

48:2-21

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 40

NJSA: 48:2-21 (Alters phase-out schedule of transitional energy facility assessment unit rate surcharges)

BILL NO: A4709 (Substituted for S1991)

SPONSOR(S) Caraballo and Smith

DATE INTRODUCED: June 26, 2006

COMMITTEE: **ASSEMBLY:** Budget

SENATE:

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DATE OF PASSAGE: **ASSEMBLY:** July 8, 2006

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FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

A4709

[SPONSOR'S STATEMENT:](#) (Begins on page 12 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

S1991

[SPONSOR'S STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

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P.L. 2006, CHAPTER 40, *approved July 8, 2006*
Assembly, No. 4709

1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and amending P.L.1997, c.162.

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

7
8 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
9 read as follows:

10 67. a. As used in this section:

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

16 "Base year" means the calendar year 1996;

17 "Board" means the Board of Public Utilities;

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

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

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

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

$$23 \quad A e, g = (I e, g) \times [Rs / (1 - Re)]$$

24

$$25 \quad \frac{\text{-----}}{(Br e, g)}$$

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

46 "Rs" means the corporation business tax rate, expressed as a
47 decimal;

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

1 expressed as a decimal; and

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

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

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

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

1 changes provided for, and in the manner set forth in paragraph (2)
2 of this subsection.

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

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

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

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

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

48 (i) Carrying costs and present values are to be computed using

1 the weighted average after-tax rate of return approved by the board
2 in the utility's last base rate proceeding.

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

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

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

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

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

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

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

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

36

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

40

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

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

1 1998 liability), and (ii) the TEFA liabilities of those utilities and
 2 entities in all years following the year 1998 through the year in
 3 which a determination is being made pursuant to this subsection
 4 (the determination year); and

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

11	Determination Year	% of
12		Year 1998
13		TEFA
14	-----	
15	1999	80%
16	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 ~~2006~~ 2008 shall be the same as the TEFA unit rate
5 surcharges in effect for calendar year 2001.

6 (b) The TEFA unit rate surcharges in effect for calendar year
7 ~~2006~~ 2008 shall be reduced ~~annually~~ on January 1, ~~2007~~
8 2009 ~~through~~ and January 1, 2010 by the following percentages:

9		
10	January 1, 2007	20%
11	January 1, 2008	40%
12	January 1, 2009	60% <u>25%</u>
13	January 1, 2010	80% <u>50%</u>
14		

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

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

44 g. Customers of the utility who are exempt from the sales and
45 use tax imposed on sales of gas and/or electricity or as a result of
46 rate changes occurring prior to the effective date of this act or for
47 other valid reasons are due a refund of sales or use tax inadvertently

1 imposed on such customers as a result of implementing the rate
2 changes provided for by this act shall file with the State Treasurer
3 to obtain such refunds. The State Treasurer shall promptly notify
4 the utility of customers granted refunds under this provision in
5 order to prevent additional collections of the sales and use tax from
6 such customers.

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

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

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

39 (3) For the purposes of this section, "cogenerator" means a
40 person or business entity that owns or operates a cogeneration
41 facility in the State of New Jersey, which facility is a plant,
42 installation or other structure whose primary purpose is the
43 sequential production of electricity and steam or other forms of
44 useful energy which are used for industrial, commercial, heating or
45 cooling purposes, and which is designated by the Federal Energy
46 Regulatory Commission, or its successor, as a "qualifying facility"

1 pursuant to the provisions of the "Public Utility Regulatory Policies
2 Act of 1978," Pub.L.95-617.
3 (cf: P.L.2004, c.43, s.2)

4

5 2. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill will freeze transitional energy facility assessment
11 (TEFA) unit rate surcharges at calendar year 2006 rates for two
12 years, and then reduce those surcharges in calendar years 2009 and
13 2010. After December 31, 2010 the TEFA assessments will be
14 eliminated to comport with the original planned phase-out of the tax
15 as had been proposed in the 1997 energy tax reform law.

