

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 5

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED JANUARY 7, 1999

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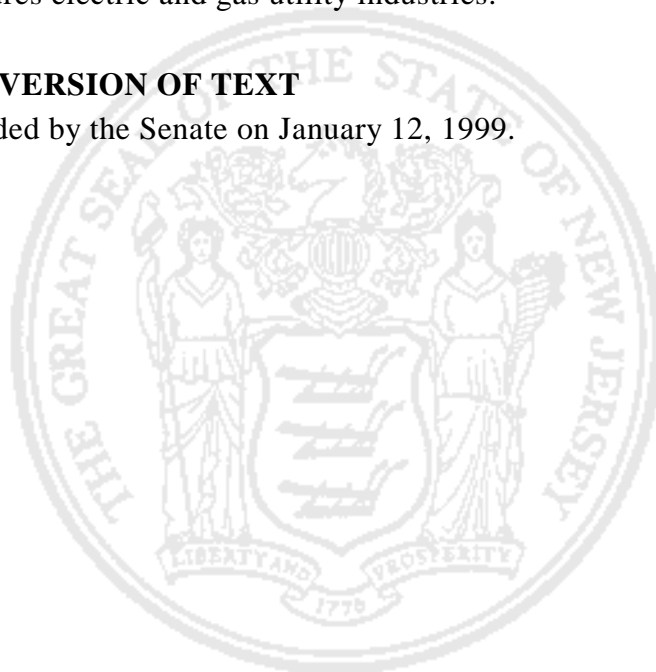
**Assemblymen DiGaetano, Bagger, Assemblywomen Heck, Murphy,
Assemblymen O'Toole, Stuhltrager, Zecker, Geist, Kelly, Talarico and
Felice**

SYNOPSIS

Restructures electric and gas utility industries.

CURRENT VERSION OF TEXT

As amended by the Senate on January 12, 1999.



(Sponsorship Updated As Of: 1/13/1999)

1 AN ACT concerning competition in the electric power and gas
2 industries and supplementing, amending and repealing certain
3 sections of the statutory law.

4

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

7

8 1. (New section) Sections 1 through 45 and sections 47, 51, 57,
9 59, 60, 63, 65 and 66 of this act shall be known and may be cited as
10 the "Electric Discount and Energy Competition Act."

11

12 2. (New section) a. The Legislature finds and declares that it is
13 the policy of this State to:

14 (1) Lower the current high cost of energy, and improve the quality
15 and choices of service, for all of this State's residential, business and
16 institutional consumers, and thereby improve the quality of life and
17 place this State in an improved competitive position in regional,
18 national and international markets;

19 (2) Place greater reliance on competitive markets, where such
20 markets exist, to deliver energy services to consumers in greater
21 variety and at lower cost than traditional, bundled public utility
22 service;

23 (3) Maintain adequate regulatory oversight over competitive
24 purveyors of retail power and natural gas supply and other energy
25 services to assure that consumer protection safeguards inherent to
26 traditional public utility regulation are maintained, without unduly
27 impeding competitive markets;

28 (4) Ensure universal access to affordable and reliable electric
29 power and natural gas service;

30 (5) Maintain traditional regulatory authority over non-competitive
31 energy delivery or other energy services, subject to alternative forms
32 of traditional regulation authorized by the Legislature;

33 (6) Ensure that rates for non-competitive public utility services do
34 not subsidize the provision of competitive services by public utilities;

35 (7) Provide diversity in the supply of electric power throughout
36 this State;

37 (8) Authorize the Board of Public Utilities to approve alternative
38 forms of regulation in order to address changes in technology and the
39 structure of the electric power and gas industries; to modify the
40 regulation of competitive services; and to promote economic
41 development;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted January 12, 1999.

² Senate floor amendments adopted January 12, 1999.

1 (9) Prevent any adverse impacts on environmental quality in this
2 State as a result of the introduction of competition in retail power
3 markets in this State;

4 (10) Ensure that improved energy efficiency and load management
5 practices, implemented via marketplace mechanisms or State-
6 sponsored programs, remain part of this State's strategy to meet the
7 long-term energy needs of New Jersey consumers;

8 (11) Preserve the reliability of power supply and delivery systems
9 as the marketplace is transformed from a monopoly to a competitive
10 environment; and

11 (12) Provide for a smooth transition from a regulated to a
12 competitive power supply marketplace, including provisions which
13 afford fair treatment to all stakeholders during the transition.

14 b. The Legislature further finds and declares that:

15 (1) In a competitive marketplace, traditional utility rate regulation
16 is not necessary to protect the public interest and that competition will
17 promote efficiency, reduce regulatory delay, and foster productivity
18 and innovation;

19 (2) Due to regulatory changes, technological developments and
20 other factors, a competitive electric generation and wholesale supply
21 market has developed over the past several years;

22 (3) Electric power services are available in the wholesale markets
23 at prices substantially lower than the current cost of electric power
24 generation and supply services provided to retail customers by this
25 State's electric public utilities;

26 (4) The traditional retail monopoly which electric public utilities
27 have held in this State for electric power generation and supply
28 services should be eliminated, so that all New Jersey energy consumers
29 will be afforded the opportunity to access the competitive market for
30 such services and to select the electric power supplier of their choice;

31 (5) The traditional electric public utility rate regulation which the
32 Board of Public Utilities has exercised over retail power supply in this
33 State requires reform in order to provide retail choice and bring the
34 benefits of competition to all New Jersey consumers;

35 (6) Permitting the competitive electric power generation and
36 supply marketplace to operate without traditional utility rate
37 regulation will produce a wider selection of services at competitive
38 market-based prices;

39 (7) Certain regulatory authority, including requiring electric power
40 suppliers and gas suppliers to maintain offices in this State, is
41 necessary to ensure continued safety, reliability and consumer
42 protections in the electric power and gas industries; and to ensure
43 accessibility to electric power suppliers and gas suppliers by the Board
44 of Public Utilities, consumers, electric public utilities and gas public
45 utilities; and

1 (8) The electric power generation marketplace and gas supply
2 marketplace should be subject to appropriate consumer protection
3 standards that will ensure that all classes of customers in all regions of
4 this State are properly and adequately served.

5 c. The Legislature therefore determines that it is in the public
6 interest to:

7 (1) Authorize the Board of Public Utilities to permit competition
8 in the electric generation and gas marketplace and such other
9 traditional utility areas as the board determines, and thereby reduce the
10 aggregate energy rates currently paid by all New Jersey consumers;

11 (2) Provide for regulation of new market entrants in the areas of
12 safe, adequate and proper service and customer protection;

13 (3) Relieve electric public utilities from traditional utility rate
14 regulation in the provision of services which are deemed to be
15 provided in a competitive market;

16 (4) Provide each electric public utility the opportunity to recover
17 above-market power generation and supply costs and other reasonably
18 incurred costs associated with the restructuring of the electric industry
19 in New Jersey, the level of which will be determined by the Board of
20 Public Utilities to the extent necessary to maintain the financial
21 integrity of the electric public utility through the transition to
22 competition, subject to the achievement of the other goals and
23 provisions of this act, and subject to the public utility having taken and
24 continuing to take all reasonably available steps to mitigate the
25 magnitude of its above-market electric power generation and supply
26 costs; and

27 (5) Provide the Board of Public Utilities with ongoing oversight
28 and regulatory authority to monitor and review composition of the
29 electric generation and retail power supply marketplace in New Jersey,
30 and to take such actions as it deems necessary and appropriate to
31 restore a competitive marketplace in the event it determines that one
32 or more suppliers are in a position to dominate the marketplace and
33 charge anti-competitive or above-market prices.

34

35 3. (New section) As used in this act:

36 "Assignee" means a person to which an electric public utility or
37 another assignee assigns, sells or transfers, other than as security, all
38 or a portion of its right to or interest in bondable transition property.
39 Except as specifically provided in this act, an assignee shall not be
40 subject to the public utility requirements of Title 48 or any rules or
41 regulations adopted pursuant thereto;

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

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

3 "Basic generation service" means electric generation service that
4 is provided, pursuant to section 9 of this act, to any customer that has
5 not chosen an alternative electric power supplier, whether or not the
6 customer has received offers as to competitive supply options,
7 including, but not limited to, any customer that cannot obtain such
8 service from an electric power supplier for any reason, including non-
9 payment for services. Basic generation service is not a competitive
10 service and shall be fully regulated by the board;

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

13 "Bondable stranded costs" means any stranded costs of an electric
14 public utility approved by the board for recovery pursuant to the
15 provisions of this act, together with, as approved by the board: (1)
16 the cost of retiring existing debt or equity capital of the electric public
17 utility, including accrued interest, premium and other fees, costs and
18 charges relating thereto, with the proceeds of the financing of
19 bondable transition property; (2) if requested by an electric public
20 utility in its application for a bondable stranded costs rate order,
21 federal, State and local tax liabilities associated with stranded costs
22 recovery or the transfer or financing of such property or both,
23 including taxes, whose recovery period is modified by the effect of a
24 stranded costs recovery order, a bondable stranded costs rate order or
25 both; and (3) the costs incurred to issue, service or refinance transition
26 bonds, including interest, acquisition or redemption premium, and
27 other financing costs, whether paid upon issuance or over the life of
28 the transition bonds, including, but not limited to, credit
29 enhancements, service charges, overcollateralization, interest rate cap,
30 swap or collar, yield maintenance, maturity guarantee or other hedging
31 agreements, equity investments, operating costs and other related fees,
32 costs and charges, or to assign, sell or otherwise transfer bondable
33 transition property;

34 "Bondable stranded costs rate order" means one or more
35 irrevocable written orders issued by the board pursuant to this act
36 which determines the amount of bondable stranded costs and the initial
37 amount of transition bond charges authorized to be imposed to recover
38 such bondable stranded costs, including the costs to be financed from
39 the proceeds of the transition bonds, as well as on-going costs
40 associated with servicing and credit enhancing the transition bonds,
41 and provides the electric public utility specific authority to issue or
42 cause to be issued, directly or indirectly, transition bonds through a
43 financing entity and related matters as provided in this act, which order
44 shall become effective immediately upon the written consent of the
45 related electric public utility to such order as provided in this act;

46 "Bondable transition property" means the property consisting of

1 the irrevocable right to charge, collect and receive, and be paid from
2 collections of, transition bond charges in the amount necessary to
3 provide for the full recovery of bondable stranded costs which are
4 determined to be recoverable in a bondable stranded costs rate order,
5 all rights of the related electric public utility under such bondable
6 stranded costs rate order including, without limitation, all rights to
7 obtain periodic adjustments of the related transition bond charges
8 pursuant to subsection b. of section 15 of this act, and all revenues,
9 collections, payments, money and proceeds arising under, or with
10 respect to, all of the foregoing;

11 "Broker" means a duly licensed electric power supplier that
12 arranges the sale of electric energy and capacity, transmission or other
13 services between buyers and sellers, but does not take title to any of
14 the power sold, or a duly licensed gas supplier that arranges the sale
15 of gas between buyers and sellers, but does not take title to the gas;

16 "Buydown" means an arrangement or arrangements involving the
17 buyer and seller in a given power purchase contract and, in some cases
18 third parties, for consideration to be given by the buyer in order to
19 effectuate a reduction in the pricing, or the restructuring of other
20 terms to reduce the overall cost of the power contract, for the
21 remaining succeeding period of the purchased power arrangement or
22 arrangements;

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

27 "Class I renewable energy" means electric energy produced from
28 solar technologies, photovoltaic technologies, wind energy, fuel cells,
29 geothermal technologies, wave or tidal action, and methane gas from
30 landfills or a biomass facility, provided that the biomass is cultivated
31 and harvested in a sustainable manner;

32 "Class II renewable energy" means electric energy produced at a
33 resource recovery facility or hydropower facility, provided that such
34 facility is located where retail competition is permitted and provided
35 further that the Commissioner of Environmental Protection has
36 determined that such facility meets the highest environmental
37 standards and minimizes any impacts to the environment and local
38 communities;

39 "Competitive service" means any service offered by an electric
40 public utility or a gas public utility that the board determines to be
41 competitive pursuant to section 8 or section 10 of this act or that is
42 not regulated by the board;

43 "Comprehensive resource analysis" means an analysis including,
44 but not limited to, an assessment of existing market barriers to the
45 implementation of energy efficiency and renewable technologies that
46 are not or cannot be delivered to customers through a competitive

1 marketplace;

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

6 "Customer account service" means metering, billing, or such other
7 administrative activity associated with maintaining a customer account;

8 "Demand side management" means the management of customer
9 demand for energy service through the implementation of
10 cost-effective energy efficiency technologies, including, but not limited
11 to, installed conservation, load management and energy efficiency
12 measures on and in the residential, commercial, industrial, institutional
13 and governmental premises and facilities in this State;

14 "Electric generation service" means the provision of retail electric
15 energy and capacity which is generated off-site from the location at
16 which the consumption of such electric energy and capacity is metered
17 for retail billing purposes, including agreements and arrangements
18 related thereto;

19 "Electric power generator" means an entity that proposes to
20 construct, own, lease or operate, or currently owns, leases or operates,
21 an electric power production facility that will sell or does sell at least
22 90 percent of its output, either directly or through a marketer, to a
23 customer or customers located at sites that are not on or contiguous
24 to the site on which the facility will be located or is located. The
25 designation of an entity as an electric power generator for the
26 purposes of this act shall not, in and of itself, effect the entity's status
27 as an exempt wholesale generator under the Public Utility Holding
28 Company Act of 1935, 15 U.S.C. s.79 et seq., shall not be deemed to
29 be an electric power generator;

30 "Electric power supplier" means a person that is duly licensed
31 pursuant to the provisions of this act to offer or provide electric
32 generation service to retail customers, and includes, but is not limited
33 to, load serving entities, marketers and brokers that offer or provide
34 electric generation service to retail customers and any other entity that
35 becomes subject to the provisions of this act. The term excludes an
36 electric public utility that provides electric generation service only as
37 a basic generation service pursuant to section 9 of this act;

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

41 "Electric related service" means a service that is directly related to
42 the consumption of electricity by an end user, including, but not
43 limited to, the installation of demand side management measures at the
44 end user's premises, the maintenance, repair or replacement of
45 appliances, lighting, motors or other energy-consuming devices at the
46 end user's premises, and the provision of energy consumption

1 measurement and billing services;

2 "Energy agent" means a person that is duly registered pursuant to
3 the provisions of this act, that arranges the sale of retail electric energy
4 or electric energy services or retail gas supply or gas related services
5 between individual customers, government aggregators or private
6 aggregators and electric power suppliers or gas suppliers, but does not
7 take title to the electric or gas sold;

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

11 "Financing entity" means an electric public utility, a special
12 purpose entity, or any other assignee of bondable transition property,
13 which issues transition bonds. Except as specifically provided in this
14 act, a financing entity which is not itself an electric public utility shall
15 not be subject to the public utility requirements of Title 48 or any rules
16 or regulations adopted pursuant thereto;

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

19 "Gas related service" means a service that is directly related to the
20 consumption of gas by an end user, including, but not limited to, the
21 installation of demand side management measures at the end user's
22 premises, the maintenance, repair or replacement of appliances or
23 other energy-consuming devices at the end user's premises, and the
24 provision of energy consumption measurement and billing services;

25 "Gas supplier" means a person that is duly licensed pursuant to the
26 provisions of this act to offer or provide gas supply service to retail
27 customers, and includes, but is not limited to, marketers and brokers.
28 A non-public utility affiliate of a public utility holding company may
29 be a gas supplier, but a gas public utility or any subsidiary of a gas
30 utility is not a gas supplier. In the event that a gas public utility is not
31 part of a holding company legal structure, a related competitive
32 business segment of that gas public utility may be a gas supplier,
33 provided that related competitive business segment is structurally
34 separated from the gas public utility, and provided that the interactions
35 between the gas public utility and the related competitive business
36 segment are subject to the affiliate relations standards adopted by the
37 board pursuant to subsection k. of section 10 of this act;

38 "Gas supply service" means the provision to customers of the retail
39 commodity of gas, but does not include any regulated distribution
40 service;

41 "Government aggregator" means any government entity subject to
42 the requirements of the "Local Public Contracts Law," P.L.1971,
43 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
44 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
45 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
46 contract with a licensed electric power supplier or a licensed gas

1 supplier for: (1) the provision of electric generation service, electric
2 related service, gas supply service, or gas related service for its own
3 use or the use of other government aggregators; or (2) if a municipal
4 or county government, the provision of electric generation service or
5 gas supply service on behalf of business or residential customers within
6 its territorial jurisdiction;

7 "Government energy aggregation program" means a program and
8 procedure pursuant to which a government aggregator enters into a
9 written contract for the provision of electric generation service or gas
10 supply service on behalf of business or residential customers within its
11 territorial jurisdiction;

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

15 "Market transition charge" means a charge imposed pursuant to
16 section 13 of this act by an electric public utility, at a level determined
17 by the board, on the electric public utility customers for a limited
18 duration transition period to recover stranded costs created as a result
19 of the introduction of electric power supply competition pursuant to
20 the provisions of this act;

21 "Marketer" means a duly licensed electric power supplier that takes
22 title to electric energy and capacity, transmission and other services
23 from electric power generators and other wholesale suppliers and then
24 resells those services to an end-use customer or customers, or a duly
25 licensed gas supplier that takes title to gas and then resells it to an
26 end-use customer or customers;

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

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

31 "On-site generation facility" means a generation facility, and
32 equipment and services appurtenant to electric sales by such facility to
33 the end use customer located on the property or on property
34 contiguous to the property on which the end user is located. An on-
35 site generation facility shall not be considered a public utility. The
36 property of the end use customer and the property on which the on-
37 site generation facility is located shall be considered contiguous if they
38 are geographically located next to each other, but may be otherwise
39 separated by an easement, public thoroughfare, transportation or
40 utility-owned right-of-way;

41 "Person" means an individual, partnership, corporation,
42 association, trust, limited liability company, governmental entity or
43 other legal entity;

44 "Private aggregator" means a non-government aggregator that is
45 a duly-organized business or non-profit organization authorized to do
46 business in this State that enters into a contract with a duly licensed

1 electric power supplier for the purchase of electric energy and
2 capacity, or with a duly licensed gas supplier for the purchase of gas
3 supply service, on behalf of multiple end-use customers by combining
4 the loads of those customers;

5 "Public utility holding company" means: (1) any company that,
6 directly or indirectly, owns, controls, or holds with power to vote, ten
7 percent or more of the outstanding voting securities of an electric
8 public utility or a gas public utility or of a company which is a public
9 utility holding company by virtue of this definition, unless the
10 Securities and Exchange Commission, or its successor, by order
11 declares such company not to be a public utility holding company
12 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
13 et seq., or its successor; or (2) any person that the Securities and
14 Exchange Commission, or its successor, determines, after notice and
15 opportunity for hearing, directly or indirectly, to exercise, either alone
16 or pursuant to an arrangement or understanding with one or more
17 other persons, such a controlling influence over the management or
18 policies of an electric public utility or a gas public utility or public
19 utility holding company as to make it necessary or appropriate in the
20 public interest or for the protection of investors or consumers that
21 such person be subject to the obligations, duties, and liabilities
22 imposed in the Public Utility Holding Company Act of 1935 or its
23 successor;

24 "Regulatory asset" means an asset recorded on the books of an
25 electric public utility or gas public utility pursuant to the Statement of
26 Financial Accounting Standards, No. 71, entitled "Accounting for the
27 Effects of Certain Types of Regulation," or any successor standard and
28 as deemed recoverable by the board;

29 "Related competitive business segment of an electric public utility
30 or gas public utility" means any business venture of an electric public
31 utility or gas public utility including, but not limited to, functionally
32 separate business units, joint ventures, and partnerships, that offers to
33 provide or provides competitive services;

34 "Related competitive business segment of a public utility holding
35 company" means any business venture of a public utility holding
36 company, including, but not limited to, functionally separate business
37 units, joint ventures, and partnerships and subsidiaries, that offers to
38 provide or provides competitive services, but does not include any
39 related competitive business segments of an electric public utility or
40 gas public utility;

41 "Resource recovery facility" means a solid waste facility
42 constructed and operated for the incineration of solid waste for energy
43 production and the recovery of metals and other materials for reuse;

44 "Restructuring related costs" means reasonably incurred costs
45 directly related to the restructuring of the electric power industry,
46 including the closure, sale, functional separation and divestiture of

1 generation and other competitive utility assets by a public utility, or
2 the provision of competitive services as such costs are determined by
3 the board, and which are not stranded costs as defined in this act but
4 may include, but not be limited to, investments in management
5 information systems, and which shall include expenses related to
6 employees affected by restructuring which result in efficiencies and
7 which result in benefits to ratepayers, such as training or retraining at
8 the level equivalent to one year's training at a vocational or technical
9 school, the provision of severance pay of up to two weeks of base pay
10 for each year of full-time employment, and a maximum of 24 months'
11 continued health care coverage. Except as to expenses related to
12 employees affected by restructuring, "restructuring related costs" shall
13 not include going forward costs;

14 "Retail choice" means the ability of retail customers to shop for
15 electric generation or gas supply service from electric power or gas
16 suppliers, or opt to receive basic generation service as basic gas
17 service, and the ability of an electric power or gas supplier to offer
18 electric generation service or gas supply service to retail customers,
19 consistent with the provisions of this act;

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

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

33 "Societal benefits charge" means a charge imposed by an electric
34 public utility, at a level determined by the board, pursuant to, and in
35 accordance with, section 12 of this act;

36 "Stranded cost" means the amount by which the net cost of an
37 electric public utility's electric generating assets or electric power
38 purchase commitments, as determined by the board consistent with the
39 provisions of this act, exceeds the market value of those assets or
40 contractual commitments in a competitive supply marketplace and the
41 costs of buydowns or buyouts of power purchase contracts;

42 "Stranded costs recovery order" means each order issued by the
43 board in accordance with subsection c. of section 13 of this act which
44 sets forth the amount of stranded costs, if any, the board has
45 determined an electric public utility is eligible to recover and collect
46 in accordance with the standards set forth in section 13 and the

1 recovery mechanisms therefor;

2 "Transition bond charge" means a charge, expressed as an amount
3 per kilowatt hour, that is authorized by and imposed on electric public
4 utility ratepayers pursuant to a bondable stranded costs rate order, as
5 modified at any time pursuant to the provisions of this act;

6 "Transition bonds" means bonds, notes, certificates of participation
7 or beneficial interest or other evidences of indebtedness or ownership
8 issued pursuant to an indenture, contract or other agreement of an
9 electric public utility or a financing entity, the proceeds of which are
10 used, directly or indirectly, to recover, finance or refinance bondable
11 stranded costs and which are, directly or indirectly, secured by or
12 payable from bondable transition property. References in this act to
13 principal, interest, and acquisition or redemption premium with respect
14 to transition bonds which are issued in the form of certificates of
15 participation or beneficial interest or other evidences of ownership
16 shall refer to the comparable payments on such securities;

17 "Transmission and distribution system" means, with respect to an
18 electric public utility, any facility or equipment that is used for the
19 transmission, distribution or delivery of electricity to the customers of
20 the electric public utility including, but not limited to, the land,
21 structures, meters, lines, switches and all other appurtenances thereof
22 and thereto, owned or controlled by the electric public utility within
23 this State; and

24 "Universal service" means any service approved by the board with
25 the purpose of assisting low-income residential customers in obtaining
26 or retaining electric generation or delivery service.

27

28 4. (New section) a. Simultaneously with the starting date for the
29 implementation of retail choice as determined by the board pursuant
30 to subsection a. of section 5 of this act, each electric public utility shall
31 unbundle its rate schedules such that discrete services and charges
32 provided, which were previously included in the bundled utility rate,
33 are separately identified and charged in its tariffs. Such discrete
34 services and charges shall include, at a minimum, customer account
35 services and charges, distribution and transmission services and
36 charges and generation services and charges, and the board may
37 require that additional services and charges be unbundled and
38 separately billed. Billings for such services also shall include charges
39 related to regulatory assets and may include restructuring related
40 costs. In the case of commercial and industrial customers, rate
41 schedules shall remain unbundled, and in all billings for such customers
42 after the starting date for the implementation of retail choice as
43 determined by the board pursuant to subsection a. of section 5 of this
44 act, the amount of the market transition charge authorized pursuant to
45 section 13 of this act shall be added to the discrete services and
46 charges identified. Residential rate schedules once unbundled, may be

1 totally or partially rebundled for residential billing purposes. All
2 competitive services offered by an electric public utility shall be
3 charged separately from non-competitive services.

4 b. As part of its unbundled rate structure established in compliance
5 with subsection a. of this section, an electric public utility providing
6 basic generation service in accordance with section 9 of this act shall
7 establish a separate charge for such service, as reviewed and approved
8 by the board consistent with this act for billing purposes. An electric
9 public utility which offers basic generation service in accordance with
10 section 9 of this act shall also provide, simultaneously with the starting
11 date for the implementation of retail choice as determined by the board
12 pursuant to subsection a. of section 5 of this act, shopping credits
13 applicable to the bills of their retail customers who choose to purchase
14 electric generation service from a duly licensed electric power
15 supplier. The board shall determine the appropriate level of shopping
16 credits for each electric public utility in a manner consistent with the
17 findings and declarations of the Legislature as set forth in section 2 of
18 this act, and other provisions of this act. The reduction in electric
19 public utility rates, as determined by the board in subsections d. and e.
20 of this section, shall be consistent with the goals of this act, including
21 the creation of shopping credits, as appropriate, pursuant to this
22 subsection.

23 Each customer bill issued after the implementation of the rate
24 reductions required or determined by the board pursuant to this
25 section, including but not limited to any enhanced reductions resulting
26 from a phase-in allowed pursuant to paragraph (2) of subsection d. of
27 this section, shall indicate the dollar amount of the difference between
28 what the customer's total charges would have been without the
29 reduction and the total charges in that bill.

30 c. The board shall require electric public utilities to submit rate
31 unbundling filings in a form adopted by the board. The board shall
32 review such filings and, after hearing and an opportunity for public
33 comment, render a determination as to the appropriate, unbundled
34 rates consistent with the provisions of this act. Notwithstanding any
35 other provisions of this act, an unbundling of electric public utility
36 rates implemented as a result of this section shall not result in a
37 reallocation of utility cost responsibility between or among different
38 classes of customers.

39 d. (1) During a term to be fixed by the board, each electric public
40 utility shall reduce its aggregate level of rates for each customer class,
41 including any surcharges assessed pursuant to this act, by a percentage
42 to be approved by the board, which shall be at least 10 percent relative
43 to the aggregate level of bundled rates in effect as of April 30, 1997,
44 subject to the provisions of paragraph (2) of this subsection.

45 (2) The board may set a term for an electric public utility to phase
46 in a rate reduction of ten percent or more during the first 36 months

1 after the starting date for the implementation of retail choice as
2 provided in subsection a. of section 5 of this act; provided, however,
3 that, on the starting date for the implementation of retail choice as
4 provided in subsection a. of section 5 of this act, each electric public
5 utility shall reduce its aggregate level of rates for each customer class,
6 including any surcharges assessed pursuant to this act, by no less than
7 five percent.

8 e. The board may order a rate reduction that exceeds the 10
9 percent rate reduction as provided in subsection d. of this section, if
10 it determines that such reductions are necessary in order to achieve
11 just and reasonable rates.

12 f. The board shall determine, consistent with the provisions of this
13 act, the manner in which to apply the rate reductions established
14 pursuant to subsections d. and e. of this section among some or all of
15 the unbundled rate components, including the distribution and
16 transmission charges and market transition charges, in order to provide
17 for a sustainable aggregate rate reduction for customers and to
18 encourage a competitive retail supply marketplace.

19 g. Any subsequent order to reduce rates beyond those authorized
20 by subsection d. of this section may only be issued after notice and
21 hearing.

22 h. Any tax reduction implemented pursuant to P.L.1997, c.162
23 (C.54:30A-100 et al.) shall not be credited towards the rate reductions
24 required pursuant to subsection d. and authorized pursuant to
25 subsections d. and e. of this section.

26 i. The rate reduction associated with the reduction in the utility's
27 capital costs, including related taxes, that results from the issuance of
28 transition bonds pursuant to section 14 of this act shall be made no
29 later than the date on which the transition bond charge, approved
30 pursuant to section 14 of this act, becomes effective.

31 j. The maximum level of rate reduction determined by the board
32 pursuant to this section shall be sustained at least until the end of the
33 48th month following the starting date for the implementation of retail
34 choice as provided in subsection a. of section 5 of this act.

35

36 5. (New section) a. By order the board shall provide that by no
37 earlier than June 1, 1999, but in no event later than August 1, 1999,
38 each electric public utility shall provide retail choice of electric power
39 suppliers for its customers. Each electric public utility shall fully
40 implement retail choice in 100 percent of its franchise area within this
41 State on the starting date of retail competition.

42 b. Each electric public utility shall comply with the schedule for
43 the implementation of retail choice established pursuant to subsection
44 a. of this section. The board shall have the authority to require each
45 electric public utility to submit a restructuring filing, with elements
46 deemed necessary by the board, which shall include the mechanisms by

1 which it will comply with the schedule for implementation of retail
2 choice established pursuant to subsection a. of this section and with
3 the other provisions of this act. Such filing shall be reviewed and,
4 after notice and hearing, may be approved, rejected or modified by the
5 board, and the board may take such additional actions as it deems
6 necessary to enforce compliance with this act.

7
8 6. (New section) a. An electric public utility may continue to
9 offer customer account services on a regulated basis subsequent to the
10 effective date of this act. Not later than three months after the starting
11 date for the implementation of retail choice for any public utility as
12 determined by the board pursuant to subsection a. of section 5 of this
13 act, the board shall initiate a formal proceeding to investigate the
14 manner and mechanics by which customers are afforded the
15 opportunity to contract with the incumbent utility or an electric power
16 supplier for customer account services and to establish the necessary
17 standards for safety, reliability and testing for meters and information
18 exchange protocols applicable to both electric power suppliers and
19 incumbent utilities that will permit customers to choose a supplier for
20 some or all such customer account services. The board shall issue an
21 order for providing customers the opportunity to choose a supplier for
22 some or all customer account services not later than one year from the
23 starting date of retail competition as provided for in subsection a. of
24 section 5 of this act and setting forth the manner, mechanics and
25 standards for competitive customer account services. The board shall
26 require that electric public utilities, in the continued regulated
27 provision of customer account services, not take actions that would
28 unreasonably impede a transition to a competitive customer account
29 service market. Notwithstanding any other provision of this act to the
30 contrary, an electric power supplier may, upon written consent from
31 a customer, bill the customer directly for generation services and other
32 services it provides to the customer as of the starting date for
33 implementation of retail choice. The board shall ensure that the
34 standards and protocols for electronic data exchange needed to
35 support this option are adopted and are implemented by electric public
36 utilities in a timely manner.

