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P.L. 2003, CHAPTER 24, *approved February 27, 2003*  
Assembly Committee Substitute (*Third Reprint*) for  
Assembly, No. 2165

1 AN ACT concerning government energy aggregation, amending <sup>2</sup>and  
2 supplementing<sup>2</sup> P.L.1999, c.23, and repealing section 44 of  
3 P.L.1999, c.23.

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

7  
8 <sup>2</sup>1. (New section) A government aggregator that is a municipality  
9 or a county may establish and operate a government energy  
10 aggregation program pursuant either to the provisions of the rules and  
11 regulations adopted by the Board of Public Utilities pursuant to  
12 section 2 of P.L. , c. (C. ) (pending in the Legislature as this  
13 bill) or to the provisions of P.L.1999, c.23 (C.48:3-49 et seq). As  
14 used in this section "government aggregator" and "government energy  
15 aggregation program" shall have the same meaning as set forth in  
16 section 3 of P.L.1999, c.23 (C.48:3-51).<sup>2</sup>

17  
18 <sup>2</sup>2. a. (New section) The <sup>3</sup>[Board of Public Utilities shall adopt,  
19 pursuant to the]<sup>3</sup> provisions of the "Administrative Procedure Act."  
20 P.L.1968, c.410 (C.52:14B-1 et seq.) <sup>3</sup>to the contrary  
21 notwithstanding<sup>3</sup> , <sup>3</sup>within 90 days of the effective date of P.L. , c.  
22 (C. ) (pending in the Legislature as this bill) the Board of Public  
23 Utilities shall adopt<sup>3</sup> rules and regulations authorizing an electric  
24 public utility or a gas public utility, upon the request of the governing  
25 body of a county or municipality, to assist a government aggregator  
26 that is a municipality or a county in establishing a government energy  
27 aggregation program. <sup>3</sup>The rules and regulations adopted pursuant to  
28 this section shall be effective as rules and regulations immediately  
29 upon filing with the Office of Administrative Law and shall be effective  
30 for a period not to exceed 18 months, and shall, thereafter, be  
31 amended, adopted or readopted by the board pursuant to the  
32 provisions of the "Administrative Procedure Act."<sup>3</sup> The rules and  
33 regulations adopted pursuant to this section shall set forth a process  
34 for the establishment of a government energy aggregation that (1)  
35 requires a government aggregator that is a municipality or a county to

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AAP committee amendments adopted September 19, 2002.

<sup>2</sup> Senate SEG committee amendments adopted December 12, 2002.

<sup>3</sup> Senate floor amendments adopted December 16, 2002.

1 establish a government energy aggregation program by ordinance or  
2 resolution, as appropriate, and to award a contract for the government  
3 energy aggregation program to a licensed electric power supplier or  
4 licensed gas supplier pursuant to the "Local Public Contracts Law,"  
5 P.L.1971, c.198 (C.40A:11-1 et seq.)<sup>3</sup>, provided, however, that such  
6 an award may be made on the basis of the most advantageous  
7 proposal, price and other factors considered<sup>3</sup>; (2) includes residential  
8 customers on an opt-out basis prior to the solicitation of bids from a  
9 licensed electric power supplier or licensed gas supplier and non-  
10 residential customers on an opt-in basis; (3) requires an electric public  
11 utility or gas public utility, as the case may be, to notify utility  
12 customers, after the adoption of an ordinance or resolution, of the  
13 proposed government energy aggregation program and of the  
14 customer's right to decline to participate in the program; (4) requires  
15 an electric public utility or a gas public utility, as the case may be, to  
16 provide appropriate customer information to a government aggregator  
17 that is a municipality or a county after the government aggregator has  
18 awarded a contract for a government energy aggregation program to  
19 a licensed electric power supplier or licensed gas supplier, as the case  
20 may be; (5) provides that an electric public utility or a gas public  
21 utility shall exercise reasonable care in the disclosure of customer  
22 information pursuant to this section but shall not be responsible for  
23 errors <sup>3</sup>[of] or<sup>3</sup> omissions in the preparation or the content of the  
24 customer information; (6) provides that an electric public utility or gas  
25 public utility shall not disclose to any governing body, licensed electric  
26 power supplier or licensed gas supplier the name, load profile, or any  
27 other customer information about a non-residential customer prior to  
28 that non-residential customer opting in to the government energy  
29 aggregation program; and (7) authorizes electric public utilities and  
30 gas public utilities to prioritize requests made by governing bodies  
31 pursuant to this section.

32 b. The rules and regulations adopted by the board pursuant to this  
33 section shall provide for the recovery by an electric public utility or a  
34 gas public utility of all reasonable costs incurred by the electric public  
35 utility or gas public utility in implementing a government energy  
36 aggregation and all reasonable costs incurred in assisting a governing  
37 body considering a government energy aggregation program. The  
38 rules and regulations shall provide that the costs allowed to be  
39 recovered pursuant to this subsection shall be recovered on a timely  
40 basis from the governing body or government energy aggregator that  
41 is a municipality or a county, as the case may be. No electric public  
42 utility or gas public utility shall be required to seek recovery of costs  
43 for a government energy aggregation program or costs for assisting  
44 a governing body considering a government energy aggregation  
45 program from the electric public utility's or gas public utility's  
46 shareholders or ratepayers.

1        c. As used in this section "government aggregator," "government  
2 energy aggregation program," "electric power supplier" and " gas  
3 supplier" shall have the same meaning as set forth in section 3 of  
4 P.L.1999, c.23 (C.48:3-51).<sup>2</sup>

5  
6        <sup>2</sup>[1.] 3.<sup>2</sup> Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to  
7 read as follows:

8        36. a. Notwithstanding any provisions of the "Administrative  
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
10 the board, in consultation with the Division of Consumer Affairs in the  
11 Department of Law and Public Safety, shall initiate a proceeding and  
12 shall adopt, after notice, provision of the opportunity for comment,  
13 and public hearing, interim consumer protection standards for electric  
14 power suppliers or gas suppliers, within 90 days of February 9, 1999,  
15 including, but not limited to, standards for collections, credit,  
16 contracts, authorized changes of an energy consumer's electric power  
17 supplier or gas supplier, for the prohibition of discriminatory  
18 marketing, for advertising and for disclosure. Such standards shall be  
19 effective as regulations immediately upon filing with the Office of  
20 Administrative Law and shall be effective for a period not to exceed  
21 18 months, and may, thereafter, be amended, adopted or readopted by  
22 the board in accordance with the provisions of the "Administrative  
23 Procedure Act."

