

SENATE, No. 7

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 25, 1999

Sponsored by:

Senator PETER A. INVERSO
District 14 (Mercer and Middlesex)
Senator EDWARD T. O'CONNOR
District 31 (Hudson)

Co-Sponsored by:

Senators Sinagra, Singer and Bucco

SYNOPSIS

Restructures electric and gas utility industries.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/29/1999)

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 46, and sections 51, 57, 59,
9 60, 63, 65 and 66 of this act shall be known and may be cited as the
10 "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;

42 (9) Prevent any adverse impacts on environmental quality in this
43 State as a result of the introduction of competition in retail power

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 markets in this State;

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

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

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

12 b. The Legislature further finds and declares that:

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

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

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

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

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

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

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

44 (8) The electric power generation marketplace and gas supply
45 marketplace should be subject to appropriate consumer protection

1 standards that will ensure that all classes of customers in all regions of
2 this State are properly and adequately served.

3 c. The Legislature therefore determines that it is in the public
4 interest to:

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

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

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

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

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

32
33 3. (New section) As used in this act:

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

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

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

9 "Board" means the New Jersey Board of Public Utilities or any
10 successor agency;

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

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

44 "Bondable transition property" means the property consisting of
45 the irrevocable right to charge, collect and receive, and be paid from
46 collections of, transition bond charges in the amount necessary to

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

9 "Broker" means a duly licensed electric power supplier that
10 assumes the contractual and legal responsibility for the sale of electric
11 generation service, transmission or other services to end-use retail
12 customers, but does not take title to any of the power sold, or a duly
13 licensed gas supplier that assumes the contractual and legal obligation
14 to provide gas supply service to end-use retail customers, but does not
15 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, affect 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.;

29 "Electric power supplier" means a person or entity that is duly
30 licensed pursuant to the provisions of this act to offer and to assume
31 the contractual and legal responsibility to provide electric generation
32 service to retail customers, and includes load serving entities,
33 marketers and brokers that offer or provide electric generation service
34 to retail customers. The term excludes an electric public utility that
35 provides electric generation service only as a basic generation service
36 pursuant to section 9 of this act;

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

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

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

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

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

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

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

24 "Gas supplier" means a person that is duly licensed pursuant to the
25 provisions of this act to offer and assume the contractual and legal
26 obligation to provide gas supply service to retail customers, and
27 includes, but is not limited to, marketers and brokers. A non-public
28 utility affiliate of a public utility holding company may be a gas
29 supplier, but a gas public utility or any subsidiary of a gas utility is not
30 a gas supplier. In the event that a gas public utility is not part of a
31 holding company legal structure, a related competitive business
32 segment of that gas public utility may be a gas supplier, provided that
33 related competitive business segment is structurally separated from the
34 gas public utility, and provided that the interactions between the gas
35 public utility and the related competitive business segment are subject
36 to the affiliate relations standards adopted by the board pursuant to
37 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 assumes contractual and legal obligation to provide electric generation
25 service, and may include transmission and other services, to an end-use
26 retail customer or customers, or a duly licensed gas supplier that takes
27 title to gas and then assumes the contractual and legal obligation to
28 provide gas supply service to an end-use customer or customers;

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

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

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

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

46 "Private aggregator" means a non-government aggregator that is

1 a duly-organized business or non-profit organization authorized to do
2 business in this State that enters into a contract with a duly licensed
3 electric power supplier for the purchase of electric energy and
4 capacity, or with a duly licensed gas supplier for the purchase of gas
5 supply service, on behalf of multiple end-use customers by combining
6 the loads of those customers;

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

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

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

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

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

46 "Restructuring related costs" means reasonably incurred costs

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

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

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

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

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

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

44 "Stranded costs recovery order" means each order issued by the
45 board in accordance with subsection c. of section 13 of this act which
46 sets forth the amount of stranded costs, if any, the board has

1 determined an electric public utility is eligible to recover and collect
2 in accordance with the standards set forth in section 13 and the
3 recovery mechanisms therefor;

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

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

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

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

29

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

1 section 13 of this act shall be added to the discrete services and
2 charges identified. Residential rate schedules once unbundled, may be
3 totally or partially rebundled for residential billing purposes. All
4 competitive services offered by an electric public utility shall be
5 charged separately from non-competitive services.

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

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

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

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

1 (2) The board may set a term for an electric public utility to phase
2 in a rate reduction of ten percent or more during the first 36 months
3 after the starting date for the implementation of retail choice as
4 provided in subsection a. of section 5 of this act; provided, however,
5 that, on the starting date for the implementation of retail choice as
6 provided in subsection a. of section 5 of this act, each electric public
7 utility shall reduce its aggregate level of rates for each customer class,
8 including any surcharges assessed pursuant to this act, by no less than
9 five percent.

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

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

21 g. Any subsequent order to reduce rates beyond those authorized
22 by subsections d. and e. of this section may only be issued after notice
23 and hearing.

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

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

33 j. The maximum level of rate reduction determined by the board
34 pursuant to this section shall be sustained at least until the end of the
35 48th month following the starting date for the implementation of retail
36 choice as provided in subsection a. of section 5 of this act.

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

44 b. Each electric public utility shall comply with the schedule for
45 the implementation of retail choice established pursuant to subsection
46 a. of this section. The board shall have the authority to require each

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

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

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

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

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

28

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

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

45 (2) The price which an electric public utility charges for a
46 competitive service shall not be less than the fully allocated cost of

1 providing such service, as determined by the board, which cost shall
2 include an allocation of the cost of all equipment, vehicles, labor,
3 related fringe benefits and overheads, and administration utilized, and
4 all other assets utilized and costs incurred, directly or indirectly, in
5 providing such competitive service.

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

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

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

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

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

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

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

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

45 e. Tariffs for competitive services filed with the board shall be in
46 the public records, except that if the board determines that the rates

1 are proprietary, they shall be filed under seal and made available under
2 the terms of an appropriate protective agreement, as provided by
3 board order. A public utility shall have the burden of proof by
4 affidavit and motions to demonstrate the need for proprietary
5 treatment. The rates shall become public upon board approval.

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

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

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

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

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

32 (5) Competitive services to non-residential customers using
33 existing utility employees.

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

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

1 records, and provide accounting entries of its regulated business to the
2 board as may be required by the board, to show that there is strict
3 separation and allocation of the utility's revenues, costs, assets, risks
4 and functions, between the electric public utility and its related
5 competitive business segment.

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

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

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

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

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

45 l. If a separate unit is established by the electric public utility as a
46 related competitive business segment of the electric public utility such

1 that other than shared administration and overheads, employees of the
2 competitive services business unit shall not also be involved in the
3 provision of non-competitive utility and safety services, and the
4 competitive services are provided utilizing separate assets than those
5 utilized to provide non-competitive utility and safety services, the
6 board shall apply 25 percent of the net revenues:

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

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

15

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

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

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

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

1 e. Nothing in this act shall limit the authority of the board,
2 pursuant to Title 48 of the Revised Statutes, to ensure that electric
3 public utilities do not make or impose unjust preferences,
4 discriminations, or classifications for any services provided to
5 customers.

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

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

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

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

1 company; or order the electric public utility to divest itself of any
2 business units that provide such services.

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

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

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

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

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

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

1 k. Prior to reclassifying as regulated any service it previously
2 found to be competitive, the board shall make recommendations to the
3 Legislature concerning the proposed reclassification. The
4 recommendations shall be deemed to be approved unless the
5 Legislature adopts a concurrent resolution stating that the Legislature
6 is not in agreement with all or any part of the recommendations within
7 90 days following the date of transmittal of the recommendations to
8 the Legislature. The concurrent resolution shall advise the board of
9 the Legislature's specific objections to the recommendations and shall
10 direct the board to submit revised recommendations which respond to
11 those objections within 45 days of the date of transmittal of the
12 concurrent resolution to the board.

13

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

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

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

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

1 costs recovery charges assessed pursuant to sections 13 and 14 of this
2 act, shall be applied:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 offered a competitive service prior to January 1, 1993 or has not
2 received previous board approval for such a competitive service shall
3 apply for approval pursuant to subsection d. of this section. Except
4 as otherwise provided by this paragraph, a competitive service that is
5 permitted by this paragraph shall be subject to all requirements of this
6 act for competitive services and to any standards or other rules or
7 regulations adopted pursuant to this act;

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

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

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

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

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

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

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

44 f. A gas public utility shall not use regulated rates to subsidize its
45 competitive services or competitive services offered by a related
46 competitive business segment of the public utility holding company of

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to this subsection.

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

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

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

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

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

45 q. Notwithstanding any other provisions of this section, by no
46 later than December 31, 2000, the board shall render a decision, after

1 notice and hearing, on any further restrictions required for any or all
2 non-safety related competitive services offered by a gas public utility
3 in addition to the provisions of this section, including whether a gas
4 public utility offering non-safety related services must establish and
5 provide such services through a business unit which is functionally
6 separated from the gas public utility business unit.

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

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

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

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

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

1 in the competitive wholesale marketplace and related ancillary and
2 administrative costs, as determined by the board or shall be based upon
3 the result of a competitive bid.

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

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

28 w. If the board finds, as a result of any audit conducted pursuant
29 to this section, that violations of the board's rules, regulations or
30 orders adopted pursuant to this section have occurred, which are not
31 substantial violations, the board is authorized to impose a fine of up to
32 \$10,000 against the gas public utility.

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

40 (1) Functionally separate its non-competitive business functions
41 from its competitive electric generation service or its electric power
42 generator functions so that such services or functions are provided by
43 a related competitive business segment of the public utility or the
44 public utility holding company. A related competitive business segment
45 of the public utility holding company that is providing competitive
46 electric generation services or performing electric power generator

1 functions shall not be considered a public utility for the purposes of
2 regulation under Title 48 of the Revised Statutes or any other State
3 law or rule or regulation, except that the interrelationships between the
4 related competitive business segment and the electric public utility
5 shall be subject to board authority and oversight consistent with the
6 provisions of this section; or

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

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

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

44 (2) Shall hire its initial employee complement from among
45 qualified employees of the electric public utility employed at the

1 generating facility at the time of the functional separation or
2 divestiture; and

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

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

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

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

14 (3) The sale will not jeopardize the reliability of the electric power
15 system;

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

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

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

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

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

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

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

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

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

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

10

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

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

34 (2) Nuclear plant decommissioning costs;

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

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

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

46 (5) The cost, of consumer education, as determined by the board,

1 which shall be in an amount that, together with the consumer
2 education surcharge imposed on electric power supplier license fees
3 pursuant to subsection h. of section 29 of this act and the consumer
4 education surcharge imposed on gas supplier license fees pursuant to
5 subsection g. of section 30 of this act, shall be sufficient to fund the
6 consumer education program established pursuant to section 36 of this
7 act.

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

24

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

36 (1) Utility generation plant stranded costs;

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

42 (3) Stranded costs related to long-term power purchase contracts
43 with non-utility generators, including buydowns and buyouts of such
44 contracts and interim debt issued to effectuate the buydown or buyout
45 of such contracts, and the costs of new power contracts approved by
46 the board which are the result of the renegotiation, restructuring or

1 termination of previous non-utility generator power purchase contracts
2 pursuant to subsection l. of this section; and

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

6 b. Costs that may be collected pursuant to subsection a. of this
7 section must be otherwise unrecoverable as a direct result of the
8 implementation of retail choice mandated by subsection a. of section
9 5 of this act.

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

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

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

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

38 e. For the purposes of quantifying the magnitude of stranded
39 costs eligible for recovery via the market transition charge, the board
40 shall require the electric public utility to demonstrate the full market
41 value of each eligible generating asset or power purchase commitment
42 over its remaining useful life or term and, in fixing the level of the
43 market transition charge, the board shall reach a determination as to
44 the market value of such eligible assets and commitments, or
45 implement a mechanism for such value to be determined. Such
46 determination or mechanism shall reflect or provide a means to reflect

1 the full value of the eligible asset or commitment, including value
2 which may not be realized by the electric public utility until after the
3 expiration of the market transition charge, and may reflect a reduced
4 return, if any, on investment in quantifying stranded costs which the
5 board determines to be reasonable given the changes in capital costs
6 or risks to the utility, or to reflect the impaired value of the
7 uneconomic generating assets to ratepayers.

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

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

14 (2) Maximizing the market value of the generating asset or
15 purchase commitment; or

16 (3) Undertaking other reasonably achievable cost reductions.

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

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

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

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

44 (2) To recover costs associated with a particular generating asset,
45 the costs of which represent at least 20 percent of an electric public
46 utility's stranded costs as determined by the board and the remaining

1 life of which for depreciation purposes at April 30, 1997 was 10 years
2 or greater, in which case the board may extend the market transition
3 charge up to three additional years if necessary to achieve the rate
4 reduction levels established by the board pursuant to section 4 of this
5 act; or

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

10 j. The board shall issue orders with respect to each electric public
11 utility's amortization of stranded costs through the market transition
12 charge pursuant to this section prior to the starting date for
13 implementation of retail choice as provided in subsection a. of section
14 5 of this act.

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

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

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

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

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

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

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

43 (5) As used in this subsection, "qualified replacement power" is
44 power that the utility purchases subsequent to the board-approved
45 buyout, buydown or renegotiation of a non-utility generator power
46 purchase contract which is necessary to provide basic generation

1 service and in order to replace power not provided as part of the
2 buydown, buyout or new contract, and which is obtained at a cost no
3 higher than that which is available in the market.

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

45 b. The issuance of transition bonds for an electric public utility
46 may be authorized by the board if all the following findings are made

1 by the board in connection with its review of a stranded cost filing
2 made by an electric public utility pursuant to section 13 of this act:

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

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

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

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

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

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

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

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

46 (c) Based on evidence on the record, such amount will produce

1 substantial and quantifiable savings for the customers of that utility;
2 and

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

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

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

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

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

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

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

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

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

37

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

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

46 (2) Approve the amount of the initial transition bond charge to be

1 imposed upon, charged to and collected and received from the
2 customers of the electric public utility in an amount not less than the
3 amount necessary to fully recover bondable stranded costs, and
4 provide for adjustment in a manner approved by the board of the initial
5 transition bond charge prior to the closing of the related transition
6 bonds to reflect the actual rate of interest thereon and all other costs,
7 including any required overcollateralization, associated with the
8 issuance of such transition bonds; and

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

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

1 board order to the contrary, shall become final 60 days thereafter.
2 Each such adjustment shall be formula-based and shall be in the
3 amount required to ensure receipt of revenues sufficient to provide for
4 the full recovery of bondable stranded costs including, without
5 limitation, the timely payment of principal of, and interest and
6 acquisition or redemption premium on, transition bonds issued to
7 finance such bondable stranded costs, which shall be recovered over
8 the term of the transition bonds and in accordance with the schedule
9 of payments of principal and interest on the transition bonds provided
10 to the board by the electric public utility pursuant to subsection a. of
11 this section. Such periodic adjustments shall not in any way affect the
12 validity or irrevocability of the bondable stranded costs rate order or
13 any sale, assignment or other transfer of or any pledge or security
14 interest granted with respect to the related bondable transition
15 property and shall not affect rights of bondholders.

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

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

1 intended characteristics of the transition bonds, including, but not
2 limited to, the following characteristics:

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

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

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

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

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

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

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

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

1 adjustments of the transition bond charges in accordance with the
2 provisions of paragraph (2) of subsection a. and of subsection b. of
3 section 15 of this act.

4

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

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

39

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

1 transmission and distribution system of the electric public utility or any
2 successor.

3

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

8

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

11

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

20

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

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

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

1 costs rate order establishing the bondable transition property.

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

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

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

1 bond charges in respect of the bondable transition property for the
2 benefit and account of the pledgee, the assignee or the financing entity.
3 The board may, at its discretion, establish criteria for the selection of
4 any entity that may become a servicer of bondable transition property
5 upon the default or other adverse material change in the financial
6 condition of the electric public utility.

