

ASSEMBLY, No. 765

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

Co-Sponsored by:

Assemblywoman N.Munoz, Assemblymen Space and Wirths

SYNOPSIS

Ends the transitional energy facilities assessment, caps the State use portion of State energy tax revenues and ensures the balance of such State revenues are paid annually as municipal aid.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain energy tax revenues, ending the
2 transitional energy facilities assessment and capping the State's
3 skimming of energy tax revenues, amending P.L.1997, c.162,
4 P.L.1997, c.167 and repealing section 3 of P.L.1997, c.167.

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

8
9 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
10 read as follows:

11 67. a. As used in this section:

12 "Base rates" means the rates, including minimum bills, charged
13 for utility commodities or service subject to the board's jurisdiction,
14 other than the rates charged under a utility's levelized energy
15 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
16 clause, hereinafter "LGAC," or equivalent rate provision;

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

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

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

24 "Utility service" means the supply, transmission, distribution or
25 transportation of electricity, natural gas or telecommunications
26 services or any combination of such commodities, processes or
27 services.

28 b. No later than 60 days after the date this act is enacted, each
29 electric, gas and telecommunications utility subject to the
30 provisions of this act shall file with the board, and shall
31 simultaneously provide copies to the Director of the Division of the
32 Ratepayer Advocate, revised tariffs and such other supporting
33 schedules, narrative and documentation required by this act, as set
34 forth in this section, to reflect in the utility's rates the changes in tax
35 liability effected pursuant to this act. No later than 90 days after the
36 date of the utility's filing, and after determining that the filing and
37 the rate changes provided for therein are in compliance with the
38 provisions of this act, the board shall approve the utility's filing and
39 associated rates for billing to the utility's customers, effective for
40 utility service rendered on and after January 1, 1998. If the board
41 determines that the utility's filing and the associated rate changes
42 provided for therein are not in compliance with the provisions of
43 this act, the board shall require the utility to amend or otherwise
44 modify its filing to render it in compliance. The board may also
45 permit the rates provided for in the utility's filing to be implemented

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 on an interim basis pending the board's final determination in the
2 event the board, in its discretion, determines that due to the filing's
3 complexity, or for other valid reasons, including but not limited to
4 the enactment of this act after June 30, 1997, additional time is
5 needed for the board to complete its review of the filing. If the
6 rates approved by the board upon its final determination are less
7 than the rates implemented on an interim basis, the difference shall
8 be refunded to the utility's customers with interest computed in
9 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
10 implemented pursuant to this act shall not constitute a fixing of
11 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
12 requirements set forth in that section.

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

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

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

36 To permit the board to make this determination, in addition to
37 including in its filing schedules showing its net income earned in
38 the base year as booked, the utility shall include adjustments to such
39 booked income to eliminate the effect of revenues, expenses and
40 extraordinary or other charges that are non-recurring, atypical, or
41 both, including, but not limited to an adjustment to eliminate the
42 effect of unusually hot or cold weather, and that would otherwise
43 make the utility's base year net income unusually high or low or
44 otherwise unrepresentative of the utility's prospective net income.
45 If the adjustment is being made to eliminate the effect of unusually
46 hot or cold weather, associated revenue and expense adjustments
47 shall also be made. Subject to the board's approval, such adjusted
48 income shall be the basis for the calculation of the initial provision

1 for corporation business tax to be included in the utility's base rates.

2 The utility shall also include a calculation of its rate of return on

3 common equity achieved in the base year, both as booked and as

4 adjusted in accordance with the foregoing. The calculation shall be

5 made employing the methodology set forth in N.J.A.C.14:12-

6 4.2(b)1, and shall separately show the effect of reflecting

7 adjustments to the calculation, if any, that may have been employed

8 historically in establishing the utility's rate of return on common

9 equity allowed for ratemaking purposes. The utility's filing shall

10 also include copies of its audited financial statements for the base

11 year and associated quarterly and other reports filed with the

12 Securities and Exchange Commission.

13 To reflect the provision for corporation business tax in base

14 rates, the demand charges, or charges per kilowatt, decatherm or

15 million cubic feet; the energy charges, or charges per kilowatthour

16 or per therm; and the customer charges, or charges other than

17 demand and energy charges, set forth in each base rate schedule,

18 and the floor price employed in parity rate schedules, included in

19 the utility's tariff filed with and approved by the board shall be

20 increased by amounts determined by multiplying such charges by

21 the adjustment factor, "A e, g" derived below:

