

# ASSEMBLY, No. 2977

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

**Sponsored by:**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Assemblywomen Watson Coleman, Quigley, Lampitt and Assemblyman Fuentes**

**SYNOPSIS**

Exempts from payment certain taxes and energy charges for manufacturing facilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/9/2010)**

1 AN ACT concerning certain taxes and energy charges of  
2 manufacturing facilities and amending P.L.1997, c.162.

3

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

6

7 1. Section 33 of P.L.1997, c.162 (C.54:32B-8.47) is amended  
8 to read as follows:

9 33. a. Receipts from the sale or use of energy and utility service  
10 to or by a utility corporation or person that was subject to the  
11 provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1,  
12 1997, or currently or formerly subject to taxation pursuant to  
13 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and  
14 consumption, are exempt from the tax imposed under the "Sales and  
15 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

16 b. Receipts from the sale or use of energy and utility service  
17 made pursuant to a contract described in section 59 of P.L.1997,  
18 c.162 (C.48:2-21.31) shall be exempt from the tax imposed under  
19 the "Sales and Use Tax Act."

20 c. **[(1)** As used in this subsection, "manufacturing facility"  
21 means a facility:

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

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

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

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

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

6 (2) For a period of seven years commencing on the first day  
7 after the expiration of an off-tariff rate agreement, entered into or  
8 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
9 21.24 et seq.), receipts from the sale to or use by a manufacturing  
10 facility of energy and utility service for use or consumption directly  
11 and primarily in the production of tangible personal property, other  
12 than energy, shall be exempt from the tax imposed under the "Sales  
13 and Use Tax Act."

14 (3) Notwithstanding the provisions of the exemption provided in  
15 this section, a seller of energy and utility service shall charge and  
16 collect the tax from the owner of the manufacturing facility and the  
17 owner shall be refunded the tax paid by the filing, within 30 days  
18 following the close of a calendar quarter in which the exemption  
19 applies, of a claim with the New Jersey Division of Taxation for a  
20 refund of sales and use taxes paid for energy and utility service,  
21 which refund shall be paid within 30 days of the refund claim being  
22 filed. Proof of claim for refund shall be made by the submission of  
23 such records and other documentation as the Director of the  
24 Division of Taxation may require] Receipts from the sale to or use  
25 by a manufacturing facility of energy and utility service for use or  
26 consumption directly and primarily in the production of tangible  
27 personal property, other than energy, by manufacturing, shall be  
28 exempt from the tax imposed under the "Sales and Use Tax Act."  
29 As used in this subsection, "manufacturing facility" means a  
30 business location at which more than 50% of the business personal  
31 property that is housed in the facility is eligible for the exemption  
32 pursuant to subsection a. of section 25 of P.L.1980, c.105  
33 (C.54:32B-8.13).

34 d. [If the owner of the manufacturing facility at any time  
35 during the sales and use tax exemption period relocates the  
36 manufacturing facility to a location outside of this State, the owner  
37 shall pay to the Director of the Division of Taxation the amount of  
38 sales and use tax for which an exemption shall have been allowed  
39 and refund obtained under this section. The State Treasurer shall  
40 notify the director of the relocation of a manufacturing facility to a  
41 location outside of this State, and the director shall issue a tax  
42 assessment for the recapture of tax, equal to the amount of sales and  
43 use tax for which an exemption shall have been allowed and refund  
44 obtained under this section. The recapture of tax shall be a State  
45 tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et  
46 seq., and shall be deposited in the General Fund.] (Deleted by  
47 amendment, P.L. , c. )(pending before the Legislature as this bill)  
48 (cf: P.L.2007, c.94, s.1)

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

3       67. a. As used in this section:

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

9       "Base year" means the calendar year 1996;

10       "Board" means the Board of Public Utilities;

11       "Manufacturing facility" means a [facility:

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

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

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

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

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

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

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

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

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

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

7 (4) employed, individually or collectively with affiliated  
8 facilities, not less than 150 employees in this State on April 1,  
9 2009] business location at which more than 50% of the business  
10 personal property that is housed in the facility is eligible for the  
11 exemption pursuant to subsection a. of section 25 of P.L.1980,  
12 c.105 (C.54:32B-8.13);

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

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

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

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

1 implemented pursuant to this act shall not constitute a fixing of  
2 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing  
3 requirements set forth in that section.

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

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

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

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

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

1 also include copies of its audited financial statements for the base  
2 year and associated quarterly and other reports filed with the  
3 Securities and Exchange Commission.

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

$$13 \quad A e, g = \frac{((I e, g) \times (Rs/(1-Re)))}{14 \quad \text{-----}} \\ 15 \quad \quad \quad (Br e, g)$$

16 where:

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

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

27 "Br e, g" means the utility's base year revenue from base rates  
28 applicable to electric or gas sales, or both, and transportation  
29 service subject to the board's jurisdiction, but excluding sales that  
30 were exempt from unit-based energy taxes formerly imposed  
31 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section  
32 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

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

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

45 (3) When billed to the utility's customers, the adjusted base rate  
46 charges determined pursuant to paragraphs (1), (2), and (4) of this  
47 subsection, and the charges determined pursuant to the utility's  
48 levelized energy adjustment clause, levelized gas adjustment clause,