37 b. A gas public utility may continue to offer customer account
38 services on a regulated basis subsequent to the effective date of this
39 act. Not later than three months after the starting date for the
40 implementation of retail choice established pursuant to section 10 of
41 this act, the board shall initiate a formal proceeding to investigate the
42 manner and mechanics by which customers are afforded the
43 opportunity to contract with by the incumbent utility or gas supplier
44 and to establish the necessary standards for safety, reliability and
45 testing for meters and information exchange protocols applicable to
46 both gas suppliers and incumbent utilities that will permit customers

1 to choose a supplier for some or all such customer account services.
2 The board shall issue an order for providing customers the opportunity
3 to choose a supplier for some or all customer account services not
4 later than December 31, 2000 and setting forth the manner, mechanics
5 and standards for competitive customer account services. The board
6 shall require that gas public utilities, in the continued regulated
7 provision of customer account services, not take actions which would
8 unreasonably impede a transition to a competitive customer account
9 service market. Notwithstanding any other provision of this act to the
10 contrary, a gas supplier may, upon written consent from a customer,
11 bill the customer directly for gas supply service and other services it
12 provides to the customer on and after the first billing which comports
13 with the provisions of section 10 of this act pertaining to the provision
14 of basic gas supply service. The board shall ensure that the standards
15 and protocols for electronic data exchange needed to support this
16 option are adopted and are implemented by gas public utilities in a
17 timely manner.

18 c. Notwithstanding any provisions of the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
20 the board shall initiate a proceeding and shall adopt, after notice,
21 provision of the opportunity for comment, and public hearing, interim
22 technical standards to ensure the safety, reliability and accuracy of
23 metering equipment provided to electric or gas customers and to
24 establish protocols for the exchange of information related to the
25 provision of customer account services.

26

27 7. (New section) a. An electric public utility or a related
28 competitive business segment of an electric public utility shall not offer
29 any competitive service to retail customers within this State without
30 the prior express written approval of the board. The board shall
31 require that an electric public utility file and maintain tariffs for
32 competitive services, which tariffs shall be subject to review and
33 approval by the board. The board shall approve a competitive service
34 only upon a finding that:

35 (1) The provision of a competitive service by an electric public
36 utility or its related competitive business segment shall not adversely
37 impact the ability of the electric public utility to offer its non-
38 competitive services to customers in a safe, adequate and proper
39 manner, and in all instances where resources are jointly deployed by
40 the utility to provide competitive and non-competitive services and
41 resource constraints arise, the provision of non-competitive services
42 shall receive a higher priority; and

43 (2) The price which an electric public utility charges for a
44 competitive service shall not be less than the fully allocated cost of
45 providing such service, as determined by the board, which cost shall
46 include an allocation of the cost of all equipment, vehicles, labor,

1 related fringe benefits and overheads, and administration utilized, and
2 all other assets utilized and costs incurred, directly or indirectly, in
3 providing such competitive service.

4 b. The board shall apply 50 percent of the net revenues earned
5 from the offering of competitive services by an electric public utility
6 or its related competitive business segment, or from the offering of
7 competitive services by an electric public utility holding company or
8 its related competitive business segment when the provision of such
9 services utilizes affiliated electric public utility assets, including, but
10 not limited to, equipment and personnel, unless the board finds that the
11 electric public utility will receive and reflect such receipt as an offset
12 to its regulated rates the full market value for the use of such assets
13 pursuant to a contract between the parties filed with the board by the
14 electric public utility and subject to the provisions of this section and
15 section 8 of this act:

16 (1) To offset any market transition charge or equivalent rate
17 mechanism assessed to customers pursuant to section 13 of this act;
18 or

19 (2) If the electric public utility is not assessing a market transition
20 charge, to offset the rates charged to customers for distribution
21 service, except that such offset shall cease to be required after the term
22 of the transition bond charge has expired as provided in paragraph (1)
23 of subsection d. of section 14 of this act.

24 c. For the purposes of subsection b. of this section the following
25 shall not constitute the utilization of electric public utility assets:

26 (1) movement or delivery of power pursuant to a federally-
27 regulated open access tariff over transmission facilities owned by the
28 electric public utility;

29 (2) movement or delivery of power pursuant to board regulated
30 tariffs over distribution facilities owned by the electric public utility;
31 and

32 (3) shared corporate overhead or administrative services subject to
33 the provisions of section 8 of this act.

34 d. Pursuant to rules and regulations to be adopted by the board,
35 the transfer of electric public utility assets from an electric public
36 utility to a related competitive business segment of that electric public
37 utility or of a public utility holding company, other than in the ordinary
38 course of business, shall require board approval, and shall be recorded
39 at full value as determined by the board. Notwithstanding this
40 subsection, no transfer of assets shall affect the whole value of the
41 assessment of the transitional energy facility assessment set forth in
42 P.L.1997, c.162 (C.54:30A-100 et al.).

43 e. Tariffs for competitive services filed with the board shall be in
44 the public records, except that if the board determines that the rates
45 are proprietary, they shall be filed under seal and made available under
46 the terms of an appropriate protective agreement, as provided by

1 board order. A public utility shall have the burden of proof by
2 affidavit and motions to demonstrate the need for proprietary
3 treatment. The rates shall become public upon board approval.

4 f. Subject to the approval of the board pursuant to subsection a.
5 of this section, an electric public utility or a related competitive
6 business segment of that electric public utility may provide the
7 following competitive services:

8 (1) Metering, billing and related administrative services that are
9 deemed competitive by the board pursuant to section 8 of this act;

10 (2) Services related to safety and reliability of utility businesses;

11 (3) Competitive services that have been offered by any electric
12 public utility or gas public utility prior to January 1, 1993 or that have
13 been approved by the board prior to the effective date of this act to be
14 offered by any electric public utility or gas public utility. An electric
15 public utility that has offered a competitive service since prior to
16 January 1, 1993 or a competitive service that was approved by the
17 board prior to the effective date of this act is not required to obtain
18 board approval pursuant to subsection a. of this section for that
19 service, but any electric public utility that has not offered a
20 competitive service since prior to January 1, 1993 or has not received
21 previous board approval for such a competitive service shall apply for
22 approval pursuant to subsection a. of this section. Except as
23 otherwise provided by this paragraph, a competitive service that is
24 permitted pursuant to this paragraph shall be subject to all
25 requirements of this act for competitive services and to any standards
26 or other rules or regulations adopted pursuant to this act;

27 (4) Services that the board determines to be substantially similar
28 to competitive services that are permitted under paragraph (3) of this
29 subsection; and

30 (5) Competitive services to non-residential customers using
31 existing utility employees.

32 g. An electric public utility or a related competitive business
33 segment of that electric public utility may provide other services that
34 are offered for nominal or no consideration to existing non-residential
35 customers in the ordinary course of business.

36 h. An electric public utility shall not use regulated rates to
37 subsidize its competitive services or competitive services offered by a
38 related competitive business segment of the public utility holding
39 company of which the electric public utility is an affiliate, and expenses
40 incurred in conjunction with its competitive services shall not be borne
41 by its regulated rate customers. The regulated rates of an electric
42 public utility shall be subject to the review and approval of the board
43 to determine that there is no subsidization of its related competitive
44 business segment. Each such public utility shall maintain books and
45 records, and provide accounting entries of its regulated business to the
46 board as may be required by the board, to show that there is strict

1 separation and allocation of the utility's revenues, costs, assets, risks
2 and functions, between the electric public utility and its related
3 competitive business segment.

4 i. Any other provision of this act to the contrary notwithstanding,
5 commencing on the effective date of this act, an electric public utility
6 or a related competitive business segment of that electric public utility
7 shall not offer any competitive service except those approved or
8 pending approval as of July 1, 1998 pursuant to subsections a. and f.
9 of this section.

10 j. A public utility holding company may offer any competitive
11 service, including, but not limited to, electric generation service,
12 telecommunications service, and cable television service, to retail
13 customers of an electric public utility that is owned by the holding
14 company, but only through a related competitive business segment of
15 the holding company that is not an electric public utility or a related
16 competitive business segment of the electric public utility.
17 Competitive services shall be offered in compliance with all rules and
18 regulations promulgated by the board for carriers of such services,
19 including, but not limited to, telecommunications and cable.

20 k. Notwithstanding any other provisions of this section, by no
21 later than December 31, 2000, the board shall render a decision, after
22 notice and hearing, on any further restrictions required for any or all
23 non-safety related competitive services offered by an electric public
24 utility in addition to the provisions of this section, including whether
25 an electric public utility offering non-safety related services shall
26 establish and provide such services through a business unit which is
27 functionally separated from the electric public utility business unit.

28 (1) Upon completion of the audit process required pursuant to
29 paragraph (1) of subsection f. of section 8 of this act, the board shall
30 commence a hearing process to examine the use of utility assets in
31 providing retail competitive services as permitted in subsection f. of
32 this section. The board shall evaluate and balance the following
33 factors: the prevention of cross-subsidization; the issues attendant to
34 separation and relative to the board's affiliate relation and fair
35 competition standards as provided in section 8 of this act; the effect on
36 ratepayers of the use of utility assets in the provision of non-safety
37 related competitive services; the effect on utility workers; and the
38 effect of utility practices on the market for such services.

39 (2) The relationship between the electric public utility and its
40 related competitive service business unit shall be subject to affiliate
41 relations standards to be promulgated by the board pursuant to
42 subsection f. of section 8 of this act.

43 l. If a separate unit is established by the electric public utility as a
44 related competitive business segment of the electric public utility such
45 that other than shared administration and overheads, employees of the
46 competitive services business unit shall not also be involved in the

1 provision of non-competitive utility and safety services, and the
2 competitive services are provided utilizing separate assets than those
3 utilized to provide non-competitive utility and safety services, the
4 board shall apply 25 percent of the net revenues:

5 (1) To offset any market transition charge or equivalent rate
6 mechanism assessed to customers pursuant to section 13 of this act;
7 or

8 (2) If the electric public utility is not assessing or has eliminated a
9 market transition charge, to offset the rates charged to customers for
10 distribution service, except that such offset shall cease to be required
11 eight years after the start date of retail competition as provided in
12 subsection a. of section 5 of this act.

13
14 8. (New section) a. Except as otherwise provided in this act, and
15 notwithstanding any provisions of R.S.48:2-18, R.S.48:2-21, section
16 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1 or any other law to
17 the contrary, the board shall not regulate, fix or prescribe the rates,
18 tolls, charges, rate structures, rate base, or cost of service of
19 competitive services.

20 b. For the purposes of this act, electric generation service is
21 deemed to be a competitive service.

22 c. The board is authorized to determine, after notice and hearing,
23 whether any other service offered by an electric public utility is a
24 competitive service. In making such a determination, the board shall
25 develop standards of competitive service which, at a minimum, shall
26 include: evidence of ease of market entry; presence of other
27 competitors; and the availability of like or substitute services in the
28 relevant market segment and geographic area. Notwithstanding the
29 presence of these factors, the board may determine that any service
30 shall remain regulated for purposes of the public safety and welfare.

31 d. The board is authorized to determine, after notice and hearing,
32 and after appropriate review by the Legislature pursuant to subsection
33 k. of this section, whether to reclassify as regulated any electric service
34 or segment thereof that it has previously found to be competitive,
35 including electric generation service, if it determines that sufficient
36 competition is no longer present, upon application of the criteria set
37 forth in subsection c. of this section. Upon such a reclassification,
38 subsection a. of this section shall no longer apply and the board shall
39 determine such rates for that electric service which it finds to be just
40 and reasonable. The board, however, shall continue to monitor the
41 electric service or segment thereof and, whenever the board shall find
42 that the electric service has again become sufficiently competitive
43 pursuant to subsection c. of this section, the board shall again apply
44 the provisions of subsection a. of this section.

45 e. Nothing in this act shall limit the authority of the board,
46 pursuant to Title 48 of the Revised Statutes, to ensure that electric

1 public utilities do not make or impose unjust preferences,
2 discriminations, or classifications for any services provided to
3 customers.

4 f. (1) The board shall adopt, by rule, regulation or order, such fair
5 competition standards, affiliate relation standards, accounting
6 standards and reports as are necessary to ensure that electric public
7 utilities or their related competitive business segments do not enjoy an
8 unfair competitive advantage over other non-affiliated purveyors of
9 competitive services and in order to monitor the allocation of costs
10 between competitive and non-competitive services offered by an
11 electric public utility, and within 60 days after the starting date for
12 implementation of retail choice pursuant to subsection a. of section 5
13 of this act, shall commence the process of conducting audits, at the
14 expense of the electric public utilities, to ensure compliance with this
15 section and section 7 of this act and with the board's rules, regulations
16 and orders adopted pursuant to this section and section 7 of this act.
17 The board shall hire an independent contractor to perform such audits.

18 (2) Subsequent audits shall take place no less than every two years
19 after the date of the decision rendered pursuant to subsection k. of
20 section 7 of this act.

21 (3) The public utility or an intervenor shall have the right to
22 contest the methodology and rebut the findings of an audit performed
23 pursuant to this subsection, in a filing with the board. The board shall
24 take no action to functionally separate, structurally separate or require
25 the divestiture of any portion of a public utility's operations pursuant
26 to this subsection until the public utility, and any intervenors, have
27 been afforded timely opportunity to make such filing and until the
28 board has issued a decision thereon.

29 (4) If the board finds, as a result of any such audit, that substantial
30 violations of this act or of the board's rules, regulations or orders
31 adopted pursuant to this section and section 7 of this act have
32 occurred which result in unfair competitive advantages for an electric
33 public utility, it shall: order the electric public utility to establish and
34 provide such services through a business unit which is functionally
35 separated from the electric public utility business unit as a related
36 competitive business segment of the utility, such that, other than
37 shared administration and overheads, employees of the competitive
38 services business unit shall not also be involved in the provision of
39 non-competitive utility and safety services, and the competitive
40 services are provided utilizing separate assets than those utilized to
41 provide noncompetitive utility and safety services; order the electric
42 public utility to establish and provide such services through a
43 structurally separate business unit or units including, but not limited
44 to, a related competitive business segment of the public utility holding
45 company; or order the electric public utility to divest itself of any
46 business units that provide such services.

1 (5) If the board determines, as a result of the audit performed
2 pursuant to this subsection that an electric public utility has unfairly
3 allocated costs between its competitive and non-competitive services,
4 the board is authorized to require such utility to return to the
5 ratepayers an amount, equivalent to the amount of the costs
6 determined to be unfairly allocated, with interest, during the time that
7 the unfair allocation of costs occurred. In addition, the board is
8 authorized to order such utility to pay a fine of up to \$10,000 as a
9 result of the violation or violations determined to have occurred
10 pursuant to this subsection.

11 (6) Notwithstanding any requirements of the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
13 the board shall initiate a proceeding and shall adopt, after notice,
14 provision of the opportunity for comment, and public hearing, such
15 fair competition and accounting standards as are necessary on an
16 interim basis to implement retail electric choice. Such standards shall
17 be effective as regulations immediately upon filing with the Office of
18 Administrative Law and shall be effective for a period not to exceed
19 18 months, and may, thereafter, be amended, adopted or readopted by
20 the board in accordance with the provisions of the "Administrative
21 Procedure Act."

22 g. The board shall determine, by rule or order, what reports are
23 necessary to monitor the competitiveness of any service offered to a
24 customer of an electric public utility.

25 h. The board shall have the authority to take appropriate
26 increasingly stringent action, including the issuance of an order that an
27 electric public utility or its related competitive business segment cease
28 the offering of a competitive service, functionally separate or
29 structurally separate its competitive service offering from non-
30 competitive business functions, or divest itself of such services, in the
31 event that the board determines, after hearing, that recurring and
32 significant violations of its rules or orders adopted pursuant to
33 subsection f. of this section have occurred.

34 i. Nothing in this act shall exempt an electric public utility from
35 obtaining all applicable local, State and federal licenses or permits
36 associated with the offering of competitive services and complying
37 with all applicable laws and regulations regarding the provision of such
38 services.

39 j. If the board finds, as a result of any audit conducted pursuant to
40 this section, that violations of the board's rules, regulations or orders
41 adopted pursuant to this section and section 7 of this act have
42 occurred, which are not substantial violations, the board is authorized
43 to impose a fine of up to \$10,000 against the electric public utility.

44 k. Prior to reclassifying as regulated any service it previously
45 found to be competitive, the board shall make recommendations to the
46 Legislature concerning the proposed reclassification. The

1 recommendations shall be deemed to be approved unless the
2 Legislature adopts a concurrent resolution stating that the Legislature
3 is not in agreement with all or any part of the recommendations within
4 90 days following the date of transmittal of the recommendations to
5 the Legislature. The concurrent resolution shall advise the board of
6 the Legislature's specific objections to the recommendations and shall
7 direct the board to submit revised recommendations which respond to
8 those objections within 45 days of the date of transmittal of the
9 concurrent resolution to the board.

10

11 9. (New section) a. Simultaneously with the starting date for the
12 implementation of retail choice as determined by the board pursuant
13 to subsection a. of section 5 of this act, and for at least three years
14 subsequent and thereafter until the board specifically finds it to be no
15 longer necessary and in the public interest, each electric public utility
16 shall provide basic generation service. Power procured for basic
17 generation service by an electric public utility shall be purchased, at
18 prices consistent with market conditions. The charges assessed to
19 customers for basic generation service shall be regulated by the board
20 and shall be based on the reasonable and prudent cost to the utility of
21 providing such service, including the cost of power purchased at prices
22 consistent with market conditions by the electric public utility in the
23 competitive wholesale marketplace and related ancillary and
24 administrative costs, as determined by the board. The board shall
25 approve unbundled rates to assure that aggregate rate reductions
26 established pursuant to section 4 of this act are sustained
27 notwithstanding changes in basic generation charges approved
28 pursuant to this section.

29 b. The board may allow an electric public utility to purchase
30 power for basic generation service through a bilateral contract from a
31 related competitive business segment of its public utility holding
32 company only if:

33 (1) The related competitive business segment is not a related
34 competitive business segment of the electric public utility; and

35 (2) The board determines that the procurement of power from the
36 related competitive business segment of the public utility holding
37 company is necessary in order to ensure the reliability of service to
38 basic generation service customers or to address other extraordinary
39 circumstances, and that the purchase price does not exceed the market
40 price for such power or the power was procured through a competitive
41 bid process subject to board review and approval. The board shall
42 require that all net revenues derived from such sales, when the source
43 of power is assets or contracts which costs are included in stranded
44 costs recovery charges assessed pursuant to sections 13 and 14 of this
45 act, shall be applied:

1 (a) To offset any market transition charge or equivalent rate
2 mechanism assessed to customers pursuant to section 13 of this act;
3 or

4 (b) If the electric public utility is not assessing a market transition
5 charge, to offset the rates charged to customers for distribution
6 service, except that such offset shall cease to be required after the term
7 of the transition bond charge has expired as provided in paragraph (1)
8 of subsection d. of section 14 of this act.

9 (3) The board may devise an alternative accounting or cost
10 recovery process that permits an electric public utility to purchase
11 power from a related competitive business segment of its public utility
12 holding company ¹ ~~], or otherwise,]~~ ¹ or otherwise. ² to provide
13 basic generation service to its customers during the period that the
14 electric public utility is providing for sustainable rate reductions
15 pursuant to subsection j. of section 4 of this act and subsection a. of
16 this section, if the board determines that such process is necessary to
17 mitigate the impacts of market price fluctuations and to sustain such
18 rate reductions.

19 c. No later than three years after the starting date of retail
20 competition as provided in subsection a. of section 5 of this act, the
21 board shall issue a decision as to whether to make available on a
22 competitive basis the opportunity to provide basic generation service
23 to any electric power supplier, any electric public utility, or both.

24 d. Power procured for basic generation service by an electric
25 power supplier shall be purchased at prices consistent with market
26 conditions. The charges assessed to customers for basic generation
27 service shall be regulated by the board and shall be based on the
28 reasonable and prudent cost to the supplier of providing such service,
29 including the cost of power purchased at prices consistent with market
30 conditions, by the supplier in the competitive wholesale marketplace
31 and related ancillary and administrative costs, as determined by the
32 board or shall be based upon the result of a competitive bid.

33 e. Each electric public utility or electric power supplier that
34 provides basic generation service pursuant to subsections a., c. or d.
35 of this section shall be permitted to recover in its basic generation
36 charges on a full and timely basis all reasonable and prudently incurred
37 costs incurred in the provision of basic generation services consistent
38 with the provisions of this section, except to the extent that certain
39 costs related to the provision of basic generation service are already
40 being recovered in other elements of an electric public utility's charges.
41 The board may approve ratemaking and other pricing mechanisms that
42 provide incentives, including financial risks and rewards, for the utility
43 or electric power supplier to procure a portfolio of electric power
44 supply that provides maximum benefit to basic generation service
45 customers.

46 f. Each electric public utility shall submit a quarterly report to the

1 board of all electricity generation contracts between the public utility
2 and any related competitive business segment. A utility that submits
3 a report pursuant to this subsection may petition the board for
4 confidential treatment as trade secrets of any or all of the information
5 provided.

6 g. Nothing in this section shall apply to any existing board
7 approved bilateral power purchase contract by an electric public utility
8 as of the effective date of this act.

9
10 10. (New section) a. After the implementation of retail electric
11 choice pursuant to subsection a. section 5 of this act, the board shall
12 order each gas public utility to unbundle its rate schedules such that
13 discrete services provided, which were previously included in the
14 bundled utility rate, are separately identified and charged in its tariffs.
15 Billing for unbundled services also shall include charges for regulatory
16 assets and may include restructuring related costs. The board shall
17 order each gas public utility to submit a rate unbundling filing no later
18 than May 1, 1999, in a form and of a content to be determined by the
19 board. The board shall review such filings and, after hearing and an
20 opportunity for public comment, render a determination as to the
21 appropriate unbundled rates consistent with the provisions of this act.
22 Notwithstanding any other provisions of this act, an unbundling of gas
23 public utility rates implemented as a result of this section shall not
24 result in a reallocation of utility cost responsibility between or among
25 different classes of customers. The board shall continue to allow
26 commercial and industrial customers to choose a gas supplier and shall
27 order that all retail customers of a gas public utility shall be able to
28 choose a gas supplier by no later than December 31, 1999, except that
29 the board may approve an accelerated schedule for retail gas customer
30 choice.

31 b. Subject to the approval of the board pursuant to subsection d.
32 of this section, a gas public utility or a related competitive business
33 segment of that gas public utility may provide the following
34 competitive services:

35 (1) Metering, billing and related administrative services that are
36 deemed competitive by the board pursuant to this section;

37 (2) Services related to safety and reliability of utility businesses;

38 (3) Competitive services that have been offered by any electric or
39 gas public utility since prior to January 1, 1993 or that have been
40 approved by the board prior to the effective date of this act to be
41 offered by any electric public utility or gas public utility. A gas public
42 utility that has offered a competitive service since prior to January 1,
43 1993 or a competitive service that was approved prior to the effective
44 date of this act is not required to obtain board approval pursuant to
45 subsection d. of this section, but any gas public utility that has not
46 offered a competitive service prior to January 1, 1993 or has not

1 received previous board approval for such a competitive service shall
2 apply for approval pursuant to subsection d. of this section. Except
3 as otherwise provided by this paragraph, a competitive service that is
4 permitted by this paragraph shall be subject to all requirements of this
5 act for competitive services and to any standards or other rules or
6 regulations adopted pursuant to this act;

7 (4) Services that are substantially similar to competitive services
8 that are permitted under paragraph (3) of this subsection; and

9 (5) Competitive services to non-residential customers using utility
10 employees and assets.

11 c. A gas public utility or a related competitive business segment
12 of that gas public utility may provide other services that are offered for
13 nominal or no consideration to existing non-residential customers in
14 the ordinary course of business.

15 d. A gas public utility shall not offer any competitive service to
16 retail customers without the express prior written approval of the
17 board. The board may require that a gas public utility file and
18 maintain tariffs for competitive services, which tariffs shall be subject
19 to review and approval by the board. The board shall approve a
20 competitive service only upon a finding that:

21 (1) The provision of a competitive service by a gas public utility
22 or its related competitive business segment shall not adversely impact
23 the ability of the gas public utility to offer its non-competitive services
24 to customers in a safe, adequate and proper manner, and in all
25 instances where resources are jointly deployed by the utility to provide
26 competitive and non-competitive services and resource constraints
27 arise, the provision of non-competitive services shall receive a higher
28 priority; and

29 (2) The price that a gas public utility charges for a competitive
30 service shall not be less than the fully allocated cost of providing such
31 service, as determined by the board, which cost shall include an
32 allocation of the cost of all equipment, vehicles, labor, related fringe
33 benefits and overheads, and administration utilized, and all other assets
34 utilized and costs incurred, directly or indirectly, in providing such
35 competitive service.

36 e. Tariffs for competitive services filed with the board shall be in
37 the public records, except that if the board determines that the rates
38 are proprietary, they shall be filed under seal and made available under
39 the terms of an appropriate protective agreement, as provided by
40 board order. A public utility shall have the burden of proof by affidavit
41 and motions to demonstrate the need for proprietary treatment. The
42 rates shall become public upon board approval.

43 f. A gas public utility shall not use regulated rates to subsidize its
44 competitive services or competitive services offered by a related
45 competitive business segment of the public utility holding company of
46 which the public utility is an affiliate, and expenses incurred in

1 conjunction with its competitive services shall not be borne by its
2 regulated rate customers. The regulated rates of a gas public utility
3 shall be subject to the review and approval of the board to determine
4 that there is no subsidization of its related competitive business
5 segment. Each such public utility shall maintain books and records,
6 and provide accounting entries of its regulated business to the board
7 as required by the board, to show that there is strict separation and
8 allocation of the utility's revenues, costs, assets, risks and functions,
9 between the gas public utility and its related competitive business
10 segment.

11 g. Except as otherwise provided in this act, and notwithstanding
12 any provisions of R.S.48:2-18, R.S.48:2-21, section 31 of P.L.1962,
13 c.198 (C.48:2-21.2), R.S.48:3-1 or any other law to the contrary, the
14 board shall not regulate, fix or prescribe the rates, tolls, charges, rate
15 structures, rate base, or cost of service of competitive services.

16 h. The board is authorized to determine, after notice and hearing,
17 whether any service offered by a gas public utility is a competitive
18 service. In making such a determination, the board shall develop
19 standards of competitive service which, at a minimum, shall include:
20 evidence of ease of market entry; presence of other competitors; and
21 the availability of like or substitute services in the relevant geographic
22 area. Notwithstanding the presence of these factors, the board may
23 determine that any service shall remain regulated for purposes of the
24 public safety and welfare.

25 i. The board shall have the authority to reclassify as regulated any
26 gas service or segment thereof that it has previously found to be
27 competitive, if, after notice and hearing, and after appropriate review
28 by the Legislature pursuant to subsection v. of this section, it
29 determines that sufficient competition is no longer present, upon
30 application of the criteria set forth in subsection h. of this section.
31 Upon such a reclassification, subsection g. of this section shall no
32 longer apply and the board shall determine such rates for that gas
33 service as it finds to be just and reasonable. The board, however, shall
34 continue to monitor the gas service or segment thereof and, whenever
35 the board shall find that the gas service has again become sufficiently
36 competitive pursuant to subsection h. of this section, the board shall
37 again apply the provisions of subsection g. of this section.

38 j. Nothing in this act shall limit the authority of the board,
39 pursuant to Title 48 of the Revised Statutes, to ensure that gas public
40 utilities do not make or impose unjust preferences, discriminations, or
41 classifications for any services provided to customers.

42 k. (1) The board shall adopt, by rule, regulation or order, such fair
43 competition standards, affiliate relation standards, accounting
44 standards and reports as are necessary to ensure that gas public
45 utilities or their related competitive business segments do not enjoy an
46 unfair competitive advantage over other non-affiliated purveyors of

1 competitive services and in order to monitor the allocation of costs
2 between competitive and non-competitive services offered by a gas
3 public utility, and within 60 days after the date for implementation of
4 retail choice pursuant to this section, shall commence the process of
5 conducting audits, at the expense of the gas public utilities, to ensure
6 compliance with this section and with the board's rules, regulations or
7 orders adopted pursuant to this section. The board shall hire an
8 independent contractor to perform such audits.

9 (2) Subsequent audits shall take place no less than every two years
10 after the date of the decision rendered pursuant to subsection q. of this
11 section.

12 (3) The public utility and an intervenor shall have the right to
13 contest the methodology and rebut the findings of an audit performed
14 pursuant to this subsection, in a filing with the board. The board shall
15 take no action to functionally separate, structurally separate or require
16 the divestiture of any portion of a public utility's operations pursuant
17 to this subsection until the public utility, and any intervenors have been
18 afforded timely opportunity to make such filing and until the board has
19 issued a decision thereon.

20 (4) If the board finds as a result of any such audit, that substantial
21 violations of this act or of the board's rules, regulations or orders
22 adopted pursuant to this section have occurred which result in unfair
23 competitive advantages for a gas public utility, it shall: order the gas
24 public utility to establish and provide such services through a business
25 unit which is functionally separated from the gas public utility business
26 unit as a related competitive business segment of the utility, such that,
27 other than shared administration and overheads, employees of the
28 competitive services business unit shall not also be involved in the
29 provision of non-competitive utility and safety services, and the
30 competitive services are provided utilizing separate assets than those
31 utilized to provide non-competitive utility and safety services; order
32 the gas public utility to establish and provide such services through a
33 structurally separate business unit or units including, but not limited
34 to, a related competitive business segment of the public utility holding
35 company; or order the gas public utility to divest itself of any business
36 units that provide such services.

37 (5) If the board determines, as a result of the audit performed
38 pursuant to this subsection that a gas public utility has unfairly
39 allocated costs between its competitive and non-competitive services,
40 the board is authorized to require such utility to return to the
41 ratepayers an amount, equivalent to the amount of the costs
42 determined to be unfairly allocated, with interest, during the time that
43 the unfair allocation of costs occurred. In addition, the board is
44 authorized to order such utility to pay a fine of up to \$10,000 as a
45 result of the violation or violations determined to have occurred
46 pursuant to this subsection.

1 l. The board shall determine, by rule or order, what reports are
2 necessary to monitor the competitiveness of any service offered to a
3 customer of a gas public utility.

4 m. The board shall have the authority to take appropriate action,
5 including the issuance of an order that a gas public utility or its related
6 competitive business segment cease the offering of a competitive
7 service, functionally separate its competitive service offering from
8 non-competitive business functions, structurally separate or divest
9 itself of such services, in the event that the board determines, after
10 hearing, that recurring and significant violations of its rules,
11 regulations or orders adopted pursuant to subsection k. of this section
12 have occurred.