22

23
$$A\ e,\ g = \frac{(I\ e,\ g) \times [Rs/(1-Re)]}{(Br\ e,g)}$$

24 -----

25

26

27 where:

28

29 "A e, g" means the adjustment factor applicable to electric base

30 rates (e), gas base rates (g), or both, other than rates applicable to

31 sales that were exempt from unit-based energy taxes formerly

32 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to

33 which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

34 "I e, g" means the utility's base year after-tax net income from

35 electric or gas sales, or both, and transportation service subject to

36 the board's jurisdiction and other operating revenue if such revenue

37 is reflected in the utility's cost of service for ratemaking purposes,

38 adjusted as approved by the board;

39 "Br e, g" means the utility's base year revenue from base rates

40 applicable to electric or gas sales, or both, and transportation

41 service subject to the board's jurisdiction, but excluding sales that

42 were exempt from unit-based energy taxes formerly imposed

43 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section

44 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

46 decimal;

47 "Rf" means the applicable federal corporation income tax rate

48 expressed as a decimal; and

1 "Re" equals $R_s + R_f(1 - R_s)$.

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

9 (3) When billed to the utility's customers, the adjusted base rate
10 charges determined pursuant to paragraphs (1), (2), and (4) of this
11 subsection, and the charges determined pursuant to the utility's
12 levelized energy adjustment clause, levelized gas adjustment clause,
13 or both, as determined both upon the effective date of the rate
14 changes authorized by this act and as revised prospectively in
15 accordance with the utility's tariff filed with and approved by the
16 board, and the transitional energy facility assessment unit rate
17 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
18 accordance with subsection d. of this section, shall be increased by
19 an amount determined by multiplying such charges by the sales and
20 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
21 addition to the utility's rates for service included in its tariff, for
22 informational purposes the tariff shall include such rates after
23 application of the sales and use tax authorized by this section.

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

1 of this subsection.

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

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

13 The utility's filing with the board to implement the rate changes
14 provided for by this act shall also include an analysis, description
15 and quantification of net deferred taxes. For the purposes of this
16 section, "net deferred taxes" means deferred corporation business
17 taxes, net of federal deferred income taxes, associated with the tax
18 and rate changes implemented pursuant to this act, including
19 deferred corporation business tax recorded in accordance with
20 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
21 calendar year in which this act takes effect and for each year of the
22 tax life of the asset giving rise to the deferred corporation business
23 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

24 If the change in such net deferred taxes projected for the calendar
25 year in which the rate changes implemented pursuant to this act
26 takes effect is negative and if the utility's requirement for working
27 capital is reduced as a result of the changes in rates and tax
28 payments implemented pursuant to this act, the working capital-
29 related rate reduction that otherwise would have been implemented
30 pursuant to this subsection shall be treated as set forth in
31 subparagraph (a) or (b) of this paragraph. For the purposes of this
32 act, a change in net deferred taxes is considered negative when it
33 reduces an existing deferred tax liability or creates a deferred tax
34 asset on the utility's balance sheet. An appropriate rate adjustment
35 for the working capital impacts of this act, reflecting all relevant
36 facts and circumstances at the time of the adjustment, shall be made
37 in the year when the earlier of the following events occur:

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

47 (i) Carrying costs and present values are to be computed using
48 the weighted average after-tax rate of return approved by the board

1 in the utility's last base rate proceeding.

2 (ii) The accumulated balance of such negative net deferred taxes
3 shall include net deferred taxes associated with all assets and
4 liabilities originally placed in service by the utility and held by the
5 utility or a company affiliated with the utility regardless of whether
6 or not such assets continue to be subject to regulation by the New
7 Jersey Board of Public Utilities.