24        (1) Contract standards shall include, but not be limited to,  
25 requirements that electric power supply contracts or gas supply  
26 contracts must conspicuously disclose the duration of the contract;  
27 state the price per kilowatt hour or per therm or other pricing  
28 determinant approved by the board; have the customer's written  
29 signature; the customer's electronic signature; an audio recording of  
30 a telephone call initiated by the customer; independent, third-party  
31 verification, in accordance with section 37 of P.L.1999, c.23  
32 (C.48:3-86), of a telephone call initiated by an electric power supplier,  
33 gas supplier or private aggregator; or such alternative forms of  
34 verification as the board, in consultation with the Division of  
35 Consumer Affairs, may permit for switching electric power suppliers  
36 or gas suppliers and for contract renewal; and include termination  
37 procedures, notice of any fees, and toll-free or local telephone  
38 numbers for the electric power supplier or gas supplier and for the  
39 board.

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

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

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

17 (5) Billing standards shall include, at a minimum, provisions  
18 prohibiting electric public utilities, gas public utilities, electric power  
19 suppliers and gas suppliers from charging a fee to residential  
20 customers for either the commencement or termination of electric  
21 generation service or gas supply service.

22 b. (1) <sup>2</sup>[An] Except as provided in paragraph (2) of this  
23 subsection, an<sup>2</sup> electric power supplier, a gas supplier, an electric  
24 public utility, and a gas public utility shall not disclose, sell or transfer  
25 individual proprietary information, including, but not limited to, a  
26 customer's name, address, telephone number, energy usage and electric  
27 power payment history, to a third party without the <sup>1</sup>[written]<sup>1</sup>  
28 consent of the customer <sup>2</sup>[, provided, however, that a customer's  
29 name, address and current electric power supplier or gas supplier or  
30 electric or gas public utility, may be so conveyed to an electric power  
31 supplier, a gas supplier, an energy agent, a government aggregator that  
32 is a municipality, or any combination thereof, without such consent,  
33 for the purposes of entering into a municipal aggregation contract  
34 pursuant to sections 42, 43 and 45 of P.L.1999, c.23 (C.48:3-91 et  
35 al)]<sup>2</sup>.

36 <sup>2</sup>(2) (a) An electric public utility or a gas public utility may disclose  
37 and provide, in an electronic format, which may include a CD rom,  
38 diskette, and other format as determined by the board, without the  
39 consent of a residential customer, a residential customer's name, rate  
40 class, and account number, to a government aggregator that is a  
41 municipality or a county, or to an energy agent acting as a consultant  
42 to a government aggregator that is a municipality or a county, if the  
43 customer information is to be used to establish a government energy  
44 aggregation program pursuant to sections 42, 43 and 45 of P.L.1999,  
45 c.23 (C.48:3-91; 48:3-92; and 48:3-94). The number of residential  
46 customers and their rate class, and the load profile of non-residential

1 customers who have affirmatively chosen to be included in a  
2 government energy aggregation program pursuant to paragraph (3) of  
3 subsection a. of section 45 of P.L.1999, c 23 (C.48:3-94) may be  
4 disclosed pursuant to this paragraph prior to the request by the  
5 government aggregator for bids pursuant to paragraph (1) of  
6 subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94), and the  
7 name, address, and account number of a residential customer and the  
8 name, address and account number of non-residential customers who  
9 have affirmatively chosen to be included in a government energy  
10 aggregation program pursuant to paragraph (3) of subsection a. of  
11 section 45 of P.L.1999, c. 23 (C.48:3-94) may be disclosed pursuant  
12 to this paragraph upon the awarding of a contract to a licensed power  
13 supplier or licensed gas supplier pursuant to paragraph (2) of  
14 subsection b. of section 45 of P.L.1999, c.23. Any customer  
15 information disclosed pursuant to this paragraph shall not be  
16 considered a government record for the purposes of, and shall be  
17 exempt from the provisions of P.L.2001, c.404.

18 (b) An electric public utility or a gas public utility disclosing  
19 customer information pursuant to this paragraph shall exercise  
20 reasonable care in the preparation of this customer information, but  
21 shall not be responsible for errors <sup>3</sup>[of] or<sup>3</sup> omissions in the  
22 preparation or the content of the customer information.

23 (c) Any person using any information disclosed pursuant to this  
24 paragraph for any purpose other than to establish a government energy  
25 aggregation program pursuant to sections 42, 43 and 45 of P.L.1999,  
26 c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject to the  
27 provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

28 (d) The role of an electric public utility or a gas public utility in a  
29 government energy aggregation program established pursuant to  
30 P.L.1999, c. 23 shall be limited to the provisions of this paragraph.<sup>2</sup>

31 <sup>2</sup>[(2)] (3)<sup>2</sup> Whenever [such] any individual proprietary  
32 information is disclosed, sold or transferred, [upon the written consent  
33 of the customer] pursuant to paragraph (1) <sup>2</sup>or paragraph (2) <sup>2</sup>of  
34 subsection b. of this section, it [may] shall be used only for the  
35 provision of continued electric generation service, electric related  
36 service, gas supply service or gas related service to that customer. In  
37 the case of a transfer or sale of a business, customer consent shall not  
38 be required for the transfer of customer proprietary information to the  
39 subsequent owner of the business for maintaining the continuation of  
40 such services.

41 <sup>2</sup>[(3)] (4)<sup>2</sup> Notwithstanding any provisions of the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
43 the board shall, within 90 days of the effective date of P.L. \_\_\_\_\_, c.  
44 (C. \_\_\_\_\_) (now before the Legislature as this bill), review existing  
45 regulations including, without limitation, Chapter 4 of Title 14 of the  
46 New Jersey Administrative Code (Energy Competition Standards), to

1 determine their consistency with the provisions of <sup>2</sup>[paragraph (1) of  
2 subsection b. of this]<sup>2</sup> section <sup>2</sup>36 of P.L.1999, c.23 (C.48:3-85),  
3 section 43 of P.L.1999, c.23 (C.48:3-92) and section 45 of P.L.1999,  
4 c.23 (C.48:3-94)<sup>2</sup>, shall repeal or modify any regulations that are  
5 inconsistent with the provisions thereof and shall adopt regulations and  
6 standards implementing the provisions thereof permitting disclosure of  
7 customer information without the consent of the customer including,  
8 without limitation, provisions for the development of a board-  
9 approved agreement between the disclosing party and the receiving  
10 party and the creation of a mechanism for the recovery by the  
11 disclosing electric public utility or gas public utility of its reasonable  
12 incremental costs of providing such information <sup>2</sup>if such costs are not  
13 covered in an existing third party supplier agreement<sup>2</sup>.