13 n. Any other provision of this act to the contrary notwithstanding,
14 commencing on the effective date of this act, a gas public utility or a
15 related competitive business segment of that gas public utility shall not
16 offer any competitive service except those approved or pending
17 approval as of July 1, 1998 pursuant to subsections b. and d. of this
18 section; provided, however, that in the event that a gas public utility
19 is not part of a holding company legal structure, competitive services
20 may be offered by a related competitive business segment of that gas
21 public utility as long as that related competitive business segment is
22 structurally separated from the gas public utility, and provided that the
23 interactions between the gas public utility and the related competitive
24 business segment are subject to the affiliate relation standards adopted
25 by the board pursuant to subsection k. of this section.

26 o. A public utility holding company may offer a gas competitive
27 service to retail customers of a gas public utility that is owned by the
28 holding company, but only through a related competitive business
29 segment of the holding company that is not a related competitive
30 business segment of the gas public utility; provided, however, that in
31 the event that a gas public utility is not part of a holding company legal
32 structure, competitive services may be offered by a related competitive
33 business segment of that gas public utility as long as that related
34 competitive business segment is structurally separated from the gas
35 public utility, and provided that interactions between the gas public
36 utility and the related competitive business segment are subject to the
37 affiliate relation standards adopted by the board pursuant to subsection
38 k. of this section.

39 p. Nothing in this act shall exempt a gas public utility from
40 obtaining all applicable local, State and federal licenses or permits
41 associated with the offering of competitive services and complying
42 with all applicable laws and regulations regarding the provision of such
43 services.

44 q. Notwithstanding any other provisions of this section, by no
45 later than December 31, 2000, the board shall render a decision, after
46 notice and hearing, on any further restrictions required for any or all

1 non-safety related competitive services offered by a gas public utility
2 in addition to the provisions of this section, including whether a gas
3 public utility offering non-safety related services must establish and
4 provide such services through a business unit which is functionally
5 separated from the gas public utility business unit.

6 (1) Upon the completion of the audit process required by
7 paragraph (1) of subsection k. of this section, the board shall initiate
8 the process of organizing and conducting hearings to examine the use
9 of utility assets in providing retail competitive services as permitted in
10 subsection f. of this section. The board shall evaluate and balance the
11 following factors: the prevention of cross subsidization, the issues
12 attendant to separation and relative to the board's affiliate relation and
13 fair competition standards as provided in subsection k. of this section,
14 the effect on ratepayers of the use of utility assets in the provision of
15 non-safety related competitive services, the effect on utility workers,
16 and the effect of utility practices on the market for such services.

17 (2) The relationship between the gas public utility and its related
18 competitive service business unit shall be subject to affiliate relations
19 standards to be promulgated by the board pursuant to subsection k. of
20 this section.

21 r. For at least three years subsequent to the starting date of 100
22 percent retail competition as provided in subsection a. of this section
23 and thereafter until the board specifically finds it to be no longer in the
24 public interest, each gas public utility shall provide basic gas supply
25 service. Gas supply procured for basic gas supply service by a gas
26 public utility shall be purchased at prices consistent with market
27 conditions. The charges assessed to customers for basic gas supply
28 service shall be regulated by the board and shall be based on the cost
29 to the utility of providing such service, including the cost of gas
30 commodity and capacity purchased at prices consistent with market
31 conditions by the gas public utility in the competitive wholesale
32 marketplace and related ancillary and administrative costs, as
33 determined by the board. A gas supply service offered by a gas public
34 utility under a tariff approved by the board as of the effective date of
35 this act shall qualify for the provision of basic gas supply service
36 required hereunder.

37 s. By no later than January 1, 2002, the board shall issue a
38 decision as to whether to make available basic gas service on a
39 competitive basis to any gas supplier, any gas public utility, or both.

40 t. Gas procured for basic gas supply service by a gas supplier shall
41 be purchased at prices consistent with market conditions. The charges
42 assessed to customers for basic gas service shall be regulated by the
43 board and shall be based on the cost to the supplier of providing such
44 service, including the cost of gas commodity and capacity purchased
45 at prices consistent with market conditions by the supplier in the
46 competitive wholesale marketplace and related ancillary and

1 administrative costs, as determined by the board or shall be based upon
2 the result of a competitive bid.

3 u. Each gas public utility or gas supplier that provides basic gas
4 supply service pursuant to subsections r., s. and t. of this section shall
5 be permitted to recover in its basic gas supply charges on a full and
6 timely basis all reasonable and prudently incurred costs incurred in the
7 provision of basic gas supply services pursuant to this section, except
8 to the extent that certain costs related to the provision of basic gas
9 supply service are already being recovered in other elements of a gas
10 public utility's charges. The board may approve ratemaking and other
11 pricing mechanisms that provide incentives, including financial risks
12 and rewards, for the gas public utility or gas supplier to procure a
13 portfolio of gas supply that provides maximum benefit to basic gas
14 supply service customers.

15 v. Prior to reclassifying as regulated, pursuant to subsection i. of
16 this section, any service previously found to be competitive, the board
17 shall make recommendations to the Legislature concerning the
18 proposed reclassification. The recommendations shall be deemed to
19 be approved unless the Legislature adopts a concurrent resolution
20 stating that the Legislature is not in agreement with all or any part of
21 the recommendations within 90 days following the date of transmittal
22 of the recommendations to the Legislature. The concurrent resolution
23 shall advise the board of the Legislature's specific objections to the
24 recommendations and shall direct the board to submit revised
25 recommendations which respond to those objections within 45 days of
26 the date of transmittal of the concurrent resolution to the board.

27 w. If the board finds, as a result of any audit conducted pursuant
28 to this section, that violations of the board's rules, regulations or
29 orders adopted pursuant to this section have occurred, which are not
30 substantial violations, the board is authorized to impose a fine of up to
31 \$10,000 against the gas public utility.

32
33 11. (New section) a. On or after the starting date for the
34 implementation of retail choice as determined by the board pursuant
35 to subsection a. section 5 of this act and for the duration of the
36 transition charges established pursuant to subsection i. of section 13
37 and subsection a. of section 14 of this act, the board may require that
38 an electric public utility either:

39 (1) Functionally separate its non-competitive business functions
40 from its competitive electric generation service or its electric power
41 generator functions so that such services or functions are provided by
42 a related competitive business segment of the public utility or the
43 public utility holding company. A related competitive business segment
44 of the public utility holding company that is providing competitive
45 electric generation services or performing electric power generator
46 functions shall not be considered a public utility for the purposes of

1 regulation under Title 48 of the Revised Statutes or any other State
2 law or rule or regulation, except that the interrelationships between the
3 related competitive business segment and the electric public utility
4 shall be subject to board authority and oversight consistent with the
5 provisions of this section; or

6 (2) Divest to an unaffiliated company all or a portion of its electric
7 generation assets and operations, upon a finding by the board, that
8 such divestiture is necessary because the concentration or location of
9 electric generation facilities under the electric public utility's ownership
10 or control enable it to exercise market control that adversely affects
11 the formation of a competitive electricity generation market and
12 adversely affects retail electric supply customers by enabling the
13 electric public utility or its related competitive business segment to
14 gain an unfair competitive advantage or otherwise charge non-
15 competitive prices.

16 b. Prior to the commencement by an electric public utility or a
17 related competitive business segment of an electric public utility of any
18 solicitation of bids for the sale of generating assets subject to recovery
19 pursuant to sections 13 and 14 of this act or of the public utility
20 holding company of any solicitation of bids for the sale of generating
21 assets which have not been previously approved by the board for
22 transfer from the electric public utility to the electric public utility
23 holding company and are subject to recovery pursuant to sections 13
24 and 14 of this act, whether ordered by the board or not, the board shall
25 establish standards for the conduct of such sale by the utility. Such
26 standards shall include provisions for the board to monitor the
27 progress of the bid process to ensure that the process is conducted by
28 parties acting in their own best interest and in a manner designed to
29 ensure a fair market value determination and does not unreasonably
30 preclude participation by prospective purchasers. An order by the
31 board, pursuant to paragraphs (1) and (2) of subsection a. of this
32 section, ordering a public utility to functionally separate or divest its
33 competitive services to a related competitive business segment of the
34 public utility, a public utility, a public utility holding company or an
35 unaffiliated company shall include a provision that the related
36 competitive business segment of the public utility, public utility
37 holding company or unaffiliated company shall:

38 (1) Recognize the existing employee bargaining unit and shall
39 continue to honor and abide by an existing collective bargaining
40 agreement for the duration of the agreement. The new entity shall be
41 required to bargain in good faith with the existing collective bargaining
42 unit when the existing collective bargaining agreement has expired;

43 (2) Shall hire its initial employee complement from among
44 qualified employees of the electric public utility employed at the
45 generating facility at the time of the functional separation or
46 divestiture; and

1 (3) Continue such terms and conditions of employment of
2 employees as are in existence at the generating facility at the time of
3 the functional separation or divestiture.

4 c. Prior to completing any sale of generating assets subject to
5 recovery pursuant to sections 13 and 14 of this act, an electric public
6 utility shall file for and obtain approval by the board of the sale. The
7 board shall approve the filing, subject to the provisions of subsection
8 d. of this section, if it finds that:

9 (1) The sale reflects the full market value of the assets;

10 (2) The sale is otherwise in the best interest of the electric public
11 utility's ratepayers;

12 (3) The sale will not jeopardize the reliability of the electric power
13 system;

14 (4) The sale will not result in undue market control by the
15 prospective buyer;

16 (5) The impacts of the sale on the utility's workers have been
17 reasonably mitigated;

18 (6) The sale process is consistent with standards established by the
19 board pursuant to subsection b. of this section;

20 (7) The sale, merger, or acquisition of the generation or other
21 utility assets includes a provision that the purchasing, merging or new
22 entity shall recognize the existing employee bargaining unit and shall
23 continue to honor and abide by any existing collective bargaining
24 agreement for the duration of the agreement. The new entity shall be
25 required to bargain in good faith with the existing collective bargaining
26 unit when the existing collective bargaining agreement has expired;

27 (8) The sale, merger, or acquisition of the generation or other
28 utility assets includes a provision that the purchasing, merging or new
29 entity shall hire its initial employee complement from among the
30 employees of the electric public utility employed at the generating
31 facility at the time of the sale, merger or acquisition; and

32 (9) The sale, merger or acquisition of the generation or other
33 utility assets includes a provision that the purchasing, merging or new
34 entity shall continue such terms and conditions of employment of
35 employees as are in existence at the generating facility at the time of
36 the sale, merger or acquisition.

37 d. Whenever an electric public utility sells generating assets
38 subject to recovery pursuant to sections 13 and 14 of this act and the
39 net proceeds from such sale exceed the level of market value used in
40 determining the level of stranded costs being recovered through a
41 market transition charge or equivalent rate mechanism established
42 pursuant to section 13 of this act, the board shall require that all such
43 excess revenues derived by the electric public utility or its related
44 competitive business segment from that sale be applied:

45 (1) To offset any market transition charge or equivalent rate
46 mechanism assessed to customers pursuant to section 13 of this act;

1 or

2 (2) If the electric public utility is not assessing a market transition
3 charge, to offset the rates charged to customers for distribution
4 service.

5 e. Notwithstanding this subsection no transfer of assets shall affect
6 the whole value of the assessment of the transitional energy facility
7 assessment set forth in P.L.1997, c.162 (C.54:30A-100 et seq.).

8

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

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

32 (2) Nuclear plant decommissioning costs;

33 (3) The costs of demand side management programs that were
34 approved by the board pursuant to its demand side management
35 regulations prior to April 30, 1997. For the purpose of establishing
36 initial unbundled rates pursuant to section 4 of this act, the societal
37 benefits charge shall be set to recover the same level of demand side
38 management program costs as is being collected in the bundled rates
39 of the electric public utility on the effective date of this act. Within
40 four months of the effective date of this act, and every four years
41 thereafter, the board shall initiate a proceeding and cause to be
42 undertaken a comprehensive resource analysis of energy programs, and
43 within eight months of initiating such proceeding and after notice,
44 provision of the opportunity for public comment, and public hearing,
45 the board, in consultation with the Department of Environmental
46 Protection, shall determine the appropriate level of funding for energy

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

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

44 (5) The cost, of consumer education, as determined by the board,
45 which shall be in an amount that, together with the consumer
46 education surcharge imposed on electric power supplier license fees

1 pursuant to subsection h. of section 29 of this act and the consumer
2 education surcharge imposed on gas supplier license fees pursuant to
3 subsection g. of section 30 of this act, shall be sufficient to fund the
4 consumer education program established pursuant to section 36 of this
5 act.

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

22

23 13. (New section) a. The provisions of R.S.48:2-21 or any other
24 law to the contrary notwithstanding, and simultaneously with the
25 starting date for the implementation of retail choice as determined by
26 the board pursuant to subsection a. of section 5 of this act, the board
27 shall, pursuant to the findings made in connection with the stranded
28 cost filing under subsection c. of this section and the related stranded
29 costs recovery order, permit each electric public utility the opportunity
30 to recover the following categories of costs through a market
31 transition charge that shall be collected as a limited duration non-
32 bypassable charge payable by all of the electric public utility's
33 customers, except as provided pursuant to section 28 of this act:

34 (1) Utility generation plant stranded costs;

35 (2) Stranded costs related to long-term and short-term power
36 purchase contracts with other utilities, including buydowns and
37 buyouts of such contracts and interim debt, the issuance of which has
38 been approved by the board, issued to effectuate the buydown or
39 buyout of such contracts;

40 (3) Stranded costs related to long-term power purchase contracts
41 with non-utility generators, including buydowns and buyouts of such
42 contracts and interim debt issued to effectuate the buydown or buyout
43 of such contracts, and the costs of new power contracts approved by
44 the board which are the result of the renegotiation, restructuring or
45 termination of previous non-utility generator power purchase contracts
46 pursuant to subsection l. of this section; and

1 (4) Such restructuring related costs, if any, as the board determines
2 to be appropriate for recovery in a market transition charge.

3 b. Costs that may be collected pursuant to subsection a. of this
4 section must be otherwise unrecoverable as a direct result of the
5 implementation of retail choice mandated by subsection a. of section
6 5 of this act.

7 c. In order for an electric public utility to have a market transition
8 charge established it must submit a stranded cost filing to the board,
9 the elements of which are to be established by the board. After notice
10 and hearing, the board may approve, reject or approve with
11 modifications the filing as it deems necessary and appropriate to
12 comply with the provisions of this act and shall thereafter issue a
13 stranded cost recovery order setting forth the amount of stranded
14 costs, if any, eligible to be recovered by such electric public utility.
15 The order or a successor order also shall set forth the board
16 authorized mechanism to be used by the electric public utility for
17 recovery of stranded costs which the board has determined are eligible
18 for recovery.

19 d. Costs that may be eligible for recovery pursuant to paragraphs
20 (1) and (2) of subsection a. of this section must have been committed
21 to by the utility and included in rates through the conclusion of the
22 utility's most recent base rate case prior to April 30, 1997, except that
23 the board may determine certain costs that were not previously
24 included in base rates to be eligible upon a showing by the utility that
25 such costs were prudently incurred and either:

26 (1) were needed to maintain plant integrity, performance or
27 reliability or to meet safety, environmental or other regulatory
28 standards consistent with the utility's obligation to serve; or

29 (2) in the case of major investments or major upgrades not
30 meeting the standard in subsection a. of this section, the utility
31 demonstrates that it had no more cost-effective power supply source
32 available at the time the commitment was made to meet their energy
33 consumers' needs consistent with applicable board standards and to
34 provide benefits to ratepayers.

35 e. For the purposes of quantifying the magnitude of stranded costs
36 eligible for recovery via the market transition charge, the board shall
37 require the electric public utility to demonstrate the full market value
38 of each eligible generating asset or power purchase commitment over
39 its remaining useful life or term and, in fixing the level of the market
40 transition charge, the board shall reach a determination as to the
41 market value of such eligible assets and commitments, or implement
42 a mechanism for such value to be determined. Such determination or
43 mechanism shall reflect or provide a means to reflect the full value of
44 the eligible asset or commitment, including value which may not be
45 realized by the electric public utility until after the expiration of the
46 market transition charge, and may reflect a reduced return, if any, on

1 investment in quantifying stranded costs which the board determines
2 to be reasonable given the changes in capital costs or risks to the
3 utility, or to reflect the impaired value of the uneconomic generating
4 assets to ratepayers.

5 f. For the purposes of quantifying the magnitude of stranded costs
6 eligible for recovery via the market transition charge, the board shall
7 require or impute all reasonably available measures for the electric
8 public utility to mitigate the quantity of stranded costs, by:

9 (1) Reducing the cost of power purchase commitments and the on-
10 going capital and operations costs of the generating plant;

11 (2) Maximizing the market value of the generating asset or
12 purchase commitment; or

13 (3) Undertaking other reasonably achievable cost reductions.

14 g. The board shall conduct a periodic review and, if necessary,
15 adjust the market transition charge or implement other ratemaking
16 mechanisms in order to ensure that the utility will not collect charges
17 that exceed its actual stranded costs. Net proceeds from the sale or
18 lease of generating assets as provided in subsection d. of section 11 of
19 this act or from the offering of competitive services by the electric
20 public utility or a related competitive business segment of the public
21 utility as provided in subsection b. of section 7 of this act, shall be
22 reflected on a timely basis in the first instance by the adjustment of the
23 market transition charge or equivalent rate mechanism implemented
24 pursuant to this subsection. Any adjustment mechanism shall reflect
25 changes in market price and may reflect other factors such as changes
26 in sales.

27 h. Notwithstanding the provisions of subsection a. of this section,
28 the board shall not determine a level for the market transition charge
29 for recovery of a utility's eligible stranded costs, as determined in
30 accordance with this section, which prevents the achievement of the
31 rate reductions required pursuant to section 4 of this act and that such
32 rate reductions will not impair the electric public utility's financial
33 integrity such that access to the capital markets for the continued
34 provision of safe, adequate, and proper utility service is impaired.

35 i. The market transition charge for each utility shall be limited to
36 a term not to exceed eight years, except that the board may extend the
37 term of the charge to allow a utility:

38 (1) To recover the non-mitigable stranded costs associated with
39 payments under long-term power purchase contracts with non-utility
40 generators over the lives of the contracts;

41 (2) To recover costs associated with a particular generating asset,
42 the costs of which represent at least 20 percent of an electric public
43 utility's stranded costs as determined by the board and the remaining
44 life of which for depreciation purposes at April 30, 1997 was 10 years
45 or greater, in which case the board may extend the market transition
46 charge up to three additional years if necessary to achieve the rate

1 reduction levels established by the board pursuant to section 4 of this
2 act; or

3 (3) To achieve the mandatory rate reductions established pursuant
4 to subsection d. of section 4 of this act if the board determines that
5 such mandatory rate reductions cannot be achieved by a public electric
6 utility absent such extension.

7 j. The board shall issue orders with respect to each electric public
8 utility's amortization of stranded costs through the market transition
9 charge pursuant to this section prior to the starting date for
10 implementation of retail choice as provided in subsection a. of section
11 5 of this act.

12 k. Nothing in this act shall be construed to alter non-utility
13 generator power purchase contracts in existence on the effective date
14 of this act or the board's orders approving said contracts.

15 l. (1) The board may approve the buyout or buydown of a power
16 purchase agreement with a non-utility generator or a new power
17 purchase contract which is the result of the renegotiation,
18 restructuring or termination of a previous non-utility generator
19 purchase agreement, if it determines that such buyout, buydown or
20 new contract, including any and all transaction costs, will result in a
21 substantial reduction in the total stranded costs of the utility, which
22 resulting savings will be passed through to ratepayers on a full and
23 timely basis.

24 (2) Each electric public utility shall be permitted to recover the
25 costs of qualified replacement power on a full and timely basis
26 pursuant to section 9 of this act.

27 (3) Each electric public utility shall be permitted to recover on a
28 full and timely basis through the market transition charge:

29 (a) all costs of power contracts, buydowns and buyouts approved
30 by the board which are the result of the renegotiation, restructuring,
31 buyout, buydown or termination of existing non-utility power purchase
32 contracts; and

33 (b) debt issued to effectuate the board-approved renegotiation,
34 restructuring, buyout, buydown, or termination of existing non-utility
35 power purchase contracts.

36 (4) The board's approval of any contract renegotiation,
37 restructuring, buyout, buydown, termination or new contract shall not
38 be subject to modification except as requested jointly by the parties to
39 such contracts.

40 (5) As used in this subsection, "qualified replacement power" is
41 power that the utility purchases subsequent to the board-approved
42 buyout, buydown or renegotiation of a non-utility generator power
43 purchase contract which is necessary to provide basic generation
44 service and in order to replace power not provided as part of the
45 buydown, buyout or new contract, and which is obtained at a cost no
46 higher than that which is available in the market.

1 14. (New section) a. For purposes of recovering a portion of the
2 stranded costs of an electric public utility that are deemed eligible for
3 rate recovery in a stranded cost recovery order consistent with the
4 provisions of section 13 of this act, and for compliance by the electric
5 public utility with the rate reduction requirements determined by the
6 board to be necessary and appropriate consistent with the provisions
7 of sections 4 and 13 of this act, the board may authorize the issuance
8 of transition bonds by the electric public utility or other financing
9 entity approved by the board. Such bonds shall be secured through an
10 irrevocable bondable stranded cost rate order imposing a non-
11 bypassable transition bond charge as provided in section 18 of this act
12 and shall provide for collection of the transition bond charge by the
13 electric public utility or another entity approved by the board. This
14 transition bond charge shall be assessed in connection with the
15 recovery of stranded costs pursuant to section 13 of this act, but each
16 electric public utility shall maintain separate accounting for transition
17 bond charges so that the board can determine, at any time, the amount
18 of each type of charge that has been assessed and collected by the
19 electric public utility. The net proceeds of the transition bonds shall be
20 used by or on behalf of the electric public utility solely for the
21 purposes of reducing the amount of its otherwise recovery-eligible
22 stranded costs, as determined by the board in accordance with the
23 provisions of section 13 of this act, through the refinancing or
24 retirement of electric public utility debt or equity, or both, or the
25 buyout, buydown or other restructuring of a power purchase
26 agreement if such buyout, buydown or restructuring leads directly to
27 substantial customer benefits over the term of the power purchase
28 agreement. The entire amount of cost savings achieved as a result of
29 the issuance of such transition bonds, whether as a result of a
30 reduction in capital costs or a lengthened recovery period associated
31 with otherwise recovery-eligible stranded costs or as a source of cash
32 for the buyout, buydown or other restructuring of a power purchase
33 agreement, shall be passed on to the customers of the electric public
34 utility in the form of reduced rates for electricity. Anything in this act
35 or any other law to the contrary notwithstanding, except for
36 adjustments authorized under paragraph (2) of subsection a. and
37 subsection b. of section 15 of this act, transition bond charges
38 approved by the board in a bondable stranded costs rate order shall not
39 be offset, reduced, adjusted or otherwise diminished either directly or
40 indirectly.

41 b. The issuance of transition bonds for an electric public utility
42 may be authorized by the board if all the following findings are made
43 by the board in connection with its review of a stranded cost filing
44 made by an electric public utility pursuant to section 13 of this act:

1 (1) The electric public utility has taken reasonable measures to
2 date, and has the appropriate incentives or plans in place to take
3 reasonable measures, to mitigate the total amount of its stranded costs;

4 (2) The electric public utility will not be able to achieve the level
5 of rate reduction deemed by the board to be necessary and appropriate
6 pursuant to the provisions of sections 4 and 13 of this act absent the
7 issuance of transition bonds;

8 (3) The issuance of such bonds will provide tangible and
9 quantifiable benefits to ratepayers, including greater rate reductions
10 than would have been achieved absent the issuance of such bonds and
11 net present value savings over the term of the bonds; and

12 (4) The structuring and pricing of the transition bonds assure that
13 the electric public utility's customers pay the lowest transition bond
14 charges consistent with market conditions and the terms of the
15 bondable stranded costs rate order. If so authorized in the financing
16 order by the board, the structure and pricing of the transition bonds
17 shall be conclusively deemed to satisfy this requirement if so certified
18 by a designee of the board upon the pricing of the transition bonds,
19 which certification will be final and uncontestable as of its date.

20 c. Subject to the other requirements of this section:

21 (1) The board may authorize the issuance of transition bonds for
22 utility generation plant stranded costs determined by the board to be
23 recoverable pursuant to paragraph (1) of subsection a. of section 13
24 of this act in a principal amount of up to 75 percent of the total
25 amount of the electric public utility's recovery-eligible utility
26 generation plant stranded costs, as determined by the board in
27 accordance with the provisions of section 13 of this act, or, in the
28 event that an electric public utility divests itself of a majority of its
29 generating assets, which divestiture will result in a lower market
30 transition charge than that which would have been collected from
31 customers had the electric public utility not divested such assets, and
32 the utility has established, as determined by the board, the stranded
33 cost amount with certainty attributable to its remaining generating
34 asset or assets, the board may authorize the issuance of transition
35 bonds in a principal amount up to the full stranded cost value of such
36 remaining generating asset or assets based on the following criteria:

37 (a) The greater the level of aggregate rate reduction provided
38 pursuant to subsections d. and e. of section 4 of this act, the higher the
39 percentage of stranded costs for which transition bonds may be issued;

40 (b) The higher the degree of certainty, such as might be obtained
41 by auction or sale of the assets, as to the magnitude of the electric
42 public utility's actual stranded costs, the larger the magnitude of
43 transition bonds which may be permitted; and

44 (c) Based on evidence on the record, such amount will produce
45 substantial and quantifiable savings for the customers of that utility;
46 and

1 (2) The board may authorize the issuance of transition bonds for
2 the buyout or buydown of long-term power purchase contracts with
3 non-utility generators determined by the board to be recoverable
4 pursuant to paragraph (3) of subsection a. of section 13 of this act in
5 a principal amount to be determined by the board in accordance with
6 the provisions of section 13 of this act, based on the following
7 criteria:

8 (a) The greater the level of aggregate rate reduction provided
9 pursuant to subsections d. and e. of section 4 of this act, the higher the
10 percentage of stranded costs that may be securitized;

11 (b) The higher the degree of certainty as to the magnitude of the
12 electric public utility's actual stranded costs, the larger the magnitude
13 of transition bonds which may be permitted; and

14 (c) Based on evidence on the record, such amount will produce
15 substantial and quantifiable savings for the customers of that electric
16 public utility because the amount of the buyout or buydown payment
17 is substantially less than the total projected stranded costs associated
18 with the contract.

19 d. The board may approve transition bonds with scheduled
20 amortization upon issuance of up to:

21 (1) Fifteen years if the electric public utility intends to utilize the
22 proceeds from such transition bonds to reduce the stranded costs
23 related to utility-owned generation; or

24 (2) The remaining term of a power purchase agreement if the
25 electric public utility intends to utilize the proceeds from such
26 transition bonds solely for the purposes and requirements of paragraph
27 (2) of subsection c. of this section.

28 e. Transition bonds for the purpose and requirements of
29 paragraphs (1) and (2) of subsection c. of this section may be issued
30 in one or more series, in one or more offerings, and each such series
31 may consist of one or more classes of transition bonds.

32 f. The board shall issue orders with respect to each electric public
33 utility's amortization of stranded costs through the transition bond
34 charges pursuant to this section.

35
36 15. (New section) a. A bondable stranded costs rate order issued
37 by the board pursuant to section 14 of this act shall:

38 (1) Authorize the electric public utility or other financing entity
39 approved by the board to issue transition bonds to finance the
40 bondable stranded costs and to pledge or assign, sell or otherwise
41 transfer the related bondable transition property without further order
42 of the board, except as provided in paragraph (2) of subsection a. of
43 this section;

44 (2) Approve the amount of the initial transition bond charge to be
45 imposed upon, charged to and collected and received from the
46 customers of the electric public utility in an amount not less than the

1 amount necessary to fully recover bondable stranded costs, and
2 provide for adjustment in a manner approved by the board of the initial
3 transition bond charge prior to the closing of the related transition
4 bonds to reflect the actual rate of interest thereon and all other costs,
5 including any required overcollateralization, associated with the
6 issuance of such transition bonds; and

7 (3) Require the electric public utility to obtain the approval of the
8 board or its designee at the time of pricing of the terms and conditions
9 of any transition bonds secured by or payable from the transition bond
10 charges, servicing fees, if any, imposed with respect to the collection
11 of such transition bond charges, or any pledging, assignment, sale or
12 other transfer of bondable transition property in connection with the
13 initial transition bond charge provided in paragraph (2) of subsection
14 a. of this section, including a schedule of payments of principal and
15 interest on the transition bonds, which notice shall be given not later
16 than five business days after issuance and sale of the transition bonds.
17 Notwithstanding any other provision of law, the notice to the board
18 required to be given by the electric public utility in connection with the
19 issuance and sale of transition bonds under this subsection shall not be
20 subject to the provisions of R.S.48:3-7 and R.S.48:3-9 and shall not
21 affect the rights of bondholders.

22 b. Each bondable stranded costs rate order shall provide for
23 mandatory periodic adjustments by the board of the transition bond
24 charges that are the subject of the bondable stranded costs rate order,
25 upon petition of the affected electric public utility, its assignee or
26 financing entity, to conform the transition bond charges to the
27 schedule of payments of principal and interest on the transition bonds
28 provided to the board by the electric public utility pursuant to
29 subsection a. of this section. Such adjustments shall be made at least
30 annually. Each such adjustment shall be formula-based, shall be in the
31 amount required to ensure receipt of revenues sufficient to provide for
32 the full recovery of bondable stranded costs, including, without
33 limitation, the timely payment of principal of, and interest and
34 acquisition or redemption premium on, transition bonds issued to
35 finance such bondable stranded costs, which shall be recovered over
36 the term of the transition bonds and in accordance with the schedule
37 of payments of principal and interest on the transition bonds provided
38 to the board by the electric public utility pursuant to subsection a. of
39 this section and shall become effective 30 days after filing thereof with
40 the board absent a determination of manifest error by the board. The
41 electric public utility shall propose such adjustments in a filing with the
42 board at least 30 days in advance of the date upon which it is
43 requested to be effective. The proposed adjustment shall become
44 effective on an interim basis on such date and, in the absence of a
45 board order to the contrary, shall become final 60 days thereafter.
46 Each such adjustment shall be formula-based and shall be in the

1 amount required to ensure receipt of revenues sufficient to provide for
2 the full recovery of bondable stranded costs including, without
3 limitation, the timely payment of principal of, and interest and
4 acquisition or redemption premium on, transition bonds issued to
5 finance such bondable stranded costs, which shall be recovered over
6 the term of the transition bonds and in accordance with the schedule
7 of payments of principal and interest on the transition bonds provided
8 to the board by the electric public utility pursuant to subsection a. of
9 this section. Such periodic adjustments shall not in any way affect the
10 validity or irrevocability of the bondable stranded costs rate order or
11 any sale, assignment or other transfer of or any pledge or security
12 interest granted with respect to the related bondable transition
13 property and shall not affect rights of bondholders.