8 (b) The year in which both an appropriate working capital
9 adjustment and the accumulated balance of negative deferred taxes,
10 as described in (ii) of subparagraph (a) of this paragraph (4), are
11 reflected in the utility's rate base in a rate proceeding before the
12 board. It is the intent of this section to fully compensate utilities on
13 a present value basis, for the carrying costs associated with negative
14 net deferred taxes arising as a result of this act, and to remit to
15 ratepayers any credit due them as a result of any overcompensation
16 as may have occurred due to the treatment of working capital and
17 deferred taxes as set forth herein or in subparagraph (a) of this
18 paragraph (4). At the time the above base rate adjustment is made,
19 an analysis shall be made to determine if such carrying costs have
20 been or will be fully recovered pursuant to the intent of this
21 provision and any additional credit or charge to ratepayers to adjust
22 for ratepayer overpayments or underpayments, if any shall be
23 addressed.

24 If the change in net deferred taxes is positive, the increase shall
25 be added to, or increase, the reduction in the utility's requirement
26 for working capital if the requirement is reduced as a result of the
27 rate and tax payment changes implemented pursuant to this act, or
28 subtracted from the working capital requirement if it is increased,
29 and the resultant net working capital requirement shall be reflected
30 in rates or accrue carrying costs in the same manner as prescribed
31 for changes in the utility's requirement for working capital above.

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

36 d. (1) Electric and gas utilities shall file, for the board's review
37 and approval, initial TEFA unit rate surcharges determined by
38 deducting from each unit-based energy tax unit tax rate effective
39 January 1, 1997 the following: (a) An amount per kilowatthour or
40 per therm determined by multiplying the total revenue received in
41 the base year from sales to which that unit tax rate would have been
42 applicable by the factor $R_u/(1 + R_u)$, where R_u is the sales and use
43 tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.)
44 expressed as a decimal, and dividing the result by the kilowatthours
45 or therms billed in that unit tax rate class in the base year; and (b)
46 An amount per kilowatthour or per therm determined by dividing
47 the revenue that would have been received in the base year from the
48 inclusion, in the manner prescribed in paragraph (2) of subsection c.

1 of this section, of the corporation business tax in the rates
2 applicable to sales billed in that unit tax rate class by the
3 kilowatthours or therms billed in that rate class. In each case, the
4 determination shall reflect the effect of adjustments that affect the
5 level of sales and revenue, if any, as provided in subsection c. of
6 this section. Of the resultant rate per kilowatthour or per therm, the
7 portion for recovery of the utility's transitional energy facilities
8 assessment liability shall be determined by multiplying such rate by
9 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
10 expressed as a decimal. The TEFA unit rate surcharges shall
11 constitute non-bypassable wires and/or mains charges of the utility,
12 and shall be applied to all sales within the customer classes to
13 which they apply, regardless of whether such customers are
14 purchasing bundled or unbundled services from the utility, but shall
15 not be applied to sales that were or are currently exempt from unit-
16 based energy taxes formerly imposed pursuant to P.L.1940, c.5
17 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162
18 (C.48:2-21.31) applies.

19 If, following the effective date of this act, a customer taking
20 bundled service from the utility shall elect to obtain its
21 requirements from another supplier and take transportation or
22 wheeling service from the utility, the TEFA unit rate surcharge
23 applicable to the bundled service shall continue to apply to the
24 transportation or wheeling service. The TEFA components of the
25 unit rate surcharges determined pursuant to this subsection (the
26 components of the surcharges remaining after deducting the
27 provision for corporation business tax included therein) shall be
28 used to determine the transitional energy facility assessment
29 liability pursuant to sections 36 through 49 of P.L.1997, c.162
30 (C.54:30A-100 through C.54:30A-113).