14 [(2)] <sup>2</sup>[(4)] (5)<sup>2</sup> An electric power supplier, a gas supplier, a gas  
15 public utility or an electric public utility may use individual proprietary  
16 information that it has obtained by virtue of its provision of electric  
17 generation service, electric related service, gas supply service or gas  
18 related service to:

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

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

23 (c) Protect consumers of such services and other electric power  
24 suppliers, gas suppliers or electric and gas public utilities from  
25 fraudulent, abusive or unlawful use of, or subscription to, such  
26 services.

27 c. The board shall establish and maintain a database for the  
28 purpose of recording customer complaints concerning electric and gas  
29 public utilities, electric power suppliers, gas suppliers, private  
30 aggregators, and energy agents.

31 d. The board, in consultation with the Division of Consumer  
32 Affairs in the Department of Law and Public Safety, shall establish, or  
33 cause to be established, a multi-lingual electric and gas consumer  
34 education program. The goal of the consumer education program shall  
35 be to educate residential, small business, and special needs consumers  
36 about the implications for consumers of the restructuring of the  
37 electric power and gas industries. The consumer education program  
38 shall include, but need not be limited to, the dissemination of  
39 information to enable consumers to make informed choices among  
40 available electricity and gas services and suppliers, <sup>3</sup>[notification of  
41 residential electric and gas customers of the right to submit their  
42 names to the board pursuant to paragraph (1) of subsection e. of this  
43 section,]<sup>3</sup> and the communication to consumers of the consumer  
44 protection provisions of this act.

45 The board shall ensure the neutrality of the content and message  
46 of advertisements and materials.



1 The board shall promulgate standards for the recovery of consumer  
2 education program costs from customers which include reasonable  
3 measures and criteria to judge the success of the program in enhancing  
4 customer understanding of retail choice.

5 e. <sup>2</sup>[(1) Residential electric or gas customers may submit their  
6 names in writing to the board for inclusion on a list established by the  
7 board of customers not wanting to receive telephone solicitations by  
8 electric power suppliers, gas suppliers or private aggregators.

9 (2) As a condition of licensing, pursuant to standards adopted by  
10 the board, an electric power supplier, gas supplier or private  
11 aggregator shall not engage in telephone solicitation of any residential  
12 electric or gas customer, as appropriate, whose name is on the list  
13 established by the board, pursuant to paragraph (1) of this  
14 subsection.](Deleted by amendment, P.L. , c. )<sup>2</sup>

15 (cf: P.L.2001, c.242, s.2)

16  
17 <sup>2</sup>[2.] 4.<sup>2</sup> Section 43 of P.L.1999, c.23 (C.48:3-92) is amended to  
18 read as follows:

19 43. Government energy aggregation programs shall be subject to  
20 the following provisions:

21 a. A contract between a government aggregator and a licensed  
22 electric power supplier or licensed gas supplier shall include the  
23 following provisions:

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

26 (2) The charges, rates, fees, or formulas to be used to determine  
27 the charges, rates or fees, to be charged to the energy consumers  
28 electing to receive electric generation service or gas supply service  
29 pursuant to the government energy aggregation program;

30 (3) The method and procedures to be followed by the licensed  
31 electric power supplier or licensed gas supplier to [solicit the  
32 affirmative and voluntary written consent of the consumer to  
33 participate in the government energy aggregation program including,  
34 but not necessarily limited to, mechanisms to] enroll and educate  
35 energy consumers concerning the provisions of the aggregation  
36 program;

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

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

43 (b) The terms of the proposed contract;

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

46 (d) Default and remedies; and

- 1 (e) The allocation of any penalties that may be imposed by any  
2 electric public utility or gas public utility as a result of over-delivery  
3 of electricity or gas, under-delivery of electricity or gas, or  
4 non-performance by the licensed electric power supplier or licensed  
5 gas supplier;
- 6 (5) The use of government aggregator resources, equipment,  
7 systems or employees in connection with such services;
- 8 (6) The term of the contract with the government aggregator;
- 9 (7) A provision indemnifying and holding the government  
10 aggregator harmless from all liabilities, damages and costs associated  
11 with any contract between a resident of the government aggregator  
12 and the licensed electric power supplier or licensed gas supplier;
- 13 (8) The requirements for the provision of a performance bond by  
14 the licensed electric power supplier or licensed gas supplier, if so  
15 required by the government aggregator;
- 16 (9) Procedures to ensure that participation in the aggregation  
17 program is <sup>1</sup>[the result of an affirmative choice by energy  
18 consumers]<sup>1</sup>[, as evidenced by a written signature,] <sup>1</sup>[and is]<sup>1</sup>  
19 consistent <sup>1</sup>with the provisions of this act and<sup>1</sup> with rules and  
20 regulations adopted by the board;
- 21 (10) Terms and conditions applicable to consumer protection as  
22 provided in rules and regulations adopted by the board, in consultation  
23 with the Division of Consumer Affairs in the Department of Law and  
24 Public Safety; <sup>2</sup>[and]
- 25 (11) A requirement that certain communications between a  
26 licensed electric power supplier and a licensed gas supplier and a  
27 customer be in a non-English language, as appropriate; and<sup>2</sup>
- 28 <sup>2</sup>[(11)] (12)<sup>2</sup> Such other terms and conditions as the government  
29 aggregator deems necessary.
- 30 b. The award of a contract for a government energy aggregation  
31 program shall be based on the most advantageous <sup>1</sup>proposal<sup>1</sup>, price  
32 and other factors considered. The governing body shall only award a  
33 contract for service to residential customers where the rate is <sup>1</sup>the  
34 same as or<sup>1</sup> lower than <sup>2</sup>[that guaranteed by the State-mandated rate  
35 reductions pursuant to section 4 of this act and]<sup>2</sup> the price of basic  
36 generation service pursuant to section 9 of <sup>2</sup>[this act] P.L.1999, c.23  
37 (C.48:3-57), plus the pro-rata value of the cost of compliance with  
38 the renewable energy portfolio standards imposed pursuant to this act  
39 derived from a non-utility generation contract with an electric public  
40 utility and transferred by the electric public utility to a supplier of basic  
41 generation service or basic gas supply service pursuant to section 10  
42 of P.L.1999, c.23 (C.48:3-58)<sup>2</sup>, as determined by the board. <sup>2</sup>The  
43 governing body may award a contract for electric generation service  
44 where the rate is higher than the price of basic generation service as  
45 determined by the board pursuant to section 9 of P.L.1999, c.23, plus  
46 the pro-rata value of the cost of compliance with the renewable energy