14 c. A bondable stranded costs rate order and the authority to meter,
15 charge, collect and receive the transition bond charges authorized
16 thereby shall remain in effect until the related bondable stranded costs,
17 including, without limitation, the principal of, and accrued interest and
18 acquisition or redemption premium on, any transition bonds issued to
19 finance such bondable stranded costs, have been paid in full and all
20 other obligations and undertakings with respect thereto have been fully
21 satisfied. Until the bondable stranded costs, including, without
22 limitation, the principal of, and accrued interest and acquisition or
23 redemption premium on, any transition bonds issued to finance such
24 bondable stranded costs, have been paid in full and all other
25 obligations and undertakings with respect thereto have been fully
26 satisfied, the electric public utility shall be obligated to provide
27 electricity through its transmission and distribution system to its
28 customers and shall have the right to meter, charge, collect and receive
29 the transition bond charges arising therefrom from its customers,
30 which rights and obligations may be assignable solely within the
31 discretion of the electric public utility.

32 d. Each bondable stranded costs rate order shall provide that any
33 transition bond charges held by the assignee or trustee of the related
34 transition bonds in excess of those amounts necessary to fully recover
35 bondable stranded costs approved in the bondable stranded costs rate
36 order shall be applied as a credit to reduce charges to customers of the
37 electric public utility, except that all bondable stranded costs as
38 quantified in the bondable stranded costs rate orders with respect to
39 the electric public utility shall be aggregated for purposes of
40 determining whether or not the total transition bond charges collected
41 exceed the total bondable stranded costs attributable to such electric
42 public utility and provided, further, that unless the electric public
43 utility can demonstrate to the satisfaction of the board that such credit
44 will result in a recharacterization of the tax, accounting, and other
45 intended characteristics of the transition bonds, including, but not
46 limited to, the following characteristics:

1 (1) the recognition of transition bonds as debt on balance sheet of
2 the electric public utility for financial accounting purposes;

3 (2) treatment of the transition bonds as debt of the electric public
4 utility or its affiliates for federal income tax purposes;

5 (3) treatment of the transfer of bondable transition property by the
6 electric public utility as a true sale for bankruptcy purposes; and

7 (4) an adverse impact of the transition bonds on the credit rating
8 of the electric public utility.

9 e. An electric public utility may commingle the revenues received
10 from amounts charged, collected and received under transition bond
11 charges for bondable stranded costs approved in any one or more
12 bondable stranded costs rate orders with other funds of the electric
13 public utility, which shall in no way affect the validity or irrevocability
14 of any bondable stranded costs rate order issued in connection
15 therewith or any sale, assignment or other transfer of or any pledge or
16 security interest granted with respect to the bondable transition
17 property created thereby.

18 f. Except as provided otherwise in this act, all proceedings in
19 connection with the determination of bondable stranded costs,
20 transition bond charges and bondable stranded costs rate orders shall
21 be exempt from the provisions of Title 48 of the Revised Statutes and
22 any regulations promulgated thereunder.

23
24 16. (New section) a. Notwithstanding any other provision of law,
25 each bondable stranded costs rate order and the transition bond
26 charges authorized therein shall become irrevocable upon the issuance
27 of such order and its becoming effective pursuant to section 19 of this
28 act. The bondable stranded costs rate order, the transition bond
29 charges and the bondable transition property shall constitute a vested,
30 presently existing property right upon the transfer to an assignee and
31 receipt of consideration for such bondable transition property.
32 Following such transfer and receipt of consideration, such property
33 right in bondable transition property shall be vested *ab initio* in such
34 assignee.

35 b. Neither the board nor any other governmental entity shall have
36 the authority, directly or indirectly, legally or equitably, to rescind,
37 alter, repeal, modify or amend a bondable stranded costs rate order, to
38 revalue, re-evaluate or revise the amount of bondable stranded costs,
39 to determine that the transition bond charges or the revenues required
40 to recover bondable stranded costs are unjust or unreasonable, or in
41 any way to reduce or impair the value of bondable transition property,
42 nor shall the amount of revenues arising with respect thereto be
43 subject to reduction, impairment, postponement or termination,
44 provided, however, that nothing in this section shall preclude
45 adjustments of the transition bond charges in accordance with the
46 provisions of paragraph (2) of subsection a. and of subsection b. of

1 section 15 of this act.

2

3 17. (New section) a. The State of New Jersey does hereby pledge
4 and agree with the holders of any transition bonds issued under the
5 authority of this act, with the pledgee, owner or assignee of bondable
6 transition property, with any financing entity which has issued
7 transition bonds with respect to which a bondable stranded costs rate
8 order has been issued and with any person who may enter into
9 agreements with an electric public utility or an assignee or pledgee
10 thereof or a financing entity pursuant to this act, that the State will not
11 limit, alter or impair any bondable transition property or other rights
12 vested in an electric public utility or an assignee or pledgee thereof or
13 a financing entity or vested in the holders of any transition bonds
14 pursuant to a bondable stranded costs rate order until such transition
15 bonds, together with the interest and acquisition or redemption
16 premium, if any, thereon, are fully paid and discharged or until such
17 agreements are fully performed on the part of the electric public utility,
18 any assignee or pledgee thereof or the financing entity or in any way
19 limit, alter, impair or reduce the value or amount of the bondable
20 transition property approved by a bondable stranded costs rate order,
21 provided, however, that nothing in this section shall preclude the
22 adjustment of the transition bond charges in accordance with
23 subsection b. of section 15 of this act. Any financing entity is
24 authorized to include this covenant and undertaking of the State of
25 New Jersey in any documentation with respect to the transition bonds
26 issued thereby.

27 b. A bondable stranded costs rate order issued under this act does
28 not constitute a debt or liability of the State or of any political
29 subdivision thereof, nor does it constitute a pledge of the full faith and
30 credit of the State or any of its political subdivisions. The issuance of
31 transition bonds under this act shall not directly, indirectly, or
32 contingently obligate the State or any political subdivision thereof to
33 levy or pledge any form of taxation therefor or to make an
34 appropriation for their payment, and any such transition bonds shall be
35 payable solely from the bondable transition property and such other
36 proceeds or property as may be pledged therefor.

37

38 18. (New section) The transition bond charges established by the
39 board in bondable stranded costs rate orders shall be assessed against
40 all customers of the electric public utility , except as provided in
41 section 28 of this act. Transition bond charges shall be established by
42 the board in accordance with section 14 and 15 of this act and shall
43 apply equally to each customer of the electric public utility based on
44 the amount of electricity delivered to the customer through the
45 transmission and distribution system of the electric public utility or any
46 successor.

1 19. (New section) Each bondable stranded costs rate order shall
2 be effective only in accordance with the terms thereof and upon the
3 written consent of the petitioning electric public utility to all such
4 terms.

5
6 20. (New section) Transition bonds shall be recourse only to the
7 credit and assets of the issuer of the transition bonds.

8
9 21. (New section) An electric public utility shall maintain or cause
10 to be maintained records of transition bond charges which have been
11 assessed and collected by the electric public utility for each bondable
12 stranded costs rate order applicable to the electric public utility. Such
13 electric public utility records and any records of a financing entity shall
14 be made available by the electric public utility for inspection and
15 examination within a reasonable time upon demand therefor by the
16 board or the related financing entity.

17
18 22. (New section) a. Electric public utilities or other financing
19 entities may, but are not required to, issue transition bonds authorized
20 by the board in any bondable stranded costs rate order.

21 b. An electric public utility or its assignee may sell, assign and
22 otherwise transfer all or portions of its interest in bondable transition
23 property to assignees or financing entities in connection with the
24 issuance of transition bonds. In addition, an electric public utility, an
25 assignee or a financing entity may pledge, grant a security interest in,
26 or encumber bondable transition property as collateral for transition
27 bonds.

28 c. Bondable transition property shall constitute an account and
29 shall constitute presently existing property for all purposes, including
30 for contracts securing transition bonds, whether or not the revenues
31 and proceeds arising with respect thereto have accrued and
32 notwithstanding the fact that the value of the property right may
33 depend upon consumers using electricity or, in those instances where
34 consumers are customers of a particular electric public utility, such
35 electric public utility performing certain services. The validity of any
36 sale, assignment or other transfer of bondable stranded cost shall not
37 be defeated or adversely affected by the commingling by the electric
38 public utility of revenues received from amounts charged, collected
39 and received as transition bond charges with other funds of the electric
40 public utility. Any description of the bondable transition property in
41 a security agreement or financing statement filed with respect to the
42 transfer of such bondable transition property in accordance with
43 N.J.S.12A:9-401 shall be sufficient if it refers to the bondable stranded
44 costs rate order establishing the bondable transition property.

45 d. A perfected security interest in bondable transition property is
46 a continuously perfected security interest in all revenues and proceeds

1 arising with respect thereto, whether or not the revenues and proceeds
2 shall have accrued. The validity and relative priority of a pledge of, or
3 security interest in, bondable transition property shall not be defeated
4 or adversely affected by the commingling by the electric public utility
5 of revenues received from amounts charged, collected and received as
6 transition bond charges with other funds of the electric public utility.
7 Any description of the bondable transition property in a security
8 agreement or financing statement filed with respect to the granting of
9 a security interest in such bondable transition property in accordance
10 with N.J.S.12A:9-401 shall be sufficient if it refers to the bondable
11 stranded costs rate order establishing the bondable transition property.

12 e. In the event of default by the electric public utility or its
13 assignee in payment of revenues arising with respect to the bondable
14 transition property, and upon the application by the pledgees or
15 transferees of the bondable transition property, the board or any court
16 of competent jurisdiction shall order the sequestration and payment to
17 the pledgees or transferees of revenues arising with respect to the
18 bondable transition property, which application shall not limit any
19 other remedies available to the pledgees or transferees by reason of the
20 default. Any such order shall remain in full force and effect
21 notwithstanding any bankruptcy, reorganization or other insolvency
22 proceedings with respect to the debtor, pledgor or transferor of the
23 bondable transition property. Any amounts in excess of amounts
24 necessary to satisfy obligations then outstanding on or related to
25 transition bonds shall be applied in the manner set forth in subsection
26 d. of section 15 of this act.

27 f. To the extent that any such interest in bondable transition
28 property is so sold or assigned, or is so pledged as collateral, the
29 electric public utility shall be authorized to enter into a contract with
30 the secured party, the assignee or the financing entity providing that
31 the electric public utility shall continue to operate its transmission and
32 distribution system to provide service to its customers, shall impose,
33 charge, collect and receive transition bond charges in respect of the
34 bondable transition property for the benefit and account of the secured
35 party, the assignee or the financing entity, and shall account for and
36 remit such amounts to and for the account of the secured party, the
37 assignee or the financing entity. In the event of a default by the
38 electric public utility in respect of charging, collecting and receiving
39 revenues derived from transition bond charges and upon the
40 application by the secured party, the assignee or the financing entity,
41 the board or any court of competent jurisdiction shall by order
42 designate a trustee or other entity to act in the place of the electric
43 public utility to impose, meter, charge, collect and receive transition
44 bond charges in respect of the bondable transition property for the
45 benefit and account of the pledgee, the assignee or the financing entity.
46 The board may, at its discretion, establish criteria for the selection of

1 any entity that may become a servicer of bondable transition property
2 upon the default or other adverse material change in the financial
3 condition of the electric public utility.

4 g. An agreement by an assignor of bondable transition property
5 not to assert any defense, claim or set-off against an assignee of the
6 bondable transition property shall be enforceable against the assignor
7 by the assignee and by any successor or subsequent assignee thereof.

8

9 23. (New section) a. If an agreement by an electric public utility
10 or its assignee to transfer bondable transition property expressly states
11 that the transfer is a sale or other absolute transfer, then,
12 notwithstanding any other provisions of law:

13 (1) Such transfer shall constitute a sale by the electric public utility
14 or its assignee of all right, title, and interest of the electric public
15 utility or its assignee, as applicable, in and to such bondable transition
16 property;

17 (2) Such transfer shall constitute a sale or other absolute transfer
18 of, and not a borrowing secured by, such bondable transition property;

19 (3) Upon execution and delivery of such agreement, the electric
20 public utility or its assignee shall have no right, title or interest in or
21 to such bondable transition property, except to the extent of any
22 retained equity interest permitted by the provisions of this act; and

23 (4) The characterization of a transfer as a sale or other absolute
24 transfer shall not be affected or impaired in any manner by, among
25 other things: (a) the assignor's retention, or acquisition as part of the
26 assignment transaction or otherwise, of a *pari passu* equity interest in
27 bondable transition property or the fact that only a portion of the
28 bondable transition property is otherwise transferred; (b) the assignor's
29 retention, or acquisition as part of the assignment transaction or
30 otherwise, of a subordinate equity interest or other provision of credit
31 enhancement on terms substantially commensurate with market
32 practices; (c) the fact that the electric public utility acts as the
33 collector or servicer of transition bond charges; (d) the assignor's
34 retention of bare legal title to bondable transition property for the
35 purpose of servicing or supervising the servicing of such property and
36 collections with respect thereto; or (e) treatment of such transfer as a
37 financing for federal, State or local tax purposes or financial
38 accounting purposes.

39 b. Such transfer shall be perfected against any third party when:

40 (1) The board has issued a bondable stranded costs rate order with
41 respect to such bondable transition property;

42 (2) Such agreement has been executed and delivered by the
43 electric public utility or its assignee; and

44 (3) A financing statement has been filed with respect to the
45 transfer of such bondable transition property in accordance with
46 N.J.S.12A:9-401 et seq.

1 24. (New section) Any successor to an electric public utility,
2 whether pursuant to any bankruptcy, reorganization or other
3 insolvency proceedings or pursuant to any merger, consolidation or
4 sale or transfer of assets of the electric public utility, by operation of
5 law, as a result of electric power industry restructuring or otherwise,
6 shall perform and satisfy all obligations and be entitled to the same
7 rights of its predecessor electric public utility under this act or the
8 bondable stranded costs rate order or any contract entered into
9 pursuant to this act in the same manner and to the same extent as such
10 predecessor electric public utility, including, but not limited to,
11 charging, collecting, receiving and paying to the person entitled
12 thereto the revenues in respect of the transition bond charges relating
13 to the bondable transition property. Bondable transition property, and
14 any payments in respect to bondable transition property, including,
15 without limitation, transition bond charges, shall not be subject to any
16 setoffs, counterclaims, surcharges or defenses by the electric public
17 utility, any customer, or any other person, in connection with the
18 bankruptcy, insolvency or default of the electric public utility or
19 otherwise.

20

21 25. (New section) Notwithstanding any of the provisions of this
22 act, electric public utility shall not be obligated under this act to apply
23 to the board for any bondable stranded costs rate order, consent to the
24 terms of any bondable stranded costs rate order, or sell, transfer or
25 pledge any bondable transition property, or issue transition bonds in
26 connection therewith.

27 The consideration or approval by the board of a petition by any
28 electric public utility under this act, including the periodic adjustment
29 provided in subsection b. of section 15 of this act shall be wholly
30 separate from and shall not be utilized in the board's consideration of
31 any other ratemaking or other proceeding involving the electric public
32 utility except as otherwise provided in this act.

33

34 26. (New section) In order to maximize the rate savings to
35 customers of the electric public utility under a bondable stranded costs
36 rate order, which order may be time-sensitive because financial market
37 conditions may affect the feasibility and terms of transition bonds
38 approved for issuance therein, the parties involved in proceedings
39 resulting in such an order shall attempt to expedite judicial review
40 pursuant to the following procedures:

41 a. Upon the issuance of a bondable stranded costs rate order, the
42 board shall forthwith cause a certified copy of such order to be served
43 upon each party entitled thereto. The electric public utility shall,
44 within 10 days of such service upon it, file with the board its written
45 consent to such order or its objections thereto.

1 b. Any party to the proceedings resulting in a bondable stranded
2 costs rate order who claims to be aggrieved by such order, including
3 but not limited to any electric public utility which has withheld its
4 consent and objected thereto or any financing entity interested therein,
5 may seek judicial review of such order in accordance with the
6 applicable Rules Governing the Courts of the State of New Jersey and
7 the provisions of this act. Such judicial review shall be the exclusive
8 remedy for the parties involved in a proceeding resulting in a bondable
9 stranded costs rate order and no petition for rehearing to the board
10 shall be made or entertained.

11 c. Any party seeking judicial review under this section shall file a
12 motion for expedited consideration of the appeal before any appellate
13 court in which an appeal may be pending on the ground that
14 acceleration is warranted because the subject of the appeal involves
15 matters of important public interest.

16

17 27. (New section) a. For purposes of this act, and the Uniform
18 Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq.,
19 bondable transition property, as defined in N.J.S.12A:9-105(1), shall
20 constitute an account. For purposes of this act, and the Uniform
21 Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq.,
22 bondable transition property shall be in existence whether or not the
23 revenues or proceeds in respect thereof have accrued, in accordance
24 with subsection c. of section 22 of this act. The validity, perfection or
25 priority of any security interest in bondable transition property shall
26 not be defeated or adversely affected by changes to the bondable
27 stranded costs rate order or to the transition bond charges payable by
28 any customer. Any description of bondable transition property in a
29 security agreement or other agreement or a financing statement shall
30 be sufficient if it refers to the bondable stranded costs rate order
31 establishing the bondable transition property.

32 b. In addition to the other rights and remedies provided or
33 authorized by this act, and by the Uniform Commercial Code - Secured
34 Transactions, N.J.S.12A:9-101 et seq., when a debtor is in default
35 under a security agreement and the collateral is bondable transition
36 property, then upon application by the secured party, the board or any
37 court of competent jurisdiction shall order the sequestration and
38 payment to the secured party of all collections and other proceeds of
39 such bondable transition property up to the value of the property. In
40 the event of any conflicts, priority among pledgees, transferees or
41 secured parties shall be determined under chapter 9 of Title 12A of the
42 New Jersey Statutes. The secured party must account to the debtor
43 for any surplus and, unless otherwise agreed, the debtor shall be liable
44 for any deficiency.

1 28. (New section) a. Whenever an on-site generation facility
2 produces power that is not consumed by the on-site customer, and that
3 power is delivered to an off-site end-use customer in this State, all the
4 following charges shall apply to the sale or delivery of such power to
5 the off-site customer:

6 (1) The societal benefits charge or its equivalent, imposed
7 pursuant to section 12 of this act;

8 (2) The market transition charge or its equivalent, imposed
9 pursuant to section 13 of this act; and

10 (3) The transition bond charge or its equivalent, imposed
11 pursuant to section 18 of this act.

12 b. None of the following charges shall be imposed on the
13 electricity sold solely to the on-site customer of an on-site generating
14 facility, except pursuant to subsection c. of this section:

15 (1) The societal benefits charge or its equivalent, imposed
16 pursuant to section 12 of this act;

17 (2) The market transition charge or its equivalent, imposed
18 pursuant to section 13 of this act; and

19 (3) The transition bond charge or its equivalent, imposed
20 pursuant to section 18 of this act.

21 c. Upon finding that generation from on-site generation facilities
22 installed subsequent to the starting date of retail competition as
23 provided in subsection a. of section 5 of this act has, in the aggregate,
24 displaced customer purchases from an electric public utility by an
25 amount such that the kilowatt hours distributed by the electric public
26 utility have been reduced to an amount equal to 92.5 percent of the
27 1999 kilowatt hours distributed by the electric public utility, the board
28 shall impose, except as provided in subsection d. of this section, the
29 charges listed in subsections a., b., and c. of this section on the on-site
30 customer. Such charges shall not be levied on any power consumption
31 that is displaced by an on-site generation facility that is installed before
32 the date of such finding:

33 (1) The societal benefits charge or its equivalent, imposed
34 pursuant to section 12 of this act;

35 (2) The market transition charge or its equivalent, imposed
36 pursuant to section 13 of this act; and

37 (3) The transition bond charge or its equivalent, imposed
38 pursuant to section 18 of this act.

39 d. Notwithstanding the provisions of subsection c. of this section,
40 a charge shall not be imposed on power consumption by the on-site
41 customer that is derived from an on-site generation facility:

42 (1) That the on-site customer ²[¹or its agent¹]² installed on or
43 before the date of the board finding in subsection c. of this section ²[¹,
44 including any expansion at any time, up to 100 percent of usage on the
45 site¹]²; or

46 (2) For which the on-site customer ²[¹or its agent¹]² has made,

1 on or before the date of the board finding in subsection c. of this
2 section, substantial financial and contractual commitments in planning
3 and development, including having applied for any appropriate air
4 permit from the Department of Environmental Protection.

5
6 29. (New section) a. A person shall not offer to provide or
7 provide electric generation service to retail customers in this State
8 unless that person has applied for and obtained from the board,
9 pursuant to standards adopted by the board, an electric power supplier
10 license. Persons providing such services on the effective date of this
11 act shall have 120 days to apply for and receive the requisite license.

12 b. The board shall issue a license to an electric power supplier that
13 is in compliance with the licensing standards adopted pursuant to
14 subsection c. of this section. A license shall expire one year from the
15 date of issuance unless the holder thereof pays to the board, within 30
16 days before the expiration date, a renewal fee accompanied by a
17 renewal application on a form prescribed by the board. If a licensee
18 has made, in accordance with this section and any applicable board
19 rules or regulations, timely and sufficient application for renewal, the
20 license shall not expire until the application has been reviewed and
21 acted upon by the board. Nothing in this section shall limit the
22 authority of the board to deny, suspend or revoke a license at any
23 time, consistent with the provisions of this act.

24 c. Notwithstanding any provisions of the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
26 the board shall initiate a proceeding and shall adopt, in consultation
27 with the Division of Consumer Affairs in the Department of Law and
28 Public Safety, after notice, provision of the opportunity for comment,
29 and public hearing, interim electric power supplier licensing standards
30 within 90 days of the effective date of this act. Such standards shall
31 be effective as regulations immediately upon filing with the Office of
32 Administrative Law and shall be effective for a period not to exceed
33 18 months, and may, thereafter, be amended, adopted or readopted by
34 the board in accordance with the provisions of the "Administrative
35 Procedure Act." The standards shall include, but need not be limited
36 to, the following requirements that an electric power supplier:

37 (1) Register with the board, which shall include the filing of basic
38 information pertaining to the supplier, such as name, address,
39 telephone number, and company background and profile, and a list of
40 the services or products offered by the supplier. A supplier shall
41 provide annual updates of this information to the board. The
42 registration shall also include:

43 (a) Evidence of financial integrity;

44 (b) Information on any disciplinary proceedings or actions by law
45 enforcement authorities in which the electric power supplier, its

1 subsidiaries, affiliates or parent has been involved in this State or any
2 other states;

3 (c) The ownership interests of the supplier including the interests
4 owned by the supplier and the interests owning the supplier;

5 (d) The name and address of the in-State agent of the supplier that
6 is authorized to receive service of process;

7 (e) The name and address of the in-State customer service agent
8 for the supplier; and

9 (f) The quantity of retail electric sales made in this State during
10 the 12 months preceding the application.

11 (2) Agree to meet all reliability standards established by the Mid-
12 Atlantic Area Council of the North American Electric Reliability
13 Council or its successor, the PJM Interconnection, L.L.C. independent
14 system operator or its successor, the Federal Energy Regulatory
15 Commission, the board, or any other state, regional, federal or
16 industry body with authority to establish reliability standards. The
17 board may establish specific standards applicable to electric power
18 suppliers to ensure the adequacy of electric power capacity, if it
19 determines that standards established by any other state, regional,
20 federal or industry bodies are not sufficient to assure the provision of
21 safe, adequate, proper and reliable electric generation service to retail
22 customers in this State. Such reliability standards shall ensure bulk
23 power system operations and security, and shall ensure the adequacy
24 of electric power capacity necessary to meet retail loads;

25 (3) Maintain an office within this State for the purposes of
26 accepting service of process, maintaining such records as the board
27 requires and ensuring accessibility to the board, consumers and electric
28 public utilities;

29 (4) Maintain a surety bond under terms and conditions as
30 determined by the board;

31 (5) Provide a description of the products and services to be
32 rendered;

33 (6) Comply with such specific standards of conduct for electric
34 power suppliers as the board shall adopt; and

35 (7) Provide through legal certification by an officer of the electric
36 power supplier such information as the board or its staff shall require
37 to assist the board in making any determination concerning revocation,
38 suspension, issuance or renewal of the supplier's license pursuant to
39 section 32 of this act.

40 d. An electric public utility shall:

41 (1) Incorporate by reference the board's licensing requirements in
42 its tariffs for transmission and distribution service;

43 (2) Apply the licensing requirements and other conditions for
44 access to the transmission and distribution system uniformly to all
45 electric power suppliers; and

46 (3) Report alleged violations of the board's licensing requirements

1 of which it becomes aware to the board.

2 e. The board shall establish an alternative dispute resolution
3 program to resolve any licensure or access dispute between an electric
4 power supplier and an electric public utility. The board may establish
5 reasonable fees, not to exceed actual costs, for the provision of
6 alternate dispute resolution services. If informal resolution of the
7 dispute is unsuccessful, the board shall adjudicate the dispute as a
8 contested case pursuant to the "Administrative Procedure Act."

9 f. The board shall monitor the retail supply market in this State,
10 and shall consider information available from the PJM Interconnection,
11 L.L.C. independent system operator or its successor with respect to
12 the conduct of electric power suppliers. The board shall monitor
13 proposed acquisitions of electric generating facilities by electric power
14 suppliers as it deems necessary, in order to ascertain whether an
15 electric power supplier has or is proposed to have control over electric
16 generating facilities of sufficient number or strategic location to charge
17 non-competitive prices to retail customers in this State. The board
18 shall have the authority to deny, suspend or revoke an electric power
19 supplier's license, after hearing, if it determines that an electric power
20 supplier has or may acquire such control, or if the electric power
21 supplier's violations of the rules, regulations or procedures of the PJM
22 Interconnection, L.L.C. independent system operator or its successor
23 may adversely affect the reliability of service to retail customers in this
24 State or may result in retail customers being charged non-competitive
25 prices.

26 g. The board may establish safety and service quality standards for
27 electric power suppliers, and nothing in this act shall limit the
28 authority of the board to promulgate such safety or service quality
29 standards or to resolve complaints regarding the quality of electric
30 generation service.

31 h. The board may establish, by written order pursuant to
32 subsection c. of this section or by rule, a licensure fee to cover the
33 costs of licensing electric power suppliers. The fee shall include a
34 reasonable surcharge to fund a consumer education program in this
35 State established pursuant to section 36 of this act.

36 i. Any provision of this act to the contrary notwithstanding, any
37 person acting as an energy agent shall be required to register with the
38 board. This registration shall include, but need not be limited to, the
39 name, address, telephone number, and business affiliation or profile of
40 the energy agent, evidence of financial integrity as determined by the
41 board, and evidence of knowledge of the energy industry. This
42 registration shall be updated annually. Nothing in this subsection shall
43 be construed to limit or exempt an energy agent from liability under
44 any other law pertaining to any activity which an energy agent may
45 engage in.

1 30. (New section) a. A person shall not offer to provide or
2 provide gas supply service to retail customers in this State unless that
3 person has applied for and obtained from the board, pursuant to
4 standards adopted by the board, a gas supplier license. A person
5 providing such services on the effective date of this act shall have 120
6 days to apply for and receive the requisite license.

7 b. The board shall issue a license to a gas supplier that is in
8 compliance with the licensing standards adopted pursuant to
9 subsection c. of this section. A license shall expire one year from the
10 date of issuance unless the holder thereof pays to the board, within 30
11 days before the expiration date, a renewal fee accompanied by a
12 renewal application on a form prescribed by the board.

13 c. Notwithstanding any provisions of the "Administrative
14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
15 in consultation with the Division of Consumer Affairs in the
16 Department of Law and Public Safety, the board shall initiate a
17 proceeding and shall adopt, after notice, provision of the opportunity
18 for comment, and public hearing, interim gas supplier licensing
19 standards within 90 days of the effective date of this act. Such
20 standards shall be effective as regulations immediately upon filing with
21 the Office of Administrative Law and shall be effective for a period not
22 to exceed 18 months, and may, thereafter, be amended, adopted or
23 readopted by the board in accordance with the provisions of the
24 "Administrative Procedure Act." The standards shall include, but need
25 not be limited to, the following requirements that a gas supplier:

26 (1) Register with the board, which shall include the filing of basic
27 information pertaining to the gas supplier, such as name, address,
28 telephone number, and company background and profile, and a list of
29 the services or products offered by the gas supplier. A gas supplier
30 shall provide annual updates of this information to the board. The
31 registration shall also include:

32 (a) Evidence of financial integrity;

33 (b) Information on any disciplinary proceedings or actions by law
34 enforcement authorities in which the gas supplier, its subsidiaries,
35 affiliates or parent has been involved in this State or any other states;

36 (c) The ownership interests of the gas supplier including the
37 interests owned by the gas supplier and the interests owning the gas
38 supplier;

39 (d) The name and address of the in-State agent of the gas supplier
40 that is authorized to receive service of process;

41 (e) The name and address of the in-State customer service agent
42 for the gas supplier;

43 (f) The quantity of retail gas sales made in this State during the 12
44 months preceding the application; and

45 (g) A list of the services or products offered by the gas supplier;

- 1 (2) Agree to meet all reliability standards established by the board
2 or any other state, regional, federal or industry body with authority to
3 establish reliability standards. The board may establish specific
4 standards applicable to gas suppliers to ensure the adequacy of gas
5 capacity, if it determines that standards established by any other state,
6 regional, federal or industry bodies are not sufficient to assure the
7 provision of safe, adequate, proper and reliable gas supply service to
8 retail customers in this State;
- 9 (3) Maintain an office within this State for purposes of accepting
10 service of process, maintaining such records as the board requires and
11 ensuring accessibility to the board, consumers and gas public utilities;
- 12 (4) Maintain a surety bond under terms and conditions approved
13 by the board;
- 14 (5) Provide a description of the products and services to be
15 rendered;
- 16 (6) Comply with such specific standards of conduct for gas
17 suppliers as the board shall adopt; and
- 18 (7) Provide through legal certification by an officer of the gas
19 supplier such information as the board or its staff shall require to assist
20 the board in making any determination concerning revocation,
21 suspension, issuance or renewal of the gas supplier's license pursuant
22 to section 32 of this act.
- 23 d. A gas public utility shall:
- 24 (1) Incorporate by reference the board's licensing requirements in
25 its tariffs for distribution service;
- 26 (2) Apply the licensing requirements and other conditions for
27 access to the distribution system uniformly to all gas suppliers;
- 28 (3) Not unreasonably deny a licensed gas supplier access to its
29 distribution system; and
- 30 (4) Report alleged violations of the board's licensing requirements
31 of which it becomes aware to the board.
- 32 e. The board shall establish an alternative dispute resolution
33 program to resolve any licensure or access dispute between a gas
34 supplier and a gas public utility. The board may establish reasonable
35 fees, not to exceed actual costs, for the provision of alternate dispute
36 resolution services. If informal resolution of the dispute is
37 unsuccessful, the board shall adjudicate the dispute as a contested case
38 pursuant to the "Administrative Procedure Act."
- 39 f. The board may establish safety and service quality standards for
40 gas suppliers, and nothing in this act shall limit the authority of the
41 board to promulgate such safety or service quality standards or to
42 resolve complaints regarding the quality of gas supply service.
- 43 g. The board may establish, by written order pursuant to
44 subsection c. of this section or by rule, a licensure fee to cover the
45 costs of licensing gas suppliers. The fee shall include a reasonable

1 surcharge to fund a consumer education program in this State
2 established pursuant to section 36 of this act.