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

35

36	January 1, 1999,	20%
37	January 1, 2000,	40%
38	January 1, 2001,	60%

39

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

43 (a) The sum of the estimated, or actual when known, (i) TEFA
44 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
45 107), and sales and use taxes collected and corporation business
46 taxes booked for the year 1998 by the gas and electric utilities and
47 other entities subject to the TEFA provisions of this act (the year
48 1998 liability), and (ii) the TEFA liabilities of those utilities and

1 entities in all years following the year 1998 through the year in
2 which a determination is being made pursuant to this subsection
3 (the determination year); and

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

10

Determination Year	% of
	Year 1998
	TEFA

1999	80%
2000	60%

17

18 by the Year 1998 TEFA,

19

20 where the Year 1998 TEFA is calculated as the total of each
21 remitter's base year liability less the sales and use taxes collected
22 and the corporation business taxes booked for the privilege period
23 ending in calendar year 1998 by the gas and electric utilities and
24 other entities subject to the TEFA provisions of this act. For
25 purposes of this subsection, the amounts assumed for the
26 determination year, including the year 1998 liability when first
27 determined for the purposes of this subsection, shall be estimates
28 based on nine months of actual data through and including the
29 month of September, and three months of data forecast for the
30 months of October through December.

31 (4) If the TEFA surcharge adjustment determined for the
32 determination year is positive (that is, if the amount determined
33 pursuant to subparagraph (a) of paragraph (3) of this subsection is
34 greater than the amount determined pursuant to subparagraph (b) of
35 paragraph (3) of this subsection), no reduction shall be made in the
36 reduction in the TEFA unit rate surcharges provided for in
37 paragraph (2) of this subsection for the year following the
38 determination year. If the TEFA surcharge adjustment is negative,
39 the reduction in the TEFA unit rate surcharges that otherwise would
40 have been implemented on January 1 of the year following the
41 determination year pursuant to paragraph (2) of this subsection shall
42 be reduced by an amount (by percentage points) equal to the
43 percentage the TEFA surcharge adjustment is of the total of the
44 base year transitional energy facility assessment of all remitters, as
45 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
46 however, that such reduction in the reduction in the TEFA unit rate
47 surcharges shall not exceed the percentage shown in paragraph (2)
48 of this subsection for that year; and provided further that in the first

1 two years, that such reduction shall not exceed 10 percentage points
2 for each year.

3 (5) (a) The TEFA unit rate surcharges for calendar years 2002
4 through **2008** 2007 shall be the same as the TEFA unit rate
5 surcharges in effect for calendar year 2001.

6 (b) **The** No TEFA unit rate surcharges shall be in effect **for**
7 after calendar year **2008** 2007 **shall be reduced on January 1,**
8 **2009 and January 1, 2010 by the following percentages:**

January 1, 2009	25%
January 1, 2010	50%]

12
13 e. The utility's filing with the board to implement the rate
14 changes provided for by this act shall include proof of revenue
15 schedules that show for each rate schedule included in the utility's
16 tariff, aggregated by unit-based energy tax unit tax classes, the
17 number of customers billed under the rate schedule, the billing
18 determinants of such customers (i.e. the kilowatts of billing demand
19 and kilowatthours of electric energy consumed, and the million
20 cubic feet/decatherm subject to gas capacity-related charges and
21 decatherm of gas consumed) and the associated revenue, both as
22 booked in the base year and on a pro forma basis reflecting the rate
23 changes implemented pursuant to this act. The proof of revenue
24 shall additionally show the amount of unit-based energy taxes
25 included in the base year revenue as booked, the unit-based energy
26 taxes that would have been collected at the unit-based energy tax
27 unit tax rates effective January 1, 1997, if different, as well as the
28 corporation business tax, sales and use tax and transitional energy
29 facility assessment revenue that would have been collected or
30 received on a pro forma basis if the rates implemented pursuant to
31 this act had been in effect in the base year.