1 portfolio standards imposed pursuant to this act derived from a non-  
2 utility generation contract with an electric public utility and transferred  
3 by the electric public utility to a supplier of basic generation service,  
4 provided that the award is for electricity <sup>3</sup>the percentage of which<sup>3</sup>  
5 that is derived from verifiable Class I or Class II renewable energy as  
6 defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51) <sup>3</sup>is greater  
7 than the percentage of Class I and Class II renewable energy required  
8 pursuant to subsection d. of section 38 of P.L.1999, c.23 (C.48:3-87)<sup>3</sup>  
9 , and that the customers are informed, in a manner determined by the  
10 board secretary, that such a higher rate is under consideration by the  
11 governing body.<sup>2</sup>

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

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

19 e. [For any specific time period, a government aggregator may  
20 enter into only one contract for the provision of electric generation  
21 service and one contract for the provision of gas supply service to the  
22 consumers within its territorial jurisdiction.] <sup>2</sup>[(Deleted by  
23 amendment, P.L. c. (now before the Legislature as this bill)] A  
24 government aggregator may enter into more than one contract for the  
25 provision of electric generation service and gas supply service,  
26 provided, however that the governing body indicates in each contract  
27 which is the default provider if a customer does not choose one of the  
28 providers.<sup>2</sup>

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

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

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

41 (cf: P.L.1999, c.23, s.43)

42

43 <sup>2</sup>[3.] 5.<sup>2</sup> Section 45 of P.L.1999, c.23 (C.48:3-94) is amended to  
44 read as follows:

45 45. <sup>2</sup>a. (1)<sup>2</sup> A government aggregator that is a municipality or a  
46 county may [, notwithstanding the provisions of section 44 of this act

1 to the contrary,] operate a [limited] government energy aggregation  
2 program that provides for the aggregation of [residential]  
3 <sup>1</sup>residential<sup>1</sup> electric generation service or gas supply service [without  
4 the initial, affirmative, voluntary, written consent of residential  
5 customers for electric generation service or gas supply service,]<sup>2</sup>, non-  
6 residential electric generation service or gas supply service on a  
7 voluntary basis, and appliance repair services for residential and non-  
8 residential customers on a voluntary basis,<sup>2</sup> either separately or  
9 bundled, in accordance with the <sup>2</sup>[following procedures:] provisions  
10 of this section.<sup>2</sup>

11 <sup>2</sup>[a. electric] (2) Electric<sup>2</sup> generation service or gas supply service  
12 for [residential] <sup>1</sup>residential<sup>1</sup> customers within the municipality or  
13 county<sup>2</sup> and for non-residential customers on a voluntary basis .and for  
14 appliance repair services for residential and non-residential customers  
15 on a voluntary basis,<sup>2</sup> may be aggregated together with electric  
16 generation service, electric related service, gas supply service or gas  
17 related service, either separately or bundled, for the government  
18 aggregator's own facilities or with other government aggregators,  
19 provided that [:

20 (1)] <sup>2</sup>[the] each<sup>2</sup> governing body adopts an ordinance in the case  
21 of a municipality, or resolution in the case of a county, <sup>2</sup>after notice  
22 and public hearing,<sup>2</sup> indicating its intent to solicit bids for the  
23 provision of electric generation service or gas supply service, either  
24 separately or bundled [, without the affirmative, voluntary written  
25 consent of the residential customer], <sup>2</sup>and for appliance repair services  
26 on a voluntary basis at a separate price and by separate bid solicitation,  
27 as the case may be,<sup>2</sup> which approval shall require passage by a  
28 majority <sup>2</sup>[plus one]<sup>2</sup> vote of the full membership of the governing  
29 body [;

30 (2) within 15 days of the adoption of such an ordinance or  
31 resolution, as appropriate, the governing body provides notice, in a  
32 form as determined by the board, to its residential customers advising  
33 them of their individual right to affirmatively decline participation in  
34 the government energy aggregation program, and providing 30 days  
35 for residential customers to respond in writing to the governing body  
36 of their decision to affirmatively decline participation in the  
37 government energy aggregation program; and

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

43 <sup>2</sup>(3) If an ordinance or resolution adopted pursuant to paragraph  
44 (2) of this subsection would include non-residential customers in a  
45 government energy aggregation program on a voluntary basis, the

1 adoption of the ordinance or resolution shall be accompanied by a  
2 public notice that non-residential customers will be included in the  
3 government energy aggregation program if they contact the  
4 appropriate governing body within 30 days of the adoption of the  
5 ordinance or resolution stating their affirmative choice to be included  
6 in the government energy aggregation program.

7 (4) (a) If an ordinance or resolution adopted pursuant to paragraph  
8 (2) of this subsection would include appliance repair services for  
9 residential or non-residential customers on a voluntary basis at a  
10 separate price and by separate bid solicitation, the adoption of the  
11 ordinance or resolution shall be accompanied by a public notice that  
12 residential or non-residential customers may receive appliance repair  
13 services if they contact the appropriate governing body within 30 days  
14 of the adoption of the ordinance or resolution stating their affirmative  
15 choice to receive appliance repair services under the government  
16 energy aggregation program.

17 (b) The Board of Public Utilities shall adopt, pursuant to the  
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
19 seq.), rules and regulations determining the manner in which electric  
20 related services and gas related services, other than appliance repair  
21 services, shall be included in government energy aggregation  
22 programs.

23 (5) A government energy aggregation program shall be structured  
24 to provide that each residential or non residential customer, as the case  
25 may be, shall receive electric generation service or gas supply service  
26 from one licensed electric power supplier or one licensed gas supplier,  
27 as the case may be.