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

11

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

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

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

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

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

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

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

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

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

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

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

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

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

45 a. Upon the issuance of a bondable stranded costs rate order, the
46 board shall forthwith cause a certified copy of such order to be served

1 upon each party entitled thereto. The electric public utility shall,
2 within 10 days of such service upon it, file with the board its written
3 consent to such order or its objections thereto.

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

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

19

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

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

1 for any surplus and, unless otherwise agreed, the debtor shall be liable
2 for any deficiency.

3

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (1) That the on-site customer or its agent installed on or before
46 the effective date of this act, including any expansion of such a facility

1 for the continued provision of on-site power consumption by the same
2 on-site customer that occurs after the effective date of this act; or

3 (2) For which the on-site customer or its agent has made, on or
4 before the effective date of this act, substantial financial and
5 contractual commitments in planning and development, including
6 having applied for any appropriate air permit from the Department of
7 Environmental Protection, including any expansion of such a facility
8 for the continued provision of on-site power consumption by the same
9 on-site customer that occurs after the effective date of this act.

10

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

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

29 c. Notwithstanding any provisions of the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
31 the board shall initiate a proceeding and shall adopt, in consultation
32 with the Division of Consumer Affairs in the Department of Law and
33 Public Safety, after notice, provision of the opportunity for comment,
34 and public hearing, interim electric power supplier licensing standards
35 within 90 days of the effective date of this act. Such standards shall
36 be effective as regulations immediately upon filing with the Office of
37 Administrative Law and shall be effective for a period not to exceed
38 18 months, and may, thereafter, be amended, adopted or readopted by
39 the board in accordance with the provisions of the "Administrative
40 Procedure Act." The standards shall include, but need not be limited
41 to, the following requirements that an electric power supplier:

42 (1) Register with the board, which shall include the filing of basic
43 information pertaining to the supplier, such as name, address,
44 telephone number, and company background and profile, and a list of
45 the services or products offered by the supplier. A supplier shall

- 1 provide annual updates of this information to the board. The
2 registration shall also include:
- 3 (a) Evidence of financial integrity;
 - 4 (b) Information on any disciplinary proceedings or actions by law
5 enforcement authorities in which the electric power supplier, its
6 subsidiaries, affiliates or parent has been involved in this State or any
7 other states;
 - 8 (c) The ownership interests of the supplier including the interests
9 owned by the supplier and the interests owning the supplier;
 - 10 (d) The name and address of the in-State agent of the supplier that
11 is authorized to receive service of process;
 - 12 (e) The name and address of the in-State customer service agent
13 for the supplier; and
 - 14 (f) The quantity of retail electric sales made in this State during
15 the 12 months preceding the application.
- 16 (2) Agree to meet all reliability standards established by the Mid-
17 Atlantic Area Council of the North American Electric Reliability
18 Council or its successor, the PJM Interconnection, L.L.C. independent
19 system operator or its successor, the Federal Energy Regulatory
20 Commission, the board, or any other state, regional, federal or
21 industry body with authority to establish reliability standards. The
22 board may establish specific standards applicable to electric power
23 suppliers to ensure the adequacy of electric power capacity, if it
24 determines that standards established by any other state, regional,
25 federal or industry bodies are not sufficient to assure the provision of
26 safe, adequate, proper and reliable electric generation service to retail
27 customers in this State. Such reliability standards shall ensure bulk
28 power system operations and security, and shall ensure the adequacy
29 of electric power capacity necessary to meet retail loads;
- 30 (3) Maintain an office within this State for the purposes of
31 accepting service of process, maintaining such records as the board
32 requires and ensuring accessibility to the board, consumers and electric
33 public utilities;
 - 34 (4) Maintain a surety bond under terms and conditions as
35 determined by the board;
 - 36 (5) Provide a description of the products and services to be
37 rendered;
 - 38 (6) Comply with such specific standards of conduct for electric
39 power suppliers as the board shall adopt; and
 - 40 (7) Provide through legal certification by an officer of the electric
41 power supplier such information as the board or its staff shall require
42 to assist the board in making any determination concerning revocation,
43 suspension, issuance or renewal of the supplier's license pursuant to
44 section 32 of this act.
- 45 d. An electric public utility shall:

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

3 (2) Apply the licensing requirements and other conditions for
4 access to the transmission and distribution system uniformly to all
5 electric power suppliers; and

6 (3) Report alleged violations of the board's licensing requirements
7 of which it becomes aware to the board.

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

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

32 g. The board may establish safety and service quality standards
33 for electric power suppliers, and nothing in this act shall limit the
34 authority of the board to promulgate such safety or service quality
35 standards or to resolve complaints regarding the quality of electric
36 generation service.

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

42 i. Any provision of this act to the contrary notwithstanding, any
43 person acting as an energy agent shall be required to register with the
44 board. This registration shall include, but need not be limited to, the
45 name, address, telephone number, and business affiliation or profile of
46 the energy agent, evidence of financial integrity as determined by the

1 board, and evidence of knowledge of the energy industry. This
2 registration shall be updated annually. Nothing in this subsection shall
3 be construed to limit or exempt an energy agent from liability under
4 any other law pertaining to any activity which an energy agent may
5 engage in.

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

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

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

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

38 (a) Evidence of financial integrity;

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

42 (c) The ownership interests of the gas supplier including the
43 interests owned by the gas supplier and the interests owning the gas
44 supplier;

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

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

1 resolve complaints regarding the quality of gas supply service.

2 g. The board may establish, by written order pursuant to
3 subsection c. of this section or by rule, a licensure fee to cover the
4 costs of licensing gas suppliers. The fee shall include a reasonable
5 surcharge to fund a consumer education program in this State
6 established pursuant to section 36 of this act.

7

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

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

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

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

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

24 (5) Examine any record, book, document, account, electronic data
25 or paper maintained by or for any electric power supplier or gas
26 supplier;

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

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

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

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

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

44 c. Whenever the board finds that a violation by an electric power
45 supplier or a gas supplier of this act, including the unlicensed
46 supplying of electric power or gas, or of any rule or regulation

1 adopted by the board pursuant thereto, has occurred, is occurring or
2 will occur, the board, in addition to any other proceeding authorized
3 by law, may seek and obtain in a summary proceeding in the Superior
4 Court an injunction prohibiting such act or practice.

5
6 32. (New section) a. The board may revoke, suspend, or refuse
7 to issue or renew an electric power supplier's license or a gas supplier's
8 license at any time upon a finding that the supplier:

9 (1) Has obtained a license through fraud, deception or
10 misrepresentation;

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

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

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

15 (5) Has engaged in misconduct as may be determined by the
16 board;

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

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

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

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

33 (10) Has repeatedly failed to submit completed applications, or
34 parts of such applications, or documentation submitted in conjunction
35 with such applications, required to be filed with the Department of
36 Environmental Protection.

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

44
45 33. (New section) a. In addition or as an alternative, as the case
46 may be, to revoking, suspending or refusing to issue or to renew the

1 license of an electric power supplier or a gas supplier, the board may,
2 after notice and opportunity for a hearing:

3 (1) Issue a letter of warning, reprimand or censure with regard to
4 any act, conduct or practice that in the judgement of the board, upon
5 consideration of all relevant facts and circumstances, does not warrant
6 the initiation of formal action;

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

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

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

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

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

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

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

1 penalty; and other factors the board determines to be appropriate. The
2 amount of the penalty when finally determined, or the amount agreed
3 upon in compromise, may be deducted from any sums owing by the
4 State to the person charged, or may be recovered, if necessary, in a
5 summary proceeding pursuant to "the penalty enforcement law,"
6 N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to
7 enforce the provisions of "the penalty enforcement law" in connection
8 with this act.

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

21 b. Administrative and judicial remedies provided in this act may be
22 pursued simultaneously.

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

40 (1) Contract standards shall include, but not be limited to,
41 requirements that electric power supply contracts or gas supply
42 contracts must conspicuously disclose the duration of the contract;
43 state the price per kilowatt hour or per therm or other pricing
44 determinant approved by the board; have the customer's written
45 signature or such alternative forms of verification as the board, in
46 consultation with the Division of Consumer Affairs, may permit for

1 switching electric power suppliers or gas suppliers and for contract
2 renewal; and include termination procedures, notice of any fees, and
3 toll-free or local telephone numbers for the electric power supplier or
4 gas supplier and for the board.

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

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

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

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

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

46 (2) An electric power supplier, a gas supplier, a gas public utility

1 or an electric public utility may use individual proprietary information
2 that it has obtained by virtue of its provision of electric generation
3 service, electric related service, gas supply service or gas related
4 service to:

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

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

9 (c) Protect consumers of such services and other electric power
10 suppliers, gas suppliers or electric and gas public utilities from
11 fraudulent, abusive or unlawful use of, or subscription to, such
12 services.

13 c. The board shall establish and maintain a database for the
14 purpose of recording customer complaints concerning electric and gas
15 public utilities, electric power suppliers, gas suppliers, private
16 aggregators, and energy agents.

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

29 The board shall ensure the neutrality of the content and message
30 of advertisements and materials.

31 The board shall promulgate standards for the recovery of consumer
32 education program costs from customers which include reasonable
33 measures and criteria to judge the success of the program in enhancing
34 customer understanding of retail choice.

35
36 37. (New section) a. Notwithstanding any provisions of the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
38 to the contrary, the board, in consultation with the Division of
39 Consumer Affairs in the Department of Law and Public Safety, shall
40 initiate a proceeding and shall adopt, after notice, provision of the
41 opportunity for comment, and public hearing, interim standards for
42 electric power suppliers or gas suppliers, within 90 days of the
43 effective date of this act, to prevent and establish penalties for
44 unauthorized changes of a consumer's electric power supplier or gas
45 supplier, a practice commonly known as "slamming." Such standards
46 shall be effective as regulations immediately upon filing with the Office

1 of Administrative Law and shall be effective for a period not to exceed
2 18 months, and may, thereafter, be amended, adopted or readopted by
3 the board in accordance with the provisions of the "Administrative
4 Procedure Act."

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

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

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

23 (3) The acts of an agent of an electric power supplier, an electric
24 public utility, a gas supplier or a gas public utility shall be considered
25 the acts of the electric power supplier, electric public utility, gas
26 supplier or gas public utility.

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

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

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

1 authorized to revoke the license of any entity that violates this section.

2

3 38. (New section) a. The board shall require an electric power
4 supplier or basic generation service provider to disclose on a
5 customer's bill or on customer contracts or marketing materials, a
6 uniform, common set of information about the environmental
7 characteristics of the energy purchased by the customer, including, but
8 not limited to:

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

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

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

18 b. 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, in consultation
21 with the Department of Environmental Protection, after notice and
22 opportunity for public comment and public hearing, interim standards
23 to implement this disclosure requirement, including, but not limited to:

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

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

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

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

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

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

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

3 (2) The board shall adopt an emissions portfolio standard
4 applicable to all electric power suppliers and basic generation service
5 providers, if two other states in the PJM power pool comprising at
6 least 40 percent of the retail electric usage in the PJM Interconnection,
7 L.L.C. independent system operator or its successor adopt such
8 standards.

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

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

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

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

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

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

43 (1) net metering standards for electric power suppliers and basic
44 generation service providers. The standards shall require electric
45 power suppliers and basic generation service providers to offer net
46 metering at non-discriminatory rates to residential and small

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

21 (2) safety and power quality interconnection standards for wind
22 and solar photovoltaic systems that shall be eligible for net metering.

23 Such standards shall take into consideration the standards of other
24 states and the Institute of Electrical and Electronic Engineers and shall
25 allow customers to use a single, non-demand, non-time differentiated
26 meter.

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

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

38

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

46 b. (1) A municipal electric corporation shall become subject to

1 the provisions of this act if it was an exclusive provider of retail power
2 within its municipal boundaries prior to the effective date of this act,
3 and subsequent to the effective date of this act, it chooses to serve
4 retail customers outside of its municipal boundaries.

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

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

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

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

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

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

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

41
42 41. (New section) a. A private aggregator shall register with the
43 board, which shall include the filing of basic information pertaining to
44 the supplier, such as name, address, telephone number, and company
45 background and profile. A private aggregator shall provide annual
46 updates of this information to the board. The registration shall also

1 include evidence of financial integrity, as determined by the board, and
2 evidence that the private aggregator has knowledge of the energy
3 industry.

4 b. Any residential customer that elects to purchase electric
5 generation service or gas supply service, after the implementation of
6 gas unbundling pursuant to section 10 of this act, through a private
7 aggregator must do so affirmatively and voluntarily, either through a
8 written signature or such alternative forms of verification as the board,
9 in consultation with the Division of Consumer Affairs in the
10 Department of Law and Public Safety, may permit.

11

12 42. (New section) a. Pursuant to the provisions of sections 42
13 through 45 of this act, a government aggregator may obtain: electric
14 generation service, electric related service, gas supply service or gas
15 related service, either separately or bundled, for its own facilities or
16 with other government aggregators; and a government aggregator that
17 is a county or municipality may contract for the provision of electric
18 generation service or gas supply service, either separately or bundled,
19 for the business and residential customers within the territorial
20 jurisdiction of the government aggregator. Such a government
21 aggregator may combine the need for its own facilities for electric
22 generation service or gas supply service with that of business and
23 residential customers.

24 b. A government aggregator shall purchase electric generation
25 service and gas supply service only from licensed electric power
26 suppliers and licensed gas suppliers.

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

35 d. Nothing in this act shall preclude the State government or any
36 State independent authority or State college from exercising authority
37 to obtain electric generation service, electric related service, gas
38 supply service or gas related service, either separately or bundled, for
39 its own facilities on an aggregated basis.

40 e. Nothing in this section shall preclude a government aggregator
41 from aggregating its own accounts for regulated utility services,
42 including basic generation or gas service.

43 f. Nothing in this act shall preclude any interstate authority or
44 agency from exercising authority to obtain electric generation service
45 or gas supply service, either separately or bundled, for its own
46 facilities in this State, including tenants in this State and other utility

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

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

29 h. The "New Jersey School Boards Association," established
30 pursuant to N.J.S.18A:6-45, is authorized to serve as a government
31 aggregator to obtain electric generation service, electric related
32 service, gas supply service or gas related service, either separately or
33 bundled, in accordance with the "Public School Contracts Law,"
34 N.J.S.18A:18A-1 et seq., for members of the association who wish to
35 voluntarily participate.

36 i. Notwithstanding any provisions of the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
38 the board shall initiate a proceeding and shall adopt, after notice,
39 provision of the opportunity for comment, and public hearing, interim
40 standards governing government energy aggregation programs. Such
41 standards shall be effective as regulations immediately upon filing with
42 the Office of Administrative Law and shall be effective for a period not
43 to exceed 18 months, and may, thereafter, be amended, adopted or
44 readopted by the board in accordance with the provisions of the
45 "Administrative Procedure Act."

46 j. No government aggregator shall implement the provisions of

1 sections 42, 43, 44, or 45 of this act, as appropriate, prior to the
2 starting date of retail competition pursuant to section 5 of this act, or
3 the date on which the board adopts interim standards pursuant to
4 subsection i. of this section, whichever is earlier.