16 TEFA was created in 1997 when the taxation of utilities was
17 shifted from a gross receipts tax to a combination of the corporation
18 business tax and the sales and use tax. The TEFA was established as
19 a transitional mechanism to phase in over several years the net
20 reduction in tax revenue from utilities. Legislation extended the
21 original phase-in schedule in 2001 and again in 2004. Under the
22 current schedule the TEFA revenue would be reduced from an
23 estimated \$227 million in FY 2006 to \$186 million in FY 2007.

24

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27

28 Alters phase-out schedule of transitional energy facility
29 assessment unit rate surcharges.

ASSEMBLY, No. 4709

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 26, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO
District 29 (Essex and Union)

Co-Sponsored by:

Senator B.Smith

SYNOPSIS

Alters phase-out schedule of transitional energy facility assessment unit rate surcharges.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/10/2006)

A4709 CARABALLO

2

1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and amending P.L.1997, c.162.

4

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

7

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

10 67. a. As used in this section:

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

16 "Base year" means the calendar year 1996;

17 "Board" means the Board of Public Utilities;

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

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

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

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

$$23 \quad A e, g = \frac{(I e, g) \times [Rs / (1 - Re)]}{24 \quad \text{-----}} \\ 25 \quad (Br e, g)$$

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
 46 "Rs" means the corporation business tax rate, expressed as a
 47 decimal;

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

1 expressed as a decimal; and

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

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

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

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

1 changes provided for, and in the manner set forth in paragraph (2)
2 of this subsection.

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

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

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

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

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

48 (i) Carrying costs and present values are to be computed using

1 the weighted average after-tax rate of return approved by the board
2 in the utility's last base rate proceeding.

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

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

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

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

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

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

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

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

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

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

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

1 1998 liability), and (ii) the TEFA liabilities of those utilities and
 2 entities in all years following the year 1998 through the year in
 3 which a determination is being made pursuant to this subsection
 4 (the determination year); and

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

11	Determination Year	% of
12		Year 1998
13		TEFA
14	-----	
15	1999	80%
16	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 ~~2006~~ 2008 shall be the same as the TEFA unit rate
 5 surcharges in effect for calendar year 2001.

6 (b) The TEFA unit rate surcharges in effect for calendar year
 7 ~~2006~~ 2008 shall be reduced ~~annually~~ on January 1, ~~2007~~
 8 ~~2009~~ ~~through~~ ~~and~~ January 1, 2010 by the following percentages:

9		
10	January 1, 2007	20%
11	January 1, 2008	40%
12	January 1, 2009	60% 25%
13	January 1, 2010	80% 50%
14		

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

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

44 g. Customers of the utility who are exempt from the sales and
 45 use tax imposed on sales of gas and/or electricity or as a result of
 46 rate changes occurring prior to the effective date of this act or for
 47 other valid reasons are due a refund of sales or use tax inadvertently

1 imposed on such customers as a result of implementing the rate
2 changes provided for by this act shall file with the State Treasurer
3 to obtain such refunds. The State Treasurer shall promptly notify
4 the utility of customers granted refunds under this provision in
5 order to prevent additional collections of the sales and use tax from
6 such customers.

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

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

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

39 (3) For the purposes of this section, "cogenerator" means a
40 person or business entity that owns or operates a cogeneration
41 facility in the State of New Jersey, which facility is a plant,
42 installation or other structure whose primary purpose is the
43 sequential production of electricity and steam or other forms of
44 useful energy which are used for industrial, commercial, heating or
45 cooling purposes, and which is designated by the Federal Energy
46 Regulatory Commission, or its successor, as a "qualifying facility"

1 pursuant to the provisions of the "Public Utility Regulatory Policies
2 Act of 1978," Pub.L.95-617.
3 (cf: P.L.2004, c.43, s.2)

4

5 2. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill will freeze transitional energy facility assessment
11 (TEFA) unit rate surcharges at calendar year 2006 rates for two
12 years, and then reduce those surcharges in calendar years 2009 and
13 2010. After December 31, 2010 the TEFA assessments will be
14 eliminated to comport with the original planned phase-out of the tax
15 as had been proposed in the 1997 energy tax reform law.