28 (6) Any residential or non-residential customer receiving electric  
29 generation service or gas supply service from a licensed electric power  
30 supplier or a licensed gas supplier prior to the establishment of a  
31 government energy aggregation program pursuant to this section shall  
32 be exempt from a government energy aggregation program established  
33 pursuant to this section. Under no circumstance shall a residential or  
34 non-residential customer's affirmative choice to be included in a  
35 government energy aggregation program abrogate the existing terms  
36 of an electric power or gas supply contract between a non-residential  
37 customer and a licensed electric power supplier or licensed gas  
38 supplier.<sup>2</sup>

39 b. (1) The governing body shall commence public bidding pursuant  
40 to the provisions of the "Local Public Contracts Law," P.L.1971,  
41 c.198 (C.40A:11-1 et seq.) to receive bids from a licensed electric  
42 power supplier or licensed gas supplier, as appropriate, for electric  
43 generation service or gas supply service <sup>2</sup>at one or more projected  
44 load levels<sup>2</sup>, either separately or bundled, for [those residential]  
45 customers [who did not affirmatively decline to participate in the  
46 government energy aggregation program pursuant to paragraph (2) of

1 subsection a. of this section,] within the municipality or county <sup>2</sup>, and  
2 if appropriate, for any appliance repair services at a separate price and  
3 by separate bid solicitation, <sup>2</sup> and for electric generation service,  
4 electric related service, gas supply service or gas related service, either  
5 separately or bundled, for the government aggregator's own facilities.  
6 <sup>2</sup>Thirty days prior to the commence of public bidding the governing  
7 body shall transmit the bid notice and all bidding documents to the  
8 board and the Division of the Ratepayer Advocate for review. The  
9 board and the Division of the Ratepayer Advocate shall have 15 days  
10 to review the bid notice and bidding documents and provide comments  
11 to the governing body, which may accept or reject the comments. <sup>2</sup>  
12 (2) Upon receipt of the bids, the governing body shall evaluate the  
13 proposals. The governing body shall select a licensed electric power  
14 supplier or licensed gas supplier, or both, based on the most  
15 advantageous proposal, price and other factors considered. [The  
16 governing body shall only select a licensed electric power supplier to  
17 be awarded a contract for service where the rate is lower than that  
18 guaranteed by the State-mandated rate reductions pursuant to section  
19 4 of this act and the price of basic generation service pursuant to  
20 section 9 of this act.] <sup>1</sup>The governing body shall only select a licensed  
21 electric power supplier <sup>2</sup>or licensed gas supplier <sup>2</sup> to be awarded a  
22 contract for service where the rate is the same as or lower than <sup>2</sup>[that  
23 guaranteed by the State-mandated rate reductions pursuant to section  
24 4 of P.L.1999, c.23 (C.48:3-52) and] <sup>2</sup> the price of basic generation  
25 service pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) plus the  
26 pro-rata value of the cost of compliance with the renewable energy  
27 portfolio standards imposed pursuant to this act derived from a non-  
28 utility generation contract with an electric public utility and transferred  
29 by the electric public utility to a supplier of basic generation service  
30 <sup>2</sup>or basic gas supply service pursuant to section 10 of P.L.1999, c.23  
31 (C.48:3-58), as determined by the board <sup>2</sup>. <sup>1</sup> <sup>2</sup>The governing body may  
32 award a contract for electric generation service where the rate is  
33 higher than the price of basic generation service as determined by the  
34 board pursuant to section 9 of P.L.1999, c.23 plus the pro-rata value  
35 of the cost of compliance with the renewable energy portfolio  
36 standards imposed pursuant to this act derived from a non-utility  
37 generation contract with an electric public utility and transferred by  
38 the electric public utility to a supplier of basic generation service,  
39 provided that the award is for electricity <sup>3</sup>the percentage of which <sup>3</sup>  
40 that is derived from verifiable Class I or Class II renewable energy as  
41 defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51) <sup>3</sup>is  
42 greater than the percentage of Class I and Class II renewable energy  
43 required pursuant to subsection d. of section 38 of P.L.1999, c.23  
44 (C.48:3-87) <sup>3</sup>, and that the customers are informed, in a manner  
45 determined by the board secretary, that such a higher rate is under  
46 consideration by the governing body. <sup>2</sup>

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

5 (1) the contract with the selected licensed electric power supplier  
6 or licensed gas supplier, or both, for the government aggregator's own  
7 load; <sup>2</sup>and<sup>2</sup>

8 (2) a contract form which shall comply with and include the  
9 requirements of subsection a. of section 43 of <sup>2</sup>[this act; and

10 (3) that the written agreement shall not take effect until the  
11 proposed contract in paragraph (2) of this subsection is [approved]  
12 reviewed by the board and the Division of the Ratepayer Advocate]  
13 P.L.1999, c.23 (C.48:3-92).

14 The governing body shall transmit a copy of the written agreement  
15 to the board and the Division of the Ratepayer Advocate, each of  
16 which shall have 15 days to review the written agreement and provide  
17 comments to the governing body, which may accept or reject the  
18 comments<sup>2</sup>.

19 d. <sup>2</sup>[After entering into a written agreement with the selected  
20 licensed supplier, the governing body shall submit, to the board and  
21 the Division of the Ratepayer Advocate for [approval] review and  
22 comment, the proposed contract [to be entered into by the selected  
23 licensed electric power supplier or licensed gas supplier, or both, with  
24 each residential customer who affirmatively consents to enter into a  
25 contract with the selected licensed electric power supplier or licensed  
26 gas supplier, or both]. This submission shall include the proposed  
27 contract and any other information deemed appropriate by the board  
28 and the Division of the Ratepayer Advocate.

29 (1) Within <sup>1</sup>[30] 15<sup>1</sup> days of receipt of the submission, the board  
30 and the Division of the Ratepayer Advocate shall [determine whether  
31 the submission is complete. If it is determined to be incomplete, it  
32 shall be returned, forthwith, along with a notice specifying the  
33 deficiency or deficiencies. The governing body shall correct the  
34 deficiency or deficiencies and resubmit the submission to the board.

35 (2) Upon being notified by the board that the submission is  
36 complete, the governing body shall cause a copy to be forwarded to  
37 the Division of the Ratepayer Advocate. Within 45 days of receipt,  
38 the Division of the Ratepayer Advocate shall recommend to the board  
39 to approve, modify or reject the submission.

40 (3) The board shall approve, reject or modify the submission  
41 within 60 days of the date the submission is deemed complete] review  
42 the proposed contract and provide comments to the governing body,  
43 which may accept or reject the comments.] (Deleted by amendment,  
44 P.L. c. (now before the Legislature as this bill))<sup>2</sup>

45 e. [Upon approval of the proposed contract to be entered into by

1 the selected licensed electric power supplier or licensed gas supplier,  
2 or both, with each residential customer who affirmatively consents to  
3 enter into a contract with the selected licensed electric power supplier  
4 or licensed gas supplier, or both, the] (1) <sup>2</sup>[Following the review by  
5 the board and the Division of the Ratepayer Advocate] After entering  
6 into the agreement pursuant to section c. of this section<sup>2</sup>, the  
7 governing body shall provide written <sup>2</sup>individual<sup>2</sup> notice to customers  
8 advising them of their individual right to affirmatively decline  
9 participation in the government energy aggregation program, and  
10 providing 30 days for customers to respond to the governing body of  
11 their decision to affirmatively decline participation in the government  
12 energy aggregation program <sup>2</sup>and providing them with the price and  
13 other factors allowing the customer to compare the government energy  
14 aggregation program to other alternatives<sup>2</sup>; and

15 (2) upon expiration of the 30-day period required pursuant to  
16 paragraph (1) of this subsection, the governing body shall determine  
17 the number and identity of customers who did not affirmatively decline  
18 to participate in the government energy aggregation program.