5
6 43. (New section) Government energy aggregation programs shall
7 be subject to the following provisions:

8 a. A contract between a government aggregator and a licensed
9 electric power supplier or licensed gas supplier shall include the
10 following provisions:

11 (1) The specific responsibilities of the government aggregator and
12 the licensed electric power supplier or licensed gas supplier;

13 (2) The charges, rates, fees, or formulas to be used to determine
14 the charges, rates or fees, to be charged to the energy consumers
15 electing to receive electric generation service or gas supply service
16 pursuant to the government energy aggregation program;

17 (3) The method and procedures to be followed by the licensed
18 electric power supplier or licensed gas supplier to solicit the
19 affirmative and voluntary written consent of the consumer to
20 participate in the government energy aggregation program including,
21 but not necessarily limited to, mechanisms to educate energy
22 consumers concerning the provisions of the aggregation program;

23 (4) The proposed terms and conditions of a standard contract
24 between energy consumers and the licensed electric power supplier or
25 licensed gas supplier including, but not necessarily limited to:

26 (a) The allocation of the risks in connection with the provision of
27 such services between the licensed electric power supplier or licensed
28 gas supplier and the energy consumers receiving such services;

29 (b) The terms of the proposed contract;

30 (c) The allocation of the risks associated with circumstances or
31 occurrences beyond the control of the parties to the contract;

32 (d) Default and remedies; and

33 (e) The allocation of any penalties that may be imposed by any
34 electric public utility or gas public utility as a result of over-delivery
35 of electricity or gas, under-delivery of electricity or gas, or non-
36 performance by the licensed electric power supplier or licensed gas
37 supplier;

38 (5) The use of government aggregator resources, equipment,
39 systems or employees in connection with such services;

40 (6) The term of the contract with the government aggregator;

41 (7) A provision indemnifying and holding the government
42 aggregator harmless from all liabilities, damages and costs associated
43 with any contract between a resident of the government aggregator
44 and the licensed electric power supplier or licensed gas supplier;

1 (8) The requirements for the provision of a performance bond by
2 the licensed electric power supplier or licensed gas supplier, if so
3 required by the government aggregator;

4 (9) Procedures to ensure that participation in the aggregation
5 program is the result of an affirmative choice by energy consumers, as
6 evidenced by a written signature, and is consistent with rules and
7 regulations adopted by the board;

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

12 (11) Such other terms and conditions as the government
13 aggregator deems necessary.

14 b. The award of a contract for a government energy aggregation
15 program shall be based on the most advantageous, price and other
16 factors considered. The governing body shall only award a contract
17 for service to residential customers where the rate is lower than that
18 guaranteed by the State-mandated rate reductions pursuant to section
19 4 of this act and the price of basic generation service pursuant to
20 section 9 of this act, as determined by the board.

21 c. No concession fees, finders' fees, or other direct monetary
22 benefit shall be paid to any government aggregator by, or on behalf of,
23 a licensed electric power supplier or licensed gas supplier or broker or
24 energy agent as a result of the contract.

25 d. A licensed electric power supplier or licensed gas supplier shall
26 be subject to the prohibitions against political contributions in
27 accordance with the provisions of R.S.19:34-45.

28 e. For any specific time period, a government aggregator may
29 enter into only one contract for the provision of electric generation
30 service and one contract for the provision of gas supply service to the
31 consumers within its territorial jurisdiction.

32 f. A county government acting as a government aggregator shall
33 not enter into a contract for the provision of a government energy
34 aggregation program that is in competition with any existing contract
35 of any government aggregator within its territorial jurisdiction.

36 (1) A county government may enter into a contract for a
37 government energy aggregation program only if one or more
38 constituent municipalities in the county adopt an ordinance authorizing
39 the county to enter into such a contract.

40 (2) A county government energy aggregation program shall only
41 be conducted for residential and business customers located within the
42 constituent municipalities that have approved participation in the
43 county's government energy aggregation program.

44
45 44. (New section) A government aggregator that chooses to
46 provide a government energy aggregation program that includes

1 residential or business customers shall provide such residential and
2 business customers the opportunity to participate in a government
3 energy aggregation program on a voluntary basis and in a clear and
4 consistent manner. Any business or residential customer that elects to
5 purchase electric generation service or gas supply service through a
6 government energy aggregation program must do so affirmatively and
7 voluntarily, as evidenced by a signature authorizing the customer's
8 participation in a government energy aggregation program for electric
9 generation service or a gas supply service where the terms and
10 conditions of the program are clearly and plainly articulated in writing
11 to the customer before the customer's signature. Residential and
12 business customers who do not voluntarily and affirmatively choose,
13 as evidenced by a written signature, to participate in a government
14 energy aggregation program shall continue to be entitled to contract
15 with and purchase electric generation service or gas supply service
16 from any corporation or entity authorized by law to engage in the
17 retail sale of such services.

18

19 45. (New section) A government aggregator that is a municipality
20 or a county may, notwithstanding the provisions of section 44 of this
21 act to the contrary, operate a limited government energy aggregation
22 program that provides for the aggregation of residential electric
23 generation service or gas supply service without the initial, affirmative,
24 voluntary, written consent of residential customers for electric
25 generation service or gas supply service, either separately or bundled,
26 in accordance with the following procedures:

27 a. electric generation service or gas supply service for residential
28 customers may be aggregated together with electric generation
29 service, electric related service, gas supply service or gas related
30 service, either separately or bundled, for the government aggregator's
31 own facilities or with other government aggregators, provided that:

32 (1) the governing body adopts an ordinance in the case of a
33 municipality, or resolution in the case of a county, indicating its intent
34 to solicit bids for the provision of electric generation service or gas
35 supply service, either separately or bundled, without the affirmative,
36 voluntary, written consent of the residential customer, which approval
37 shall require passage by a majority plus one vote of the full
38 membership of the governing body;

39 (2) within 15 days of the adoption of such an ordinance or
40 resolution, as appropriate, the governing body provides notice, in a
41 form as determined by the board, to its residential customers advising
42 them of their individual right to affirmatively decline participation in
43 the government energy aggregation program, and providing 30 days
44 for residential customers to respond in writing to the governing body
45 of their decision to affirmatively decline participation in the
46 government energy aggregation program; and

1 (3) upon expiration of the 30 day period required pursuant to
2 paragraph (2) of subsection a. of this section, the governing body shall
3 determine the number and identity of residential customers who did
4 not affirmatively decline to participate in the government energy
5 aggregation program.

6 b. (1) The governing body shall commence public bidding pursuant
7 to the provisions of the "Local Public Contracts Law," P.L.1971,
8 c.198 (C.40A:11-1 et seq.) to receive bids from a licensed electric
9 power supplier or licensed gas supplier, as appropriate, for electric
10 generation service or gas supply service, either separately or bundled,
11 for those residential customers who did not affirmatively decline to
12 participate in the government energy aggregation program pursuant to
13 paragraph (2) of subsection a. of this section, and for electric
14 generation service, electric related service, gas supply service or gas
15 related service, either separately or bundled, for the government
16 aggregator's own facilities.

17 (2) Upon receipt of the bids, the governing body shall evaluate the
18 proposals. The governing body shall select a licensed electric power
19 supplier or licensed gas supplier, or both, based on the most
20 advantageous, price and other factors considered. The governing body
21 shall only select a licensed electric power supplier to be awarded a
22 contract for service where the rate is lower than that guaranteed by the
23 State-mandated rate reductions pursuant to section 4 of this act and
24 the price of basic generation service pursuant to section 9 of this act.

25 c. Upon selection of a licensed electric power supplier or licensed
26 gas supplier, or both, pursuant to subsection b. of this section, the
27 governing body shall enter into a written agreement with the selected
28 licensed supplier. The written agreement shall include:

29 (1) the contract with the selected licensed electric power supplier
30 or licensed gas supplier, or both, for the government aggregator's own
31 load;

32 (2) a contract form which shall comply with and include the
33 requirements of subsection a. of section 43 of this act; and

34 (3) that the written agreement shall not take effect until the
35 proposed contract in paragraph (2) of this subsection is approved by
36 the board.

37 d. After entering into a written agreement with the selected
38 licensed supplier, the governing body shall submit, to the board for
39 approval, the proposed contract to be entered into by the selected
40 licensed electric power supplier or licensed gas supplier, or both, with
41 each residential customer who affirmatively consents to enter into a
42 contract with the selected licensed electric power supplier or licensed
43 gas supplier, or both. This submission shall include the proposed
44 contract and any other information deemed appropriate by the board.

45 (1) Within 30 days of receipt of the submission, the board shall
46 determine whether the submission is complete. If it is determined to

1 be incomplete, it shall be returned, forthwith, along with a notice
2 specifying the deficiency or deficiencies. The governing body shall
3 correct the deficiency or deficiencies and resubmit the submission to
4 the board.

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

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

12 e. Upon approval of the proposed contract to be entered into by
13 the selected licensed electric power supplier or licensed gas supplier,
14 or both, with each residential customer who affirmatively consents to
15 enter into a contract with the selected licensed electric power supplier
16 or licensed gas supplier, or both, the governing body shall authorize
17 the selected licensed electric power supplier or licensed gas supplier,
18 or both, to solicit the affirmative and voluntary written consent to
19 participate in the government energy aggregation program of any
20 residential customer within the municipality who did not initially
21 affirmatively decline to be part of a government energy aggregation
22 program pursuant to the provisions of paragraph (2) of subsection a.
23 of this section.

24 f. The licensed electric power supplier or licensed gas supplier, or
25 both, selected pursuant to the provisions of this section shall be
26 subject to the provisions of section 37 of this act.

27 g. Whenever the process results in a change of provider of energy
28 or of price to program participants, the governing body shall give
29 residential customers notice, as determined by the board, of their right
30 to decline continued participation.

31 h. A government aggregator which is a county may implement
32 the provisions of this section only as authorized pursuant to the
33 provisions of subsection f. of section 43 of this act.

34 i. The provisions of this section shall only apply to government
35 energy aggregation programs for residential customers.

36 j. Nothing in this section shall preclude a limited government
37 energy aggregation program from including business customers as
38 participants pursuant to section 44 of this act.

39
40 46. (New section) Notwithstanding the provisions of the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
42 to the contrary, the board shall initiate a proceeding and shall adopt,
43 after notice, provision of the opportunity for comment, and public
44 hearing, such interim rules and regulations as the board determines to
45 be necessary to effectuate the provisions of this act within 90 days of
46 the effective date of this act. Such standards shall be effective as

1 regulations immediately upon filing with the Office of Administrative
2 Law and shall be effective for a period not to exceed 18 months, and
3 may, thereafter, be amended, adopted or readopted by the board in
4 accordance with the provisions of the "Administrative Procedure Act."
5

6 47. R.S.40:48-1 is amended to read as follows:

7 40:48-1. Ordinances; general purpose. The governing body of
8 every municipality may make, amend, repeal and enforce ordinances
9 to:

10 Finances and property. 1. Manage, regulate and control the
11 finances and property, real and personal, of the municipality;

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

15 Officers and employees; duties, terms and salaries. 3. Prescribe
16 and define, except as otherwise provided by law, the duties and terms
17 of office or employment, of all officers and employees; and to
18 provide for the employment and compensation of such officials and
19 employees, in addition to those provided for by statute, as may be
20 deemed necessary for the efficient conduct of the affairs of the
21 municipality;

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

27 Salaries instead of fees; disposition of fees. 5. Provide that any
28 officer or employee receiving compensation for his services, in whole
29 or in part by fees, whether paid by the municipality or otherwise, shall
30 be paid a salary to be fixed in the ordinance, and thereafter all fees
31 received by such officer or employee shall be paid into the municipal
32 treasury;

33 Maintain order. 6. Prevent vice, drunkenness and immorality; to
34 preserve the public peace and order; to prevent and quell riots,
35 disturbances and disorderly assemblages;

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

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

42 Swimming; bathing costume. 9. Regulate or prohibit swimming
43 or bathing in the waters of, in, or bounding the municipality, and to
44 regulate or prohibit persons from appearing upon the public streets,
45 parks and places clad in bathing costumes or robes, or costumes of a
46 similar character;

1 Prohibit annoyance of persons or animals. 10. Regulate or
2 prohibit any practice tending to frighten animals, or to annoy or injure
3 persons in the public streets;

4 Animals; pounds; establishment and regulation. 11. Establish
5 and regulate one or more pounds, and to prohibit or regulate the
6 running at large of horses, cattle, dogs, swine, goats and other
7 animals, and to authorize their impounding and sale for the penalty
8 incurred, and the costs of impounding, keeping and sale; to regulate
9 or prohibit the keeping of cattle, goats or swine in any part of the
10 municipality; to authorize the destruction of dogs running at large
11 therein;

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

14 Building regulations; wooden structures. 13. Regulate and
15 control the construction, erection, alteration and repair of buildings
16 and structures of every kind within the municipality; and to prohibit,
17 within certain limits, the construction, erection or alteration of
18 buildings or structures of wood or other combustible material;

19 Inflammable materials; inspect docks and buildings. 14. Regulate
20 the use, storage, sale and disposal of inflammable or combustible
21 materials, and to provide for the protection of life and property from
22 fire, explosions and other dangers; to provide for inspections of
23 buildings, docks, wharves, warehouses and other places, and of goods
24 and materials contained therein, to secure the proper enforcement of
25 such ordinance;

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

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

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

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

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

41 Theaters, schools, churches and public places. 20. Regulate the
42 use of theaters, cinema houses, public halls, schools, churches, and
43 other places where numbers of people assemble, and the exits
44 therefrom, so that escape therefrom may be easily and safely made in
45 case of fire or panic; and to regulate any machinery, scenery, lights,
46 wires and other apparatus, equipment or appliances used in all places

1 of public amusement;

2 Excavations. 21. Regulate excavations below the established
3 grade or curb line of any street, not greater than eight feet, which the
4 owner of any land may make, in the erection of any building upon his
5 own property; and to provide for the giving of notice, in writing, of
6 such intended excavation to any adjoining owner or owners, and that
7 they will be required to protect and care for their several foundation
8 walls that may be endangered by such excavation; and to provide that
9 in case of the neglect or refusal, for 10 days, of such adjoining owner
10 or owners to take proper action to secure and protect the foundations
11 of any adjacent building or other structure, that the party or parties
12 giving such notice, or their agents, contractors or employees, may
13 enter into and upon such adjoining property and do all necessary work
14 to make such foundations secure, and may recover the cost of such
15 work and labor in so protecting such adjacent property; and to make
16 such further and other provisions in relation to the proper conduct
17 and performance of said work as the governing body or board of the
18 municipality may deem necessary and proper;

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

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

29 Fire escapes. 24. Provide for the erection of fire escapes on
30 buildings in the municipality, and to provide rules and regulations
31 concerning the construction and maintenance of the same, and for the
32 prevention of any obstruction thereof or thereon;

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

36 Bulkheads and other structures. 26. Fix and determine the lines
37 of bulkheads or other works or structures to be erected, constructed
38 or maintained by the owners of lands facing upon any navigable water
39 in front of their lands, and in front of or along any highway or public
40 lands of said municipality, and to designate the materials to be used,
41 and the type, height and dimensions thereof;

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

44 Appropriation for life-saving apparatus. 28. Appropriate moneys
45 to safeguard people from drowning within its borders, by location of
46 apparatus or conduct of educational work in harmony with the plans

1 of the United States volunteer life-saving corps in this State;

2 Fences. 29. Regulate the size, height and dimensions of any
3 fences between the lands of adjoining owners, whether built or erected
4 as division or partition fences between such lands, and whether the
5 same exist or be erected entirely or only partly upon the lands of any
6 such adjoining owners, or along or immediately adjacent to any
7 division or partition line of such lands. To provide, in such ordinance,
8 the manner of securing, fastening or shoring such fences. In the case
9 of fences thereafter erected contrary to the provisions thereof, the
10 governing body may provide for a penalty for the violation of such
11 ordinance, and in the case of such fence or fences erected or existing
12 at the time of the passage of any such ordinance, may provide therein
13 for the removal, change or alteration thereof, so as to make such
14 fence or fences comply with the provisions of any such ordinance;

15 Advertise municipality. 30. Appropriate funds for advertising the
16 advantages of the municipality.

17 Government Energy Aggregation Programs, 31. Establish
18 programs and procedures pursuant to which the municipality may act
19 as an government aggregator pursuant to sections 40 through 45 of
20 P.L. c. (C.) (now before the Legislature as this bill).
21 Notwithstanding the provisions of any other law, rule or regulation to
22 the contrary, a municipality acting as a government aggregator
23 pursuant to P.L. c. (C.) (now before the Legislature as this
24 bill) shall not be deemed to be a public utility pursuant to R.S.40:62-
25 24 or R.S.48:1-1 et seq. or be deemed to be operating any form of
26 public utility service pursuant to R.S.40:62-1 et seq., to the extent
27 such municipality is solely engaged in the provision of such
28 aggregation service and not otherwise owning or operating any plant
29 or facility for the production or distribution of gas, electricity, steam
30 or other product as provided in R.S.40:62-12.