3

4 31. (New section) a. Whenever it shall appear to the board that
5 an electric power supplier or a gas supplier has engaged in, is engaging
6 in, or is about to engage in any act or practice that is in violation of
7 this act, or when the board shall deem it to be in the public interest to
8 inquire whether any such violation may exist, the board may exercise
9 any of the following investigative powers:

10 (1) Require any person to file, on such form as may be prescribed,
11 a statement or report in writing under oath, or otherwise, as to the
12 facts and circumstances concerning the rendition of any service or
13 conduct of any sale incidental to the discharge of this act;

14 (2) Examine under oath any person in connection with any act or
15 practice subject to the requirements of this act;

16 (3) Inspect any premises from which an electric power supplier or
17 a gas supplier conducts business;

18 (4) Examine any goods, ware, item or facility used in the supply
19 of electric power or gas;

20 (5) Examine any record, book, document, account, electronic data
21 or paper maintained by or for any electric power supplier or gas
22 supplier;

23 (6) For the purpose of preserving evidence of an unlawful act or
24 practice, pursuant to an order of the Superior Court, impound any
25 record, book, document, account, paper, electronic data, goods, ware,
26 item or facility used or maintained by or for any electric power
27 supplier or gas supplier in the regular course of business. In such
28 cases as may be necessary, the Superior Court may, on application of
29 the board, issue an order sealing items or material subject to this
30 paragraph.

31 b. If any person shall fail or refuse to file any statement or report
32 or refuse access to premises from which an electric power supplier or
33 a gas supplier conducts business in any lawfully conducted
34 investigative matter or fail to obey a subpoena issued pursuant to this
35 act, the board may apply to the Superior Court and obtain an order:

36 (1) Adjudging such person in contempt of court;

37 (2) Granting such other relief as may be required; or

38 (3) Suspending the license of any such person unless and until
39 compliance with the subpoena or investigative demand is effected.

40 c. Whenever the board finds that a violation by an electric power
41 supplier or a gas supplier of this act, including the unlicensed
42 supplying of electric power or gas, or of any rule or regulation
43 adopted by the board pursuant thereto, has occurred, is occurring or
44 will occur, the board, in addition to any other proceeding authorized
45 by law, may seek and obtain in a summary proceeding in the Superior
46 Court an injunction prohibiting such act or practice.

1 32. (New section) a. The board may revoke, suspend, or refuse
2 to issue or renew an electric power supplier's license or a gas supplier's
3 license at any time upon a finding that the supplier:

4 (1) Has obtained a license through fraud, deception or
5 misrepresentation;

6 (2) Has engaged in the use or employment of dishonesty, fraud,
7 deception, misrepresentation, false promise or false pretense;

8 (3) Has engaged in gross negligence or gross incompetence;

9 (4) Has engaged in repeated acts of negligence or incompetence;

10 (5) Has engaged in misconduct as may be determined by the
11 board;

12 (6) Has been convicted of any crime involving moral turpitude or
13 any crime relating adversely to the activity regulated by the board, has
14 not fulfilled the licensure requirements or is not in compliance with the
15 safety and service quality standards adopted by the board. For the
16 purpose of this subsection, a plea of guilty, *non vult, nolo contendere*
17 or any other such disposition of alleged criminal activity shall be
18 deemed a conviction;

19 (7) Has violated any consumer protection law or regulation in this
20 State or any other state or has had its authority to engage in supplying
21 electric power or gas revoked or suspended by any other state, agency
22 or authority for reasons consistent with this section;

23 (8) Has violated or failed to comply with the provisions of any law
24 or regulation or order adopted by the board;

25 (9) Is incapable, for any good cause, of discharging the functions
26 of an electric power supplier or a gas supplier in a manner consistent
27 with the public health, safety and welfare; or

28 (10) Has repeatedly failed to submit completed applications, or
29 parts of such applications, or documentation submitted in conjunction
30 with such applications, required to be filed with the Department of
31 Environmental Protection.

32 b. The board may, upon a duly verified application alleging an act
33 or practice violating any provision of this act or any rule adopted
34 pursuant thereto, enter a temporary order suspending or limiting any
35 license issued by the board pending plenary hearing on an
36 administrative complaint when the application made to the board and
37 imminent danger to the public health, safety or welfare, and notice of
38 such application is given to the licensee affected by such order.

39

40 33. (New section) a. In addition or as an alternative, as the case
41 may be, to revoking, suspending or refusing to issue or to renew the
42 license of an electric power supplier or a gas supplier, the board may,
43 after notice and opportunity for a hearing:

44 (1) Issue a letter of warning, reprimand or censure with regard to
45 any act, conduct or practice that in the judgement of the board, upon

1 consideration of all relevant facts and circumstances, does not warrant
2 the initiation of formal action;

3 (2) Assess a civil penalty pursuant to section 34 of this act;

4 (3) Order that any person violating any provision of this act or any
5 rule adopted pursuant to this act cease and desist from future
6 violations thereof or take affirmative corrective action as may be
7 necessary with regard to any act or practice found unlawful by the
8 board;

9 (4) Order any person found to have violated any provision of this
10 act or any rule adopted pursuant thereto to restore to any person
11 aggrieved by an unlawful act or practice any moneys or property, real
12 or personal, or the equivalent value of any property, real or personal,
13 acquired by means of such act or practice; except that the board shall
14 not order restoration in a dollar amount greater than the total value of
15 those monies or property received by a licensee or a licensee's agent
16 or any other person violating the act or rule.

17 b. In any administrative proceeding commenced on a complaint
18 alleging a violation of this act or of a rule adopted pursuant thereto,
19 the board or the board secretary may issue subpoenas to compel the
20 attendance of witnesses or the production of electronic data, books,
21 records, or documents at the hearing on the complaint.

22 c. In any action brought pursuant to this act, the board or the
23 court may order the payment of costs for the use of the State.

24 d. Pursuit of any remedy specified in this section shall not preclude
25 the pursuit of any other remedy, including any civil remedy for
26 damage, provided by any other law. Administrative and judicial
27 remedies provided in this section may be pursued simultaneously.

28

29 34. (New section) Any person who violates any provision of this
30 act shall be liable for a civil penalty of not more than \$5,000 for the
31 first offense, except for a violation of section 37 of this act, for which
32 a person shall be liable for a civil penalty of not more than \$10,000 for
33 the first offense, and not more than \$25,000 for the second and each
34 subsequent offense, for each day that the violation continues. Any
35 civil penalty which may be imposed pursuant to this section may be
36 compromised by the board. In determining the amount of the penalty,
37 or the amount agreed upon in compromise, the board shall consider:
38 the nature, circumstances and gravity of the violation; the degree of
39 the violator's culpability; any history of prior violations; the
40 prospective effect of the penalty on the ability of the violator to
41 conduct business; any good faith effort on the part of the violator in
42 attempting to achieve compliance; the violator's ability to pay the
43 penalty; and other factors the board determines to be appropriate. The
44 amount of the penalty when finally determined, or the amount agreed
45 upon in compromise, may be deducted from any sums owing by the
46 State to the person charged, or may be recovered, if necessary, in a

1 summary proceeding pursuant to "the penalty enforcement law,"
2 N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to
3 enforce the provisions of "the penalty enforcement law" in connection
4 with this act.

5
6 35. (New section) a. The rights, remedies and prohibitions
7 accorded by the provisions of this act are in addition to and cumulative
8 of any right, remedy or prohibition accorded by the common law or
9 any statute of this State and nothing contained herein shall be
10 construed to deny, abrogate or impair any such common law or
11 statutory right, remedy or prohibition. The Attorney General and the
12 Division of Consumer Affairs in the Department of Law and Public
13 Safety shall continue to have the authority to enforce civil and criminal
14 violations of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.)
15 or any other applicable law, rule or regulation in connection with the
16 activities of electric power suppliers and gas suppliers.

17 b. Administrative and judicial remedies provided in this act may be
18 pursued simultaneously.

19
20 36. (New section) a. Notwithstanding any provisions of the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
22 to the contrary, the board, in consultation with the Division of
23 Consumer Affairs in the Department of Law and Public Safety, shall
24 initiate a proceeding and shall adopt, after notice, provision of the
25 opportunity for comment, and public hearing, interim consumer
26 protection standards for electric power suppliers or gas suppliers
27 within 90 days of the effective date of this act, including, but not
28 limited to, standards for collections, credit, contracts, authorized
29 changes of an energy consumer's electric power supplier or gas
30 supplier, for the prohibition of discriminatory marketing, for
31 advertising and for disclosure. Such standards shall be effective as
32 regulations immediately upon filing with the Office of Administrative
33 Law and shall be effective for a period not to exceed 18 months, and
34 may, thereafter, be amended, adopted or readopted by the board in
35 accordance with the provisions of the "Administrative Procedure Act."

36 (1) Contract standards shall include, but not be limited to,
37 requirements that electric power supply contracts or gas supply
38 contracts must conspicuously disclose the duration of the contract;
39 state the price per kilowatt hour or per therm or other pricing
40 determinant approved by the board; have the customer's written
41 signature or such alternative forms of verification as the board, in
42 consultation with the Division of Consumer Affairs, may permit for
43 switching electric power suppliers or gas suppliers and for contract
44 renewal; and include termination procedures, notice of any fees, and
45 toll-free or local telephone numbers for the electric power supplier or
46 gas supplier and for the board.

1 (2) Standards for the prohibition of discriminatory marketing
2 standards shall provide at a minimum that a decision made by an
3 electric power supplier or a gas supplier to accept or reject a customer
4 shall not be based on race, color, national origin, age, gender, religion,
5 source of income, receipt of public benefits, family status, sexual
6 preference, or geographic location. The board shall adopt reporting
7 requirements to monitor compliance with such standards.

8 (3) Advertising standards for electric power suppliers or gas
9 suppliers shall provide, at a minimum, that optional charges to the
10 consumer will not be added to any advertised cost per kilowatt hour
11 or per therm, and that the only unit of measurement that may be used
12 in advertisements is cost per kilowatt hour or per therm, unless
13 otherwise approved by the board. If an electric power supplier or gas
14 supplier does not advertise using cost per kilowatt hour or per therm,
15 the electric power supplier or gas supplier shall provide, at the
16 consumer's request, an estimate of the cost per kilowatt hour or per
17 therm. Any optional charges to the consumer shall be identified
18 separately and denoted as optional.

19 (4) Credit standards shall include, at a minimum, that the credit
20 requirements used to make offer decisions must be the same for all
21 residential customers and that electric power suppliers, gas suppliers
22 and private aggregators not impose unreasonable income or credit
23 requirements.

24 (5) Billing standards shall include, at a minimum, provisions
25 prohibiting electric public utilities, gas public utilities, electric power
26 suppliers and gas suppliers from charging a fee to residential
27 customers for either the commencement or termination of electric
28 generation service or gas supply service.

29 b. (1) An electric power supplier, a gas supplier, an electric public
30 utility, and a gas public utility shall not disclose, sell or transfer
31 individual proprietary information, including, but not limited to, a
32 customer's name, address, telephone number, energy usage and electric
33 power payment history, to a third party without the written consent of
34 the customer. Whenever such individual proprietary information is
35 disclosed, sold or transferred, upon the written consent of the
36 customer, it may be used only for the provision of continued electric
37 generation service, electric related service, gas supply service or gas
38 related service to that customer. In the case of a transfer or sale of a
39 business, customer consent shall not be required for the transfer of
40 customer proprietary information to the subsequent owner of the
41 business for maintaining the continuation of such services.

42 (2) An electric power supplier, a gas supplier, a gas public utility
43 or an electric public utility may use individual proprietary information
44 that it has obtained by virtue of its provision of electric generation
45 service, electric related service, gas supply service or gas related
46 service to:

1 (a) Initiate, render, bill and collect for such services to the extent
2 otherwise authorized to provide billing and collection services;

3 (b) Protect the rights or property of the electric power supplier,
4 gas supplier or public utility; and

5 (c) Protect consumers of such services and other electric power
6 suppliers, gas suppliers or electric and gas public utilities from
7 fraudulent, abusive or unlawful use of, or subscription to, such
8 services.

9 c. The board shall establish and maintain a database for the
10 purpose of recording customer complaints concerning electric and gas
11 public utilities, electric power suppliers, gas suppliers, private
12 aggregators, and energy agents.

13 d. The board, in consultation with the Division of Consumer
14 Affairs in the Department of Law and Public Safety, shall establish, or
15 cause to be established, a multi-lingual electric and gas consumer
16 education program. The goal of the consumer education program shall
17 be to educate residential, small business, and special needs consumers
18 about the implications for consumers of the restructuring of the
19 electric power and gas industries. The consumer education program
20 shall include, but need not be limited to, the dissemination of
21 information to enable consumers to make informed choices among
22 available electricity and gas services and suppliers, and the
23 communication to consumers of the consumer protection provisions
24 of this act.

25 The board shall ensure the neutrality of the content and message
26 of advertisements and materials.

27 The board shall promulgate standards for the recovery of consumer
28 education program costs from customers which include reasonable
29 measures and criteria to judge the success of the program in enhancing
30 customer understanding of retail choice.

31

32 37. (New section) a. Notwithstanding any provisions of the
33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
34 to the contrary, the board, in consultation with the Division of
35 Consumer Affairs in the Department of Law and Public Safety, shall
36 initiate a proceeding and shall adopt, after notice, provision of the
37 opportunity for comment, and public hearing, interim standards for
38 electric power suppliers or gas suppliers, within 90 days of the
39 effective date of this act, to prevent and establish penalties for
40 unauthorized changes of a consumer's electric power supplier or gas
41 supplier, a practice commonly known as "slamming." Such standards
42 shall be effective as regulations immediately upon filing with the Office
43 of Administrative Law and shall be effective for a period not to exceed
44 18 months, and may, thereafter, be amended, adopted or readopted by
45 the board in accordance with the provisions of the "Administrative
46 Procedure Act."

1 b. Standards for the prohibition of unauthorized changes in a
2 customer's electric power supplier or gas supplier shall include:

3 (1) An electric power supplier, an electric public utility, a gas
4 supplier or a gas public utility shall not cause an unauthorized change
5 in a customer's electric power supplier or gas supplier, a practice
6 known as "slamming." A change in a customer's electric power
7 supplier or gas supplier shall be deemed to be unauthorized unless the
8 customer has done so affirmatively and voluntarily and the supplier has
9 obtained the customer's approval either through a written signature or
10 such alternative forms of verification as the board, in consultation with
11 the Division of Consumer Affairs, may permit;

12 (2) An electric power supplier, an electric public utility, a gas
13 supplier or a gas public utility shall not fail to cause a change in a
14 customer's electric power supplier or gas supplier, within a period of
15 time determined to be appropriate by the board, when a supplier or
16 utility is in receipt of a change order provided that such change order
17 has been received in a manner that complies with federal and State
18 rules and regulations, including as provided in this subsection;

19 (3) The acts of an agent of an electric power supplier, an electric
20 public utility, a gas supplier or a gas public utility shall be considered
21 the acts of the electric power supplier, electric public utility, gas
22 supplier or gas public utility.

23 c. A customer's new electric power supplier, electric public utility,
24 gas supplier or gas public utility shall notify the customer of the
25 change in the customer's electric or gas supplier within 30 days in a
26 manner to be determined by the board.

27 d. Bills to customers from an electric power supplier, electric
28 public utility, gas supplier or gas public utility shall contain the name
29 and telephone number of each supplier for whom billing is provided,
30 and any other information deemed applicable by the board.

31 e. In addition to any other penalties, fines or remedies authorized
32 by law, any electric power supplier, electric public utility, gas supplier
33 or gas public utility that violates this section and collects charges for
34 electric power supply or gas supply services from a customer or
35 through an entity providing customer account services shall be liable
36 to the electric power supplier, electric public utility, gas supplier or
37 gas public utility previously selected by the customer in an amount
38 equal to all charges paid by the customer after such violation in
39 accordance with such procedures as the board may prescribe. Any
40 electric power supplier, electric public utility, gas supplier or gas
41 public utility that violates this section shall also be liable for a civil
42 penalty pursuant to section 34 of this act; and the board is hereby
43 authorized to revoke the license of any entity that violates this section.
44

45 38. (New section) a. The board shall require an electric power
46 supplier or basic generation service provider to disclose on a

1 customer's bill or on customer contracts or marketing materials, a
2 uniform, common set of information about the environmental
3 characteristics of the energy purchased by the customer, including, but
4 not limited to:

5 (1) Its fuel mix, including categories for oil, gas, nuclear, coal,
6 solar, hydroelectric, wind and biomass, or a regional average
7 determined by the board;

8 (2) Its emissions, in pounds per megawatt hour, of sulfur dioxide,
9 carbon dioxide, oxides of nitrogen, and any other pollutant that the
10 board may determine to pose an environmental or health hazard, or an
11 emissions default to be determined by the board; and

12 (3) Any discrete emission reduction retired pursuant to rules and
13 regulations adopted pursuant to P.L.1995, c.188.

14 b. Notwithstanding any provisions of the "Administrative
15 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
16 the board shall initiate a proceeding and shall adopt, in consultation
17 with the Department of Environmental Protection, after notice and
18 opportunity for public comment and public hearing, interim standards
19 to implement this disclosure requirement, including, but not limited to:

20 (1) A methodology for disclosure of emissions based on output
21 pounds per megawatt hour;

22 (2) Benchmarks for all suppliers and basic generation service
23 providers to use in disclosing emissions that will enable consumers to
24 perform a meaningful comparison with a supplier's or basic generation
25 service provider's emission levels; and

26 (3) A uniform emissions disclosure format that is graphic in nature
27 and easily understandable by consumers. The board shall periodically
28 review the disclosure requirements to determine if revisions to the
29 environmental disclosure system as implemented are necessary.

30 Such standards shall be effective as regulations immediately upon
31 filing with the Office of Administrative Law and shall be effective for
32 a period not to exceed 18 months, and may, thereafter, be amended,
33 adopted or readopted by the board in accordance with the provisions
34 of the "Administrative Procedure Act."

35 c. (1) The board may adopt, in consultation with the Department
36 of Environmental Protection, after notice and opportunity for public
37 comment, an emissions portfolio standard applicable to all electric
38 power suppliers and basic generation service providers, upon a finding
39 that:

40 (a) The standard is necessary as part of a plan to enable the State
41 to meet federal Clean Air Act or State ambient air quality standards;
42 and

43 (b) Actions at the regional or federal level cannot reasonably be
44 expected to achieve the compliance with the federal standards.

45 (2) The board shall adopt an emissions portfolio standard
46 applicable to all electric power suppliers and basic generation service

1 providers, if two other states in the PJM power pool comprising at
2 least 40 percent of the retail electric usage in the PJM Interconnection,
3 L.L.C. independent system operator or its successor adopt such
4 standards.

5 d. Notwithstanding any provisions of the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
7 the board shall initiate a proceeding and shall adopt, after notice,
8 provision of the opportunity for comment, and public hearing, interim
9 renewable energy portfolio standards that shall require:

10 (1) that two and one-half percent of the kilowatt hours sold in this
11 State by each electric power supplier and each basic generation service
12 provider be from Class I or Class II renewable energy sources; and

13 (2) beginning on January 1, 2001, that one-half of one percent of
14 the kilowatt hours sold in this State by each electric power supplier
15 and each basic generation service provider be from Class I renewable
16 energy sources. The board shall increase the required percentage for
17 Class I renewable energy sources so that by January 1, 2006, one
18 percent of the kilowatt hours sold in this State by each electric power
19 supplier and each basic generation service provider shall be from Class
20 I renewable energy sources and shall additionally increase the required
21 percentage for Class I renewable energy sources by one-half of one
22 percent each year until January 1, 2012, when four percent of the
23 kilowatt hours sold in this State by each electric power supplier and
24 each basic generation service provider shall be from Class I renewable
25 energy sources.

26 An electric power supplier or basic generation service provider
27 may satisfy the requirements of this subsection by participating in a
28 renewable energy trading program approved by the board in
29 consultation with the Department of Environmental Protection.

30 Such standards shall be effective as regulations immediately upon
31 filing with the Office of Administrative Law and shall be effective for
32 a period not to exceed 18 months, and may, thereafter, be amended,
33 adopted or readopted by the board in accordance with the provisions
34 of the "Administrative Procedure Act."

35 e. Notwithstanding any provisions of the "Administrative
36 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
37 the board shall initiate a proceeding and shall adopt, after notice,
38 provision of the opportunity for comment, and public hearing:

39 (1) net metering standards for electric power suppliers and basic
40 generation service providers. The standards shall require electric
41 power suppliers and basic generation service providers to offer net
42 metering at non-discriminatory rates to residential and small
43 commercial customers that generate electricity, on the customer's side
44 of the meter, using wind or solar photovoltaic systems for the net
45 amount of electricity supplied by the electric power supplier or basic
46 generation service provider over an annualized period. Where the

1 amount of electricity generated by the customer-generator plus any
2 kilowatt hour credits held over from the previous billing periods
3 exceed the electricity supplied by the electric power supplier or basic
4 generation service provider, the electric power supplier or basic
5 generation service provider, as the case may be, shall credit the
6 customer for the excess kilowatt hours until the end of the annualized
7 period at which point the customer-generator will be compensated for
8 any remaining credits at the electric power supplier's or basic
9 generation service provider's avoided cost of wholesale power. The
10 board may authorize an electric power supplier or basic generation
11 service provider to cease offering net metering whenever the total
12 rated generating capacity owned and operated by net metering
13 customer-generators statewide equals 0.1 percent of the State's peak
14 electricity demand or the annual aggregate financial impact to electric
15 power suppliers and basic generation service providers statewide, as
16 determined by the board, exceeds \$2,000,000, whichever is less; and

17 (2) safety and power quality interconnection standards for wind
18 and solar photovoltaic systems that shall be eligible for net metering.
19 Such standards shall take into consideration the standards of other
20 states and the Institute of Electrical and Electronic Engineers and shall
21 allow customers to use a single, non-demand, non-time differentiated
22 meter.

23 Such standards shall be effective as regulations immediately upon
24 filing with the Office of Administrative Law and shall be effective for
25 a period not to exceed 18 months, and may, thereafter, be amended,
26 adopted or readopted by the board in accordance with the provisions
27 of the "Administrative Procedure Act."

28 f. The board may assess, by written order and after notice and
29 opportunity for comment, a separate fee to cover the cost of
30 implementing and overseeing an emission disclosure system or
31 emission portfolio standard, which fee shall be assessed based on an
32 electric power supplier's or basic generation service provider's share
33 of the retail electricity supply market.

34
35 39. (New section) a. A municipal electric corporation, a
36 municipal electric utility, or a cooperative electric utility that existed
37 prior to the effective date of this act shall not be subject to the
38 requirements of this act, except that a local governmental entity may
39 choose to require the municipal electric corporation, municipal electric
40 utility or cooperative electric utility to implement retail choice, or
41 except as otherwise provided in subsection b. of this section.

42 b. (1) A municipal electric corporation shall become subject to
43 the provisions of this act if it was an exclusive provider of retail power
44 within its municipal boundaries prior to the effective date of this act,
45 and subsequent to the effective date of this act, it chooses to serve
46 retail customers outside of its municipal boundaries.

1 (2) A municipal electric utility that is subject to board regulation
2 pursuant to R.S.40:62-24 shall become subject to the provisions of this
3 act, if subsequent to the effective date of this act, it chooses to serve
4 retail customers outside of its franchise area.

5 (3) A cooperative electric utility shall become subject to the
6 provisions of this act, if subsequent to the effective date of this act, it
7 chooses to serve retail customers outside of its franchise area.

8 c. A municipal electric corporation or cooperative electric utility
9 that becomes subject to the provisions of this act pursuant to
10 paragraphs (1) and (3) of subsection b. of this section shall be subject
11 to regulation as a public utility under Title 48 of the Revised Statutes.

12
13 40. (New section) a. A private aggregator may enter into a
14 contract with a licensed electric power supplier or a licensed gas
15 supplier for the provision of any combination of electric generation
16 service, electric related service, gas supply service or gas related
17 service for business customers.

18 b. A government aggregator may enter into a contract with a
19 licensed electric power supplier or a licensed gas supplier, as provided
20 in section 42 of this act, for the provision of any combination of
21 electric generation service, electric related service, gas supply service
22 or gas related service for its own use or as combined with the use of
23 other government aggregators in a manner provided by law.

24 c. For residential customers, gas and electric services cannot be
25 bundled until the gas market is opened up for retail competition for
26 that residential customer.

27 d. Aggregation of electric generation service or gas supply service
28 by a government aggregator shall not be construed to constitute the
29 formation of a municipal electric corporation or a municipal electric
30 utility created subsequent to the effective date of this act solely for
31 purposes of State taxation and shall not exempt the sale of such
32 services or income from that sale from any tax to which the sale or
33 income would otherwise be subject, including, but not limited to the
34 sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et
35 seq.) and the corporation business tax imposed pursuant to P.L.1945,
36 c.162. (C.54:10A-1 et seq.) .

37
38 41. (New section) a. A private aggregator shall register with the
39 board, which shall include the filing of basic information pertaining to
40 the supplier, such as name, address, telephone number, and company
41 background and profile. A private aggregator shall provide annual
42 updates of this information to the board. The registration shall also
43 include evidence of financial integrity, as determined by the board, and
44 evidence that the private aggregator has knowledge of the energy
45 industry.

46 b. Any residential customer that elects to purchase electric

1 generation service or gas supply service, after the implementation of
2 gas unbundling pursuant to section 10 of this act, through a private
3 aggregator must do so affirmatively and voluntarily, either through a
4 written signature or such alternative forms of verification as the board,
5 in consultation with the Division of Consumer Affairs in the
6 Department of Law and Public Safety, may permit.

7
8 42. (New section) a. A government aggregator may obtain by
9 entering into a contract with a licensed electric power supplier or a
10 licensed gas supplier pursuant to the "Local Public Contracts Law,"
11 P.L.1971, c.198 (C.40A:11-1 et seq.) and section 43 of this act:

12 (1) electric generation service, electric related service, gas supply
13 service or gas related service, either separately or bundled, for its own
14 facilities or with other government aggregators; and

15 (2) electric generation service or gas supply service, either
16 separately or bundled, for the business and residential customers
17 within the territorial jurisdiction of the government aggregator.

18 b. Any business or residential customer that elects to purchase
19 electric generation service or gas supply service through a government
20 energy aggregation program must do so affirmatively and voluntarily,
21 as evidenced by a signature authorizing the customer's participation in
22 a government energy aggregation program for electric generation
23 service or a gas supply service where the terms and conditions of the
24 program are clearly and plainly articulated in writing to the customer
25 before the customer's signature.

26 c. The government aggregator shall enter into the contract for
27 electric generation service, electric related service, gas supply service
28 or gas related service for its own facilities or with other government
29 aggregators under the provisions of the "Local Public Contracts Law,"
30 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts
31 Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law,"
32 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services
33 Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.

34 d. A government aggregator may aggregate its load with other
35 government aggregators for the purpose of obtaining electric
36 generation service, electric related service, gas supply service or gas
37 related services as an end use customer by entering into a contract or
38 agreement in accordance with the provisions of the "Interlocal
39 Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.).

40 e. Nothing in this act shall preclude the State government or any
41 State independent authority or State college from exercising authority
42 to obtain electric generation service, electric related service, gas
43 supply service or gas related service, either separately or bundled, for
44 its own facilities on an aggregated basis.

1 f. Nothing in this section shall preclude a government aggregator
2 from aggregating its own accounts for regulated utility services,
3 including basic generation or gas service.

4 g. Nothing in this act shall preclude any interstate authority or
5 agency from exercising authority to obtain electric generation service
6 or gas supply service, either separately or bundled, for its own
7 facilities in this State, including tenants in this State and other utility
8 customers in this State at such facilities, on an aggregated basis. By
9 exercising such authority, no interstate authority or agency shall be
10 deemed to be a public utility pursuant to R.S.48:1-1 et seq.; provided,
11 however, that nothing in this act shall be construed to exempt such
12 authority or agency from the payment of the market transition charge
13 or its equivalent, imposed pursuant to section 13 of this act, the
14 transition bond charge or its equivalent, imposed pursuant to section
15 18 of this act and any societal benefits charge or its equivalent, which
16 may be imposed pursuant to section 12 of this act, to the same extent
17 that other customers of an electric public utility pay such charges in
18 conjunction with any transmission and distribution service provided by
19 an electric public utility to the authority or agency.

20 h. Notwithstanding any other provision of this act to the contrary,
21 a private aggregator that is a private institution of higher education
22 may enter into a contract with a licensed electric power supplier other
23 than a municipal electric corporation, a municipal electric utility, or
24 cooperative electric utility for the provision of electric generation
25 service or electric related service, either separately or bundled,
26 including any private aggregator that is a four-year private institution
27 of higher education which is located within the jurisdiction of a
28 municipality that contains a municipal electric corporation or a
29 municipal electric utility. The right hereunder of a four-year private
30 institution of higher education to enter into a contract with a licensed
31 electric power supplier other than the municipal electric corporation
32 or municipal electric utility shall be subject to the condition that the
33 municipal electric corporation or municipal electric utility shall have
34 the right of first refusal to offer a competitive, market-based price for
35 electric power.

36 i. Nothing in this act shall preclude the "New Jersey School
37 Boards Association," established pursuant to N.J.S.18A:6-45, from
38 exercising authority to obtain electric generation service, electric
39 related service, gas supply service or gas related service, either
40 separately or bundled, in accordance with the "Public School
41 Contracts Law," N.J.S.18A:18A-1 et seq., for members of the
42 association who wish to voluntarily participate in a government energy
43 aggregation program.