16 TEFA was created in 1997 when the taxation of utilities was
17 shifted from a gross receipts tax to a combination of the corporation
18 business tax and the sales and use tax. The TEFA was established as
19 a transitional mechanism to phase in over several years the net
20 reduction in tax revenue from utilities. Legislation extended the
21 original phase-in schedule in 2001 and again in 2004. Under the
22 current schedule the TEFA revenue would be reduced from an
23 estimated \$227 million in FY 2006 to \$186 million in FY 2007.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4709

STATE OF NEW JERSEY

DATED: JUNE 28, 2006

The Assembly Budget Committee reports favorably Assembly Bill No. 4709.

Assembly Bill No. 4709 will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2006 rates for two years, and then reduce those surcharges in calendar years 2009 and 2010. After December 31, 2010 the TEFA assessments will be eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

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. Under the current schedule the TEFA revenue would be reduced from an estimated \$227 million in FY 2006 to \$186 million in FY 2007.

FISCAL IMPACT:

It has been estimated that the TEFA surcharge freeze will increase State revenues by approximately \$57 million for State Fiscal Year 2006-2007.

SENATE, No. 1991

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 26, 2006

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Alters phase-out schedule of transitional energy facility assessment unit rate surcharges.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and amending P.L.1997, c.162.

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

7
8 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
9 read as follows:

10 67. a. As used in this section:

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

16 "Base year" means the calendar year 1996;

17 "Board" means the Board of Public Utilities;

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

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

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

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

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

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

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

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

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

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

1 common equity achieved in the base year, both as booked and as
2 adjusted in accordance with the foregoing. The calculation shall be
3 made employing the methodology set forth in N.J.A.C.14:12-
4 4.2(b)1, and shall separately show the effect of reflecting
5 adjustments to the calculation, if any, that may have been employed
6 historically in establishing the utility's rate of return on common
7 equity allowed for ratemaking purposes. The utility's filing shall
8 also include copies of its audited financial statements for the base
9 year and associated quarterly and other reports filed with the
10 Securities and Exchange Commission.

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

20

$$21 \quad A e, g = \frac{(I e, g) \times [Rs / (1 - Re)]}{22 \quad \text{-----}} \\ 23 \quad (Br e, g)$$

24

25 where:

26

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

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

37 "Br e, g" means the utility's base year revenue from base rates
38 applicable to electric or gas sales, or both, and transportation
39 service subject to the board's jurisdiction, but excluding sales that
40 were exempt from unit-based energy taxes formerly imposed
41 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
42 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

43

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

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

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

49 The utility shall account for the changes in tax liability provided

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

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

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

48 If the utility's requirement for cash working capital is increased
49 as a result of the changes in rates and tax payments implemented

1 pursuant to this act, the utility may accrue carrying costs, calculated
2 at its last overall rate of return allowed by the board and applied on
3 a simple annual interest basis without compounding, on the
4 increased working capital requirement and request recovery of such
5 carrying costs in a rate proceeding before the board.

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

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

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

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

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

47 (ii) The accumulated balance of such negative net deferred taxes
48 shall include net deferred taxes associated with all assets and
49 liabilities originally placed in service by the utility and held by the

1 utility or a company affiliated with the utility regardless of whether
2 or not such assets continue to be subject to regulation by the New
3 Jersey Board of Public Utilities.

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

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

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

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

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

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

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

30

31	January 1, 1999,	20%
32	January 1, 2000,	40%
33	January 1, 2001,	60%

34

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

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

47 (b) The sum of (i) the total of each remitter's base year liability,
48 as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii)
49 the cumulative TEFA obligation, defined as the sum through the

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1 determination year of the amounts calculated by multiplying, for the
2 applicable year, the percentage in the second column of the
3 following table:

4	Determination Year	% of
5		Year 1998
6		TEFA
7	-----	
8	1999	80%
9	2000	60%

10

11 by the Year 1998 TEFA,

12

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

24

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

44

(5) (a) The TEFA unit rate surcharges for calendar years 2002
45 through **[2006]** 2008 shall be the same as the TEFA unit rate
46 surcharges in effect for calendar year 2001.