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

32

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

34 12A:9-103. Perfection of Security Interests in Multiple State
35 Transactions.

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

37 (a) This subsection applies to documents, instruments, rights to
38 proceeds of written letters of credit, and goods other than those
39 covered by a certificate of title described in subsection (2), mobile
40 goods described in subsection (3), and minerals described in
41 subsection (5).

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

1 (c) If the parties to a transaction creating a purchase money
2 security interest in goods in one jurisdiction understand at the time
3 that the security interest attaches that the goods will be kept in another
4 jurisdiction, then the law of the other jurisdiction governs the
5 perfection and the effect of perfection or nonperfection of the security
6 interest from the time it attaches until 30 days after the debtor receives
7 possession of the goods and thereafter if the goods are taken to the
8 other jurisdiction before the end of the 30-day period.

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

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

20 (ii) if the action is taken before the expiration of the period
21 specified in subparagraph (i), the security interest continues perfected
22 thereafter;

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

28 (2) Certificate of title.

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

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

42 (c) Except with respect to the rights of a buyer described in the
43 next paragraph, a security interest, perfected in another jurisdiction
44 otherwise than by notation on a certificate of title, in goods brought
45 into this State and thereafter covered by a certificate of title issued by
46 this State is subject to the rules stated in paragraph (d) of subsection

1 (1).(d) If goods are brought into this State while a security interest
2 therein is perfected in any manner under the law of the jurisdiction
3 from which the goods are removed and a certificate of title is issued
4 by this State and the certificate does not show that the goods are
5 subject to the security interest or that they may be subject to security
6 interests not shown on the certificate, the security interest is
7 subordinate to the rights of a buyer of the goods who is not in the
8 business of selling goods of that kind to the extent that he gives value
9 and receives delivery of the goods after issuance of the certificate and
10 without the knowledge of the security interest.

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

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

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

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

36 (d) A debtor shall be deemed located at his place of business if he
37 has one, at his chief executive office if he has more than one place of
38 business, otherwise at his residence. If, however, the debtor is a
39 foreign air carrier under the Federal Aviation Act of 1958,
40 ASCUS.1301 et seq., as amended, it shall be deemed located at the
41 designated office of the agent upon whom service of process may be
42 made on behalf of the foreign air carrier.

43 (e) A security interest perfected under the law of the jurisdiction
44 of the location of the debtor is perfected until the expiration of four
45 months after a change of the debtor's location to another jurisdiction,
46 or until perfection would have ceased by the law of the first

1 jurisdiction, whichever period first expires. Unless perfected in the
2 new jurisdiction before the end of that period, it becomes unperfected
3 thereafter and is deemed to have been unperfected as against a person
4 who became a purchaser after the change.

5 (4) Chattel paper.

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

11 (5) Minerals.

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

19 (6) Investment property.

20 (a) This subsection applies to investment property.

21 (b) Except as otherwise provided in paragraph (f), during the time
22 that a security certificate is located in a jurisdiction, perfection of a
23 security interest, the effect of perfection or non-perfection, and the
24 priority of a security interest in the certificated security represented
25 thereby are governed by the local law of that jurisdiction.

26 (c) 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 an uncertificated security are governed
29 by the local law of the issuer's jurisdiction as specified in subsection d.
30 of 12A:8-110.

31 (d) 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 security entitlement or securities
34 account are governed by the local law of the securities intermediary's
35 jurisdiction as specified in subsection e. of 12A:8-110.

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

42 (i) If an agreement between the commodity intermediary and
43 commodity customer specifies that it is governed by the law of a
44 particular jurisdiction, that jurisdiction is the commodity intermediary's
45 jurisdiction.

1 (ii) If an agreement between the commodity intermediary and
2 commodity customer does not specify the governing law as provided
3 in subparagraph (i) of this paragraph, but expressly specifies that the
4 commodity account is maintained at an office in a particular
5 jurisdiction, that jurisdiction is the commodity intermediary's
6 jurisdiction.

7 (iii) 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, the commodity
10 intermediary's jurisdiction is the jurisdiction in which is located the
11 office identified in an account statement as the office serving the
12 commodity customer's account.

13 (iv) If an agreement between the commodity intermediary and
14 commodity customer does not specify a jurisdiction as provided in
15 subparagraph (i) or (ii) of this paragraph and an account statement
16 does not identify an office serving the commodity customer's account
17 as provided in subparagraph (iii) of this paragraph, the commodity
18 intermediary's jurisdiction is the jurisdiction in which is located the
19 chief executive office of the commodity intermediary.

20 (f) Perfection of a security interest by filing, automatic perfection
21 of a security interest in investment property granted by a broker or
22 securities intermediary, and automatic perfection of a security interest
23 in a commodity contract or commodity account granted by a
24 commodity intermediary are governed by the local law of the
25 jurisdiction in which the debtor is located.

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

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

30

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

32 12A:9-105. Definitions and Index of Definitions.

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

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

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

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

45 (d) "Debtor" means the person who owes payment or other
46 performance of the obligation secured, whether or not he owns or has

1 rights in the collateral, and includes the seller of accounts or chattel
2 paper. Where the debtor and the owner of the collateral are not the
3 same person, the term "debtor" means the owner of the collateral in
4 any provision of the chapter dealing with the collateral, the obligor in
5 any provision dealing with the obligation, and may include both where
6 the context so requires;

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

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

14 (g) "Encumbrance" includes real estate mortgages and other liens
15 on real estate and all other rights in real estate that are not ownership
16 interests;

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

24 (i) "Instrument" means a negotiable instrument (defined in
25 12A:3-104), or any other writing which evidences a right to the
26 payment of money and is not itself a security agreement or lease and
27 is of a type which is in ordinary course of business transferred by
28 delivery with any necessary indorsement or assignment. The term does
29 not include investment property;

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

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

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

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

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

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

- 3 "Account." 12A:9-106.
- 4 "Attach." 12A:9-203.
- 5 "Commodity contract." 12A:9-115.
- 6 "Commodity customer." 12A:9-115.
- 7 "Commodity intermediary." 12A:9-115.
- 8 "Construction mortgage." 12A:9-313 (1).
- 9 "Consumer goods." 12A:9-109 (1).
- 10 "Control." 12A:9-115.
- 11 "Equipment." 12A:9-109 (2).
- 12 "Farm products." 12A:9-109 (3).
- 13 "Fixture." 12A:9-313(1).
- 14 "Fixture filing." 12A:9-313(1).
- 15 "General intangibles." 12A:9-106.
- 16 "Inventory." 12A:9-109 (4).
- 17 "Investment property." 12A:9-115.
- 18 "Lien creditor." 12A:9-301 (3).
- 19 "Proceeds." 12A:9-306 (1).
- 20 "Purchase money security interest." 12A:9-107.
- 21 "United States." 12A:9-103 (3).

22 (3) The following definitions in other chapters apply to this
23 chapter:

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

43 (4) In addition chapter 1 contains general definitions and
44 principles of construction and interpretation applicable throughout this
45 chapter.

46 (cf: P.L.1997, c.395, s.6)

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

2 12A:9-403. (1) Presentation for filing of a financing statement,
3 tender of the filing fee and acceptance of the statement by the filing
4 officer constitute filing under this chapter.

5 (2) Except as provided in subsection (6) a filed financing
6 statement is effective for a period of five years from the date of filing.
7 The effectiveness of a filed financing statement lapses on the
8 expiration of the five-year period unless a continuation statement is
9 filed prior to the lapse. If a security interest perfected by filing exists
10 at the time insolvency proceedings are commenced by or against the
11 debtor, the security interest remains perfected until termination of the
12 insolvency proceedings and thereafter for a period of 60 days or until
13 expiration of the five-year period, whichever occurs later. Upon lapse
14 the security interest becomes unperfected, unless it is perfected
15 without filing. If the security interest becomes unperfected upon
16 lapse, it is deemed to have been unperfected as against a person who
17 became a purchaser or lien creditor before lapse.

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

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

40 (4) Except as provided in subsection (7), a filing officer shall mark
41 each statement with a file number and with the date and hour of filing
42 and shall hold the statement or a microfilm or other photographic copy
43 thereof for public inspection. In addition, the filing officer shall index
44 the statements according to the name of the debtor and shall note in
45 the index the file number and the address of the debtor given in the
46 statement. A financing statement covering collateral which is or is to

1 become a fixture or fixtures, or crops growing or to be grown, shall
2 also be indexed in the name of the record owner of the realty.

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

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

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

25

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

32 b. The Director of the Division of Taxation in the Department of
33 the Treasury is authorized to issue regulations regarding the
34 determination of profit or loss related to the sale of assets which have
35 been deemed to be part of stranded costs pursuant to sections 13 and
36 14 of this act for purposes of computing the corporation business tax
37 to which the utility is subject.

38

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

40 48:2-13. a. The board shall have general supervision and
41 regulation of and jurisdiction and control over all public utilities as
42 **[hereinafter]** defined in this section **[defined]** and their property,
43 property rights, equipment, facilities and franchises so far as may be
44 necessary for the purpose of carrying out the provisions of this Title.

45 The term "public utility" shall include every individual,
46 copartnership, association, corporation or joint stock company, their

1 lessees, trustees or receivers appointed by any court whatsoever, their
2 successors, heirs or assigns, that now or hereafter may own, operate,
3 manage or control within this State any railroad, street railway,
4 traction railway, autobus, charter bus operation, special bus operation,
5 canal, express, subway, pipeline, gas, [electric light, heat, power]
6 electricity distribution, water, oil, sewer, solid waste collection, solid
7 waste disposal, telephone or telegraph system, plant or equipment for
8 public use, under privileges granted or hereafter to be granted by this
9 State or by any political subdivision thereof.

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

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

40 d. Unless otherwise specifically provided pursuant to P.L. _____,
41 c. (C. _____) (now before the Legislature as this bill), all services
42 necessary for the transmission and distribution of electricity and gas,
43 including but not limited to safety, reliability, metering, meter reading
44 and billing, shall remain the jurisdiction of the Board of Public
45 Utilities. The board shall also maintain the necessary jurisdiction with
46 regard to the production of electricity and gas to assure the reliability

1 of electricity and gas supply to retail customers in the State as
2 prescribed by the board or any other federal or multi-jurisdictional
3 agency responsible for reliability and capacity in the State.

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

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

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

35
36 53. Section 3 of P.L.1995, c.180 (C.48:2-21.26) is amended to
37 read as follows:

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

1 subsequent modification of the standards that is adopted by the board
2 shall be adopted pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.).

4 b. After the adoption by the board of specific standards pursuant
5 to subsection a. of this section, an electric public utility may, within
6 seven years of ~~the effective date of this act~~ July 20, 1995 , enter into
7 an off-tariff rate agreement with an individual retail customer pursuant
8 to the provisions of sections 3 and 4 of ~~this act~~ P.L.1995, c.180
9 (C.48:2-21.26 and 48:2-21.27) . The provisions of sections 3 and 4
10 ~~of this act~~ shall not apply to an off-tariff rate agreement entered into
11 by an electric public utility after that seven-year period, except as
12 otherwise provided by the board. Notwithstanding the seven-year
13 limitation imposed pursuant to this subsection, an off-tariff rate
14 agreement that is entered into during that seven-year period shall
15 remain in effect until its expiration pursuant to the terms of the
16 agreement.

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

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

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

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

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

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

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

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

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

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

45 (5) The term of the off-tariff rate agreement shall not exceed a
46 maximum number of years, to be specified by the board pursuant to

1 subsection a. of this section, except that the term of an off-tariff rate
2 agreement may exceed the maximum contract term established by the
3 board, only with the prior review and approval of the board on a case
4 by case basis.

5 (6) The electric public utility shall not make the provision of any
6 competitive service or basic generation service offered by the public
7 utility or its related competitive business segment to the customer a
8 pre-condition to the offering of or agreement to an off-tariff rate
9 agreement.

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

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

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

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

30

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

33 4. a. An electric public utility that enters into an off-tariff rate
34 agreement pursuant to section 3 of **【this act】** P.L.1995, c.180 (C.48:2-
35 21.26) shall not recover through rates any revenue erosion that occurs
36 between the effective date of the agreement and the conclusion of the
37 public utility's next base rate case.

38 b. As part of a base rate case proceeding, an electric public utility
39 may request prospective recovery of a portion of the quantifiable
40 revenue erosion resulting from an existing off-tariff rate agreement
41 with a customer that previously purchased power from the utility
42 under a tariff set by the board. Whenever a public utility requests
43 partial recovery of revenue erosion from an off-tariff rate agreement,
44 and notwithstanding any provision of subsection c. of section 3 of
45 **【this act】** P.L.1995, c.180 (C.48:2-21.26) to the contrary, the entire
46 agreement shall be available to the public, except that a public utility

1 may petition the board to keep confidential certain parts of the
2 agreement or supporting documentation that are competitively
3 sensitive. Upon petition by the public utility, and after an opportunity
4 for all interested parties to comment, the board may classify as
5 confidential any part of the agreement that is found to contain
6 competitively sensitive information that, if revealed, would harm the
7 competitive position of either party to the agreement. An intervenor
8 in the base rate case proceeding may request access to information that
9 has been classified as confidential. The board shall grant such access,
10 subject to an executed non-disclosure agreement, if the board
11 determines that the intervenor's interest cannot be pursued fully in the
12 base rate case proceeding without access to the information and that
13 the intervenor is not a direct competitor of either party to the
14 agreement.

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

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

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

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

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

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

1 A determination that the public utility's ratepayers are paying lower
2 rates with the implementation of an off-tariff rate agreement on or
3 after the effective date of P.L. , c. (C.) (now before the
4 Legislature as this bill) will therefore include a finding that the
5 customer receiving the off-tariff rate would have relocated its facility
6 outside of the State to a location where it could have obtained
7 delivered power at a lower cost, had it not received the off-tariff rate;
8 and

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

14
15 55. Section 5 of P.L.1995, c.180 (C.48:2-21.28) is amended to
16 read as follows:

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

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

- 1 (2) Will provide incentives for the utility to lower its costs and
2 rates;
- 3 (3) Will provide incentives to improve utility efficiency and
4 productivity;
- 5 (4) Will foster the long-term **[production and]** delivery of
6 electricity or natural gas in a manner that will improve the quality and
7 choices of service;
- 8 (5) Includes a mechanism for the board to monitor and review the
9 plan on a periodic basis over its term and to take appropriate actions
10 if it is found that the plan is not achieving its intended results;
- 11 (6) Will maintain or improve pre-existing service quality
12 standards, except that an individual customer may agree to accept
13 lower quality service. A public utility shall continue to provide safe,
14 adequate and proper service pursuant to R.S.48:2-23;
- 15 (7) Will not result in cross-subsidization among or between groups
16 of utility customers, or between the portion of the utility's business or
17 operations subject to the alternative form of regulation and the portion
18 of the utility's business or operations that is not subject to the
19 alternative form of regulation;
- 20 (8) Will reduce regulatory delay and cost;
- 21 (9) Is in the public interest and will produce just and reasonable
22 rates; **[and]**
- 23 (10) Will enhance economic development in the State~~[,]~~ ;
- 24 (11) Will not discourage energy efficiency or distributed
25 generation as alternatives to distribution plant investment and will
26 explore ways to remove the linkage between retail throughput and the
27 recovery of fixed and stranded costs; and
- 28 (12) Is otherwise consistent with the provisions of P.L. _____, c.
29 (C. _____)(now before the Legislature as this bill).
- 30 In preparation for the development of such plans, each electric
31 public utility shall begin to collect distribution cost data that will be
32 needed to evaluate accurately alternatives to traditional infrastructure
33 investments.
- 34 b. Consistent with the provisions of **[this act]** P.L.1995, c.180
35 (C.48:2-21.24 et seq.), and provided that the plan meets the standards
36 established in subsection a. of this section, the board may approve a
37 plan for an alternative form of regulation that permits a gas or electric
38 public utility to establish a rate for a group of retail customers without
39 a finding of rate base and reasonable rate of return pursuant to the
40 pre-existing provisions of Title 48 of the Revised Statutes, if the board
41 determines that the rate being charged by the utility to a retail
42 customer is no lower than a minimum price that is determined by the
43 board to prevent anti-competitive pricing and that:
- 44 (1) The group of customers has access to a competitive market for
45 supply of power to its site and that market pricing of delivery services
46 for that group of customers is thereby appropriate; or

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

5 (3) At the time of the plan's approval, the level of retail prices of
6 the utility for the group of customers is determined to be reasonably
7 reflective of the level necessary to produce a fair and reasonable rate
8 of return pursuant to a current evaluation under pre-existing standards
9 of Title 48 of the Revised Statutes, and that the plan provides
10 mechanisms for prospective adjustments to rates that will track trends
11 in utility rates.

