, c.199, s.4)

41
42 4. The following sections are repealed:
43 Section 1 of P.L.2011, c.126 (C.48:3-60.2); and
44 Section 1 of P.L.2011, c.216 (C.48:3-60.3).

45
46 5. This act shall take effect immediately.

S1407 PENNACCHIO

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STATEMENT

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2

3 This bill eliminates the cost of demand side management
4 programs from recovery through the societal benefits charge.
5 Demand side management program cost recovery includes certain
6 funding for energy efficiency and Class I renewable energy
7 programs from the clean energy funds established by the Board of
8 Public Utilities.