32 f. The board may, in its discretion, permit the rate changes
33 provided for this act to be implemented as part of a pending base
34 rate case or other proceeding in which the utility's rates are to be
35 changed, provided that the effective date of the changes is not
36 delayed beyond the date on which the changes would have been
37 implemented under subsection c. of this section. The board may
38 also, pursuant to its powers provided by law, permit or require
39 further modifications in the implementation of this section to
40 address unforeseen consequences arising out of the implementation
41 of this act.

42 g. Customers of the utility who are exempt from the sales and
43 use tax imposed on sales of gas and/or electricity or as a result of
44 rate changes occurring prior to the effective date of this act or for
45 other valid reasons are due a refund of sales or use tax inadvertently
46 imposed on such customers as a result of implementing the rate
47 changes provided for by this act shall file with the State Treasurer
48 to obtain such refunds. The State Treasurer shall promptly notify

1 the utility of customers granted refunds under this provision in
2 order to prevent additional collections of the sales and use tax from
3 such customers.

4 h. Public utilities providing telecommunications service
5 regulated by the board shall file for the board's review and approval
6 revised tariffs that eliminate from the rates applicable to such
7 service the excise tax liability included therein pursuant to
8 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
9 corporation business tax calculated using the methodology used in
10 calculating the adjustment factor set forth in paragraph (2) of
11 subsection c. of this section. Subsection d. of this section shall not
12 apply to telecommunication utilities, and telecommunication
13 utilities subject to a plan of regulation other than rate base/rate of
14 return shall additionally not be required to file the rate of return
15 information required by paragraph (2) of subsection c. Such
16 utilities shall, however, include a narrative and/or other
17 documentation as required by the board to support the
18 reasonableness of the after-tax income, which may be adjusted to
19 eliminate the effect of non-recurring or other atypical events, on
20 which the corporate business tax inclusion in rates is based.
21 Telecommunications utilities shall comply with all other applicable
22 provisions of this section.

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

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

36 (3) For the purposes of this section, "cogenerator" means a
37 person or business entity that owns or operates a cogeneration
38 facility in the State of New Jersey, which facility is a plant,
39 installation or other structure whose primary purpose is the
40 sequential production of electricity and steam or other forms of
41 useful energy which are used for industrial, commercial, heating or
42 cooling purposes, and which is designated by the Federal Energy
43 Regulatory Commission, or its successor, as a "qualifying facility"
44 pursuant to the provisions of the "Public Utility Regulatory Policies
45 Act of 1978," Pub.L.95-617.

46 (cf: P.L.2006, c.40, s.1)

47

48 2. Section 2 of P.L.1997, c.167 (C.52:27D-439) is amended to

1 read as follows:

2 2. a. **【Commencing July 1, 1997 there】** There is established
3 the "Energy Tax Receipts Property Tax Relief Fund" as a special
4 dedicated fund in the State Treasury into which there shall be
5 credited annually **【, commencing in State fiscal year 1998,】** the sum
6 of **【\$740,000,000 or the amount determined pursuant to subsection**
7 **e. of this section】** the total annual revenue from the following: net
8 payments under the "Sales and Use Tax Act," P.L.1966, c.30
9 (C.54:32B-1 et seq.) from sales and use of energy or utility services,
10 net payments under the Corporation Business Tax Act (1945),
11 P.L.1945, c.162 (C.54:10A-1 et seq.) from gas, electric, and gas and
12 electric public utilities, whether municipal or otherwise, that were
13 subject to tax pursuant to the provisions of P.L.1940, c.5
14 (C.54:30A-49 et seq.) prior to January 1, 1998, net payments under
15 the Corporation Business Tax Act (1945), P.L.1945, c.162
16 (C.54:10A-1 et seq.) from telecommunications public utilities that
17 were subject to tax pursuant to the provisions of P.L.1940, c.4
18 (C.54:30A-16 et seq.) as of April 1, 1997, net payments under
19 P.L.1940, c.5 (C.54:30A-49 et seq.) from sewerage and water
20 corporations, and net payments under the "Transitional Energy
21 Facility Assessment Act," P.L.1997, c.162 (C.54:30A-100 through
22 C.54:30A-113), **【and such sums from】** but net of \$403,000,000
23 from those sources, which amount, but no greater amount thereof,
24 may be credited to the General Fund as **【may be necessary to**
25 **provide that the annual amount credited to the fund shall equal**
26 **\$740,000,000 or the amount determined pursuant to subsection e. of**
27 **this section】** general State revenue.