12 c. **[**Consistent with the provisions of this act, and provided that
13 the plan meets the standards established in subsection a. of this
14 section, the board may approve a plan for an alternative form of
15 regulation for a newly-constructed or acquired energy and capacity
16 supply of a gas or electric public utility, including any transmission
17 facilities directly associated with a generating unit, which regulation
18 provides for a revenue requirement calculation that differs from the
19 rate base, rate of return formula required by pre-existing standards of
20 Title 48 of the Revised Statutes, if the board finds that:

21 (1) An asset, commodity or service comparable to that being
22 provided by the utility could have been obtained from any one of many
23 purveyors or suppliers in a competitive marketplace, and an
24 opportunity was afforded those purveyors or suppliers to offer such an
25 alternative source of energy and capacity supply; and

26 (2) The cost being charged to consumers by the utility under the
27 alternative plan reflects the market price for that asset, commodity or
28 service. **]** ~~(Deleted by amendment, P.L. _____, c. _____)~~

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

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

32 (2) A reduction in the gross receipts and franchise tax or a
33 successor tax pursuant to P.L.1997, c.162 (C.54:10A-3 et al.).

34 e. The board may require an independent audit or such accounting
35 and reporting systems from electric and gas utilities as are necessary
36 to allow a proper allocation of investments, costs or expenses for all
37 services provided under the provisions of **[**this act**]** P.L.1995, c.180
38 (C.48:2-21.24 et seq.) that are subject to the jurisdiction of the board.

39 f. Consistent with the provisions of this section, the Legislature
40 hereby authorizes and directs the New Jersey Economic Development
41 Authority, in conjunction with the Board of Public Utilities, to
42 establish the New Jersey Senior and Alternate Vital Energy (NJ
43 SAVE) program for the purpose of funding capital improvements of
44 natural gas distribution facilities, and for purchase and installation of
45 natural gas heating equipment and appliances located on the premises
46 of homeowners, where those homeowners reside in all-electric homes

1 in age-restricted communities.

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

8 The gas public utility shall be permitted to assess a meter charge,
9 as approved by the board, to recover the funds to repay loan principal
10 and interest. Monies collected by the gas public utility as a result of
11 such meter charge shall be utilized by the gas public utility to repay the
12 bonds issued by the authority. Nothing in this section shall be
13 construed to relieve the gas public utility of its obligation to repay any
14 bonds issued by the authority.

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

16

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

19 6. The Board of Public Utilities shall submit a report to the
20 Legislature on the implementation of **【this act】** P.L.1995, c.180
21 (C.48:2-21.24 et seq.) and of the restructuring of the electric power
22 industry pursuant to P.L. _____, c. _____ (C. _____) (now before the
23 Legislature as this bill) on December 1 of the third year following the
24 effective date of **【this act】** P.L. _____, c. _____ (C. _____) (now before the
25 Legislature as this bill) and every four years thereafter. **【This report**
26 **shall include the status of any investigations of programs to implement**
27 **a restructuring of the electric power industry.】**

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

29

30 57. (New section) a. The Board of Public Utilities shall adopt,
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.), standards for the inspection, maintenance, repair
33 and replacement of the distribution equipment and facilities of electric
34 public utilities. The standards may be prescriptive standards,
35 performance standards, or both, and shall provide for high quality, safe
36 and reliable service. The board shall also adopt standards for the
37 operation, reliability and safety of such equipment and facilities during
38 periods of emergency or disaster. The board shall adopt a schedule of
39 penalties for violations of these standards.

40 b. In adopting standards pursuant to this section, the board shall
41 consider cost, local geography and weather, applicable industry codes,
42 national electric industry practices, sound engineering judgement, and
43 past experience.

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

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

3 10. Appeal or petition in certain cases to the Board of Public
4 **【Utility Commissioners】** Public Utilities.

5 If a public utility, as defined in R.S.48:2-13, or an electric power
6 generator, as defined in section 3 of P.L. , c. (C.) (now
7 before the Legislature as this bill), is aggrieved by the action of a
8 municipal agency through said agency's exercise of its powers under
9 this act , with respect to any action in which the public utility or
10 electric power generator has an interest, an appeal to the Board of
11 Public **【Utility Commissioners】** Utilities of the State of New Jersey
12 may be taken within 35 days after such action without appeal to the
13 municipal governing body pursuant to section 8 of this act unless such
14 public utility or electric power generator so chooses. In such case
15 appeal to the **【Public Utility Commissioners】** Board of Public Utilities
16 may be taken within 35 days after action by the governing body. A
17 hearing on the appeal of a public utility to the **【Public Utility**
18 **Commissioners】** Board of Public Utilities shall be had on notice to the
19 agency from which the appeal is taken and to all parties primarily
20 concerned, all of whom shall be afforded an opportunity to be heard.
21 If, after such hearing, the Board of Public **【Utility Commissioners】**
22 Utilities shall find that the present or proposed use by the public utility
23 or electric power generator of the land described in the petition is
24 necessary for the service, convenience or welfare of the public,
25 including, but not limited to, in the case of an electric power
26 generator, a finding by the board that the present or proposed use of
27 the land is necessary to maintain reliable electric or natural gas supply
28 service for the general public and that no alternative site or sites are
29 reasonably available to achieve an equivalent public benefit, the public
30 utility or electric power generator may proceed in accordance with
31 such decision of the Board of Public **【Utility Commissioners】** Utilities,
32 any ordinance or regulation made under the authority of this act
33 notwithstanding.

34 This act or any ordinance or regulation made under authority
35 thereof, shall not apply to a development proposed by a public utility
36 for installation in more than one municipality for the furnishing of
37 service, if upon a petition of the public utility, the Board of Public
38 **【Utility Commissioners】** Utilities shall after hearing, of which any
39 municipalities affected shall have notice, decide the proposed
40 installation of the development in question is reasonably necessary for
41 the service, convenience or welfare of the public.

42 Nothing in this act shall be construed to restrict the right of any
43 interested party to obtain a review of the action of the municipal
44 agency or of the Board of Public **【Utility Commissioners】** Utilities by

1 any court of competent jurisdiction according to law.

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

3

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

9

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

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

22

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

25 5. a. This act shall not forbid the existence of trade and
26 professional organizations created for the purpose of mutual help, and
27 not having capital stock, nor forbid or restrain members of such
28 organizations from lawfully carrying out the legitimate objects thereof
29 not otherwise in violation of this act; nor shall those organizations or
30 members per se be illegal combinations or conspiracies in restraint of
31 trade under the provisions of this act.

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

33 (1) The activities of any labor organization or of individual
34 members thereof which are directed solely to labor objectives which
35 are legitimate under the laws of either the State of New Jersey or the
36 United States;

37 (2) The activities of any agricultural or horticultural cooperative
38 organization, whether incorporated or unincorporated, or of individual
39 members thereof, which are directed solely to objectives of such
40 cooperative organizations which are legitimate under the laws of either
41 the State of New Jersey or the United States;

42 (3) The activities of any public utility, as defined in R.S.48:2-13 to
43 the extent that such activities are subject to the jurisdiction of the
44 Board of Public Utilities, the Department of Transportation, the
45 Federal **Power** Energy Regulatory Commission, the Federal
46 Communications Commission, the Federal Department of

1 Transportation or the Interstate Commerce Commission, except that
2 this exemption, and that of subsection c. of this section, shall apply to
3 the activities of any electric public utility or gas public utility or any
4 related competitive business segment of an electric public utility or
5 related competitive business segment of a gas public utility, or any
6 public utility holding company or related competitive business segment
7 of a public utility holding company as those terms are defined in
8 section 3 of P.L. , c. (C.) (now before the Legislature as this bill),
9 only to the extent such activities are expressly required by and
10 supervised pursuant to State regulation or are required by federal or
11 State law;

12 (4) The activities, including, but not limited to, the making of or
13 participating in joint underwriting or joint reinsurance arrangements,
14 of any insurer, insurance agent, insurance broker, independent
15 insurance adjuster or rating organization to the extent that such
16 activities are subject to regulation by the Commissioner of Insurance
17 of this State under, or are permitted, or are authorized by, the
18 "Department of Banking and Insurance Act of 1948," P.L.1948, c.88
19 (C.17:1-1.1 et al.) and the "Department of Insurance Act of 1970,"
20 P.L.1970, c.12 (C.17:1C-1 et seq.), provided, however, the provisions
21 of this paragraph (4) shall not apply to private passenger automobile
22 insurance business, except as provided in section 69 of P.L.1990, c.8
23 (C.17:33B-31);

24 (5) The bona fide religious and charitable activities of any not for
25 profit corporation, trust or organization established exclusively for
26 religious or charitable purposes, or for both purposes;

27 (6) The activities engaged in by securities dealers, issuers or agents
28 who are (I) a. licensed by the State of New Jersey under the "Uniform
29 Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.); or (ii)
30 members of the National Association of Securities Dealers, or (iii)
31 members of any National Securities Exchange registered with the
32 Securities and Exchange Commission under the "Securities Exchange
33 Act of 1934," as amended, in the course of their business of offering,
34 selling, buying and selling, or otherwise trading in or underwriting
35 securities, as agent, broker, or principal, and activities of any National
36 Securities Exchange so registered, including the establishment of
37 commission rates and schedules of charges;

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

44 (8) The activities of any state or federal savings and loan
45 association to the extent that such activities are regulated or
46 supervised by officers of the State government under the "Department

1 of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et
2 al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government
3 under the banking laws of the United States;

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

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

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

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

21

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

24 26. a. Receipts from the sale, exchange, delivery or use of
25 electricity are exempt from the tax imposed under the Sales and Use
26 Tax Act if the electricity:

27 (1) (a) Is sold by a municipal electric corporation in existence as
28 of December 31, 1995 and used within its municipal boundaries except
29 if the customer is located within a franchise area served by an electric
30 public utility other than the municipal electric corporation. If a
31 municipal electric corporation makes sales of electricity used outside
32 of its municipal boundaries or within a franchise area served by an
33 electric public utility other than the municipal electric corporation,
34 then receipts from those sales of electricity by the municipal electric
35 corporation shall be subject to tax under P.L.1966, c.30; or

36 (b) Is sold by a municipal electric utility in existence as of
37 December 31, 1995, and used within its municipal boundaries.
38 However, a municipal electric utility's receipts from the sale, exchange,
39 delivery or use of electricity used by customers outside of its municipal
40 boundaries and within its franchise area existing as of December 31,
41 1995 shall be subject to tax. If a municipal electric utility makes sales
42 of electricity used outside of its franchise area existing as of December
43 31, 1995, then receipts from those sales of electricity by the municipal
44 electric utility shall be subject to tax under P.L.1966, c.30;

45 (2) Was generated by a facility located on the user's property or
46 property purchased or leased from the user by the person owning the

1 **【co-generator】** generation facility and such property is contiguous to
2 the user's property, and the electricity was consumed by the one
3 on-site end user on the user's property, and was not transported to the
4 user over wires that cross a property line or public thoroughfare unless
5 the property line or public thoroughfare merely bifurcated the user's or
6 **【co-generator】** generation facility owner's otherwise contiguous
7 property or the electricity was consumed by an affiliated user on the
8 same site, or by a non-affiliated user on the same site with an electric
9 distribution system which is integrated and interconnected with the
10 user on or before March 10, 1997; the director may promulgate rules
11 and regulations and issue guidance with respect to all issues related to
12 affiliated users; or

13 (3) Is sold for resale.

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

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

21 (1) Natural gas or utility service that is used to generate electricity
22 that is sold for resale or to an end user other than the end user upon
23 whose property is located a co-generation facility or self-generation
24 unit that generated the electricity or upon the property purchased or
25 leased from the end user by the person owning the co-generation
26 facility or self-generation unit if such property is contiguous to the
27 user's property and is the property upon which is located a
28 co-generation facility or self-generation unit that generated the
29 electricity; and

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

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

39

40 63. (New section) In the case of construction of a new county
41 correction facility, in addition to the purchase of thermal energy,
42 contracts for the purchase of electricity shall be permitted pursuant to
43 subsection (1)(c) of section 15 of P.L.1971, c.198 (C.40A:11-
44 15(1)(c)).

45

46 64. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to

1 read as follows:

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

10 (1) Supplying of:

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

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

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

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

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

23 (4) The collection and recycling of methane gas from a sanitary
24 landfill facility, for any term not exceeding 25 years, when such
25 contract is in conformance with a district solid waste management plan
26 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
27 approval of the Division of Local Government Services in the
28 Department of Community Affairs and the Department of
29 Environmental Protection. The contracting unit shall award the
30 contract to the highest responsible bidder, notwithstanding that the
31 contract price may be in excess of the amount of any necessarily
32 related administrative expenses; except that if the contract requires the
33 contracting unit to expend funds only, the contracting unit shall award
34 the contract to the lowest responsible bidder. The approval by the
35 Division of Local Government Services of public bidding requirements
36 shall not be required for those contracts exempted therefrom pursuant
37 to section 5 of P.L.1971, c.198 (C.40A:11-5);

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

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

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

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

4 (9) Any single project for the construction, reconstruction or
5 rehabilitation of any public building, structure or facility, or any public
6 works project, including the retention of the services of any architect
7 or engineer in connection therewith, for the length of time authorized
8 and necessary for the completion of the actual construction;

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

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

14 (12) The performance of work or services or the furnishing of
15 materials or supplies for the purpose of conserving energy in buildings
16 owned by, or operations conducted by, the contracting unit, the entire
17 price of which to be established as a percentage of the resultant
18 savings in energy costs, for a term not to exceed 10 years; provided,
19 however, that such contracts shall be entered into only subject to and
20 in accordance with rules and regulations promulgated by the
21 Department of Environmental Protection establishing a methodology
22 for computing energy cost savings;

23 (13) The performance of work or services or the furnishing of
24 materials or supplies for the purpose of elevator maintenance for any
25 term not exceeding three years;

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

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

37 (16) The provision of water supply services or the designing,
38 financing, construction, operation, or maintenance, or any combination
39 thereof, of a water supply facility, or any component part or parts
40 thereof, including a water filtration system, for a period not to exceed
41 40 years, when the contract for these services is approved by the
42 Division of Local Government Services in the Department of
43 Community Affairs, the Board of Public Utilities, and the Department
44 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
45 al.), except for those contracts otherwise exempted pursuant to
46 subsection (30), (31), (34) or (35) of this section. For the purposes