44
45 43. (New section) Contracts for a government energy aggregation
46 program shall be subject to the following provisions:

- 1 a. A contract for a government energy aggregation program shall
2 include the following provisions:
- 3 (1) The specific responsibilities of the government aggregator and
4 the licensed electric power supplier or licensed gas supplier;
- 5 (2) The charges, rates, fees, or formulas to be used to determine
6 the charges, rates or fees, to be charged to the energy consumers
7 electing to receive electric generation service or gas supply service
8 pursuant to the aggregation program ¹], and such rates shall not be
9 higher than that guaranteed by the State-mandated rate reduction
10 pursuant to section 4 of this act and the price of basic generation
11 service pursuant to section 9 of this act, as determined by the board¹
12 ², and such rates shall not be higher than that guaranteed by the State-
13 mandated rate reduction pursuant to section 4 of this act and the price
14 of basic generation service pursuant to section 9 of this act, as
15 determined by the board² ;
- 16 (3) The method and procedures to be followed by the licensed
17 electric power supplier or licensed gas supplier to solicit participation
18 in the aggregation program including, but not necessarily limited to,
19 mechanisms to educate energy consumers concerning the provisions
20 of the aggregation program;
- 21 (4) The proposed terms and conditions of a standard contract
22 between energy consumers and the licensed electric power supplier or
23 licensed gas supplier including, but not necessarily limited to:
- 24 (a) The allocation of the risks in connection with the provision of
25 such services between the licensed electric power supplier or licensed
26 gas supplier and the energy consumers receiving such services;
- 27 (b) The terms of the proposed contract;
- 28 (c) The allocation of the risks associated with circumstances or
29 occurrences beyond the control of the parties to the contract;
- 30 (d) Default and remedies; and
- 31 (e) The allocation of any penalties that may be imposed by any
32 electric public utility or gas public utility as a result of over-delivery
33 of electricity or gas, under-delivery of electricity or gas, or non-
34 performance by the licensed electric power supplier or licensed gas
35 supplier;
- 36 (5) The use of government aggregator resources, equipment,
37 systems or employees in connection with such services;
- 38 (6) The term of the contract with the government aggregator;
- 39 (7) A provision indemnifying and holding the government
40 aggregator harmless from all liabilities, damages and costs associated
41 with any contract between a resident of the government aggregator
42 and the licensed electric power supplier or licensed gas supplier;
- 43 (8) The requirements for the provision of a performance bond by
44 the licensed electric power supplier or licensed gas supplier, if so
45 required by the government aggregator;
- 46 (9) Procedures to ensure that participation in the aggregation

1 program is the result of an affirmative choice by energy consumers, as
2 evidenced by a written signature, and is consistent with rules and
3 regulations adopted by the board;

4 (10) Terms and conditions applicable to consumer protection as
5 provided in rules and regulations adopted by the board, in consultation
6 with the Division of Consumer Affairs in the Department of Law and
7 Public Safety;

8 (11) Such other terms and conditions as the government
9 aggregator deems necessary; and

10 (12) Any other terms and conditions that are negotiated by the
11 government aggregator and the licensed electric power supplier or
12 licensed gas supplier.

13 b. No concession fees, finders' fees, or other direct monetary
14 benefit shall be paid to any government aggregator by, or on behalf of,
15 a licensed electric power supplier or licensed gas supplier as a result
16 of the contract; provided, however, that nothing in this subsection
17 shall be deemed to prohibit the payment of fair market value by a
18 licensed electric power supplier or a licensed gas supplier to a
19 government aggregator for in-kind services actually provided by the
20 government aggregator to the supplier pursuant to such contract.

21 c. A licensed electric power supplier or licensed gas supplier shall
22 be subject to the prohibitions against political contributions in
23 accordance with the provisions of R.S.19:34-45.

24 d. For any specific time period, a government aggregator may
25 enter into only one contract for the provision of electric generation
26 service and one contract for the provision of gas supply service to the
27 consumers within its territorial jurisdiction.

28 e. A county government acting as a government aggregator shall
29 not enter into a contract for the provision of an aggregation program
30 that is in competition with any existing contract of any government
31 aggregator within its territorial jurisdiction.

32
33 44. (New section) A government aggregator shall provide all
34 residential and business consumers with the opportunity to participate
35 in a government energy aggregation program on a voluntary basis and
36 in a clear and consistent manner. Residential and business consumers
37 who do not voluntarily and affirmatively choose, as evidenced by a
38 written signature, to participate in an aggregation program shall
39 continue to be entitled to contract with and purchase electric
40 generation service or gas supply service from any corporation or entity
41 authorized by law to engage in the retail sale of such services.

42
43 45. (New section) ¹[a. Notwithstanding the provisions of
44 sections 42 and 44 of this act to the contrary, a government
45 aggregator may aggregate residential customers for electric generation
46 service or gas supply service without the affirmative, voluntary,

1 written consent of the customer, and may assume that a customer who
2 does not affirmatively reject participation in a government energy
3 aggregation program has agreed to participate in the government
4 energy aggregation program, provided that the governing body, or its
5 designee, provides notice, as determined by the board, to its residential
6 customers of its intent to pass an ordinance indicating its intent to
7 aggregate without the affirmative, voluntary, written consent of the
8 customer, and provides such notice not more 30 days or less than 15
9 days prior to the approval of such ordinance, which approval shall
10 require a three-fifths vote of the membership of the governing body.

11 b. Upon approval of the ordinance, the municipality shall
12 commence public bidding pursuant to the "Local Public Contracts
13 Law," P.L.1971, c.198 (C.40A:11-1 et seq.). Upon receipt of the
14 bids, the governing body shall evaluate the proposals. The award of
15 the contract for residential consumers shall be based on the most
16 advantageous, price and other factors considered. The governing body
17 shall not award a contract for service to residential consumers where
18 the rate is higher than that guaranteed by the State-mandated rate
19 reductions pursuant to subsections d. and e. of section 4 of this act and
20 the price of basic generation service pursuant to section 9 of this act,
21 as determined by the board.

22 c. Contracts for a government energy aggregation program
23 entered into pursuant to the provisions of this section shall be subject
24 to the provisions of section 43 of P.L. , c. (C.)(now before the
25 Legislature as this bill), except for the provisions of paragraph (3) and
26 paragraph (9) of subsection a. of that section.

27 d. Within 15 days of the award of the final contract by the
28 governing body, the governing body, or its designee, shall provide a
29 second notice, as determined by the board, to residential customers
30 advising them of their right to affirmatively decline to be part of the
31 government energy aggregation program on or before 60 days
32 following final award of the contract.

33 e. Whenever a modification of a government energy aggregation
34 program results in a change of provider of electric generation service
35 or gas supply service, or of price to participants in the government
36 energy aggregation program, the governing body, or its designee, shall
37 give residential customers notice, as determined by the board, of their
38 right to decline continued participation in the government energy
39 aggregation program.】

40 ²[a. Notwithstanding the provisions of section 44 of this act to the
41 contrary, a government aggregator may aggregate residential
42 customers for electric generation service or gas supply service without
43 the affirmative, voluntary, written consent of the customer, and may
44 assume that a customer who does not affirmatively reject participation
45 in a government energy aggregation program has agreed to participate
46 in the government energy aggregation program, provided that:

1 (1) the governing body passes an ordinance indicating its intent to
2 aggregate without the affirmative, voluntary, written consent of the
3 customer, providing for a referendum to approve the government
4 energy aggregation program, and including the ballot question and
5 interpretative statement for the referendum;

6 (2) the governing body submits the proposed ordinance to the
7 board for approval of the ballot question and interpretive statement
8 prior to final passage. The board shall have 30 days to approve,
9 modify or reject the ballot question and interpretive statement. As an
10 alternative to the procedure contained in this paragraph, a governing
11 body may use a model ballot question and interpretative statement
12 provided by the board, and file a copy of the ordinance documenting
13 the use of the model ballot question and interpretative statement to the
14 board;

15 (3) the governing body conducts a referendum not less than 30
16 days after the passage of the ordinance as provided in paragraph 1 of
17 this subsection;

18 (4) a referendum is conducted in accordance with Title 19; and

19 (5) a majority of the votes cast on the question shall be deemed to
20 approve the resolution of the governing body, except that at least 20%
21 of those registered to vote in the municipality must cast ballots.

22 b. A governing body may end a government energy aggregation
23 program established pursuant to this section by the passage of an
24 ordinance.

25 c. Upon approval of the referendum, the municipality shall
26 commence public bidding pursuant to P.L.1971, c.198 (C.40A:11-1 et
27 seq.). Upon receipt of the bids, the governing body shall evaluate the
28 proposals. The award of the contract for residential consumers shall
29 be based on the most advantageous, price and other factors
30 considered. The governing body shall not award a contract for service
31 to residential consumers where the rate is higher than that guaranteed
32 by the State-mandated rate reductions pursuant to subsections d. and
33 e. of section 4 of this act and the price of basic generation service
34 pursuant to section 9 of this act.

35 d. The governing body shall pass a resolution stating its intent to
36 award a contract and scheduling a public hearing no sooner than 10
37 days after the passage of the resolution. Notice of the public hearing
38 shall be published in the official newspaper of the municipality.

39 e. After the public hearing, if the governing body decides to
40 proceed with the award of the contract, it shall apply to the board for
41 approval of the contract. The application shall include the contract,
42 a summary of the public hearing, and any other information deemed
43 appropriate by the board. Upon submission to the board, the
44 governing body shall provide initial notice, as determined by the board,
45 advising the residential customers of their right to affirmatively decline
46 to be part of the government energy aggregation program on or before

1 60 days following final award of the contract.

2 f. (1) Within 30 days of receipt of the application, the board shall
3 determine whether the application is complete. If it is determined to
4 be incomplete, it shall be returned, forthwith, along with a notice
5 specifying the deficiency or deficiencies. The governing body shall
6 correct same and resubmit the application to the board.

7 (2) Upon being notified by the board that the application is
8 complete, the governing body shall cause a copy to be forwarded to
9 the Division of the Ratepayer Advocate. Within 45 days of receipt,
10 the Division of the Ratepayer Advocate shall recommend to the board
11 to approve, modify or reject the application.

12 (3) The board shall approve, reject or modify the submission
13 within 60 days of the date the application is deemed complete.

14 g. Upon approval of the final contract by the board, the governing
15 body may award the contract.

16 h. Within 15 days of the award of the final contract by the
17 governing body, the governing body shall provide a second notice, as
18 determined by the board, to residential customers advising them of
19 their right to affirmatively decline to be part of the government energy
20 aggregation program on or before 60 days following final award of the
21 contract.

22 i. Whenever the process results in a change of provider of energy
23 or of price to program participants, the governing body shall give
24 residential customers notice, as determined by the board, of their right
25 to decline participation.

26 j. (1) Appropriations associated with conducting the referendum
27 as provided in subsection a. of this section, notice to residents
28 pursuant to subsections e. and h. of this section, and the public hearing
29 as provided in subsection e. of this section shall be excluded from
30 expenditure limitations pursuant to N.J.S.40A:45-1.

31 (2) The governing body may be reimbursed by the successful
32 bidder for expenses associated with conducting the referendum as
33 provided in subsection a. of this section, notice to residents pursuant
34 to subsections e. and h. of this section, and the public hearing as
35 provided in subsection e. of this section.¹】

36 a. Notwithstanding the provisions of sections 42 and 44 of this act
37 to the contrary, a government aggregator may aggregate residential
38 customers for electric generation service or gas supply service without
39 the affirmative, voluntary, written consent of the customer, and may
40 assume that a customer who does not affirmatively reject participation
41 in a government energy aggregation program has agreed to participate
42 in the government energy aggregation program, provided that the
43 governing body, or its designee, provides notice, as determined by the
44 board, to its residential customers of its intent to pass an ordinance
45 indicating its intent to aggregate without the affirmative, voluntary,
46 written consent of the customer, and provides such notice not more 30

1 days or less than 15 days prior to the approval of such ordinance,
2 which approval shall require a three-fifths vote of the membership of
3 the governing body.

4 b. Upon approval of the ordinance, the municipality shall
5 commence public bidding pursuant to the "Local Public Contracts
6 Law," P.L.1971, c.198 (C.40A:11-1 et seq.). Upon receipt of the
7 bids, the governing body shall evaluate the proposals. The award of
8 the contract for residential consumers shall be based on the most
9 advantageous, price and other factors considered. The governing body
10 shall not award a contract for service to residential consumers where
11 the rate is higher than that guaranteed by the State-mandated rate
12 reductions pursuant to subsections d. and e. of section 4 of this act and
13 the price of basic generation service pursuant to section 9 of this act,
14 as determined by the board.

15 c. Contracts for a government energy aggregation program
16 entered into pursuant to the provisions of this section shall be subject
17 to the provisions of section 43 of P.L. , c. (C.)(now before the
18 Legislature as this bill), except for the provisions of paragraph (3) and
19 paragraph (9) of subsection a. of that section.

20 d. Within 15 days of the award of the final contract by the
21 governing body, the governing body, or its designee, shall provide a
22 second notice, as determined by the board, to residential customers
23 advising them of their right to affirmatively decline to be part of the
24 government energy aggregation program on or before 60 days
25 following final award of the contract.

26 e. Whenever a modification of a government energy aggregation
27 program results in a change of provider of electric generation service
28 or gas supply service, or of price to participants in the government
29 energy aggregation program, the governing body, or its designee, shall
30 give residential customers notice, as determined by the board, of their
31 right to decline continued participation in the government energy
32 aggregation program.²

33

34 46. R.S.40:48-1 is amended to read as follows:

35 40:48-1. Ordinances; general purpose. The governing body of
36 every municipality may make, amend, repeal and enforce ordinances
37 to:

38 Finances and property.

39 1. Manage, regulate and control the finances and property, real
40 and personal, of the municipality;

41 Contracts and contractor's bonds. 2. Prescribe the form and
42 manner of execution and approval of all contracts to be executed by
43 the municipality and of all bonds to be given to it;

44 Officers and employees; duties, terms and salaries. 3. Prescribe
45 and define, except as otherwise provided by law, the duties and terms
46 of office or employment, of all officers and employees; and to

1 provide for the employment and compensation of such officials and
2 employees, in addition to those provided for by statute, as may be
3 deemed necessary for the efficient conduct of the affairs of the
4 municipality;

5 Fees. 4. Fix the fees of any officer or employee of the
6 municipality for any service rendered in connection with his office or
7 position, for which no specific fee or compensation is provided. In the
8 case of salaried officers or employees, such fee shall be paid into the
9 municipal treasury;

10 Salaries instead of fees; disposition of fees. 5. Provide that any
11 officer or employee receiving compensation for his services, in whole
12 or in part by fees, whether paid by the municipality or otherwise, shall
13 be paid a salary to be fixed in the ordinance, and thereafter all fees
14 received by such officer or employee shall be paid into the municipal
15 treasury;

16 Maintain order. 6. Prevent vice, drunkenness and immorality; to
17 preserve the public peace and order; to prevent and quell riots,
18 disturbances and disorderly assemblages;

19 Punish beggars; prevention of loitering 7. Restrain and punish
20 drunkards, vagrants, mendicants and street beggars; to prevent
21 loitering, lounging or sleeping in the streets, parks or public places;

22 Auctions and noises. 8. Regulate the ringing of bells and the
23 crying of goods and other commodities for sale at auction or
24 otherwise, and to prevent disturbing noises;

25 Swimming; bathing costume. 9. Regulate or prohibit swimming
26 or bathing in the waters of, in, or bounding the municipality, and to
27 regulate or prohibit persons from appearing upon the public streets,
28 parks and places clad in bathing costumes or robes, or costumes of a
29 similar character;

30 Prohibit annoyance of persons or animals. 10. Regulate or
31 prohibit any practice tending to frighten animals, or to annoy or injure
32 persons in the public streets;

33 Animals; pounds; establishment and regulation. 11. Establish and
34 regulate one or more pounds, and to prohibit or regulate the running
35 at large of horses, cattle, dogs, swine, goats and other animals, and to
36 authorize their impounding and sale for the penalty incurred, and the
37 costs of impounding, keeping and sale; to regulate or prohibit the
38 keeping of cattle, goats or swine in any part of the municipality; to
39 authorize the destruction of dogs running at large therein;

40 Hucksters. 12. Prescribe and regulate the place of vending or
41 exposing for sale articles of merchandise from vehicles;

42 Building regulations; wooden structures. 13. Regulate and
43 control the construction, erection, alteration and repair of buildings
44 and structures of every kind within the municipality; and to prohibit,
45 within certain limits, the construction, erection or alteration of
46 buildings or structures of wood or other combustible material;

1 Inflammable materials; inspect docks and buildings. 14. Regulate
2 the use, storage, sale and disposal of inflammable or combustible
3 materials, and to provide for the protection of life and property from
4 fire, explosions and other dangers; to provide for inspections of
5 buildings, docks, wharves, warehouses and other places, and of goods
6 and materials contained therein, to secure the proper enforcement of
7 such ordinance;

8 Dangerous structures; removal or destruction; procedure. 15.
9 Provide for the removal or destruction of any building, wall or
10 structure which is or may become dangerous to life or health, or
11 might tend to extend a conflagration; and to assess the cost thereof as
12 a municipal lien against the premises;

13 Chimneys and boilers. 16. Regulate the construction and setting
14 up of chimneys, furnaces, stoves, boilers, ovens and other
15 contrivances in which fire is used;

16 Explosives. 17. Regulate, in conformity with the statutes of this
17 State, the manufacture, storage, sale, keeping or conveying of
18 gunpowder, nitroglycerine, dynamite and other explosives;

19 Firearms and fireworks. 18. Regulate and prohibit the sale and
20 use of guns, pistols, firearms, and fireworks of all descriptions;

21 Soft coal. 19. Regulate the use of soft coal in locomotives,
22 factories, power houses and other places;

23 Theaters, schools, churches and public places. 20. Regulate the
24 use of theaters, cinema houses, public halls, schools, churches, and
25 other places where numbers of people assemble, and the exits
26 therefrom, so that escape therefrom may be easily and safely made in
27 case of fire or panic; and to regulate any machinery, scenery, lights,
28 wires and other apparatus, equipment or appliances used in all places
29 of public amusement;

30 Excavations. 21. Regulate excavations below the established
31 grade or curb line of any street, not greater than eight feet, which the
32 owner of any land may make, in the erection of any building upon his
33 own property; and to provide for the giving of notice, in writing, of
34 such intended excavation to any adjoining owner or owners, and that
35 they will be required to protect and care for their several foundation
36 walls that may be endangered by such excavation; and to provide that
37 in case of the neglect or refusal, for 10 days, of such adjoining owner
38 or owners to take proper action to secure and protect the foundations
39 of any adjacent building or other structure, that the party or parties
40 giving such notice, or their agents, contractors or employees, may
41 enter into and upon such adjoining property and do all necessary work
42 to make such foundations secure, and may recover the cost of such
43 work and labor in so protecting such adjacent property; and to make
44 such further and other provisions in relation to the proper conduct
45 and performance of said work as the governing body or board of the
46 municipality may deem necessary and proper;

1 Sample medicines. 22. Regulate and prohibit the distribution,
2 depositing or leaving on the public streets or highways, public places
3 or private property, or at any private place or places within any such
4 municipality, and medicine, medicinal preparation or preparations
5 represented to cure ailments or diseases of the body or mind, or any
6 samples thereof, or any advertisements or circulars relating thereto,
7 but no ordinance shall prohibit a delivery of any such article to any
8 person above the age of 12 years willing to receive the same;

9 Boating. 23. Regulate the use of motor and other boats upon
10 waters within or bounding the municipality;

11 Fire escapes. 24. Provide for the erection of fire escapes on
12 buildings in the municipality, and to provide rules and regulations
13 concerning the construction and maintenance of the same, and for the
14 prevention of any obstruction thereof or thereon;

15 Care of injured employees. 25. Provide for the payment of
16 compensation and for medical attendance to any officer or employee
17 of the municipality injured in the performance of his duty;

18 Bulkheads and other structures. 26. Fix and determine the lines
19 of bulkheads or other works or structures to be erected, constructed
20 or maintained by the owners of lands facing upon any navigable water
21 in front of their lands, and in front of or along any highway or public
22 lands of said municipality, and to designate the materials to be used,
23 and the type, height and dimensions thereof;

24 Lifeguard. 27. Establish, maintain, regulate and control a
25 lifeguard upon any beach within or bordering on the municipality;

26 Appropriation for life-saving apparatus. 28. Appropriate moneys
27 to safeguard people from drowning within its borders, by location of
28 apparatus or conduct of educational work in harmony with the plans
29 of the United States volunteer life-saving corps in this State;

30 Fences. 29. Regulate the size, height and dimensions of any
31 fences between the lands of adjoining owners, whether built or erected
32 as division or partition fences between such lands, and whether the
33 same exist or be erected entirely or only partly upon the lands of any
34 such adjoining owners, or along or immediately adjacent to any
35 division or partition line of such lands. To provide, in such ordinance,
36 the manner of securing, fastening or shoring such fences. In the case
37 of fences thereafter erected contrary to the provisions thereof, the
38 governing body may provide for a penalty for the violation of such
39 ordinance, and in the case of such fence or fences erected or existing
40 at the time of the passage of any such ordinance, may provide therein
41 for the removal, change or alteration thereof, so as to make such
42 fence or fences comply with the provisions of any such ordinance;

43 Advertise municipality. 30. Appropriate funds for advertising the
44 advantages of the municipality.

45 Government Energy Aggregation Programs. 31. Establish
46 programs and procedures pursuant to which the municipality may act

1 as an government aggregator pursuant to sections 40 through 45 of
2 P.L. c. (C.) (now before the Legislature as this bill).
3 Notwithstanding the provisions of any other law, rule or regulation to
4 the contrary, a municipality acting as a government aggregator
5 pursuant to P.L. c. (C.) (now before the Legislation as this
6 bill) shall not be deemed to be a public utility pursuant to R.S.40:62-
7 24 or R.S.48:1-1 et seq. or be deemed to be operating any form of
8 public utility service pursuant to R.S.40:62-1 et seq., to the extent
9 such municipality is solely engaged in the provision of such
10 aggregation service and not otherwise owning or operating any plant
11 or facility for the production or distribution of gas, electricity, steam
12 or other product as provided in R.S.40:62-12.

13 (cf: P.L.1979, c.43, s.1)

14

15 47. (New section) Notwithstanding the provisions of the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
17 to the contrary, the board shall initiate a proceeding and shall adopt,
18 after notice, provision of the opportunity for comment, and public
19 hearing, such interim rules and regulations as the board determines to
20 be necessary to effectuate the provisions of this act within 90 days of
21 the effective date of this act. Such standards shall be effective as
22 regulations immediately upon filing with the Office of Administrative
23 Law and shall be effective for a period not to exceed 18 months, and
24 may, thereafter, be amended, adopted or readopted by the board in
25 accordance with the provisions of the "Administrative Procedure Act."

26

27 48. N.J.S.12A:9-103 is amended to read as follows:

28 12A:9-103. Perfection of Security Interests in Multiple State
29 Transactions.

30 (1) Documents, instruments, letters of credit, and ordinary goods.

31 (a) This subsection applies to documents, instruments, rights to
32 proceeds of written letters of credit, and goods other than those
33 covered by a certificate of title described in subsection (2), mobile
34 goods described in subsection (3), and minerals described in
35 subsection (5).

36 (b) Except as otherwise provided in this subsection, perfection and
37 the effect of perfection or nonperfection of a security interest in
38 collateral are governed by the law of the jurisdiction where the
39 collateral is when the last event occurs on which is based the assertion
40 that the security interest is perfected or unperfected.

41 (c) If the parties to a transaction creating a purchase money
42 security interest in goods in one jurisdiction understand at the time
43 that the security interest attaches that the goods will be kept in another
44 jurisdiction, then the law of the other jurisdiction governs the
45 perfection and the effect of perfection or nonperfection of the security
46 interest from the time it attaches until 30 days after the debtor receives

1 possession of the goods and thereafter if the goods are taken to the
2 other jurisdiction before the end of the 30-day period.

3 (d) When collateral is brought into and kept in this State while
4 subject to a security interest perfected under the law of the jurisdiction
5 from which the collateral was removed, the security interest remains
6 perfected, but if action is required by subchapter 3 of this chapter to
7 perfect the security interest,

8 (i) if the action is not taken before the expiration of the period of
9 perfection in the other jurisdiction or the end of four months after the
10 collateral is brought into this State, whichever period first expires, the
11 security interest becomes unperfected at the end of that period and is
12 thereafter deemed to have been unperfected as against a person who
13 became a purchaser after removal;

14 (ii) if the action is taken before the expiration of the period
15 specified in subparagraph (i), the security interest continues perfected
16 thereafter;

17 (iii) for the purpose of priority over a buyer of consumer goods
18 (subsection (2) of 12A:9-307), the period of the effectiveness of a
19 filing in the jurisdiction from which the collateral is removed is
20 governed by the rules with respect to perfection in subparagraphs (i)
21 and (ii).

22 (2) Certificate of title.

23 (a) This subsection applies to goods covered by a certificate of
24 title issued under a statute of this State or of another jurisdiction under
25 the law of which indication of a security interest on the certificate is
26 required as a condition of perfection.

27 (b) Except as otherwise provided in this subsection, perfection and
28 the effect of perfection or nonperfection of the security interest are
29 governed by the law (including the conflict of laws rules) of the
30 jurisdiction issuing the certificate until four months after the goods are
31 removed from that jurisdiction and thereafter until the goods are
32 registered in another jurisdiction, but in any event not beyond
33 surrender of the certificate. After the expiration of that period, the
34 goods are not covered by the certificate of title within the meaning of
35 this section.

36 (c) Except with respect to the rights of a buyer described in the
37 next paragraph, a security interest, perfected in another jurisdiction
38 otherwise than by notation on a certificate of title, in goods brought
39 into this State and thereafter covered by a certificate of title issued by
40 this State is subject to the rules stated in paragraph (d) of subsection
41 (1).(d) If goods are brought into this State while a security interest
42 therein is perfected in any manner under the law of the jurisdiction
43 from which the goods are removed and a certificate of title is issued
44 by this State and the certificate does not show that the goods are
45 subject to the security interest or that they may be subject to security
46 interests not shown on the certificate, the security interest is

1 subordinate to the rights of a buyer of the goods who is not in the
2 business of selling goods of that kind to the extent that he gives value
3 and receives delivery of the goods after issuance of the certificate and
4 without the knowledge of the security interest.

5 (3) Accounts, general intangibles and mobile goods.

6 (a) This subsection applies to accounts (other than an account
7 described in subsection (5) on minerals) and general intangibles (other
8 than uncertificated securities) and to goods which are mobile and
9 which are of a type normally used in more than one jurisdiction, such
10 as motor vehicles, trailers, rolling stock, airplanes, shipping containers,
11 road building and construction machinery and commercial harvesting
12 machinery and the like, if the goods are equipment or are inventory
13 leased or held for lease by the debtor to others, and are not covered by
14 a certificate of title described in subsection (2).

15 (b) The law (including the conflict of laws rules) of the jurisdiction
16 in which the debtor is located governs the perfection and the effect of
17 perfection or nonperfection of the security interest.

18 (c) If, however, the debtor is located in a jurisdiction which is not
19 a part of the United States, and which does not provide for perfection
20 of the security interest by filing or recording in that jurisdiction, the
21 law of the jurisdiction in the United States in which the debtor has its
22 major executive office in the United States governs the perfection and
23 the effect of perfection or nonperfection of the security interest
24 through filing. In the alternative, if the debtor is located in a
25 jurisdiction which is not a part of the United States or Canada and the
26 collateral is accounts or general intangibles for money due or to
27 become due, the security interest may be perfected by notification to
28 the account debtor. As used in this paragraph, "United States" includes
29 its territories and possessions and the Commonwealth of Puerto Rico.

30 (d) A debtor shall be deemed located at his place of business if he
31 has one, at his chief executive office if he has more than one place of
32 business, otherwise at his residence. If, however, the debtor is a
33 foreign air carrier under the Federal Aviation Act of 1958,
34 49U.S.C.ss.1301 et seq.,as amended, it shall be deemed located at the
35 designated office of the agent upon whom service of process may be
36 made on behalf of the foreign air carrier.

37 (e) A security interest perfected under the law of the jurisdiction
38 of the location of the debtor is perfected until the expiration of four
39 months after a change of the debtor's location to another jurisdiction,
40 or until perfection would have ceased by the law of the first
41 jurisdiction, whichever period first expires. Unless perfected in the
42 new jurisdiction before the end of that period, it becomes unperfected
43 thereafter and is deemed to have been unperfected as against a person
44 who became a purchaser after the change.

45 (4) Chattel paper.

1 The rules stated for goods in subsection (1) apply to a possessory
2 security interest in chattel paper. The rules stated for accounts in
3 subsection (3) apply to a nonpossessory security interest in chattel
4 paper, but the security interest may not be perfected by notification to
5 the account debtor.

6 (5) Minerals.

7 Perfection and the effect of perfection or nonperfection of a
8 security interest which is created by a debtor who has an interest in
9 minerals or the like (including oil and gas) before extraction and which
10 attaches thereto as extracted, or which attaches to an account resulting
11 from the sale thereof at the wellhead or minehead are governed by the
12 law (including the conflict of laws rules) of the jurisdiction wherein the
13 wellhead or minehead is located.

14 (6) Investment property.

15 (a) This subsection applies to investment property.

16 (b) Except as otherwise provided in paragraph (f), during the time
17 that a security certificate is located in a jurisdiction, perfection of a
18 security interest, the effect of perfection or non-perfection, and the
19 priority of a security interest in the certificated security represented
20 thereby are governed by the local law of that jurisdiction.

21 (c) Except as otherwise provided in paragraph (f), perfection of
22 a security interest, the effect of perfection or non-perfection, and the
23 priority of a security interest in an uncertificated security are governed
24 by the local law of the issuer's jurisdiction as specified in subsection d.
25 of 12A:8-110.

26 (d) Except as otherwise provided in paragraph (f), perfection of
27 a security interest, the effect of perfection or non-perfection, and the
28 priority of a security interest in a security entitlement or securities
29 account are governed by the local law of the securities intermediary's
30 jurisdiction as specified in subsection e. of 12A:8-110.

31 (e) Except as otherwise provided in paragraph (f), perfection of
32 a security interest, the effect of perfection or non-perfection, and the
33 priority of a security interest in a commodity contract or commodity
34 account are governed by the local law of the commodity intermediary's
35 jurisdiction. The following rules determine a "commodity
36 intermediary's jurisdiction" for purposes of this paragraph:

37 (i) If an agreement between the commodity intermediary and
38 commodity customer specifies that it is governed by the law of a
39 particular jurisdiction, that jurisdiction is the commodity intermediary's
40 jurisdiction.

41 (ii) If an agreement between the commodity intermediary and
42 commodity customer does not specify the governing law as provided
43 in subparagraph (i) of this paragraph, but expressly specifies that the
44 commodity account is maintained at an office in a particular
45 jurisdiction, that jurisdiction is the commodity intermediary's
46 jurisdiction.

1 (iii) If an agreement between the commodity intermediary and
2 commodity customer does not specify a jurisdiction as provided in
3 subparagraph (i) or (ii) of this paragraph, the commodity
4 intermediary's jurisdiction is the jurisdiction in which is located the
5 office identified in an account statement as the office serving the
6 commodity customer's account.

7 (iv) If an agreement between the commodity intermediary and
8 commodity customer does not specify a jurisdiction as provided in
9 subparagraph (i) or (ii) of this paragraph and an account statement
10 does not identify an office serving the commodity customer's account
11 as provided in subparagraph (iii) of this paragraph, the commodity
12 intermediary's jurisdiction is the jurisdiction in which is located the
13 chief executive office of the commodity intermediary.