19 (3) The governing body shall then authorize the selected licensed  
20 electric power supplier or licensed gas supplier, or both, to [solicit the  
21 affirmative and voluntary written consent to participate in the  
22 government energy aggregation program of any] enroll each  
23 [residential]customer within the municipality or county who did not  
24 initially affirmatively decline to be part of a government energy  
25 aggregation program pursuant to the provisions of paragraph [(2)] (1)  
26 of subsection [a.] e. of this section.

27 <sup>2</sup>(4) <sup>3</sup>[Residential and non-residential customers that have been  
28 enrolled in a government energy aggregation program and move to a  
29 new location where that same government energy aggregation  
30 program is available may consent to continue in the government  
31 energy aggregation program but will revert to basic generation service  
32 or basic gas supply service for no more than 60 days to accommodate  
33 customer notification and billing cycle requirements.<sup>2</sup>] The Board of  
34 Public Utilities shall adopt, pursuant to the Administrative Procedure  
35 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations  
36 regarding service for residential and non-residential customers in  
37 municipalities and counties in which government energy aggregation  
38 programs have been established providing for the notification to new  
39 customers of the availability of the established government energy  
40 aggregation program and their option to enroll in the program, and  
41 establishing a process by which customers that have been enrolled in  
42 a government energy aggregation program and that move to a new  
43 location where that same government energy aggregation program is  
44 available may consent to continue in the program without reverting to  
45 basic generation service or basic gas service. The rules and



1 regulations adopted by the board pursuant to this section shall provide  
2 for the recovery by an electric public utility or a gas public utility of all  
3 reasonable costs incurred by the electric public utility or gas public  
4 utility in complying with the regulations adopted pursuant to this  
5 section.<sup>3</sup>

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

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

13 h. A government aggregator ~~[which]~~ that is a county may  
14 implement the provisions of this section only as authorized pursuant  
15 to the provisions of subsection f. of section 43 of this act.

16 i. ~~[The provisions of this section shall only apply to government~~  
17 ~~energy aggregation programs for residential customers.]~~<sup>1</sup> ~~[(Deleted~~  
18 ~~by P.L. c. (now before the Legislature as this bill)]~~ The provisions  
19 of this section shall only apply to government energy aggregation  
20 programs for residential customers<sup>2</sup> and to non-residential customers  
21 on a voluntary basis<sup>2</sup> .<sup>1</sup>

22 j. ~~[Nothing in this section shall preclude a limited government~~  
23 ~~energy aggregation program from including business customers as~~  
24 ~~participants pursuant to section 44 of this act.]~~<sup>1</sup> ~~[(Deleted by~~  
25 ~~P.L. c. (now before the Legislature as this bill)]~~ Nothing in this  
26 section shall preclude a government energy aggregation program from  
27 including<sup>2</sup> [business] non-residential<sup>2</sup> customers as participants on a  
28 voluntary basis and in a clear and consistent manner.

29 k. Nothing in this section shall preclude a residential customer  
30 who did not affirmatively decline to participate in a government energy  
31 aggregation program from switching electric service to another electric  
32 power supplier or to basic generation service pursuant to regulations  
33 adopted by the board.<sup>1</sup>

34 (cf: P.L.1999, c.23, s.45)

35  
36 <sup>2</sup>6. (New section) a. The provisions of any law, or rule or  
37 regulation adopted pursuant thereto, to the contrary notwithstanding,  
38 a government aggregator that is a municipality or a county shall not  
39 award a contract to a licensed electric power supplier, a licensed gas  
40 supplier, or appliance repair service provider if the licensed electric  
41 power supplier, licensed gas supplier, or appliance repair service  
42 provider has solicited or made any contribution of money, or pledge  
43 of contribution, including in-kind contributions, to a campaign  
44 committee of any candidate or holder of the public office having  
45 ultimate responsibility for the award of the contract, or to any State,  
46 county or municipal party committee or legislative leadership

1 committee, in excess of the thresholds specified in subsection c. of this  
2 section within one calendar year immediately proceeding  
3 commencement of negotiations for the contract.

4 b. No licensed electric power supplier, licensed gas supplier, or  
5 appliance repair service provider which enters into negotiations for, or  
6 agrees to, any contract with a government aggregator that is a  
7 municipality or a county shall knowingly solicit or make any  
8 contribution of money, or pledge of a contribution, including in-kind  
9 contributions, to any candidate or holder of the public office having  
10 ultimate responsibility for the award of the contract, or to any State,  
11 county or municipal party committee or legislative leadership  
12 committee, between the commencement of negotiations for and the  
13 later of the termination of negotiations or the completion of the  
14 contract.

15 c. Any individual included within the definition of a licensed  
16 electric power supplier, licensed gas supplier, or appliance repair  
17 service provider pursuant to subsection o. of this section may annually  
18 contribute a maximum of \$250 for any purpose to any candidate for  
19 the office of Governor or for the office of member of the Legislature,  
20 or \$500 to any State, county or municipal party committee or  
21 legislative leadership committee, without violating subsection a. of this  
22 section. However, any group of individuals meeting the definition of  
23 a licensed electric power supplier, a licensed gas supplier pursuant, or  
24 appliance repair service provider to subsection o. of this section, in the  
25 aggregate shall not annually contribute for any purpose in excess of  
26 \$5,000 to all candidates for the office of Governor or for the office of  
27 member of the Legislature and officeholders with ultimate  
28 responsibility for the awarding of the contract, and all State, county  
29 and municipal political parties and legislative leadership committees  
30 combined, without violating subsection a. of this section.

31 d. For purposes of this section, the office that is considered to  
32 have ultimate responsibility for the award of the contract shall be any  
33 elected official of the governing body of the municipality or county  
34 serving as the government aggregator.

35 e. No contribution of money or other thing of value, including in-  
36 kind contributions, made by a licensed electric power supplier, a  
37 licensed gas supplier, or appliance repair service provider to any  
38 candidate for the office of Governor or for the office of member of the  
39 Legislature or State, county or municipal party committee or  
40 legislative leadership committee shall be deemed a violation of section  
41 a. of this section nor shall an agreement for property, goods or  
42 services, of any kind whatsoever, be disqualified thereby, if that  
43 contribution was made by the licensed electric power supplier, licensed  
44 gas supplier, or appliance repair service provider prior to the effective  
45 date of P.L. . c. (C. ) (pending in the Legislature as this bill).