1 of this subsection, "water supply services" means any service provided
2 by a water supply facility; "water filtration system" means any
3 equipment, plants, structures, machinery, apparatus, or land, or any
4 combination thereof, acquired, used, constructed, rehabilitated, or
5 operated for the collection, impoundment, storage, improvement,
6 filtration, or other treatment of drinking water for the purposes of
7 purifying and enhancing water quality and insuring its potability prior
8 to the distribution of the drinking water to the general public for
9 human consumption, including plants and works, and other personal
10 property and appurtenances necessary for their use or operation; and
11 "water supply facility" means and refers to the real property and the
12 plants, structures, interconnections between existing water supply
13 facilities, machinery and equipment and other property, real, personal
14 and mixed, acquired, constructed or operated, or to be acquired,
15 constructed or operated, in whole or in part by or on behalf of a
16 political subdivision of the State or any agency thereof, for the
17 purpose of augmenting the natural water resources of the State and
18 making available an increased supply of water for all uses, or of
19 conserving existing water resources, and any and all appurtenances
20 necessary, useful or convenient for the collecting, impounding, storing,
21 improving, treating, filtering, conserving or transmitting of water and
22 for the preservation and protection of these resources and facilities and
23 providing for the conservation and development of future water supply
24 resources;

25 (17) The provision of resource recovery services by a qualified
26 vendor, the disposal of the solid waste delivered for disposal which
27 cannot be processed by a resource recovery facility or the residual ash
28 generated at a resource recovery facility, including hazardous waste
29 and recovered metals and other materials for reuse, or the design,
30 financing, construction, operation or maintenance of a resource
31 recovery facility for a period not to exceed 40 years when the contract
32 is approved by the Division of Local Government Services in the
33 Department of Community Affairs, and the Department of
34 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
35 al.); and when the resource recovery facility is in conformance with a
36 district solid waste management plan approved pursuant to P.L.1970,
37 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
38 "resource recovery facility" means a solid waste facility constructed
39 and operated for the incineration of solid waste for energy production
40 and the recovery of metals and other materials for reuse; or a
41 mechanized composting facility, or any other facility constructed or
42 operated for the collection, separation, recycling, and recovery of
43 metals, glass, paper, and other materials for reuse or for energy
44 production; and "residual ash" means the bottom ash, fly ash, or any
45 combination thereof, resulting from the combustion of solid waste at
46 a resource recovery facility;

1 (18) The sale of electricity or thermal energy, or both, produced
2 by a resource recovery facility for a period not to exceed 40 years
3 when the contract is approved by the **[Board of Public Utilities]**
4 Department of Environmental Protection, and when the resource
5 recovery facility is in conformance with a district solid waste
6 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
7 seq.). For the purposes of this subsection, "resource recovery facility"
8 means a solid waste facility constructed and operated for the
9 incineration of solid waste for energy production and the recovery of
10 metals and other materials for reuse; or a mechanized composting
11 facility, or any other facility constructed or operated for the
12 collection, separation, recycling, and recovery of metals, glass, paper,
13 and other materials for reuse or for energy production;

14 (19) The provision of wastewater treatment services or the
15 designing, financing, construction, operation, or maintenance, or any
16 combination thereof, of a wastewater treatment system, or any
17 component part or parts thereof, for a period not to exceed 40 years,
18 when the contract for these services is approved by the Division of
19 Local Government Services in the Department of Community Affairs
20 and the Department of Environmental Protection pursuant to
21 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise
22 exempted pursuant to subsection (36) of this section. For the
23 purposes of this subsection, "wastewater treatment services" means
24 any services provided by a wastewater treatment system, and
25 "wastewater treatment system" means equipment, plants, structures,
26 machinery, apparatus, or land, or any combination thereof, acquired,
27 used, constructed, or operated for the storage, collection, reduction,
28 recycling, reclamation, disposal, separation, or other treatment of
29 wastewater or sewage sludge, or for the final disposal of residues
30 resulting from the treatment of wastewater, including, but not limited
31 to, pumping and ventilating stations, facilities, plants and works,
32 connections, outfall sewers, interceptors, trunk lines, and other
33 personal property and appurtenances necessary for their operation;

34 (20) The supplying of materials or services for the purpose of
35 lighting public streets, for a term not to exceed five years, provided
36 that the rates, fares, tariffs or charges for the supplying of electricity
37 for that purpose are approved by the Board of Public Utilities;

38 (21) In the case of a contracting unit which is a county or
39 municipality, the provision of emergency medical services by a hospital
40 to residents of a municipality or county as appropriate for a term not
41 to exceed five years;

42 (22) Towing and storage contracts, awarded pursuant to
43 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
44 (C.40A:11-5) for any term not exceeding three years;

45 (23) Fuel for the purpose of generating electricity for a term not
46 to exceed eight years;

1 (24) The purchase of electricity or administrative or dispatching
2 services related to the transmission of such electricity, from a public
3 utility company subject to the jurisdiction of the Board of Public
4 Utilities, a similar regulatory body of another state, or a federal
5 regulatory agency, or from a qualifying small power producing facility
6 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by
7 a contracting unit engaged in the generation of electricity for retail
8 sale, as of May 24,1991, for a term not to exceed 40 years;

9 (25) Basic life support services, for a period not to exceed five
10 years. For the purposes of this subsection, "basic life support" means
11 a basic level of prehospital care, which includes but need not be limited
12 to patient stabilization, airway clearance, cardiopulmonary
13 resuscitation, hemorrhage control, initial wound care and fracture
14 stabilization;

15 (26) Claims administration services, for any term not to exceed
16 three years;

17 (27) The provision of transportation services to elderly, disabled
18 or indigent persons for any term of not more than three years. For the
19 purposes of this subsection, "elderly persons" means persons who are
20 60 years of age or older. "Disabled persons" means persons of any age
21 who, by reason of illness, injury, age, congenital malfunction, or other
22 permanent or temporary incapacity or disability, are unable, without
23 special facilities or special planning or design to utilize mass
24 transportation facilities and services as effectively as persons who are
25 not so affected. "Indigent persons" means persons of any age whose
26 income does not exceed 100 percent of the poverty level, adjusted for
27 family size, established and adjusted under section 673(2) of subtitle
28 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
29 U.S.C. s.9902 (2));

30 (28) The supplying of liquid oxygen or other chemicals, for a term
31 not to exceed five years, when the contract includes the installation of
32 tanks or other storage facilities by the supplier, on or near the
33 premises of the contracting unit;

34 (29) The performance of patient care services by contracted
35 medical staff at county hospitals, correction facilities and long term
36 care facilities, for any term of not more than three years;

37 (30) The acquisition of an equitable interest in a water supply
38 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an
39 agreement entered into pursuant to the "County and Municipal Water
40 Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into
41 no later than January 7, 1995, for any term of not more than forty
42 years;

43 (31) The provision of water supply services or the financing,
44 construction, operation or maintenance or any combination thereof, of
45 a water supply facility or any component part or parts thereof, by a
46 partnership or copartnership established pursuant to a contract

1 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
2 period not to exceed 40 years;

3 (32) Laundry service and the rental, supply and cleaning of
4 uniforms for any term of not more than three years;

5 (33) The supplying of any product or the rendering of any service,
6 including consulting services, by a cemetery management company for
7 the maintenance and preservation of a municipal cemetery operating
8 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for
9 a term not exceeding 15 years;

10 (34) A contract between a public entity and a private firm
11 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
12 water supply services may be entered into for any term which, when
13 all optional extension periods are added, may not exceed 40 years;

14 (35) An agreement for the purchase of a supply of water from a
15 public utility company subject to the jurisdiction of the Board of Public
16 Utilities in accordance with tariffs and schedules of charges made,
17 charged or exacted or contracts filed with the Board of Public
18 Utilities, for any term of not more than 40 years;

19 (36) A contract between a public entity and a private firm or
20 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
21 the provision of wastewater treatment services may be entered into for
22 any term of not more than 40 years, including all optional extension
23 periods; and

24 (37) The operation and management of a facility under a license
25 issued or permit approved by the Department of Environmental
26 Protection, including a wastewater treatment system or a water supply
27 or distribution facility, as the case may be, for any term of not more
28 than seven years. For the purposes of this subsection, "wastewater
29 treatment system" refers to facilities operated or maintained for the
30 storage, collection, reduction, disposal, or other treatment of
31 wastewater or sewage sludge, remediation of groundwater
32 contamination, stormwater runoff, or the final disposal of residues
33 resulting from the treatment of wastewater; and "water supply or
34 distribution facility" refers to facilities operated or maintained for
35 augmenting the natural water resources of the State, increasing the
36 supply of water, conserving existing water resources, or distributing
37 water to users.

38 All multiyear leases and contracts entered into pursuant to this
39 section, except contracts for the leasing or servicing of equipment
40 supplied by a telephone company which is subject to the jurisdiction
41 of the Board of Public Utilities, contracts involving the supplying of
42 electricity for the purpose of lighting public streets and contracts for
43 thermal energy authorized pursuant to subsection (1) above,
44 construction contracts authorized pursuant to subsection (9) above,
45 contracts and agreements for the provision of work or the supplying
46 of equipment to promote energy conservation authorized pursuant to

1 subsection (12) above, contracts for water supply services or for a
2 water supply facility, or any component part or parts thereof
3 authorized pursuant to subsection (16), (30), (31), (34), (35) or (37)
4 above, contracts for resource recovery services or a resource recovery
5 facility authorized pursuant to subsection (17) above, contracts for the
6 sale of energy produced by a resource recovery facility authorized
7 pursuant to subsection (18) above, contracts for wastewater treatment
8 services or for a wastewater treatment system or any component part
9 or parts thereof authorized pursuant to subsection (19), (36) or (37)
10 above, and contracts for the purchase of electricity or administrative
11 or dispatching services related to the transmission of such electricity
12 authorized pursuant to subsection (24) above, shall contain a clause
13 making them subject to the availability and appropriation annually of
14 sufficient funds as may be required to meet the extended obligation, or
15 contain an annual cancellation clause.

16 The Division of Local Government Services shall adopt and
17 promulgate rules and regulations concerning the methods of
18 accounting for all contracts that do not coincide with the fiscal year.
19 (cf: P.L.1997, c.288)

20

21 65. (New section) The following sections are repealed:

22 The "Public Utility Accident Fault Determination Act," P.L.1983,
23 c.94 (C.48:2-21.4 et seq.).

24 P.L.1963, c.114 (C.48:7-7 through 48:7-13).

25 The "Electric Facility Need Assessment Act," P.L.1983, c.115
26 (C.48:7-16 through 25).

27 R.S.48:9-20.

28 Sections 2, 5.1, 10, 11, 17, 23, and 25 of the "Department of
29 Energy Act," P.L.1977, c.146 (C.52:27F-2, 52:27F-6, 52:27F-12,
30 52:27F-13, 52:27F-19, 52:27F-26, and 52:27F-28).

31

32 66. This act shall take effect immediately, except that, to the
33 extent not already provided for by existing law, the authority of the
34 board to order rate unbundling filings, restructuring filings, and
35 stranded cost filings, perform audits of utility competitive services and
36 take such other regulatory actions, including, but not limited to, the
37 holding of hearings, providing of notice and opportunity for comment,
38 the issuance of orders, and the establishment of standards, including
39 auction standards adopted for application to an electric public utility
40 that is executing a divestiture plan, and to take such other anticipatory
41 regulatory action as it deems necessary to fulfill the purposes or
42 requirements of this act shall apply retroactively to April 1, 1997
43 provided that the board shall take such actions as may be necessary,
44 if any, to ensure that the requirements of this act are met in all
45 regulatory actions related to this act which were commenced prior to
46 its enactment.

1 STATEMENT

2

3

4 This bill establishes the framework and the necessary time
5 schedules for the deregulation and restructuring of the electric and
6 natural gas utilities in this State, with the goal of providing all New
7 Jersey consumers with access to competitively priced electricity,
8 natural gas, and other energy related services now provided only by
9 the State's regulated natural gas and electricity public utilities. To
10 ensure that all electricity consumers will realize a timely economic
11 benefit from the deregulation of the electric utility industry, this bill
12 requires all electric public utilities to reduce their current rates by at
13 least 10 percent over a period to be determined by the Board of Public
14 Utilities (BPU), with at least a 5 percent rate reduction to take effect
15 no later than August 1, 1999, the date on which access to
16 competitively priced electricity will be available to all consumers. No
17 later than August 1, 1999, New Jersey consumers will be able to chose
18 a electricity generator other than their local electric utility, who may
19 be able to meet their electricity needs at a price lower than that
20 charged by their local electric utility. Consumers who choose to
21 change to a new non- utility electricity supplier will be afforded basic
22 consumer protection safeguards established in this bill, but the rates
23 charged by these non-utility suppliers will not be regulated by the
24 BPU. This bill would not require, however, any consumer to switch
25 to a new supplier. Consumers who do not want to change will
26 continue to be provided electricity (basic generation service) by their
27 local utility at rates overseen by the BPU. In addition, while this bill
28 would end the monopoly control of electricity generation by the state's
29 electric utilities, the transmission and distribution functions of the
30 electric utility (the wires, poles, and other physical infrastructure and
31 the obligation to maintain them) will remain as a monopoly regulated
32 by the BPU.

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This bill would effectively end the system of government regulation of the electricity generation industry, which has existed in New Jersey since the years when Woodrow Wilson served as Governor. Under that traditional system of utility regulation (known as the rate base/rate of return system), the State granted an electric utility company monopoly status in defined service territories, required the electric utility to provide safe adequate and proper service to all consumers in the service territory, regulated the rates the utility could charge for its service, and also guaranteed the utility a fair rate of return on investments made to provide electricity service. For more than six decades this system functioned essentially without change. In 1978, however, Congress enacted the Public Utility Regulatory Policies Act, which provided incentives to the development of non-utility electricity generation, and required state regulatory commissions to require electric utilities to contract to purchase electricity generated by non-

1 utility producers, which, at the time, was priced lower than electricity
2 produced by utilities. In 1992, Congress enacted the Energy Policy
3 Act, which gave further support to opening the once monopolistic and
4 regulated electricity market to competition and choice. This bill would
5 continue this process, and would make the benefits as well as the risks
6 of participation in an unregulated electricity generating market
7 available to all retail consumers in New Jersey.

8
9 The specific provisions of this bill are as follows:

10
11 **Starting date/implementation schedule (sections 5, 10)**

12 This bill provides that the starting date for electric retail choice is
13 no later than August 1, 1999. Choice related to gas supply service
14 would continue as currently underway in accordance with the BPU
15 regulations with full retail choice by December 31, 1999.

16
17 **Rate Reductions (sections 4, 10)**

18 For electric generation service, this bill requires all electric public
19 utilities to reduce their current rates by at least 10 percent over a
20 period to be determined by the BPU, with at least a 5 percent rate
21 reduction to take effect on the starting date for retail choice. The
22 maximum level of rate reduction must be sustained for at least until the
23 end of the 48th month after the start of retail choice. This rate
24 reduction is in addition to any tax savings per P.L.1997, c.162. In
25 addition, this bill provides that utilities provide a "shopping credit" for
26 retail customers to be set at a level determined by the board.

27 This bill requires rates to be unbundled as of the starting date for
28 retail competition, provides that rates for industrial and commercial
29 customers remain unbundled, and provides that rates for residential
30 customers may be totally or partially rebundled.

31 For gas supply service, this bill does not require a mandated rate
32 reduction.

33
34 **Customer Account Services (section 6)**

35 This bill includes metering, billing or other administrative activity
36 related to maintaining a customer account as customer account
37 services.

38 This bill allows customers of an electric power supplier to request
39 to be billed directly for electric generation service and allows
40 customers of a gas supplier to request to be billed directly for gas
41 supply service.

42
43 **Competitive Services (sections 7 & 8)**

44 This bill prohibits the use of regulated utility rates to subsidize
45 competitive services of related competitive business segments; requires
46 the BPU to commence hearings upon completion of competitive

1 service audits; requires Legislative review before the BPU can
2 reregulate services; and allows the BPU to order structural separation
3 or divestiture of competitive services, order utility refunds to
4 ratepayers, and impose fines.

5

6 **Basic (electric) Generation Service (BGS) (section 9)**

7 This bill provides that for at least three years following the start of
8 retail choice, utilities shall provide BGS to customers who do not or
9 can not choose another electric supplier or are dropped by another
10 supplier. On or before the end of this three year period, the BPU will
11 decide whether to permit BGS to be offered by others on a
12 competitive bid basis, and utilities will be permitted to bid. Whether
13 competitively bid or not, BGS will be regulated by the BPU with
14 power to be procured at market prices. This bill allows the board to
15 create an alternative accounting or cost recovery process to negotiate
16 market price fluctuations.