28 b. **【Notwithstanding the provisions of P.L.1940, c.4**
29 **(C.54:30A-16 et seq.), P.L.1940, c.5 (C.54:30A-49 et seq.) and any**
30 **other provision of law concerning the apportionment and**
31 **distribution by the State of taxes paid by public utilities,**

32 (1)**【** There shall be paid **【during the State fiscal year 1998 and】**
33 during each fiscal year **【thereafter】** from the "Energy Tax Receipts
34 Property Tax Relief Fund" to the municipalities of the State **【the**
35 **sum of \$740,000,000 or】** the amount determined pursuant to
36 subsection e. of this section.

37 **【(2)** A portion of the \$740,000,000 or the amount determined
38 pursuant to subsection e. of this section shall be allocated in a
39 manner that provides that each municipality shall receive an amount
40 not less than the largest annual amount received or to be received
41 by the municipality from:

42 (a) the distribution of \$685,000,000 from the proceeds of the
43 public utilities franchise and gross receipts taxes under P.L.1940,
44 c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.)
45 in calendar year 1994, 1995 or 1996; or

46 (b) the distribution of \$685,000,000 from the proceeds of the
47 public utilities franchise and gross receipts taxes under P.L.1940,

1 c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.)
2 or from taxes and assessments collected in replacement of such
3 taxes as released by the Division of Local Government Services in
4 the Department of Community Affairs as fiscal year 1998 estimated
5 franchise and gross receipts taxes State aid distributions by
6 municipality prior to the certification of apportionment of such
7 funds by the Director of the Division of Taxation and the amounts
8 required pursuant to subsection d. of this section.

9 (3) A portion of the \$740,000,000 or the amount determined
10 pursuant to subsection e. of this section shall be allocated in a
11 manner that provides that each municipality shall receive an amount
12 equal to the difference, if any, between the amount it received
13 pursuant to paragraph (2) of this subsection and the sum of the
14 amounts that the municipality received pursuant to the certification
15 made in the 1997 calendar year released by the Division of Local
16 Government Services in the Department of Community Affairs as
17 the fiscal year 1998 estimated franchise and gross receipts taxes
18 State aid distribution of \$685,000,000 and the certification of the
19 1997 fiscal year distribution of \$45,000,000.

20 (4) The portion of the \$740,000,000 or the amount, not more
21 than \$755,000,000, determined pursuant to subsection e. of this
22 section remaining after the allocations pursuant to paragraphs (2)
23 and (3) of this subsection shall be distributed in proportion to the
24 amounts distributed pursuant to paragraph (2) of this subsection. **】**

25 c. **【(1)】** The funds distributed pursuant to **【**paragraphs (2) and
26 **】**(4) of subsection b. of **【**this section shall be distributed annually to
27 municipalities on the following schedule: **【**July 15, 35% of the total
28 amount due;**】** August 1, **【10%】** 45% of the total amount due;
29 September 1, 30% of the total amount due; October 1, 15% of the
30 total amount due; November 1, 5% of the total amount due; and
31 December 1, 5% of the total amount due.

32 **【(2)】** The funds distributed pursuant to paragraph (3) of
33 subsection b. of this section, prior to January 1, 2002 for all
34 municipalities, and distributed after January 1, 2002 for
35 municipalities operating on a State fiscal year basis, shall be
36 distributed annually to those municipalities on or before June 30.
37 The funds distributed after January 1, 2002 pursuant to paragraph
38 (3) of subsection b. of this section to calendar year municipalities
39 shall be distributed annually on or before July 15. **】**

40 d. **【**The allocation set forth in paragraph (2) of subsection b. of
41 this section shall be adjusted to increase each appropriate municipal
42 distribution by the amount necessary to:

43 (1) make corrections to apportionment valuations or distribution
44 values made by the Director of the Division of Taxation in the
45 Department of the Treasury pursuant to R.S.54:30-2; and

46 (2) correct equitable distortions, as determined by the State
47 Treasurer, resulting from the application of section 2 of P.L.1980,

1 c.10 (C.54:30A-24.1) and section 4 of P.L.1980, c.11 (C.54:30A-
2 61.1).