46 f. (1) Prior to awarding any contract to a licensed electric power

1 supplier, a licensed gas supplier, or appliance repair service provider,  
2 a government aggregator that is a municipality or a county shall  
3 receive a sworn statement from the licensed electric power supplier,  
4 licensed gas supplier, or appliance repair service provider made under  
5 penalty of perjury that the licensed electric power supplier, licensed  
6 gas supplier, or appliance repair service provider has not made a  
7 contribution in violation of subsection a. of this section.

8 (2) A licensed electric power supplier, licensed gas supplier, and  
9 appliance repair service provider shall have a continuing duty to report  
10 any violations of this section that may occur during the negotiation of  
11 duration of the contract.

12 g. Candidates for the office of Governor or for the office of  
13 member of the Legislature, and State and county party committees and  
14 legislative leadership committees shall use reasonable efforts to notify  
15 contributors and potential contributors that contributions, including in-  
16 kind contributions, from a licensed electric power supplier, a licensed  
17 gas supplier, or appliance repair service provider and certain  
18 individuals associated with a licensed electric power supplier, licensed  
19 gas supplier, or appliance repair service provider may affect the ability  
20 of the licensed electric power supplier, licensed gas supplier, or  
21 appliance repair service provider to contract or continue to contract  
22 with a government aggregator that is a municipality or a county. Such  
23 reasonable efforts shall include, but need not be limited to, notification  
24 in written fundraising solicitations or donor information request forms  
25 or other fundraising solicitation materials. The failure of a licensed  
26 electric power supplier, licensed gas supplier, or appliance repair  
27 service provider to receive the notice prescribed in this subsection  
28 section shall not be a defense to a violation subsection a. of this  
29 section.

30 h. A licensed electric power supplier, licensed gas supplier,  
31 appliance repair service provider, candidate for the office of Governor  
32 or for the office of member of the Legislature, an officeholder or a  
33 State, county or municipal party committee or legislative leadership  
34 committee may cure a violation of section subsection a. of this section  
35 if, within 30 days after the election for which a contribution is made  
36 the licensed electric power supplier, licensed gas supplier, or appliance  
37 repair service provider seeks and receives reimbursement of a  
38 contribution from the candidate for the office of Governor or for the  
39 office of member of the Legislature or State, county or municipal  
40 political party or legislative leadership committee.

41 i. It shall be a breach of the terms of a contract for a licensed  
42 electric power supplier, licensed gas supplier, or appliance repair  
43 service provider to violate subsection a. of this section or to  
44 knowingly conceal or misrepresent contributions given or received, or  
45 to make or solicit contributions through intermediaries for the purpose  
46 of concealing or misrepresenting the source of the contribution, and

1 any such licensed electric power supplier, licensed gas supplier, or  
2 appliance repair service provider shall be subject to penalties  
3 prescribed in subsection k. of this section and any other penalties  
4 prescribed by law.

5 j. No person shall make and no person, other than a candidate or  
6 an official representative of the candidate committee or joint  
7 candidates committee of the candidate, shall accept any contribution  
8 on the condition or with the agreement that it will be contributed to  
9 any other particular candidate, subject to penalties prescribed in  
10 subsection k. of this section and any other penalties prescribed by law.  
11 The expenditure of funds received by a person shall be made at the  
12 sole discretion of the recipient person.

13 k. Any licensed electric power supplier, licensed gas supplier, or  
14 appliance repair service provider who knowingly fails to reveal a  
15 contribution made in violation of subsection a. of this section, or who  
16 knowingly makes or solicits contributions through intermediaries for  
17 the purpose of concealing or misrepresenting the source of the  
18 contribution, shall be disqualified from eligibility for future energy  
19 aggregation program contracts for a period of four calendar years  
20 from the date of the determination of violation, and shall have any  
21 contract with the State then in effect immediately terminated.

22 l. The governing body of a county or municipality shall have the  
23 option to promulgate and implement its own ordinances restricting  
24 campaign contributions by licensed electric power suppliers and  
25 licensed gas suppliers.

26 m. (1) Any licensed electric power supplier, licensed gas supplier,  
27 or appliance repair service provider making a contribution to any  
28 candidate, committee, or political party shall file an annual disclosure  
29 statement with the New Jersey Election Law Enforcement Commission  
30 setting forth all political contributions made during the 12 months  
31 prior to the reporting deadline.

32 (2) The Election Law Enforcement Commission shall prescribe  
33 forms and procedures for the reporting required in paragraph (1) of  
34 this subsection which, at a minimum, shall require the following  
35 information:

36 (a) The names and addresses of the licensed electric power  
37 supplier, licensed gas supplier, or appliance repair service provider  
38 making the contributions, and the amount contributed;

39 (b) The name of the candidate committee or political party  
40 receiving the contribution; and

41 (c) The amount of money received from a government aggregator  
42 that is a municipality or a county.

43 n. The Election Law Enforcement Commission shall maintain a list  
44 of such reports for public inspection both at the commission's office  
45 and through the commission's electronic disclosure Web site.

46 o. (1) For purposes of this section, "electric power supplier" and

1 "gas supplier" shall have the same meaning as set forth in section 3 of  
2 P.L.1999, c.23 (C.48:3-51), and shall include all principals who own  
3 10 percent or more of the equity in an entity that is an electric power  
4 supplier or a gas supplier, partners, and all officers in the aggregate  
5 employed by the entity, as well as any subsidiaries directly controlled  
6 by the entity. "Appliance repair service provider" means any person  
7 or entity engaged in the maintenance, repair or replacement of  
8 appliances and providing such services as part of government energy  
9 aggregation program pursuant to P.L.1999, c.23, and shall include all  
10 principals who own more than 10 percent or more of the equity in an  
11 entity which is an appliance more than 10 percent or more of the  
12 equity in an entity which is an appliance repair service provider,  
13 partners, and all officers in the aggregate employed by the entity, as  
14 well as any subsidiaries directly controlled by the entity. "Contract"  
15 shall mean a contract between a government aggregator that is a  
16 municipality or a county for a government energy aggregation program  
17 entered into pursuant to the provisions of section 2 of P.L. , c.   
18 (C. )(pending in the Legislature as this bill) or the provisions of  
19 P.L.1999, c.23.