14 (f) Perfection of a security interest by filing, automatic perfection
15 of a security interest in investment property granted by a broker or
16 securities intermediary, and automatic perfection of a security interest
17 in a commodity contract or commodity account granted by a
18 commodity intermediary are governed by the local law of the
19 jurisdiction in which the debtor is located.

20 (7) Notwithstanding subsection (3) of this section, the law of this
21 State shall govern the perfection and the effect of perfection of any
22 security interest in bondable transition property.

23 (cf: P.L.1997, c.395, s.4)

24
25 49. N.J.S.12A:9-105 is amended to read as follows:

26 12A:9-105. Definitions and Index of Definitions.

27 (1) In this chapter unless the context otherwise requires:

28 (a) "Account debtor" means the person who is obligated on an
29 account, chattel paper or general intangible;

30 (b) "Chattel paper" means a writing or writings which evidence
31 both a monetary obligation and a security interest in or a lease of
32 specific goods, but a charter or other contract involving the use or hire
33 of a vessel is not chattel paper. When a transaction is evidenced both
34 by such a security agreement or a lease and by an instrument or a
35 series of instruments, the group of writings taken together constitutes
36 chattel paper;

37 (c) "Collateral" means the property subject to a security interest,
38 and includes accounts and chattel paper which have been sold;

39 (d) "Debtor" means the person who owes payment or other
40 performance of the obligation secured, whether or not he owns or has
41 rights in the collateral, and includes the seller of accounts or chattel
42 paper. Where the debtor and the owner of the collateral are not the
43 same person, the term "debtor" means the owner of the collateral in
44 any provision of the chapter dealing with the collateral, the obligor in
45 any provision dealing with the obligation, and may include both where
46 the context so requires;

1 (e) "Deposit account" means a demand, time, savings, passbook
2 or like account maintained with a bank, savings and loan association,
3 credit union or like organization, other than an account evidenced by
4 a certificate of deposit;

5 (f) "Document" means document of title as defined in the general
6 definitions of chapter 1 (12A:1-201), and a receipt of the kind
7 described in subsection (2) of 12A:7-201;

8 (g) "Encumbrance" includes real estate mortgages and other liens
9 on real estate and all other rights in real estate that are not ownership
10 interests;

11 (h) "Goods" includes all things which are movable at the time the
12 security interest attaches or which are fixtures (12A:9-313), but does
13 not include money, documents, instruments, investment property,
14 accounts, chattel paper, general intangibles, or minerals or the like
15 (including oil and gas) before extraction. "Goods" also includes
16 standing timber which is to be cut and removed under a conveyance or
17 contract for sale, the unborn young of animals, and growing crops;

18 (i) "Instrument" means a negotiable instrument (defined in
19 12A:3-104), or any other writing which evidences a right to the
20 payment of money and is not itself a security agreement or lease and
21 is of a type which is in ordinary course of business transferred by
22 delivery with any necessary indorsement or assignment. The term does
23 not include investment property;

24 (j) "Mortgage" means a consensual interest created by a real estate
25 mortgage, a trust deed on real estate, or the like;

26 (k) An advance is made "pursuant to commitment" if the secured
27 party has bound himself to make it, whether or not a subsequent event
28 of default or other event not within his control has relieved or may
29 relieve him from his obligation;

30 (l) "Security agreement" means an agreement which creates or
31 provides for a security interest;

32 (m) "Secured party" means a lender, seller or other person in
33 whose favor there is a security interest, including a person to whom
34 accounts or chattel paper have been sold. When the holders of
35 obligations issued under an indenture of trust, equipment trust
36 agreement or the like are represented by a trustee or other person, the
37 representative is the secured party.

38 (n) "Bondable transition property" shall have the meaning set forth
39 in section 3 of P.L. , c. (C.) (now before the Legislature
40 as this bill).

41 (2) Other definitions applying to this chapter and the sections in
42 which they appear are:

43 "Account." 12A:9-106.

44 "Attach." 12A:9-203.

45 "Commodity contract." 12A:9-115.

46 "Commodity customer." 12A:9-115.

- 1 "Commodity intermediary." 12A:9-115.
- 2 "Construction mortgage." 12A:9-313 (1).
- 3 "Consumer goods." 12A:9-109 (1).
- 4 "Control." 12A:9-115.
- 5 "Equipment." 12A:9-109 (2).
- 6 "Farm products." 12A:9-109 (3).
- 7 "Fixture." 12A:9-313(1).
- 8 "Fixture filing." 12A:9-313(1).
- 9 "General intangibles." 12A:9-106.
- 10 "Inventory." 12A:9-109 (4).
- 11 "Investment property." 12A:9-115.
- 12 "Lien creditor." 12A:9-301 (3).
- 13 "Proceeds." 12A:9-306 (1).
- 14 "Purchase money security interest." 12A:9-107.
- 15 "United States." 12A:9-103 (3).

16 (3) The following definitions in other chapters apply to this
17 chapter:

- 18 "Broker." 12A:8-102.
- 19 "Certificated security." 12A:8-102.
- 20 "Check." 12A:3-104.
- 21 "Clearing corporation." 12A:8-102.
- 22 "Contract for sale." 12A:2-106.
- 23 "Control." 12A:8-106.
- 24 "Delivery." 12A:8-301.
- 25 "Entitlement holder." 12A:8-102.
- 26 "Financial asset." 12A:8-102.
- 27 "Holder in due course." 12A:3-302.
- 28 "Letter of Credit." 12A:5-102.
- 29 "Note." 12A:3-104.
- 30 "Proceeds of a letter of credit." 12A:5-114.
- 31 "Sale." 12A:2-106.
- 32 "Securities intermediary." 12A:8-102.
- 33 "Security." 12A:8-102.
- 34 "Security certificate." 12A:8-102.
- 35 "Security entitlement." 12A:8-102.
- 36 "Uncertificated security." 12A:8-102.

37 (4) In addition chapter 1 contains general definitions and principles
38 of construction and interpretation applicable throughout this chapter.
39 (cf: P.L.1997, c.395, s.6)

40

41 50. N.J.S.12A:9-403 is amended to read as follows:

42 12A:9-403. (1) Presentation for filing of a financing statement,
43 tender of the filing fee and acceptance of the statement by the filing
44 officer constitute filing under this chapter.

45 (2) Except as provided in subsection (6) a filed financing
46 statement is effective for a period of five years from the date of filing.

1 The effectiveness of a filed financing statement lapses on the
2 expiration of the five-year period unless a continuation statement is
3 filed prior to the lapse. If a security interest perfected by filing exists
4 at the time insolvency proceedings are commenced by or against the
5 debtor, the security interest remains perfected until termination of the
6 insolvency proceedings and thereafter for a period of 60 days or until
7 expiration of the five-year period, whichever occurs later. Upon lapse
8 the security interest becomes unperfected, unless it is perfected
9 without filing. If the security interest becomes unperfected upon
10 lapse, it is deemed to have been unperfected as against a person who
11 became a purchaser or lien creditor before lapse.

12 (3) A continuation statement may be filed by the secured party
13 within six months prior to the expiration of the five-year period
14 specified in subsection (2). Any such continuation statement must be
15 signed by the secured party, identify the original statement by file
16 number and state that the original statement is still effective. A
17 continuation statement signed by a person other than the secured party
18 of record must be accompanied by a separate written statement of
19 assignment signed by the secured party of record and complying with
20 subsection (2) of 12A:9-405, including payment of the required fee.

21 Upon timely filing of the continuation statement, the effectiveness
22 of the original statement is continued for five years after the last date
23 to which the filing was effective whereupon it lapses in the same
24 manner as provided in subsection (2) unless another continuation
25 statement is filed prior to such lapse. Succeeding continuation
26 statements may be filed in the same manner to continue the
27 effectiveness of the original statement. The filing officer shall so
28 arrange matters by physical annexation of financing statements to
29 continuation statements or other related filings, or by other means,
30 that if he physically destroys the financing statements of a period more
31 than five years past, those which have been continued by a
32 continuation statement or which are still effective under subsection (6)
33 shall be retained.

34 (4) Except as provided in subsection (7), a filing officer shall mark
35 each statement with a file number and with the date and hour of filing
36 and shall hold the statement or a microfilm or other photographic copy
37 thereof for public inspection. In addition, the filing officer shall index
38 the statements according to the name of the debtor and shall note in
39 the index the file number and the address of the debtor given in the
40 statement. A financing statement covering collateral which is or is to
41 become a fixture or fixtures, or crops growing or to be grown, shall
42 also be indexed in the name of the record owner of the realty.

43 (5) The uniform fee for filing, indexing and furnishing filing data
44 for an original or a continuation statement or any amendment of either
45 shall be \$25.00.

46 (6) A real estate mortgage which is effective as a fixture filing

1 under subsection (6) of 12A:9-402 remains effective as a fixture filing
2 until the mortgage is released or satisfied of record or its effectiveness
3 otherwise terminates as to the real estate. If a filed financing
4 statement relates to a security interest in bondable transition property
5 and the financing statement so states, it is effective until a termination
6 statement is filed.

7 (7) When a financing statement covers timber to be cut or covers
8 minerals or the like (including oil and gas) or accounts subject to
9 subsection (5) of 12A:9-103, or is filed as a fixture filing, it shall be
10 filed for record and the filing officer shall index it under the names of
11 the debtor and any owner of record shown on the financing statement
12 in the same fashion as if they were the mortgagors in a mortgage of the
13 real estate described, and, to the extent that the law of this State
14 provides for indexing of mortgages under the name of the mortgagee,
15 under the name of the secured party as if he were the mortgagee
16 thereunder, or where indexing is by description in the same fashion as
17 if the financing statement were a mortgage of the real estate described.
18 (cf: P.L.1987, c.435, s.4)

19

20 51. (New section) a. All proceeds received from the issuance of
21 transition bonds shall not be considered income to the electric public
22 utility or gas public utility for the purposes of the "Corporation
23 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or
24 the "New Jersey Gross Income Tax Act," P.L.1976, c.47 (C.54A:1-1
25 et seq.).

26 b. The Director of the Division of Taxation in the Department of
27 the Treasury is authorized to issue regulations regarding the
28 determination of profit or loss related to the sale of assets which have
29 been deemed to be part of stranded costs pursuant to sections 13 and
30 14 of this act for purposes of computing the corporation business tax
31 to which the utility is subject.

32

33 52. R.S.48:2-13 is amended to read as follows:

34 48:2-13. a. The board shall have general supervision and
35 regulation of and jurisdiction and control over all public utilities as
36 **【hereinafter】** defined in this section **【defined】** and their property,
37 property rights, equipment, facilities and franchises so far as may be
38 necessary for the purpose of carrying out the provisions of this Title.

39 The term "public utility" shall include every individual,
40 copartnership, association, corporation or joint stock company, their
41 lessees, trustees or receivers appointed by any court whatsoever, their
42 successors, heirs or assigns, that now or hereafter may own, operate,
43 manage or control within this State any railroad, street railway,
44 traction railway, autobus, charter bus operation, special bus operation,
45 canal, express, subway, pipeline, gas, **【electric light, heat, power】**
46 electricity distribution, water, oil, sewer, solid waste collection, solid

1 waste disposal, telephone or telegraph system, plant or equipment for
2 public use, under privileges granted or hereafter to be granted by this
3 State or by any political subdivision thereof.

4 b. Nothing contained in this Title shall extend the powers of the
5 board to include any supervision and regulation of, or jurisdiction and
6 control over any vehicles engaged in ridesharing arrangements with a
7 maximum carrying capacity of not more than 15 passengers, including
8 the driver, where the transportation of passengers is incidental to the
9 purpose of the driver or any vehicles engaged in the transportation of
10 passengers for hire in the manner and form commonly called taxicab
11 service unless such service becomes or is held out to be regular service
12 between stated termini; hotel buses used exclusively for the
13 transportation of hotel patrons to or from local railroad or other
14 common carrier stations, including local airports, or bus employed
15 solely for transporting school children and teachers, to and from
16 school, or any autobus with a carrying capacity of not more than 10
17 passengers now or hereafter operated under municipal consent upon
18 a route established wholly within the limits of a single municipality or
19 with a carrying capacity of not more than 20 passengers operated
20 under municipal consent upon a route established wholly within the
21 limits of not more than four contiguous municipalities within any
22 county of the fifth or sixth class, which route in either case does not
23 in whole or in part parallel upon the same street the line of any street
24 railway or traction railway or any other autobus route.

25 c. Except as provided in section 7 of P.L.1995, c.101
26 (C.58:26-25), the board shall have no regulatory authority over the
27 parties to a contract negotiated between a public entity and a private
28 firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection
29 with the performance of their respective obligations thereunder.
30 Nothing contained in this title shall extend the powers of the board to
31 include any supervision and regulation of, or jurisdiction and control
32 over, any public-private contract for the provision of water supply
33 services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

34 d. Unless otherwise specifically provided pursuant to P.L. _____,
35 c. (C. _____) (now before the Legislature as this bill), all services
36 necessary for the transmission and distribution of electricity and gas,
37 including but not limited to safety, reliability, metering, meter reading
38 and billing, shall remain the jurisdiction of the Board of Public
39 Utilities. The board shall also maintain the necessary jurisdiction with
40 regard to the production of electricity and gas to assure the reliability
41 of electricity and gas supply to retail customers in the State as
42 prescribed by the board or any other federal or multi-jurisdictional
43 agency responsible for reliability and capacity in the State.

44 e. Notwithstanding the provisions of subsection a. of this section,
45 the board shall have the authority to classify as regulated the sale of
46 any thermal energy service by a cogenerator or district heating system.

1 for the purpose of providing heating or cooling to a residential
2 dwelling if, after notice and hearing, it determines that the customer
3 does not have sufficient space on its property to install an alternative
4 source of equivalent thermal energy, there is no contract governing the
5 provision of thermal energy service for the relevant period of time, and
6 that sufficient competition is no longer present, based upon
7 consideration of such factors as: ease of market entry; presence of
8 other competitors; and the availability of like or substitute services in
9 the relevant geographic area. Upon such a classification, the board
10 may determine such rates for the thermal energy service for the
11 purpose of providing heating or cooling to a residential dwelling as it
12 finds to be consistent with the prevailing cost of alternative sources of
13 thermal energy in similar situations. The board, however, shall
14 continue to monitor the thermal energy service to such residential
15 dwelling and, whenever the board finds that the thermal energy
16 service has again become sufficiently competitive pursuant to the
17 criteria listed above, the board shall cease to regulate the sale or
18 production of the service. The board shall not have the authority to
19 regulate the sale or production of steam or any other form of thermal
20 energy, including hot and chilled water, to non-residential customers.

21 f. Nothing contained in this Title shall extend the powers of the
22 board to include supervision and regulation of, or jurisdiction and
23 control over, an entity engaged in the provision or use of sewage
24 effluent for the purpose of providing a cooling medium to an end user
25 or end users on a single site, which provision results in the
26 conservation of potable water which would otherwise have been used
27 for such purposes.

28 (cf: P.L.1995, c.101, s.10)

29

30 53. Section 3 of P.L.1995, c.180 (C.48:2-21.26) is amended to
31 read as follows:

32 3. a. No later than **[90 days from the effective date of this act]**
33 **October 18, 1995** and notwithstanding any provision of the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
35 to the contrary, the Board of Public Utilities shall initiate a proceeding
36 and shall adopt, after notice, provision of the opportunity for
37 comment, and public hearing, specific standards regarding minimum
38 prices, confidentiality standards, maximum contract duration, filing
39 requirements, and such other standards as the board may determine are
40 necessary for off-tariff rate agreements consistent with this act. Any
41 subsequent modification of the standards that is adopted by the board
42 shall be adopted pursuant to the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.).

44 b. After the adoption by the board of specific standards pursuant
45 to subsection a. of this section, an electric public utility may, within
46 seven years of **[the effective date of this act]** **July 20, 1995**, enter into

1 an off-tariff rate agreement with an individual retail customer pursuant
2 to the provisions of sections 3 and 4 of **[this act]** P.L.1995, c.180
3 (C.48:2-21.26 and 48:2-21.27) . The provisions of sections 3 and 4
4 **[of this act]** shall not apply to an off-tariff rate agreement entered into
5 by an electric public utility after that seven-year period, except as
6 otherwise provided by the board. Notwithstanding the seven-year
7 limitation imposed pursuant to this subsection, an off-tariff rate
8 agreement that is entered into during that seven-year period shall
9 remain in effect until its expiration pursuant to the terms of the
10 agreement.

11 c. An off-tariff rate agreement shall be filed with the board a
12 minimum of 30 days prior to its effective date along with sufficient
13 information to demonstrate that the off-tariff rate agreement meets the
14 conditions established in subsection d. of this section and the standards
15 established pursuant to subsection a. of this section. The entire
16 agreement shall be available to the public, except that a public utility
17 may petition the board to keep confidential certain parts of the
18 agreement or supporting documentation that are competitively
19 sensitive. Upon petition by the public utility, the board may classify
20 as confidential any part of the agreement that is found to contain
21 competitively sensitive information that, if revealed, would harm the
22 competitive position of either party to the agreement. A copy of the
23 off-tariff rate agreement and supporting information shall be served
24 simultaneously upon the Director of the Division of the Ratepayer
25 Advocate, or its successor agency. The staff of the board and the
26 division shall have full access to all portions of the agreement and to
27 any supporting documentation, subject to a standard non-disclosure
28 agreement to be approved by the board. The board or its staff shall
29 review the agreement, and upon review the board may delay its
30 implementation if it requires additional time to review the agreement
31 or shall disapprove the agreement upon a finding that it does not meet
32 the conditions established in subsection d. of this section and the
33 standards established pursuant to subsection a. of this section. If the
34 board does not issue notice that it is delaying implementation for
35 further review or that it disapproves the agreement, the utility may
36 implement the off-tariff rate agreement.

37 An off-tariff rate agreement implemented pursuant to this
38 subsection shall not include any reduction in the gross receipts and
39 franchise tax or a successor tax pursuant to P.L.1997, c.162
40 (C.54:30A-10 et seq.).

41 d. An off-tariff rate agreement implemented pursuant to this
42 section prior to the effective date of retail competition as provided in
43 subsection a. of section 5 of P.L. , c. (C.) (now before the
44 Legislature as this bill) may establish a price for electricity to a retail
45 customer that is different from, but in no case higher than, that
46 specified in the utility's current cost-of-service based tariff rate

1 otherwise applicable to that customer[, and]. An off-tariff rate
2 agreement implemented pursuant to this section on or after the
3 effective date of retail competition as provided in subsection a. of
4 section 5 of P.L. , c. (C.) (now before the Legislature as this
5 bill) may establish a price for the transmission or distribution of
6 electricity to a retail customer that is different from, but in no case
7 higher than, that specified in the electric public utility's current
8 cost-of-service based tariff rate for transmission or distribution service
9 otherwise applicable to that customer. An off-tariff rate agreement
10 shall be subject to the following conditions:

11 (1) There shall be no retroactive recovery by the utility from its
12 general ratepayer base of any revenue erosion that occurs prior to the
13 conclusion of the utility's next base rate case. Subsequent to the
14 conclusion of the utility's next base rate case, any such recovery shall
15 be prospective only and in accordance with section 4 of [this act]
16 P.L.1995, c.180 (C.48:2-21.27).

17 (2) In no event shall any customer be required to enter into an
18 off-tariff rate agreement.

19 (3) [The] An off-tariff rate for electricity at a minimum shall
20 equal the sum of the following:

21 (a) the electric public utility's marginal [energy and capacity]
22 cost to provide transmission or distribution service to the customer
23 over the term of the off-tariff rate agreement,

24 (b) the per kilowatt hour contribution to [demand side
25 management program costs] the societal benefits charge, market
26 transition charge, and transition bond charge, as established pursuant
27 to P.L. , c. (C.) (now before the Legislature as this bill) and
28 otherwise chargeable under the standard applicable rate schedule, and

29 (c) a floor margin to be specified by the board pursuant to
30 subsection a. of this section, which shall constitute the minimum
31 contribution by an off-tariff customer toward a public utility's fixed
32 transmission and distribution costs.

33 (4) Evidence of a comprehensive energy audit of the customer's
34 facility must be submitted to the utility prior to the effective date of
35 the off-tariff rate agreement, in order to ensure that the customer has
36 evaluated cost-effective energy efficiency and demand side
37 management measures at its facility as part of its efforts to reduce
38 electricity costs.

39 (5) The term of the off-tariff rate agreement shall not exceed a
40 maximum number of years, to be specified by the board pursuant to
41 subsection a. of this section, except that the term of an off-tariff rate
42 agreement may exceed the maximum contract term established by the
43 board, only with the prior review and approval of the board on a case
44 by case basis.

45 (6) The electric public utility shall not make the provision of any
46 competitive service or basic generation service offered by the public

1 utility or its related competitive business segment to the customer a
2 pre-condition to the offering of or agreement to an off-tariff rate
3 agreement.

4 (7) The utility shall submit any information required by the filing
5 requirements established pursuant to subsection a. of this section.

6 e. Each electric public utility shall file with the board and the
7 Director of the Division of the Ratepayer Advocate, on a periodic
8 basis to be determined by the board, a report, which shall be made
9 available to the public, that includes the number of off-tariff rate
10 contracts implemented, the aggregate expected revenues and margins
11 derived thereunder, and an estimate of the aggregate differential
12 between the revenues produced under the off-tariff rate agreements
13 and the revenues that would have been produced under a
14 **【cost-of-service based】** standard board-approved tariff rate, so that
15 the board can evaluate the total impact of off-tariff rate agreements on
16 the financial integrity of the utility and on its ratepayers.

17 f. Upon notice and hearing, the board may suspend an electric
18 public utility's implementation of additional off-tariff rate agreements
19 based upon information in the report filed pursuant to subsection e. of
20 this section or with other good cause. The board may suspend
21 additional off-tariff rate agreements during the pendency of any such
22 hearings.

23 (cf: P.L.1995, c.180, s.3)

24
25 54. Section 4 of P.L.1995, c.180 (C.48:2-21.27) is amended to
26 read as follows:

27 4. a. An electric public utility that enters into an off-tariff rate
28 agreement pursuant to section 3 of **【this act】** P.L.1995, c.180 (C.48:2-
29 21.26) shall not recover through rates any revenue erosion that occurs
30 between the effective date of the agreement and the conclusion of the
31 public utility's next base rate case.

32 b. As part of a base rate case proceeding, an electric public utility
33 may request prospective recovery of a portion of the quantifiable
34 revenue erosion resulting from an existing off-tariff rate agreement
35 with a customer that previously purchased power from the utility
36 under a tariff set by the board. Whenever a public utility requests
37 partial recovery of revenue erosion from an off-tariff rate agreement,
38 and notwithstanding any provision of subsection c. of section 3 of
39 **【this act】** P.L.1995, c.180 (C.48:2-21.26) to the contrary, the entire
40 agreement shall be available to the public, except that a public utility
41 may petition the board to keep confidential certain parts of the
42 agreement or supporting documentation that are competitively
43 sensitive. Upon petition by the public utility, and after an opportunity
44 for all interested parties to comment, the board may classify as
45 confidential any part of the agreement that is found to contain
46 competitively sensitive information that, if revealed, would harm the

1 competitive position of either party to the agreement. An intervenor
2 in the base rate case proceeding may request access to information that
3 has been classified as confidential. The board shall grant such access,
4 subject to an executed non-disclosure agreement, if the board
5 determines that the intervenor's interest cannot be pursued fully in the
6 base rate case proceeding without access to the information and that
7 the intervenor is not a direct competitor of either party to the
8 agreement.

9 c. In a base rate case proceeding at which an electric public utility
10 requests, pursuant to subsection b. of this section, prospective
11 recovery of revenue erosion, the board may approve prospective
12 recovery of 50 percent of the revenue erosion occurring after the
13 conclusion of that base rate case proceeding, in order to ensure that
14 ratepayers shall not bear a greater portion of the revenue erosion
15 resulting from the off-tariff rate agreement than the public utility, if the
16 board determines that:

17 (1) All appropriate offsetting financial adjustments, including but
18 not limited to sales growth, standby and backup sales to the customer,
19 **【and off-system capacity sales,】** are credited to the revenue
20 requirement calculation and that the utility is not already achieving a
21 fair and reasonable rate of return;

22 (2) The utility has developed and implemented a corporate
23 strategy to lower its cost of **【producing and】** delivering power;

24 (3) Ratepayers are paying lower rates with the implementation of
25 an off-tariff rate agreement for a particular customer than without such
26 implementation, because the off-tariff rate agreement allowed the
27 utility to continue to maintain the customer and thus to continue to
28 receive the customer's contribution to the fixed transmission and
29 distribution costs of the electric public utility. A determination that
30 the public utility's ratepayers are paying lower rates with the
31 implementation of an off-tariff rate agreement prior to the effective
32 date of P.L. , c. (C.) (now before the Legislature as this bill)
33 will therefore include a finding that the customer receiving the
34 off-tariff rate:

35 (a) Had a viable alternative source of power deliverable to its site
36 and, had it not received the off-tariff rate, would have ceased to obtain
37 its power primarily from the public utility; or

38 (b) Would have relocated its facility outside of the State to a
39 location where power could be obtained at a lower cost, had it not
40 received the off-tariff rate.

41 A determination that the public utility's ratepayers are paying lower
42 rates with the implementation of an off-tariff rate agreement on or
43 after the effective date of P.L. , c. (C.) (now before the
44 Legislature as this bill) will therefore include a finding that the
45 customer receiving the off-tariff rate would have relocated its facility
46 outside of the State to a location where it could have obtained

1 delivered power at a lower cost, had it not received the off-tariff rate;
2 and

3 (4) The utility and the customer have otherwise complied with the
4 provisions of **【this act】** P.L.1995, c.180 (C.48:2-21.24 et seq.) and the
5 off-tariff rate standards adopted by the board pursuant to subsection
6 a. of section 3 of **【this act】** P.L.1995, c.180 (C.48:2-21.26).
7 (cf: P.L.1995, c.180, s.4)
8

9 55. Section 5 of P.L.1995, c.180 (C.48:2-21.28) is amended to
10 read as follows:

11 5. a. An electric or gas public utility may petition the Board of
12 Public Utilities to be regulated under an alternative form of regulation
13 for its distribution system only, for the setting of prices for all or a
14 portion of its retail customer base, **【for the recovery in rates of a**
15 **particular asset or expenditure,】** or for the purpose of creating
16 incentives consistent with the provisions of this act without changing
17 the rate reductions for the sustained period as set forth under section
18 4 of P.L. , c. (C.)(now before the Legislature as this bill), no
19 earlier than 12 months after the starting date of retail competition as
20 provided in subsection a. of section 5 of P.L. , c. (C.)(now before
21 the Legislature as this bill). The public utility shall submit its plan for
22 an alternative form of regulation with its petition. The public utility
23 shall also file its petition and plan concurrently with the Director of the
24 Division of the Ratepayer Advocate, or its successor. The public
25 utility shall provide, within 15 days of the filing of its petition and
26 plan, notice of the specific filing to the clerk of each municipality, to
27 the clerk of each board of Chosen Freeholders, and to each county
28 executive, in the service territory of the public utility. The public
29 utility shall also provide, within 15 days of the filing, public notice to
30 its customers of the filing, either by notice in a newspaper that has a
31 general circulation in its service territory or by bill inserts as directed
32 by the board. The board shall review the plan and may approve the
33 plan, or approve it with modifications, if the board finds, after notice
34 and hearing, that the plan will provide benefits to customers of the
35 public utility **【relative to the pre-existing regulatory standards**
36 **embodied in Title 48 of the Revised Statutes based upon a finding that**
37 **the plan】**, and that the plan meets the following standards:

38 (1) **【Is designed to achieve】** Will further the State's objective of
39 producing lower rates for New Jersey consumers;

40 (2) Will provide incentives for the utility to lower its costs and
41 rates;

42 (3) Will provide incentives to improve utility efficiency and
43 productivity;

44 (4) Will foster the long-term **【production and】** delivery of
45 electricity or natural gas in a manner that will improve the quality and
46 choices of service;

1 (5) Includes a mechanism for the board to monitor and review the
2 plan on a periodic basis over its term and to take appropriate actions
3 if it is found that the plan is not achieving its intended results;

4 (6) Will maintain or improve pre-existing service quality
5 standards, except that an individual customer may agree to accept
6 lower quality service. A public utility shall continue to provide safe,
7 adequate and proper service pursuant to R.S.48:2-23;

8 (7) Will not result in cross-subsidization among or between groups
9 of utility customers, or between the portion of the utility's business or
10 operations subject to the alternative form of regulation and the portion
11 of the utility's business or operations that is not subject to the
12 alternative form of regulation;

13 (8) Will reduce regulatory delay and cost;

14 (9) Is in the public interest and will produce just and reasonable
15 rates; **[and]**

16 (10) Will enhance economic development in the State **[.]** ;

17 (11) Will not discourage energy efficiency or distributed
18 generation as alternatives to distribution plant investment and will
19 explore ways to remove the linkage between retail throughput and the
20 recovery of fixed and stranded costs; and

21 (12) Is otherwise consistent with the provisions of P.L. _____, c.
22 (C. _____)(now before the Legislature as this bill).

23 In preparation for the development of such plans, each electric
24 public utility shall begin to collect distribution cost data that will be
25 needed to evaluate accurately alternatives to traditional infrastructure
26 investments.

27 b. Consistent with the provisions of **[this act]** P.L.1995, c.180
28 (C.48:2-21.24 et seq.), and provided that the plan meets the standards
29 established in subsection a. of this section, the board may approve a
30 plan for an alternative form of regulation that permits a gas or electric
31 public utility to establish a rate for a group of retail customers without
32 a finding of rate base and reasonable rate of return pursuant to the
33 pre-existing provisions of Title 48 of the Revised Statutes, if the board
34 determines that the rate being charged by the utility to a retail
35 customer is no lower than a minimum price that is determined by the
36 board to prevent anti-competitive pricing and that:

37 (1) The group of customers has access to a competitive market for
38 supply of power to its site and that market pricing of delivery services
39 for that group of customers is thereby appropriate; or

40 (2) The group of customers has otherwise voluntarily agreed in
41 writing to accept a price that has not been established based upon rate
42 base and reasonable rate of return standards pursuant to Title 48 of the
43 Revised Statutes; or

44 (3) At the time of the plan's approval, the level of retail prices of
45 the utility for the group of customers is determined to be reasonably
46 reflective of the level necessary to produce a fair and reasonable rate

1 of return pursuant to a current evaluation under pre-existing standards
2 of Title 48 of the Revised Statutes, and that the plan provides
3 mechanisms for prospective adjustments to rates that will track trends
4 in utility rates.

5 c. (Deleted by amendment, P.L. _____, c. _____)

6 d. An alternative regulation plan as provided for in this section
7 shall not include any mechanism for:

8 (1) Recovery of revenue erosion from other ratepayers; or

9 (2) A reduction in the gross receipts and franchise tax or a
10 successor tax pursuant to P.L.1997, c.162.