47

(b) The TEFA unit rate surcharges in effect for calendar year
48 **[2006]** 2008 shall be reduced **[annually]** on January 1, **[2007]**
49 2009 **[through]** and January 1, 2010 by the following percentages:

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1	【 January 1, 2007	20%
2	January 1, 2008	40%】
3	January 1, 2009	【60%】 <u>25%</u>
4	January 1, 2010	【80%】 <u>50%</u>

5
6 e. The utility's filing with the board to implement the rate
7 changes provided for by this act shall include proof of revenue
8 schedules that show for each rate schedule included in the utility's
9 tariff, aggregated by unit-based energy tax unit tax classes, the
10 number of customers billed under the rate schedule, the billing
11 determinants of such customers (i.e. the kilowatts of billing demand
12 and kilowatthours of electric energy consumed, and the million
13 cubic feet/deca-therm subject to gas capacity-related charges and
14 deca-therm of gas consumed) and the associated revenue, both as
15 booked in the base year and on a pro forma basis reflecting the rate
16 changes implemented pursuant to this act. The proof of revenue
17 shall additionally show the amount of unit-based energy taxes
18 included in the base year revenue as booked, the unit-based energy
19 taxes that would have been collected at the unit-based energy tax
20 unit tax rates effective January 1, 1997, if different, as well as the
21 corporation business tax, sales and use tax and transitional energy
22 facility assessment revenue that would have been collected or
23 received on a pro forma basis if the rates implemented pursuant to
24 this act had been in effect in the base year.

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

35 g. Customers of the utility who are exempt from the sales and
36 use tax imposed on sales of gas and/or electricity or as a result of
37 rate changes occurring prior to the effective date of this act or for
38 other valid reasons are due a refund of sales or use tax inadvertently
39 imposed on such customers as a result of implementing the rate
40 changes provided for by this act shall file with the State Treasurer
41 to obtain such refunds. The State Treasurer shall promptly notify
42 the utility of customers granted refunds under this provision in
43 order to prevent additional collections of the sales and use tax from
44 such customers.

45 h. Public utilities providing telecommunications service
46 regulated by the board shall file for the board's review and approval
47 revised tariffs that eliminate from the rates applicable to such
48 service the excise tax liability included therein pursuant to
49 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the

1 corporation business tax calculated using the methodology used in
2 calculating the adjustment factor set forth in paragraph (2) of
3 subsection c. of this section. Subsection d. of this section shall not
4 apply to telecommunication utilities, and telecommunication
5 utilities subject to a plan of regulation other than rate base/rate of
6 return shall additionally not be required to file the rate of return
7 information required by paragraph (2) of subsection c. Such
8 utilities shall, however, include a narrative and/or other
9 documentation as required by the board to support the
10 reasonableness of the after-tax income, which may be adjusted to
11 eliminate the effect of non-recurring or other atypical events, on
12 which the corporate business tax inclusion in rates is based.
13 Telecommunications utilities shall comply with all other applicable
14 provisions of this section.

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

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

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

38 (cf: P.L.2004, c.43, s.2)

39

40 2. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill will freeze transitional energy facility assessment
46 (TEFA) unit rate surcharges at calendar year 2006 rates for two
47 years, and then reduce those surcharges in calendar years 2009 and
48 2010. After December 31, 2010 the TEFA assessments will be
49 eliminated to comport with the original planned phase-out of the tax

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1 as had been proposed in the 1997 energy tax reform law.

2 TEFA was created in 1997 when the taxation of utilities was
3 shifted from a gross receipts tax to a combination of the corporation
4 business tax and the sales and use tax. The TEFA was established as
5 a transitional mechanism to phase in over several years the net
6 reduction in tax revenue from utilities. Legislation extended the
7 original phase-in schedule in 2001 and again in 2004. Under the
8 current schedule the TEFA revenue would be reduced from an
9 estimated \$227 million in FY 2006 to \$186 million in FY 2007.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1991

STATE OF NEW JERSEY

DATED: JUNE 30, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1991.

This bill will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2006 rates for two years, and then reduce those surcharges in calendar years 2009 and 2010. After December 31, 2010 the TEFA assessments will be eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

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. Under the current schedule the TEFA revenue would be reduced from an estimated \$227 million in FY 2006 to \$186 million in FY 2007.

As reported, this bill is identical to Assembly Bill No. 4709.

FISCAL IMPACT:

It has been estimated that the TEFA surcharge freeze will increase State revenues by approximately \$57 million for State Fiscal Year 2006-2007.