3 The director shall report to the Legislature, on or before July 15,
4 1997, the amount and distribution of the corrections pursuant to
5 paragraphs (1) and (2) of this subsection. **】** (Deleted by amendment,
6 P.L. , c.) (pending before the Legislature as this bill)

7 e. **【The】** If the amount credited to the "Energy Tax Receipts
8 Property Tax Relief Fund" **【shall be \$745,000,000 for State fiscal**
9 **year 1999, \$750,000,000 for each of State fiscal years 2000 and**
10 **2001, \$755,000,000 for State fiscal year 2002, and】** for **【each】** a
11 fiscal year **【thereafter the】** is an amount **【equal to】** less than or
12 greater than the amount credited in the prior fiscal year **【multiplied**
13 **by the sum of 1.0 and the index rate or zero, whichever is greater.**
14 As used in this section, "index rate" means the rate of annual
15 percentage increase, rounded to the nearest half-percent, in the
16 Implicit Price Deflator for State and Local Government Purchases
17 of Goods and Services, computed and published quarterly by the
18 United States Department of Commerce, Bureau of Economic
19 Analysis, calculating the annual increase therein at the second
20 calendar quarter which occurred in the next preceding State fiscal
21 year. The Director of the Division of Local Government Services
22 shall promulgate annually the index rate to apply in the next
23 following State fiscal year which shall be the same as the index rate
24 determined pursuant to section 4 of P.L.1983, c.49 (C.40A:4-
25 45.1a) **】** the amount of aid distributed to a municipality shall be
26 reduced or increased, as the case may be, in proportion to the
27 amount of aid distributed to the municipality in the prior State fiscal
28 year. Any amount of aid distributed to a municipality in excess of
29 the amount distributed to the municipality from the "Energy Tax
30 Receipts Property Tax Relief Fund" during the State fiscal year
31 2002 shall be used solely and exclusively by each municipality for
32 the purpose of reducing the amount the municipality is required to
33 raise by local property tax levy for municipal purposes.

34 f. Notwithstanding any other provision of this section or any
35 other provision of law to the contrary, if any municipality paid a
36 county for an amount for county purposes from the amount it
37 received from its apportionment of taxes according to the
38 limitations on the municipalities apportionment under section 4 of
39 P.L.1980, c.11 (C.54:30A-61.1), the highest amount of that
40 payment during calendar years 1994, 1995, and 1996 shall be paid
41 annually directly to that county by the State Treasurer and be
42 deducted from that municipality's distribution otherwise determined
43 pursuant to paragraph (2) of subsection b. of this section.
44 (cf: P.L.2002, c.3, s.1)

45

46 3. Section 4 of P.L.1997, c.167 (C.52:27D-441) is amended to
47 read as follows:

1 4. a. The annual appropriations act for each State fiscal year
2 commencing with fiscal year **【1998】** 2009 shall appropriate the full
3 amount credited to the "Energy Tax Receipts Property Tax Relief
4 Fund" pursuant to the provisions of section 2 of P.L.1997,
5 c.167 (C.52:27D-439), and distribute to each municipality during
6 the fiscal year **【an amount not less than \$740,000,000 or】**
7 exclusively from the sources credited to the fund pursuant to that
8 section, the amount determined pursuant to subsection e. of section
9 2 of P.L.1997, c.167 (C.52:27D-439) from the "Energy Tax
10 Receipts Property Tax Relief Fund" pursuant to the provisions of
11 that section **【2 of P.L.1997, c.167 (C.52:27D-439), for the purposes**
12 **of that fund】.**

13 b. If the provisions of subsection a. of this section are not met
14 on the effective date of an annual appropriations act for the State
15 fiscal year, or if an amendment or supplement to an annual
16 appropriations act for the State fiscal year should violate the
17 provisions of subsection a. of this section, the Director of the
18 Division of Budget and Accounting in the Department of the
19 Treasury shall, not later than five days after the enactment of the
20 annual appropriations act, or an amendment or supplement thereto,
21 that violates the provisions of subsection a. of this section, certify to
22 the Director of the Division of Taxation that the requirements of
23 subsection a. of this section have not been met.