11 e. The board may require an independent audit or such accounting
12 and reporting systems from electric and gas utilities as are necessary
13 to allow a proper allocation of investments, costs or expenses for all
14 services provided under the provisions of **【this act】** P.L.1995, c.180
15 that are subject to the jurisdiction of the board.

16 f. Consistent with the provisions of this section, the Legislature
17 hereby authorizes and directs the New Jersey Economic Development
18 Authority, in conjunction with the Board of Public Utilities, to
19 establish the New Jersey Senior and Alternate Vital Energy (NJ
20 SAVE) program for the purpose of funding capital improvements of
21 natural gas distribution facilities, and for purchase and installation of
22 natural gas heating equipment and appliances located on the premises
23 of homeowners, where those homeowners reside in all-electric homes
24 in age-restricted communities.

25 The authority may issue bonds on behalf of gas public utilities, the
26 proceeds of which may be used for the purpose of distributing in the
27 form of loans to eligible customers for the purpose of allowing such
28 customers to pay home heating and appliance conversion costs and the
29 customer's contribution, to the extent applicable, to gas distribution
30 system extension costs required to serve those customers.

31 The gas public utility shall be permitted to assess a meter charge,
32 as approved by the board, to recover the funds to repay loan principal
33 and interest. Monies collected by the gas public utility as a result of
34 such meter charge shall be utilized by the gas public utility to repay the
35 bonds issued by the authority. Nothing in this section shall be
36 construed to relieve the gas public utility of its obligation to repay any
37 bonds issued by the authority.

38 (cf: P.L.1995, c.180, s.5)

39
40 56. Section 6 of P.L.1995, c.180 (C.48:2-21.29) is amended as
41 follows:

42 6. The Board of Public Utilities shall submit a report to the
43 Legislature on the implementation of **【this act】** P.L.1995, c.180
44 (C.48:2-21.24 et seq.) and of the restructuring of the electric power
45 industry pursuant to P.L. _____, c. _____ (C. _____) (now before the
46 Legislature as this bill) on December 1 of the third year following the

1 effective date of **[this act]** P.L. , c. (C.) (now before the
2 Legislature as this bill) and every four years thereafter. **[This report**
3 **shall include the status of any investigations of programs to implement**
4 **a restructuring of the electric power industry.]**

5 (cf: P.L.1995, c.180, s.6)

6

7 57. (New section) a. The Board of Public Utilities shall adopt,
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
9 (C.52:14B-1 et seq.), standards for the inspection, maintenance, repair
10 and replacement of the distribution equipment and facilities of electric
11 public utilities. The standards may be prescriptive standards,
12 performance standards, or both, and shall provide for high quality, safe
13 and reliable service. The board shall also adopt standards for the
14 operation, reliability and safety of such equipment and facilities during
15 periods of emergency or disaster. The board shall adopt a schedule of
16 penalties for violations of these standards.

17 b. In adopting standards pursuant to this section, the board shall
18 consider cost, local geography and weather, applicable industry codes,
19 national electric industry practices, sound engineering judgement, and
20 past experience.

21 c. The board shall require each electric public utility to report
22 annually on its compliance with the standards adopted pursuant to this
23 section, and the utility shall make these reports available to the public.

24

25 58. Section 10 of P.L.1975, c.291 (C.40:55D-19) is amended to
26 read as follows:

27 10. Appeal or petition in certain cases to the Board of Public
28 **[Utility Commissioners]** Public Utilities.

29 If a public utility, as defined in R.S.48:2-13, or an electric power
30 generator, as defined in section 3 of P.L. , c. (C.) (now
31 before the Legislature as this bill), is aggrieved by the action of a
32 municipal agency through said agency's exercise of its powers under
33 this act , with respect to any action in which the public utility or
34 electric power generator has an interest, an appeal to the Board of
35 Public **[Utility Commissioners]** Utilities of the State of New Jersey
36 may be taken within 35 days after such action without appeal to the
37 municipal governing body pursuant to section 8 of this act unless such
38 public utility or electric power generator so chooses. In such case
39 appeal to the **[Public Utility Commissioners]** Board of Public Utilities
40 may be taken within 35 days after action by the governing body. A
41 hearing on the appeal of a public utility to the **[Public Utility**
42 **Commissioners]** Board of Public Utilities shall be had on notice to the
43 agency from which the appeal is taken and to all parties primarily
44 concerned, all of whom shall be afforded an opportunity to be heard.
45 If, after such hearing, the Board of Public **[Utility Commissioners]**
46 Utilities shall find that the present or proposed use by the public utility

1 or electric power generator of the land described in the petition is
2 necessary for the service, convenience or welfare of the public,
3 including, but not limited to, in the case of an electric power
4 generator, a finding by the board that the present or proposed use of
5 the land is necessary to maintain reliable electric or natural gas supply
6 service for the general public and that no alternative site or sites are
7 reasonably available to achieve an equivalent public benefit, the public
8 utility or electric power generator may proceed in accordance with
9 such decision of the Board of Public **【Utility Commissioners】** Utilities,
10 any ordinance or regulation made under the authority of this act
11 notwithstanding.

12 This act or any ordinance or regulation made under authority
13 thereof, shall not apply to a development proposed by a public utility
14 for installation in more than one municipality for the furnishing of
15 service, if upon a petition of the public utility, the Board of Public
16 **【Utility Commissioners】** Utilities shall after hearing, of which any
17 municipalities affected shall have notice, decide the proposed
18 installation of the development in question is reasonably necessary for
19 the service, convenience or welfare of the public.

20 Nothing in this act shall be construed to restrict the right of any
21 interested party to obtain a review of the action of the municipal
22 agency or of the Board of Public **【Utility Commissioners】** Utilities by
23 any court of competent jurisdiction according to law.

24 (cf: P.L.1975, c.291, s.10)

25

26 59. (New section) The provisions of this act are severable. If any
27 provision of this act or its application to any person or circumstance
28 is held invalid by any court of competent jurisdiction, the invalidity
29 shall not affect any other provision or the application of this act which
30 can be given effect without the invalid provision or application.

31

32 60. (New section) a. No provision of this act shall be interpreted
33 or construed in any fashion so as to amend or alter the functions,
34 powers and duties of the Commissioner of Transportation in respect
35 to autobuses, charter and special bus operations, railroads, street
36 railways, traction railways, and subways as transferred to the
37 commissioner by Executive Reorganization filed on October 5, 1978,
38 pursuant to the provisions of the "State Agency Transfer Act,"
39 P.L.1971, c.375 (C.52:14D-1 et seq.).

40 b. No provision of this act shall be interpreted or construed in any
41 fashion so as to amend or alter the functions, powers and duties of the
42 Commissioner of Environmental Protection in respect to the
43 commissioner's role in protecting the environment.

44

45 61. Section 5 of P.L.1970, c.73 (C.56:9-5), is amended to read as
46 follows:

1 5. a. This act shall not forbid the existence of trade and
2 professional organizations created for the purpose of mutual help, and
3 not having capital stock, nor forbid or restrain members of such
4 organizations from lawfully carrying out the legitimate objects thereof
5 not otherwise in violation of this act; nor shall those organizations or
6 members per se be illegal combinations or conspiracies in restraint of
7 trade under the provisions of this act.

8 b. No provisions of this act shall be construed to make illegal:

9 (1) The activities of any labor organization or of individual
10 members thereof which are directed solely to labor objectives which
11 are legitimate under the laws of either the State of New Jersey or the
12 United States;

13 (2) The activities of any agricultural or horticultural cooperative
14 organization, whether incorporated or unincorporated, or of individual
15 members thereof, which are directed solely to objectives of such
16 cooperative organizations which are legitimate under the laws of either
17 the State of New Jersey or the United States;

18 (3) The activities of any public utility, as defined in R.S.48:2-13
19 to the extent that such activities are subject to the jurisdiction of the
20 Board of Public Utilities, the Department of Transportation, the
21 Federal **【Power】** Energy Regulatory Commission, the Federal
22 Communications Commission, the Federal Department of
23 Transportation or the Interstate Commerce Commission, except that
24 this exemption, and that of subsection c. of this section, shall apply to
25 the activities of any electric public utility or gas public utility or any
26 related competitive business segment of an electric public utility or
27 related competitive business segment of a gas public utility, or any
28 public utility holding company or related competitive business segment
29 of a public utility holding company as those terms are defined in
30 section 3 of P.L. , c. (C.) (now before the Legislature as this bill),
31 only to the extent such activities are expressly required by and
32 supervised pursuant to State regulation or are required by federal or
33 State law;

34 (4) The activities, including, but not limited to, the making of or
35 participating in joint underwriting or joint reinsurance arrangements,
36 of any insurer, insurance agent, insurance broker, independent
37 insurance adjuster or rating organization to the extent that such
38 activities are subject to regulation by the Commissioner of Insurance
39 of this State under, or are permitted, or are authorized by, the
40 "Department of Banking and Insurance Act of 1948," P.L.1948, c.88
41 (C.17:1-1.1 et al.) and the "Department of Insurance Act of 1970,"
42 P.L.1970, c.12 (C.17:1C-1 et seq.), provided, however, the provisions
43 of this paragraph (4) shall not apply to private passenger automobile
44 insurance business, except as provided in section 69 of P.L.1990, c.8
45 (C.17:33B-31);

46 (5) The bona fide religious and charitable activities of any not for

1 profit corporation, trust or organization established exclusively for
2 religious or charitable purposes, or for both purposes;

3 (6) The activities engaged in by securities dealers, issuers or
4 agents who are (I) a. licensed by the State of New Jersey under the
5 "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.);
6 or (ii) members of the National Association of Securities Dealers, or
7 (iii) members of any National Securities Exchange registered with the
8 Securities and Exchange Commission under the "Securities Exchange
9 Act of 1934," as amended, in the course of their business of offering,
10 selling, buying and selling, or otherwise trading in or underwriting
11 securities, as agent, broker, or principal, and activities of any National
12 Securities Exchange so registered, including the establishment of
13 commission rates and schedules of charges;

14 (7) The activities of any State or national banking institution to
15 the extent that such activities are regulated or supervised by officers
16 of the State government under the "Department of Banking and
17 Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or
18 P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under
19 the banking laws of the United States;

20 (8) The activities of any state or federal savings and loan
21 association to the extent that such activities are regulated or
22 supervised by officers of the State government under the "Department
23 of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et
24 al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government
25 under the banking laws of the United States;

26 (9) The activities of any bona fide not for profit professional
27 association, society or board, licensed and regulated by the courts or
28 any other agency of this State, in recommending schedules of
29 suggested fees, rates or commissions for use solely as guidelines in
30 determining charges for professional and technical services; or

31 (10) The activities permitted under the provisions of chapter 4 of
32 Title 56 of the Revised Statutes, "An act to regulate the retail sale of
33 motor fuels," P.L.1938, c.163 (C.56:6-1 et seq.), the "Unfair Motor
34 Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.) and the
35 "Unfair Cigarette Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et
36 seq.).

37 c. This act shall not apply to any activity directed, authorized or
38 permitted by any law of this State that is in conflict or inconsistent
39 with the provisions of this act, and the enactment of this act shall not
40 be deemed to repeal, either expressly or by implication, any such other
41 law in effect on the date of its enactment.

42 (cf: P.L.1994, c.188, s.2)

43

44 62. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to
45 read as follows:

46 26. a. Receipts from the sale, exchange, delivery or use of

1 electricity are exempt from the tax imposed under the Sales and Use
2 Tax Act if the electricity:

3 (1) (a) Is sold by a municipal electric corporation in existence as
4 of December 31, 1995 and used within its municipal boundaries except
5 if the customer is located within a franchise area served by an electric
6 public utility other than the municipal electric corporation. If a
7 municipal electric corporation makes sales of electricity used outside
8 of its municipal boundaries or within a franchise area served by an
9 electric public utility other than the municipal electric corporation,
10 then receipts from those sales of electricity by the municipal electric
11 corporation shall be subject to tax under P.L.1966, c.30; or

12 (b) Is sold by a municipal electric utility in existence as of
13 December 31, 1995, and used within its municipal boundaries.
14 However, a municipal electric utility's receipts from the sale, exchange,
15 delivery or use of electricity used by customers outside of its municipal
16 boundaries and within its franchise area existing as of December 31,
17 1995 shall be subject to tax. If a municipal electric utility makes sales
18 of electricity used outside of its franchise area existing as of December
19 31, 1995, then receipts from those sales of electricity by the municipal
20 electric utility shall be subject to tax under P.L.1966, c.30;

21 (2) Was generated by a facility located on the user's property or
22 property purchased or leased from the user by the person owning the
23 **【co-generator】** generation facility and such property is contiguous to
24 the user's property, and the electricity was consumed by the one
25 on-site end user on the user's property, and was not transported to the
26 user over wires that cross a property line or public thoroughfare unless
27 the property line or public thoroughfare merely bifurcated the user's or
28 generation facility **【co-generator】** generation facility owner's
29 otherwise contiguous property or the electricity was consumed by an
30 affiliated user on the same site, or by a non-affiliated user on the same
31 site with an electric distribution system which is integrated and
32 interconnected with the user on or before March 10, 1997; the director
33 may promulgate rules and regulations and issue guidance with respect
34 to all issues related to affiliated users; or

35 (3) Is sold for resale.

36 The State Treasurer shall monitor monies deposited into the
37 Energy Tax Receipts Property Tax Relief Fund on an annual basis and
38 may report the results of the State Treasurer's analysis on the fund to
39 the Governor and the Legislature, along with any recommendations on
40 the exemptions in this subsection.

41 b. Receipts from the purchase or use of the following are exempt
42 from the tax imposed under the Sales and Use Tax Act:

43 (1) Natural gas or utility service that is used to generate electricity
44 that is sold for resale or to an end user other than the end user upon
45 whose property is located a co-generation facility or self-generation
46 unit that generated the electricity or upon the property purchased or

1 leased from the end user by the person owning the co-generation
2 facility or self-generation unit if such property is contiguous to the
3 user's property and is the property upon which is located a
4 co-generation facility or self-generation unit that generated the
5 electricity; and

6 (2) Natural gas and utility service that is used for co-generation
7 at any site at which a co-generation facility was in operation on or
8 before March 10, 1997, or for which an application for an operating
9 permit or a construction permit and a certificate of operation in order
10 to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1
11 et seq.) has been filed with the Department of Environmental
12 Protection on or before March 10, 1997, to produce electricity for use
13 on that site.

14 (cf: P.L.1998, c.114, s.4.)

15

16 63. (New section) In the case of construction of a new county
17 correction facility, in addition to the purchase of thermal energy,
18 contracts for the purchase of electricity shall be permitted pursuant to
19 subsection (1)(c) of section 15 of P.L.1971, c.198 (C.40A:11-
20 15(1)(c)).

21

22 64. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
23 read as follows:

24 15. All purchases, contracts or agreements for the performing of
25 work or the furnishing of materials, supplies or services shall be made
26 for a period not to exceed 24 consecutive months, except that
27 contracts for professional services pursuant to subparagraph (i) of
28 paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198
29 (C.40A:11-5) shall be made for a period not to exceed 12 consecutive
30 months. Contracts or agreements may be entered into for longer
31 periods of time as follows:

32 (1) Supplying of:

33 (a) (Deleted by amendment, P.L.1996, c.113.)

34 (b) (Deleted by amendment, P.L.1996, c.113.)

35 (c) Thermal energy produced by a cogeneration facility, for use
36 for heating or air conditioning or both, for any term not exceeding 40
37 years, when the contract is approved by the Board of Public Utilities.
38 For the purposes of this paragraph, "cogeneration" means the
39 simultaneous production in one facility of electric power and other
40 forms of useful energy such as heating or process steam;

41 (2) (Deleted by amendment, P.L.1977, c.53.)

42 (3) The collection and disposal of municipal solid waste, the
43 collection and disposition of recyclable material, or the disposal of
44 sewage sludge, for any term not exceeding in the aggregate, five years;

45 (4) The collection and recycling of methane gas from a sanitary
46 landfill facility, for any term not exceeding 25 years, when such

1 contract is in conformance with a district solid waste management plan
2 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
3 approval of the Division of Local Government Services in the
4 Department of Community Affairs and the Department of
5 Environmental Protection. The contracting unit shall award the
6 contract to the highest responsible bidder, notwithstanding that the
7 contract price may be in excess of the amount of any necessarily
8 related administrative expenses; except that if the contract requires the
9 contracting unit to expend funds only, the contracting unit shall award
10 the contract to the lowest responsible bidder. The approval by the
11 Division of Local Government Services of public bidding requirements
12 shall not be required for those contracts exempted therefrom pursuant
13 to section 5 of P.L.1971, c.198 (C.40A:11-5);

14 (5) Data processing service, for any term of not more than three
15 years;

16 (6) Insurance, for any term of not more than three years;

17 (7) Leasing or servicing of automobiles, motor vehicles, machinery
18 and equipment of every nature and kind, for a period not to exceed
19 three years; provided, however, such contracts shall be entered into
20 only subject to and in accordance with the rules and regulations
21 promulgated by the Director of the Division of Local Government
22 Services of the Department of Community Affairs;

23 (8) The supplying of any product or the rendering of any service
24 by a telephone company which is subject to the jurisdiction of the
25 Board of Public Utilities for a term not exceeding five years;

26 (9) Any single project for the construction, reconstruction or
27 rehabilitation of any public building, structure or facility, or any public
28 works project, including the retention of the services of any architect
29 or engineer in connection therewith, for the length of time authorized
30 and necessary for the completion of the actual construction;

31 (10) The providing of food services for any term not exceeding
32 three years;

33 (11) On-site inspections undertaken by private agencies pursuant
34 to the "State Uniform Construction Code Act," P.L.1975, c.217
35 (C.52:27D-119 et seq.) for any term of not more than three years;

36 (12) The performance of work or services or the furnishing of
37 materials or supplies for the purpose of conserving energy in buildings
38 owned by, or operations conducted by, the contracting unit, the entire
39 price of which to be established as a percentage of the resultant
40 savings in energy costs, for a term not to exceed 10 years; provided,
41 however, that such contracts shall be entered into only subject to and
42 in accordance with rules and regulations promulgated by the
43 Department of Environmental Protection establishing a methodology
44 for computing energy cost savings;

45 (13) The performance of work or services or the furnishing of
46 materials or supplies for the purpose of elevator maintenance for any

1 term not exceeding three years;

2 (14) Leasing or servicing of electronic communications equipment
3 for a period not to exceed five years; provided, however, such contract
4 shall be entered into only subject to and in accordance with the rules
5 and regulations promulgated by the Director of the Division of Local
6 Government Services of the Department of Community Affairs;

7 (15) Leasing of motor vehicles, machinery and other equipment
8 primarily used to fight fires, for a term not to exceed ten years, when
9 the contract includes an option to purchase, subject to and in
10 accordance with rules and regulations promulgated by the Director of
11 the Division of Local Government Services of the Department of
12 Community Affairs;

13 (16) The provision of water supply services or the designing,
14 financing, construction, operation, or maintenance, or any combination
15 thereof, of a water supply facility, or any component part or parts
16 thereof, including a water filtration system, for a period not to exceed
17 40 years, when the contract for these services is approved by the
18 Division of Local Government Services in the Department of
19 Community Affairs, the Board of Public Utilities, and the Department
20 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
21 al.), except for those contracts otherwise exempted pursuant to
22 subsection (30), (31), (34) or (35) of this section. For the purposes
23 of this subsection, "water supply services" means any service provided
24 by a water supply facility; "water filtration system" means any
25 equipment, plants, structures, machinery, apparatus, or land, or any
26 combination thereof, acquired, used, constructed, rehabilitated, or
27 operated for the collection, impoundment, storage, improvement,
28 filtration, or other treatment of drinking water for the purposes of
29 purifying and enhancing water quality and insuring its potability prior
30 to the distribution of the drinking water to the general public for
31 human consumption, including plants and works, and other personal
32 property and appurtenances necessary for their use or operation; and
33 "water supply facility" means and refers to the real property and the
34 plants, structures, interconnections between existing water supply
35 facilities, machinery and equipment and other property, real, personal
36 and mixed, acquired, constructed or operated, or to be acquired,
37 constructed or operated, in whole or in part by or on behalf of a
38 political subdivision of the State or any agency thereof, for the
39 purpose of augmenting the natural water resources of the State and
40 making available an increased supply of water for all uses, or of
41 conserving existing water resources, and any and all appurtenances
42 necessary, useful or convenient for the collecting, impounding, storing,
43 improving, treating, filtering, conserving or transmitting of water and
44 for the preservation and protection of these resources and facilities and
45 providing for the conservation and development of future water supply
46 resources;

1 (17) The provision of resource recovery services by a qualified
2 vendor, the disposal of the solid waste delivered for disposal which
3 cannot be processed by a resource recovery facility or the residual ash
4 generated at a resource recovery facility, including hazardous waste
5 and recovered metals and other materials for reuse, or the design,
6 financing, construction, operation or maintenance of a resource
7 recovery facility for a period not to exceed 40 years when the contract
8 is approved by the Division of Local Government Services in the
9 Department of Community Affairs, and the Department of
10 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
11 al.); and when the resource recovery facility is in conformance with a
12 district solid waste management plan approved pursuant to P.L.1970,
13 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
14 "resource recovery facility" means a solid waste facility constructed
15 and operated for the incineration of solid waste for energy production
16 and the recovery of metals and other materials for reuse; or a
17 mechanized composting facility, or any other facility constructed or
18 operated for the collection, separation, recycling, and recovery of
19 metals, glass, paper, and other materials for reuse or for energy
20 production; and "residual ash" means the bottom ash, fly ash, or any
21 combination thereof, resulting from the combustion of solid waste at
22 a resource recovery facility;

23 (18) The sale of electricity or thermal energy, or both, produced
24 by a resource recovery facility for a period not to exceed 40 years
25 when the contract is approved by the **【Board of Public Utilities】**
26 Department of Environmental Protection, and when the resource
27 recovery facility is in conformance with a district solid waste
28 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
29 seq.). For the purposes of this subsection, "resource recovery facility"
30 means a solid waste facility constructed and operated for the
31 incineration of solid waste for energy production and the recovery of
32 metals and other materials for reuse; or a mechanized composting
33 facility, or any other facility constructed or operated for the
34 collection, separation, recycling, and recovery of metals, glass, paper,
35 and other materials for reuse or for energy production;

36 (19) The provision of wastewater treatment services or the
37 designing, financing, construction, operation, or maintenance, or any
38 combination thereof, of a wastewater treatment system, or any
39 component part or parts thereof, for a period not to exceed 40 years,
40 when the contract for these services is approved by the Division of
41 Local Government Services in the Department of Community Affairs
42 and the Department of Environmental Protection pursuant to
43 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise
44 exempted pursuant to subsection (36) of this section. For the
45 purposes of this subsection, "wastewater treatment services" means
46 any services provided by a wastewater treatment system, and

1 "wastewater treatment system" means equipment, plants, structures,
2 machinery, apparatus, or land, or any combination thereof, acquired,
3 used, constructed, or operated for the storage, collection, reduction,
4 recycling, reclamation, disposal, separation, or other treatment of
5 wastewater or sewage sludge, or for the final disposal of residues
6 resulting from the treatment of wastewater, including, but not limited
7 to, pumping and ventilating stations, facilities, plants and works,
8 connections, outfall sewers, interceptors, trunk lines, and other
9 personal property and appurtenances necessary for their operation;

10 (20) The supplying of materials or services for the purpose of
11 lighting public streets, for a term not to exceed five years, provided
12 that the rates, fares, tariffs or charges for the supplying of electricity
13 for that purpose are approved by the Board of Public Utilities;

14 (21) In the case of a contracting unit which is a county or
15 municipality, the provision of emergency medical services by a hospital
16 to residents of a municipality or county as appropriate for a term not
17 to exceed five years;

18 (22) Towing and storage contracts, awarded pursuant to
19 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
20 (C.40A:11-5) for any term not exceeding three years;

21 (23) Fuel for the purpose of generating electricity for a term not
22 to exceed eight years;

23 (24) The purchase of electricity or administrative or dispatching
24 services related to the transmission of such electricity, from a public
25 utility company subject to the jurisdiction of the Board of Public
26 Utilities, a similar regulatory body of another state, or a federal
27 regulatory agency, or from a qualifying small power producing facility
28 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by
29 a contracting unit engaged in the generation of electricity for retail
30 sale, as of May 24,1991, for a term not to exceed 40 years;

31 (25) Basic life support services, for a period not to exceed five
32 years. For the purposes of this subsection, "basic life support" means
33 a basic level of prehospital care, which includes but need not be limited
34 to patient stabilization, airway clearance, cardiopulmonary
35 resuscitation, hemorrhage control, initial wound care and fracture
36 stabilization;

37 (26) Claims administration services, for any term not to exceed
38 three years;

39 (27) The provision of transportation services to elderly, disabled
40 or indigent persons for any term of not more than three years. For the
41 purposes of this subsection, "elderly persons" means persons who are
42 60 years of age or older. "Disabled persons" means persons of any age
43 who, by reason of illness, injury, age, congenital malfunction, or other
44 permanent or temporary incapacity or disability, are unable, without
45 special facilities or special planning or design to utilize mass
46 transportation facilities and services as effectively as persons who are

1 not so affected. "Indigent persons" means persons of any age whose
2 income does not exceed 100 percent of the poverty level, adjusted for
3 family size, established and adjusted under section 673(2) of subtitle
4 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
5 U.S.C. s.9902 (2));

6 (28) The supplying of liquid oxygen or other chemicals, for a term
7 not to exceed five years, when the contract includes the installation of
8 tanks or other storage facilities by the supplier, on or near the
9 premises of the contracting unit;

10 (29) The performance of patient care services by contracted
11 medical staff at county hospitals, correction facilities and long term
12 care facilities, for any term of not more than three years;

13 (30) The acquisition of an equitable interest in a water supply
14 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an
15 agreement entered into pursuant to the "County and Municipal Water
16 Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into
17 no later than January 7, 1995, for any term of not more than forty
18 years;

19 (31) The provision of water supply services or the financing,
20 construction, operation or maintenance or any combination thereof, of
21 a water supply facility or any component part or parts thereof, by a
22 partnership or copartnership established pursuant to a contract
23 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
24 period not to exceed 40 years;

25 (32) Laundry service and the rental, supply and cleaning of
26 uniforms for any term of not more than three years;

27 (33) The supplying of any product or the rendering of any service,
28 including consulting services, by a cemetery management company for
29 the maintenance and preservation of a municipal cemetery operating
30 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for
31 a term not exceeding 15 years;

32 (34) A contract between a public entity and a private firm
33 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
34 water supply services may be entered into for any term which, when
35 all optional extension periods are added, may not exceed 40 years;

36 (35) An agreement for the purchase of a supply of water from a
37 public utility company subject to the jurisdiction of the Board of Public
38 Utilities in accordance with tariffs and schedules of charges made,
39 charged or exacted or contracts filed with the Board of Public
40 Utilities, for any term of not more than 40 years;

41 (36) A contract between a public entity and a private firm or
42 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
43 the provision of wastewater treatment services may be entered into for
44 any term of not more than 40 years, including all optional extension
45 periods; and

46 (37) The operation and management of a facility under a license

1 issued or permit approved by the Department of Environmental
2 Protection, including a wastewater treatment system or a water supply
3 or distribution facility, as the case may be, for any term of not more
4 than seven years. For the purposes of this subsection, "wastewater
5 treatment system" refers to facilities operated or maintained for the
6 storage, collection, reduction, disposal, or other treatment of
7 wastewater or sewage sludge, remediation of groundwater
8 contamination, stormwater runoff, or the final disposal of residues
9 resulting from the treatment of wastewater; and "water supply or
10 distribution facility" refers to facilities operated or maintained for
11 augmenting the natural water resources of the State, increasing the
12 supply of water, conserving existing water resources, or distributing
13 water to users.

14 All multiyear leases and contracts entered into pursuant to this
15 section, except contracts for the leasing or servicing of equipment
16 supplied by a telephone company which is subject to the jurisdiction
17 of the Board of Public Utilities, contracts involving the supplying of
18 electricity for the purpose of lighting public streets and contracts for
19 thermal energy authorized pursuant to subsection (1) above,
20 construction contracts authorized pursuant to subsection (9) above,
21 contracts and agreements for the provision of work or the supplying
22 of equipment to promote energy conservation authorized pursuant to
23 subsection (12) above, contracts for water supply services or for a
24 water supply facility, or any component part or parts thereof
25 authorized pursuant to subsection (16), (30), (31), (34), (35) or (37)
26 above, contracts for resource recovery services or a resource recovery
27 facility authorized pursuant to subsection (17) above, contracts for the
28 sale of energy produced by a resource recovery facility authorized
29 pursuant to subsection (18) above, contracts for wastewater treatment
30 services or for a wastewater treatment system or any component part
31 or parts thereof authorized pursuant to subsection (19), (36) or (37)
32 above, and contracts for the purchase of electricity or administrative
33 or dispatching services related to the transmission of such electricity
34 authorized pursuant to subsection (24) above, shall contain a clause
35 making them subject to the availability and appropriation annually of
36 sufficient funds as may be required to meet the extended obligation, or
37 contain an annual cancellation clause.

38 The Division of Local Government Services shall adopt and
39 promulgate rules and regulations concerning the methods of
40 accounting for all contracts that do not coincide with the fiscal year.
41 (cf: P.L.1997, c.288)

42

43 65. (New section) The following sections are repealed:

44 The "Public Utility Accident Fault Determination Act," P.L.1983,
45 c.94 (C.48:2-21.4 et seq.).

46 P.L.1963, c.114 (C.48:7-7 through 48:7-13).

1 The "Electric Facility Need Assessment Act," P.L.1983, c.115
2 (C.48:7-16 through 25).

3 R.S.48:9-20.

4 Sections 2, 5.1, 10, 11, 17, 23, and 25 of the "Department of
5 Energy Act," P.L.1977, c.146 (C.52:27F-2, 52:27F-6, 52:27F-12,
6 52:27F-13, 52:27F-19, 52:27F-26, and 52:27F-28).

7

8 66. This act shall take effect immediately, except that, to the
9 extent not already provided for by existing law, the authority of the
10 board to order rate unbundling filings, restructuring filings, and
11 stranded cost filings, perform audits of utility competitive services and
12 take such other regulatory actions, including, but not limited to, the
13 holding of hearings, providing of notice and opportunity for comment,
14 the issuance of orders, and the establishment of standards, including
15 auction standards adopted for application to an electric public utility
16 that is executing a divestiture plan, and to take such other anticipatory
17 regulatory action as it deems necessary to fulfill the purposes or
18 requirements of this act shall apply retroactively to April 1, 1997
19 provided that the board shall take such actions as may be necessary,
20 if any, to ensure that the requirements of this act are met in all
21 regulatory actions related to this act which were commenced prior to
22 its enactment.