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

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

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

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



1       The utility's filing with the board to implement the rate changes  
2 provided for by this act shall also include an analysis, description  
3 and quantification of net deferred taxes. For the purposes of this  
4 section, "net deferred taxes" means deferred corporation business  
5 taxes, net of federal deferred income taxes, associated with the tax  
6 and rate changes implemented pursuant to this act, including  
7 deferred corporation business tax recorded in accordance with  
8 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the  
9 calendar year in which this act takes effect and for each year of the  
10 tax life of the asset giving rise to the deferred corporation business  
11 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

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

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

44       (b) The year in which both an appropriate working capital  
45 adjustment and the accumulated balance of negative deferred taxes,  
46 as described in (ii) of subparagraph (a) of this paragraph (4), are  
47 reflected in the utility's rate base in a rate proceeding before the  
48 board. It is the intent of this section to fully compensate utilities on

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

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

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

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

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

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

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

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

10 (ii) [for a period of seven years commencing on the first day  
11 after the expiration of an off-tariff rate agreement, entered into or  
12 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
13 21.24 et seq.), to a manufacturing facility for use or consumption  
14 directly and primarily in the production of tangible personal  
15 property, other than energy, and

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

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

1 General Fund] to a manufacturing facility for use or consumption  
 2 directly and primarily in the production of tangible personal  
 3 property, other than energy, by manufacturing.

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

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

20	January 1, 1999,	20%
21	January 1, 2000,	40%
22	January 1, 2001,	60%

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

26 (a) The sum of the estimated, or actual when known, (i) TEFA  
 27 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-  
 28 107), and sales and use taxes collected and corporation business  
 29 taxes booked for the year 1998 by the gas and electric utilities and  
 30 other entities subject to the TEFA provisions of this act (the year  
 31 1998 liability), and (ii) the TEFA liabilities of those utilities and  
 32 entities in all years following the year 1998 through the year in  
 33 which a determination is being made pursuant to this subsection  
 34 (the determination year); and

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

41	Determination Year	% of
42		Year 1998
43		TEFA
44	-----	
45	1999	80%
46	2000	60%

1 by the Year 1998 TEFA, where the Year 1998 TEFA is calculated  
 2 as the total of each remitter's base year liability less the sales and  
 3 use taxes collected and the corporation business taxes booked for  
 4 the privilege period ending in calendar year 1998 by the gas and  
 5 electric utilities and other entities subject to the TEFA provisions of  
 6 this act. For purposes of this subsection, the amounts assumed for  
 7 the determination year, including the year 1998 liability when first  
 8 determined for the purposes of this subsection, shall be estimates  
 9 based on nine months of actual data through and including the  
 10 month of September, and three months of data forecast for the  
 11 months of October through December.

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

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

35 (b) The TEFA unit rate surcharges in effect for calendar year  
 36 2011 shall be reduced on January 1, 2012 and January 1, 2013 by  
 37 the following percentages:

38	January 1, 2012	25%
39	January 1, 2013	50%

40 e. The utility's filing with the board to implement the rate  
 41 changes provided for by this act shall include proof of revenue  
 42 schedules that show for each rate schedule included in the utility's  
 43 tariff, aggregated by unit-based energy tax unit tax classes, the  
 44 number of customers billed under the rate schedule, the billing  
 45 determinants of such customers (i.e. the kilowatts of billing demand  
 46 and kilowatthours of electric energy consumed, and the million  
 47 cubic feet/decatherm subject to gas capacity-related charges and  
 48 decatherm of gas consumed) and the associated revenue, both as

1 booked in the base year and on a pro forma basis reflecting the rate  
2 changes implemented pursuant to this act. The proof of revenue  
3 shall additionally show the amount of unit-based energy taxes  
4 included in the base year revenue as booked, the unit-based energy  
5 taxes that would have been collected at the unit-based energy tax  
6 unit tax rates effective January 1, 1997, if different, as well as the  
7 corporation business tax, sales and use tax and transitional energy  
8 facility assessment revenue that would have been collected or  
9 received on a pro forma basis if the rates implemented pursuant to  
10 this act had been in effect in the base year.

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

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

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

1 Telecommunications utilities shall comply with all other applicable  
2 provisions of this section.

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

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

16 (3) For the purposes of this section, "cogenerator" means a  
17 person or business entity that owns or operates a cogeneration  
18 facility in the State of New Jersey, which facility is a plant,  
19 installation or other structure whose primary purpose is the  
20 sequential production of electricity and steam or other forms of  
21 useful energy which are used for industrial, commercial, heating or  
22 cooling purposes, and which is designated by the Federal Energy  
23 Regulatory Commission, or its successor, as a "qualifying facility"  
24 pursuant to the provisions of the "Public Utility Regulatory Policies  
25 Act of 1978," Pub.L.95-617.  
26 (cf: P.L.2009, c.90, s.51)  
27

28 3. This act shall take effect on the July 1 next following the  
29 date of enactment.  
30  
31

32 STATEMENT  
33

34 This bill exempts sales of energy and utility service to  
35 manufacturing facilities from the sales and use tax and the  
36 transitional energy facility assessment (TEFA) unit rate surcharge.  
37 Manufacturers are among the largest users of electricity and natural  
38 gas. High energy costs are reported as a major state-level obstacle  
39 to manufacturing success in this State. The exemptions provided  
40 under this bill are designed to encourage manufacturers to stay in  
41 New Jersey and to expand their operations here. The sales tax  
42 exemption and the TEFA unit rate surcharge exemption will save  
43 manufacturing facilities approximately 10% in taxes assessed  
44 against their energy use.