17 This bill permits purchases of power for BGS from public utility
18 holding company affiliates, under the following conditions: purchases
19 are required for reliability or other extraordinary reasons; purchase
20 prices shall not exceed market prices or must be procured under
21 competitive bid; and net revenues, if derived from generating plants,
22 or contracts, the costs of which are included in stranded cost recovery
23 charges, shall be used to offset market transition charges or, if no such
24 charges are being assessed, to offset distribution rates.

25

26 **Basic Gas Service (section 10)**

27 This bill provides that for three years, or longer if the BPU so
28 determines, gas public utilities shall offer basic gas service to the same
29 types of customers receiving basic generation service. By January 1,
30 2002, this bill requires the BPU to decide if basic gas service will be
31 permitted to be offered by gas suppliers, gas utilities, or both, under
32 competitive bid basis. This bill also provides that the BPU will
33 regulate rates, and allows gas utilities to purchase basic gas supply
34 services at prices consistent with market conditions.

35 This bill requires the BPU to review and determine appropriate
36 unbundled gas rates; prohibits reallocation of utility costs among
37 different customer classes; requires the BPU to commence an audit
38 within 60 days after retail choice; permits the BPU to order gas
39 utilities to functionally or structurally separate or to divest itself of
40 competitive services; provides for Legislative review before the board
41 can reregulate gas services; and permits the board to order utility
42 refunds to ratepayers, and impose fines.

43

44 **Functional Separation/Divestiture (Electric Generation Facilities)**
45 **(section 11)**

46 This bill does not mandate divestiture. The BPU may require a

1 utility to functionally separate its generation assets to its holding
2 company or a related competitive business segment. The BPU may
3 order divestiture to an unaffiliated entity if it finds that concentration
4 or location of generation facilities results in market control that would
5 adversely effect the formation of a competitive generation
6 marketplace.

7 This bill provides that the sale of divested assets which are eligible
8 for stranded cost recovery shall be subject to the BPU standards, and
9 the BPU shall monitor the bid process. The BPU shall approve the
10 sale of divested assets under the following conditions: the sale reflects
11 full market value of assets; the sale will be in best interest of
12 ratepayers; the sale will not jeopardize the utility's reliability; the
13 prospective buyer will not gain undue market control; impacts on
14 utility's employees have been "reasonably mitigated;" if net proceeds
15 from any such sale exceed market value, excess revenues are to be
16 used to offset transition costs, or, where no such costs are assessed,
17 to offset distribution rates; and the sale will not effect the Transitional
18 Energy Facility Assessment, established pursuant to P.L.1997, c.162.

19

20 **Societal Benefits Charge (section 12)**

21 This bill authorizes the BPU to establish an adjustable societal
22 benefits charge (SBC), as a non-bypassable charge on all electric and
23 gas public utility customers and authorizes BPU to allow electric and
24 gas public utilities to impose an SBC, beginning on the starting date
25 of retail choice, to recover costs associated with socially beneficial
26 programs, approved by the BPU prior to April 30, 1997, such as low-
27 income customer assistance, consumer protection and promotion of
28 certain societal goals, nuclear plant decommissioning, demand side
29 management approved by BPU prior to April 30, 1997, manufactured
30 gas plant remediation, and consumer education.

31 This bill provides that funding for demand side management
32 (DSM) programs is held at 1999 levels, with after four years at least
33 50% of DSM funding dedicated to energy efficiency and renewable
34 energy projects up to \$140 million. This bill requires the BPU to
35 undertake comprehensive resource analyses and determine the
36 appropriate level of funding for energy efficiency and renewable
37 energy programs.

38 This bill establishes, in the BPU, a "Universal Service Fund," and
39 provides that the BPU shall determine: the level of funding and the
40 appropriate administration of the fund; the purposes and programs to
41 be funded with monies from the fund; which social programs shall be
42 provided by an electric public utility as part of the provision of its
43 regulated services; whether the funds appropriated to fund the
44 "Lifeline Credit Program," the "Tenants' Lifeline Assistance Program,"
45 the funds received pursuant to the federal Low Income Home Energy
46 Assistance Program, and funds collected by electric and natural gas

1 utilities, as authorized by the BPU, to off-set uncollectible electricity
2 and natural gas bills, should be deposited in the fund; and whether new
3 charges should be imposed to fund new or expanded social programs.
4

5 **Stranded Costs (section 13)**

6 This bill authorizes the BPU to approve amount of stranded costs
7 that each electric public utility may recover through a non-bypassable
8 market transition charge (MTC) of limited duration (up to 8 years) and
9 sets forth various categories of stranded costs eligible for recovery
10 through the MTC, including utility generation plants costs; long-term
11 and short-term power purchase contracts with other utilities, long-
12 term power purchase contracts with non-utility generators (NUGs),
13 and certain restructuring costs approved by the BPU for recovery.

14 This bill requires stranded costs to have been included in rates in
15 a utility's most recent base rate case prior to April 30, 1997, unless the
16 board determines that certain costs related to safety or capital projects
17 after that date are eligible for recovery. This bill authorizes the BPU
18 to: require utilities to mitigate stranded costs by all reasonably
19 available means; periodically review the MTC and adjust the MTC or
20 initiate other rate-making procedures to prevent overcollection of
21 actual level of stranded costs; extend the 8 year MTC limit for costs
22 of long-term NUG contracts and for certain BPU-approved generation
23 assets; and approve NUG contract renegotiation if it substantially
24 reduces the total stranded costs of the utility.
25

26 **Transition Bonds and Securitization (section 14)**

27 This bill authorizes the BPU to permit electric public utilities or
28 another financing entity, approved by the BPU, to issue transition
29 bonds for the purposes of recovering part of a utility's stranded costs
30 to achieve rate reductions and requires transition bonds to be secured
31 by an irrevocable bondable stranded cost rate order imposing a non-
32 bypassable transition bond charge against all customers of an electric
33 public utility.

34 This bill: requires the net proceeds from transition bonds to be
35 used to reduce eligible stranded costs through refinancing or
36 retirement of utility debt or equity, or both, or the buyout, buydown
37 or other restructuring of a power purchase agreement; requires entire
38 cost savings from transition bonds to be passed on to customers
39 through reduced electric rates; requires the BPU to make certain
40 findings, prior to the issuance of transition bonds, concerning
41 mitigation of stranded costs, necessary for achieving rate reductions
42 and tangible benefits for ratepayers; authorizes the BPU to permit
43 issuance of transition bonds in a principal amount of up to 75 percent
44 of recovery-eligible generation plant stranded costs or for the full
45 stranded cost value of the remaining generation assets after divestiture
46 of the majority of a utility's generating assets if mandated conditions

1 are met; authorizes the BPU to permit electric public utilities to issue
2 transition bonds for the buyout or buydown of long-term power
3 purchase contracts in a principal amount to be determined by the BPU;
4 and authorizes the BPU to approve transition bonds for terms of up to
5 15 years if the proceeds will be applied to reduce utility-owned
6 generation stranded costs or for the full term of the power purchase
7 contract if proceeds will be applied solely to reduce stranded costs of
8 long-term NUG contracts. This bill provides that, if so ordered by the
9 board, transition bonds' structuring and pricing requirements shall
10 provide assurances that utility customers pay the lowest transition
11 bond charges.

12

13 **Detailed Requirements Relating to Securitization (sections 15-22)**

14 This bill sets forth certain guarantees to be included in the BPU's
15 stranded costs rate order to assure transition bonds are marketable to
16 the investment community and to provide for the greatest cost savings
17 to ratepayers including the following: formally authorizing an electric
18 public utility or other financing entity to issue transition bonds;
19 approving the initial transition bond charge to be imposed on and
20 collected from utility customers and providing for adjustment in a
21 manner approved by the BPU of such charge prior to closing to reflect
22 all costs associated with transition bonds; requiring utilities to obtain
23 approval from the BPU or its designee at the time of pricing of the
24 terms and conditions of any transition bonds secured by transition
25 bond charges or for any transfers of bondable transition property;
26 providing for a "true-up" mechanism requiring mandatory adjustments
27 by the BPU of transition bond charges to insure that charges are
28 sufficient to meet scheduled principal and debt payments; directing
29 that the BPU rate order and authority to collect transition bond
30 charges shall remain in effect until all scheduled transition bond
31 payments are paid in full; providing that any transition bond charges
32 that exceed the amount necessary to recover bondable stranded costs
33 shall be applied as a credit to reduce charges to utility customers;
34 allowing a utility to commingle revenues received from transition bond
35 charges with other funds of the utility without affecting irrevocability
36 of stranded costs rate order or any transfer of bondable transition
37 property; and providing that all proceeds in connection with
38 determination of bondable stranded costs, transition bond charges and
39 bondable stranded costs rate orders shall be exempt from Title 48 of
40 the Revised Statutes.

41 This bill allows utilities to name a designee at the time of the
42 pricing of the terms and conditions of the transition bonds and clarifies
43 that notice given to the BPU shall not affect the rights of bondholders.

44 This bill provides that the BPU's bondable stranded cost rate
45 orders, and transition bond charges authorized by a BPU order, shall
46 be irrevocable and shall constitute vested property rights that are

1 expressly protected from alteration, repeal or modification, directly or
2 indirectly, by any future action of the BPU or any other governmental
3 entity.

4 This bill provides that the State of New Jersey pledges that the
5 State will not limit, alter or impair any bondable transition property or
6 other rights vested as a result of a bondable stranded costs rate order
7 until all transition bonds are fully paid. The substitute further provides
8 that a bondable stranded costs rate order does not constitute a debt or
9 liability or pledge of the full faith and credit of the State or any of its
10 political subdivisions.

11 This bill provides that electric public utility customers shall be
12 assessed transition bond charges established by the BPU pursuant to
13 a bondable stranded rate cost order, and provides that entities which
14 qualify under section 28 do not pay transition bond charges.

15 This bill requires written consent of an electric public utility to all
16 terms of a bondable stranded costs rate order before it shall be
17 effective.

18 This bill provides that transition bonds shall be recourse only to
19 credit and assets of issuer of the transition bonds.

20 This bill requires an electric public utility to maintain records of
21 transition bond charges assessed and collected for each bondable
22 stranded costs rate order applicable to the utility, and requires such
23 records to be made available for inspection by the BPU or the related
24 financing entity.

25 This bill authorizes electric public utilities or other financing
26 entities to issue transition bonds approved by the BPU in a bondable
27 stranded costs rate order, and sets forth certain legal rights which
28 attach to the transition bonds and bondable transition property
29 concerning sale and transfer, commingling, security interests and
30 default.

31

32 **Guidelines for Transfer, Sale, Judicial Review and Security**
33 **Interests (sections 23-27)**

34 This bill sets forth detailed requirements governing transfer and
35 sale of bondable transition property and the status of successor electric
36 public utilities; clarifies that electric public utilities may petition the
37 BPU for a bondable stranded costs rate order but are not required to
38 do so; requires parties involved in bondable stranded costs rate order
39 proceedings to agree to expedite judicial review according to specified
40 procedures; provides that perfection of a security interest in bondable
41 transition property shall not be adversely affected by changes to the
42 bondable stranded costs rate order or to the transition bond charges;
43 requires that any disputes that arise concerning priority among the
44 secured parties shall be determined in accordance with chapter 9 of
45 Title 12A of the New Jersey Statutes governing secured transactions;
46 requires that a financing statement is to be filed with respect to the

1 transfer of bondable transition property; and provides that the
2 provisions of the "Uniform Commercial Code-Secured Transactions"
3 act shall apply to bondable transition property.

4
5 **Exit Fees (section 28)**

6 This bill provides that: on-site generators that sell to off-site retail
7 customers in this State shall be required to pay Societal Benefits
8 Charges (SBC), Market Transition Charges (MTC), and Transition
9 Bond Charges; existing on-site generators that sell only to on-site
10 customers are exempt from paying SBC, MTC and Transition Bond
11 Charges; provides that on-site generator facilities, installed after the
12 starting date of retail competition shall be subject to SBC, MTC and
13 Transition Bond Charges if the amount of generation from on-site
14 generators has reduced the kilowatt hours distributed by an electric
15 public utility to a level equal to 92.5 percent of the 1999 kilowatt
16 hours distributed by the electric public utility; and provides that on-site
17 generator facilities installed after the starting date of retail competition
18 that do not cause such a reduction shall be exempt from paying the
19 SBC, MTC and Transition Bond Charges.

20
21 **Supplier Licensing (sections 29, 30-34)**

22 This bill requires that a person must apply for an electric power or
23 gas supplier license prior to providing or offering to provide electric
24 generation service or gas supply service to retail customers.

25 This bill requires the BPU to adopt interim electric power and gas
26 supplier licensing standards within 90 days of the bill's effective date.
27 The standards include registering with the board, including providing
28 company information, evidence of financial integrity, information on
29 disciplinary proceedings, ownership interests, the name of agent to
30 receive service of process and the quantity of retail sales made in New
31 Jersey in past 12 months. In addition, the standards require suppliers
32 to: agree to meet reliability standards adequate to ensure bulk power
33 system operations and security, and ensure the adequacy of capacity
34 to meet retail loads; maintain an office in New Jersey for accepting
35 service of process, and ensuring access to the board, consumers and
36 other utilities; and maintain surety bonds; provide a description of the
37 products and services to be rendered; comply with standards of
38 conduct for suppliers the board is to adopt; and provide information
39 as requested by the board for revocation, suspension, issuance or
40 renewal of supplier's license.

41 This bill requires a gas or electric power public utility to
42 incorporate by reference the board's licensing requirements in its tariffs
43 for transmission and distribution service, and apply them to all
44 suppliers uniformly.

45 This bill provides that the board shall establish an alternative
46 dispute resolution program to resolve any licensure or access dispute

1 between a supplier and a public utility. The board may establish
2 reasonable fees for the alternate dispute resolution services.

3 This bill also provides that the board monitor the retail supply
4 market, and proposed acquisitions of electric generating facilities by
5 electric power suppliers to ascertain whether an electric power
6 supplier has or is proposed to have control over electric generating
7 facilities of a number or location to charge non-competitive prices to
8 retail customers. If the board finds this, it may deny, suspend or
9 revoke, after a hearing, the supplier's license. It may also do so if it
10 finds violations of rules or regulations that may affect reliability of
11 service to retail customers.

12 In addition, this bill provides that the board may establish safety
13 and service quality standards for suppliers, and may establish a
14 licensure fee to cover all costs of licensing electric power suppliers and
15 such fee may include a reasonable surcharge to fund a consumer
16 education program in the State.

17 This bill provides that the board may exercise investigative powers
18 when it appears to the board that a supplier has engaged in, is
19 engaging in or is about to engage in any act or practice that violates
20 the act, or when the board deems it in the public interest to inquire
21 whether any violation exists, and when a violation is found, the board
22 may seek and obtain in a summary proceeding in Superior Court an
23 injunction prohibiting the violative act or practice.

24 This bill provides that the board may revoke, suspend or refuse to
25 issue or renew an electric power or gas supplier's license under certain
26 circumstances. In addition, the board may issue letters of warning,
27 assess civil penalties; issue cease and desist orders; issue subpoenas to
28 compel attendance or production of documents at a complaint hearing.

29 This bill requires any person acting as an energy agent to register
30 with the board, and update such registration annually, with such
31 registration including the name, address, telephone number, and
32 business affiliation or profile of the energy agent, evidence of financial
33 integrity as determined by the board, and evidence of knowledge of the
34 energy industry.

35 This bill includes a penalty provision that provides that any person
36 who violates the act shall be liable for a civil penalty of up to \$5,000
37 for the first offense, except that a person who violates the "anti-
38 slamming" provisions of the act shall be liable for a civil penalty of up
39 to \$10,000 for the first offense, and up to \$25,000 for a second and
40 each subsequent offense, for each day the violation continues.