24 c. The Director of the Division of Taxation shall, no later than
25 five days after certification by the Director of the Division of
26 Budget and Accounting in the Department of the Treasury pursuant
27 to subsection b. of this section that the provisions of subsection a.
28 of this section have not been met or have been violated by an
29 amendment or supplement to the annual appropriations act, notify
30 all taxpayers that have filed a return under the Corporation Business
31 Tax (1946), P.L.1945, c.162 (C.54:10A-1 et seq.) during the
32 previous calendar year, other than taxpayers that are gas, electric,
33 and gas and electric, or telecommunications public utilities as
34 defined pursuant to subsection (q) of section 4 of P.L.1945,
35 c.162 (C.54:10A-4) pursuant to the amendment to that section 4
36 made in section 2 of P.L.1997, c.162, that the taxpayer shall have
37 no liability pursuant to the provisions of P.L.1945, c.162 for any
38 corporation business tax for the taxpayer's current privilege period,
39 notwithstanding any other provision of law to the contrary.
40 (cf: P.L.1997, c.167, s.4)

41

42 4. Section 3 of P.L.1997, c.167 (C. 52:27D-440) is repealed.

43

44 5. This act shall take effect immediately.

STATEMENT

This bill puts an end to the practice of overtaxing New Jersey's energy consumers and short changing New Jersey's municipalities. It ends the repeated, extended imposition of the "temporary" transitional energy facilities assessment (TEFA), limits the amount of the State use portion of total annual State energy tax revenues to the amount the State budget "skimmed" in fiscal year 1998, and ensures that the balance of annual State revenues from energy-sector taxes are paid-out annually as municipal aid.

TEFA was created in 1997 when the taxation of utilities was shifted from a gross receipts tax to a combination of the corporation business tax and the sales and use tax. The TEFA was established as a transitional mechanism to phase in over several years the net reduction in tax revenue from utilities. Legislation extended the original phase-in schedule in 2001 and again in 2004 and 2006. This bill will end the continuing extension of this "transitional" tax that has become a rather permanent, 10-year general revenue source that supports the growing State budget and is embedded within electricity and natural gas commodity prices charged to New Jersey consumers.

This bill will also limit the amount of the State-use portion of total annual State energy tax revenues. This is the portion of total energy sector-related State tax revenue that the State uses as general revenue to support the annual State budget. The State budget will be limited to retaining the amount "skimmed" in fiscal year 1998, the first year under the 1997 energy tax reform law. In 1998 the State retained \$403 million from energy taxes and distributed \$740 million to municipalities. In 2008, the State will retain \$829 million, while distributing \$789 million.

The bill also changes the crediting of these tax revenues to the "Energy Tax Receipts Property Tax Relief Fund," and requires a larger annual appropriation and distribution of tax revenues to municipalities to support local property tax relief. With the price of energy and natural gas rising substantially over the last ten years, along with a steady growth in energy consumption, the related growth in energy-related State revenue has mostly accrued to the support of the growth in State budget spending. This is demonstrated by the over 100% growth in the amount of the annual State retention of this revenue. With the capping of this retention at the 1998 level of \$403 million, and assuming only current levels of revenue, municipal aid from this source will grow by over \$400 million. Future revenue growth, almost assuredly attributable to increased energy consumption and widely anticipated increases in energy pricing, will be distributed for municipal aid to each municipality in proportion to each municipality's prior year State aid distributed from this source.