41

42 **Rights and Remedies (section 35)**

43 This bill provides that the acts, rights, remedies or prohibitions are
44 cumulative of any rights, remedies or prohibitions of common law or
45 State statute and shall not be construed to deny, or impair such
46 common law or statute.

1 **Consumer Protection Standards; Slamming (sections 36 & 37)**

2 This bill requires the board to adopt interim consumer protection
3 standards for electric power and gas suppliers within 90 days of the
4 effective date of the act. These standards are to include standards for
5 collections, credit, contracts, authorized changes of an energy
6 consumer's electric power or gas supplier, for the prohibition of
7 discriminatory marketing, for advertising and disclosure and are to be
8 adopted in consultation with the Division of Consumer Affairs.

9 This bill also requires that contracts must disclose duration of the
10 contract and price per unit, and have the customer's written signature
11 or other board-approved verification for switching electric power or
12 gas suppliers and for contract renewal. Contracts must also disclose
13 termination procedures, notice of any fees, and toll-free or local
14 telephone numbers for electric power or gas suppliers and the board.

15 This bill requires the board to adopt standards for the prohibition
16 of discriminatory marketing in accepting or rejecting customers.

17 This bill requires advertising standards to provide that optional
18 charges to the consumer will not be added to any advertised cost per
19 kilowatt hour or therm, and the only unit of measurement that may be
20 used in advertisements is cost per kilowatt hour or therm unless the
21 board approves otherwise. Optional charges must be identified
22 separately and identified as optional.

23 This bill requires credit standards to include that the credit
24 requirements must be the same for all residential customers, and
25 prohibits the imposition of unreasonable income or credit
26 requirements.

27 This bill requires billing standards to include, at a minimum,
28 provisions prohibiting the imposition of switching fees on residential
29 customers.

30 This bill requires that a customer's proprietary information (name,
31 address, energy usage and payment history, etc.) shall not be disclosed
32 without a customer's written consent, and requires when such
33 information is disclosed, it may be used only for the provision of
34 continued electric generation service, electric related service, gas
35 supply service or gas related service to that customer. This bill
36 provides that proprietary information gained by virtue of provision of
37 service may be used to initiate, render, bill and collect for services,
38 protect the rights or property of the electric power or gas supplier or
39 public utility, and protect consumers and other service providers from
40 fraudulent, abusive or unlawful use of, or subscription to the services.

41 This bill requires the board to establish and maintain a database for
42 the purpose of recording customer complaints concerning electric and
43 gas public utilities, electric power suppliers, gas suppliers, private
44 aggregators, and energy agents.

45 This bill requires the board, in consultation with the Division of
46 Consumer Affairs, to establish a multi-lingual Consumer Education

1 Program to educate consumers about the implications of utility
2 restructuring.

3 This bill also requires the board, in consultation with the Division
4 of Consumer Affairs, to adopt standards for the prohibition of
5 unauthorized changes in a customer's electric or gas supplier and
6 provides for penalties for violations of such standards.

7

8 **Environmental Issues (Section 38)**

9 This bill requires electric power suppliers and basic generation
10 service providers to disclose on bills, contracts or marketing material
11 a uniform common set of environmental characteristics, including fuel
12 mix, emissions, and any retiring of emission credits, and requires the
13 BPU to adopt standards, in consultation with the DEP, to implement
14 the disclosure requirements, including adopting a methodology for
15 emissions disclosure based on output pounds per megawatt hour,
16 benchmarks to allow consumers to perform a meaningful comparison
17 of different suppliers, and a uniform format for emissions disclosure
18 that is graphic in nature and easily understandable.

19 This bill authorizes the BPU to adopt, in consultation with DEP,
20 an emissions portfolio standard for electric power suppliers and basic
21 generation service providers upon a finding that: the standard is
22 necessary to meet Clean Air Act; and regional and federal actions will
23 not achieve compliance.

24 This bill requires the board to adopt an emissions portfolio
25 standard applicable to all electric power suppliers, including basic
26 generation service providers, if two other states in the PJM power
27 pool comprising at least 40% of the retail electric usage in the PJM
28 power pool adopt such standards.

29 This bill requires the BPU to adopt renewable energy portfolio
30 standards, and requires that: two and one-half percent of the kilowatt
31 hours sold in this State by each electric power supplier and basic
32 generation service provider be from Class I or Class II renewable
33 energy sources; and beginning on January 1, 2001, that one-half of
34 one percent of the kilowatt hours sold in this State by each electric
35 power supplier and basic generation service provider to be from Class
36 I renewable energy sources. This bill requires the board to increase
37 the required percentage for Class I renewable energy sources so that
38 by January 1, 2006 one percent of the kilowatt hours sold in this State
39 by each electric power supplier and basic generation service provider
40 shall be from Class I renewable energy sources and to increase the
41 required percentage for Class I renewable energy sources by one-half
42 of one percent each year until January 1, 2012, when four percent of
43 the kilowatt hours sold in this State shall be from Class I renewable
44 energy sources.

45 This bill requires the BPU to adopt interim net metering standards
46 for electric power suppliers and basic generation service providers.

1 Customers producing more power than they receive from the power
2 supplier will be given a credit for the excess on the next bill.

3 In addition, this bill provides that the BPU may assess a fee to
4 cover the cost of implementing and overseeing an emission disclosure
5 system or emission portfolio standard.

6

7 **Municipal Electric Utilities (Section 39)**

8 This bill provides that existing municipal electric utilities and
9 cooperatives are not subject to the restructuring law nor are they
10 required to offer retail choice to their customers. A local government
11 can voluntarily choose to implement choice for their municipal utility.
12 This bill provides that municipal electric utilities and cooperatives
13 become subject to the act and must offer retail choice, if subsequent
14 to the effective date, they serve customers outside their municipal or
15 franchise boundaries, and they are then subject to regulation under
16 Title 48.

17

18 **Customer Aggregation (Sections 40 - 45)**

19 This bill provides for aggregation by private aggregators and
20 government aggregators.

21 This bill provides that aggregation by private entities for all
22 customer classes may include combinations of electric, gas, and other
23 related energy services, and requires private aggregators to register
24 with the BPU.

25 This bill authorizes government entities to aggregate for their own
26 government energy needs (municipal buildings, schools, street lights,
27 etc.) or with other government entities, and may enter into a contract
28 pursuant to the Local Public Contracts Law to aggregate their
29 residential and business customers when retail access begins.

30 This bill requires that participation by residential and business
31 customers in a government energy aggregation program must be
32 affirmative and voluntary ("opt-in"), as evidenced via written
33 authorization.

34 In addition, this bill provides an alternative procedure for the
35 establishment of a government energy aggregation program that
36 requires a municipality to adopt an ordinance indicating its intent to
37 solicit bids for electric and gas supply service for those residential
38 ratepayers who agree to participate. Those residential ratepayers who
39 do not wish to participate are authorized to "opt-out" by notifying the
40 governing body in writing. Furthermore, the bill outlines a review
41 procedure by the board and the Ratepayer Advocate for the contract
42 agreements to be offered to residential customers who wish to
43 participate in the program. Residential customers who wish to
44 participate in the program must sign a contract with the selected
45 supplier.

1 **BPU Rules and Regulations (section 46)**

2 This bill requires the BPU to initiate a proceeding and adopt, after
3 public comment, interim rules and regulations to effectuate provisions
4 of the bill within 90 days of effective date. This bill provides that such
5 standards shall be effective as regulations immediately upon filing with
6 the Office of Administrative Law and shall be effective for a period not
7 to exceed eighteen months, and may, thereafter, be amended, adopted
8 or readopted by the board in accordance with the provisions of the
9 "Administrative Procedure Act."

10

11 **Bondable Transition Property (sections 47 - 49)**

12 This bill amends the Uniform Commercial Code to require that the
13 law of the State governs the perfection and the effect of perfection of
14 any security interest in bondable transition property, and adds the
15 definition of bondable transition property to the Uniform Commercial
16 Code.

17 This bill allows that if a commercial transaction financing statement
18 is filed with the appropriate financing officer and which relates to a
19 security interest of bondable transition property, the statement is
20 effective, if so stated until a termination statement is filed.

21

22 **Transition Bond Proceeds Not Taxable (section 50)**

23 This bill provides that proceeds from transition bond sales not to
24 be considered income under the State's "Corporate Business Tax Act"
25 and "Gross Income Tax Act," and authorizes the Taxation Division
26 Director to issue regulations determining profit or loss related to sale
27 of assets for computing the corporate business tax the utility is subject
28 to if assets are deemed a stranded cost.

29

30 **Definition of Public Utility (section 51)**

31 This bill changes the definition of public utility by removing
32 companies which provide electric light, heat or power and substituting
33 electricity distribution; provides that services necessary for production,
34 transmission, and distribution of electricity and gas, including but not
35 limited to safety, reliability, metering, meter reading and billing, shall
36 remain the jurisdiction of the BPU.

37 This bill provides that the BPU has authority to regulate the sale
38 of any thermal energy service by a cogenerator or district heating
39 system, for the purpose of providing heating or cooling to residential
40 dwellings if it determines that sufficient competition is no longer
41 present, based upon consideration of such factors as ease of market
42 entry; presence of other competitors; and the availability of like or
43 substitute services in the relevant geographic area. However, the BPU
44 is prohibited from regulating the sale of steam or energy to non-
45 residential customers.

1 This bill prohibits BPU jurisdiction over an entity providing sewage
2 effluent to an end user for cooling purposes.

3
4 **Off-Tariff Rate Agreements (OTRAS) (sections 52 & 53)**

5 This bill provides that OTRAs implemented on or after the
6 effective date of retail competition may establish a price for the
7 transmission or distribution of electricity to a retail customer that is
8 different from, but in no case higher than, that specified in the electric
9 public utility's current cost-of-service-based tariff rate for transmission
10 or distribution service otherwise applicable to that customer, and
11 OTRAs for electricity shall include a societal benefits charge, market
12 transition charge, and transition bond charge.

13 This bill provides that electric utilities cannot provide a
14 competitive service or basic generation service offered by the utility or
15 its related competitive business segment to the customer a
16 precondition to the offering of or agreement to an off-tariff rate
17 agreement.

18 This bill provides that a BPU determination that the utility's
19 ratepayers are paying lower rates with the implementation of an off-
20 tariff rate agreement on or after the effective date of the bill will
21 therefore include a finding that the customer receiving the off-tariff
22 rate would have relocated its facility outside of the State to a location
23 where it could have obtained delivered power at a lower cost, had it
24 not received the off-tariff rate.

25
26 **Alternative Form of Regulation Plans (section 55)**

27 This bill deletes provisions that the BPU may approve an
28 alternative form of regulation plan for a newly-constructed or acquired
29 energy and capacity supply of a gas or electric utility, including any
30 transmission facilities directly associated with a generating unit, which
31 regulation provides for a revenue requirement calculation that differs
32 from the rate base, rate of return formula required by preexisting
33 standards of Title 48 of the Revised Statutes, if the BPU finds that: (1)
34 an asset, commodity or service comparable to that being provided by
35 the utility could have been obtained from any suppliers in a
36 competitive marketplace, and an opportunity was afforded those
37 suppliers to offer such an alternative source of energy and capacity
38 supply; and (2) the cost being charged to consumers by the utility
39 under the alternative plan reflects the market price for that asset,
40 commodity or service.

41 This bill authorizes and directs the New Jersey Economic
42 Development Authority, in conjunction with the BPU, to establish the
43 New Jersey Senior Alternate Vital Energy (NJ SAVE) program for the
44 purpose of funding capital improvements of natural gas distribution
45 facilities, and for purchase and installation of natural gas heating
46 equipment and appliances located on the premises of homeowners,

1 where those homeowners reside in all-electric homes in age-restricted
2 communities. The authority may issue bonds on behalf of gas public
3 utilities, the proceeds of which may be used for the purpose of
4 distributing in the form of loans to eligible customers for the purpose
5 of allowing such customers to pay home heating and appliance
6 conversion costs and the customer's contribution, to the extent
7 applicable, to gas distribution system extension costs required to serve
8 those customers. Gas public utilities shall be permitted to assess a
9 meter charge, as approved by the BPU, to recover the funds to repay
10 loan principal and interest. Monies collected by gas public utilities as
11 a result of such meter charge shall be utilized to repay the bonds
12 issued by the authority.

13

14 **Energy Restructuring Annual Report (section 56)**

15 This bill requires the BPU to submit a report to the Legislature on
16 the implementation of the restructuring of the electric power industry
17 on December 1 of the third year following the effective date of the bill
18 and every four years thereafter.

19

20 **Utility Distribution Equipment & Facility Standards (section 57)**

21 This bill requires the BPU to adopt standards: for the inspection,
22 maintenance, repair and replacement of the distribution equipment and
23 facilities of electric public utilities. The standards may be prescriptive
24 standards, performance standards, or both, and shall provide for high
25 quality, safe and reliable service; and for the operation, reliability and
26 safety of such equipment and facilities during periods of emergency or
27 disaster. The board is to adopt a schedule of penalties for violations
28 of these standards.

29

30 **Municipal Actions: Utility May Appeal to BPU (section 58)**

31 This bill amends "Municipal Land Use Law" to allow electric
32 power generator, if aggrieved by the action of a municipal agency, to
33 appeal to the BPU within 35 days after such action without appeal to
34 the municipal governing body unless the generator is allowed to be
35 heard. If the BPU finds that the present or proposed use by the
36 generator's facility is necessary for the service to the public, and that
37 the present or proposed use of the land is necessary to maintain
38 reliable electric or gas supply service for the general public and that no
39 alternative site or sites are reasonably available to achieve an
40 equivalent public benefit, the generator may proceed in accordance
41 with the BPU's decision.

42

43 **Severability (section 59)**

44 This bill provides that the provisions of the bill are severable. If
45 any provision in the bill or its application to any person or
46 circumstance is held invalid by any court of competent jurisdiction, the

1 invalidity shall not affect any other provision or the application of the
2 bill which can be given effect without the invalid provision or
3 application.

4

5 **DOT and DEP Commissioners (section 60)**

6 This bill provides that the DOT Commissioner's powers or
7 responsibilities with respect to autobuses, charter and special bus
8 operations, railroads, street railways, traction railways, and subways
9 as transferred to the commissioner by Executive Reorganization filed
10 on October 5, 1978 are not affected, and provides that the functions,
11 powers and duties of the DEP Commissioner in respect to the
12 commissioner's role in protecting the environment are not altered.

13

14 **NJ "Antitrust Act" Exemptions (section 61)**

15 This bill provides that the N.J. "Antitrust Act" exemption shall
16 apply to the activities of any electric public utility or gas public utility
17 or any related competitive business segment of an electric public utility
18 or related competitive business segment of a gas public utility, or any
19 public utility holding company or related competitive business segment
20 of a public utility holding company, only to the extent such activities
21 are expressly required by and supervised pursuant to State regulation
22 or are required by federal or State law.

23

24 **Municipal Electric Corporations (section 62)**

25 This bill requires the State Treasurer to provide annual reports to
26 the Governor and the Legislature regarding the Energy Tax Receipts
27 Property Tax Relief Fund.

28

29 **Repealed Statutes (section 65)**

30 This bill repeals the following: the "Public Utility Accident Fault
31 Determination Act"; the "Electric Facility Need Assessment Act"; gas
32 company notice requirements to other gas or water companies for
33 installing new gas mains and penalties for failure to notify those other
34 companies; and portions of the "Department of Energy Act," which
35 apply to the Advisory Council on Energy Planning and Conservation,
36 department employees conflict of interest policy, monies available to
37 the State Energy Office and the Bureau of Energy Resources.

38

39 **Effective Date (section 66)**

40 This bill would take effect immediately and grants the BPU
41 authority to implement the requirements of the bill, including actions
42 taken since April 1, 1997 which relate to energy restructuring.