20 (2) For the purposes of this section, "contribution," "in-kind  
21 contribution," "other thing of value," "candidate," "candidate  
22 committee," "joint candidates committee," "legislative leadership  
23 committee," "State, county or municipal political party" and "State,  
24 county or municipal party committee" shall have the meanings set forth  
25 in the "New Jersey Campaign Contributions and Expenditures  
26 Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.).<sup>2</sup>

27

28 <sup>2</sup>[5.] 7.<sup>2</sup> Section 44 of P.L.1999, c.23 (C.48:3-93) is repealed.

29

30 <sup>2</sup>[6.] 8.<sup>2</sup> This act shall take effect immediately.

31

32

33

34

35 Revises process for governmental energy aggregation.

# ASSEMBLY, No. 2165

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 26, 2002

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman DOUGLAS H. FISHER**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Revises process for governmental energy aggregation.

**CURRENT VERSION OF TEXT**

As introduced.



A2165 BURZICHELLI, FISHER

2

1 AN ACT concerning governmental energy aggregation and amending  
2 P.L.1999, c.23.

3

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

6

7 1. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as  
8 follows:

9 36. a. Notwithstanding any provisions of the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
11 the board, in consultation with the Division of Consumer Affairs in the  
12 Department of Law and Public Safety, shall initiate a proceeding and  
13 shall adopt, after notice, provision of the opportunity for comment,  
14 and public hearing, interim consumer protection standards for electric  
15 power suppliers or gas suppliers, within 90 days of February 9, 1999,  
16 including, but not limited to, standards for collections, credit,  
17 contracts, authorized changes of an energy consumer's electric power  
18 supplier or gas supplier, for the prohibition of discriminatory  
19 marketing, for advertising and for disclosure. Such standards shall be  
20 effective as regulations immediately upon filing with the Office of  
21 Administrative Law and shall be effective for a period not to exceed  
22 18 months, and may, thereafter, be amended, adopted or readopted by  
23 the board in accordance with the provisions of the "Administrative  
24 Procedure Act."

25 (1) Contract standards shall include, but not be limited to,  
26 requirements that electric power supply contracts or gas supply  
27 contracts must conspicuously disclose the duration of the contract;  
28 state the price per kilowatt hour or per therm or other pricing  
29 determinant approved by the board; have the customer's written  
30 signature; the customer's electronic signature; an audio recording of  
31 a telephone call initiated by the customer; independent, third-party  
32 verification, in accordance with section 37 of P.L.1999, c.23  
33 (C.48:3-86), of a telephone call initiated by an electric power supplier,  
34 gas supplier or private aggregator; or such alternative forms of  
35 verification as the board, in consultation with the Division of  
36 Consumer Affairs, may permit for switching electric power suppliers  
37 or gas suppliers and for contract renewal; and include termination  
38 procedures, notice of any fees, and toll-free or local telephone  
39 numbers for the electric power supplier or gas supplier and for the  
40 board.

41 (2) Standards for the prohibition of discriminatory marketing  
42 standards shall provide at a minimum that a decision made by an  
43 electric power supplier or a gas supplier to accept or reject a customer

**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 shall not be based on race, color, national origin, age, gender, religion,  
2 source of income, receipt of public benefits, family status, sexual  
3 preference, or geographic location. The board shall adopt reporting  
4 requirements to monitor compliance with such standards.

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

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

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

26 b. (1) An electric power supplier, a gas supplier, an electric public  
27 utility, and a gas public utility shall not disclose, sell or transfer  
28 individual proprietary information, including, but not limited to, a  
29 customer's name, address, telephone number, energy usage and electric  
30 power payment history, to a third party without the written consent of  
31 the customer ; provided, however, that a customer's name, address and  
32 current electric power supplier or gas supplier or electric or gas public  
33 utility, may be so conveyed to an electric power supplier, a gas  
34 supplier, an energy agent, a government aggregator that is a  
35 municipality, or any combination thereof, without such consent, for the  
36 purposes of entering into a municipal aggregation contract pursuant to  
37 sections 42 through 45 of P.L.1999, c.23 (C.48:3-91 through 94).  
38 Whenever [such] any individual proprietary information is disclosed,  
39 sold or transferred, [upon the written consent of the customer]  
40 pursuant to this paragraph, it may be used only for the provision of  
41 continued electric generation service, electric related service, gas  
42 supply service or gas related service to that customer. In the case of  
43 a transfer or sale of a business, customer consent shall not be required  
44 for the transfer of customer proprietary information to the subsequent  
45 owner of the business for maintaining the continuation of such  
46 services.



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

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

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

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

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

18 d. The board, in consultation with the Division of Consumer  
19 Affairs in the Department of Law and Public Safety, shall establish, or  
20 cause to be established, a multi-lingual electric and gas consumer  
21 education program. The goal of the consumer education program shall  
22 be to educate residential, small business, and special needs consumers  
23 about the implications for consumers of the restructuring of the  
24 electric power and gas industries. The consumer education program  
25 shall include, but need not be limited to, the dissemination of  
26 information to enable consumers to make informed choices among  
27 available electricity and gas services and suppliers, notification of  
28 residential electric and gas customers of the right to submit their  
29 names to the board pursuant to paragraph (1) of subsection e. of this  
30 section, and the communication to consumers of the consumer  
31 protection provisions of this act.

32 The board shall ensure the neutrality of the content and message of  
33 advertisements and materials.

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

38 e. (1) Residential electric or gas customers may submit their names  
39 in writing to the board for inclusion on a list established by the board  
40 of customers not wanting to receive telephone solicitations by electric  
41 power suppliers, gas suppliers or private aggregators.

42 (2) As a condition of licensing, pursuant to standards adopted by  
43 the board, an electric power supplier, gas supplier or private  
44 aggregator shall not engage in telephone solicitation of any residential  
45 electric or gas customer, as appropriate, whose name is on the list

1 established by the board, pursuant to paragraph (1) of this subsection.  
2 (cf: P.L.2001, c.242, s.2)

3

4 2. Section 43 of P.L.1999, c.23 (C.48:3-92) is amended to read as  
5 follows:

6 43. Government energy aggregation programs shall be subject to  
7 the following provisions:

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

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

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

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

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

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

29 (b) The terms of the proposed contract;

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

32 (d) Default and remedies; and

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

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

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

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

45 (8) The requirements for the provision of a performance bond by  
46 the licensed electric power supplier or licensed gas supplier, if so

1 required by the government aggregator;

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

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

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

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

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

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

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

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

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

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

42 (cf: P.L.1999, c.23, s.43)

43

44 3. Section 44 of P.L.1999, c.23 (C.48:3-93) is amended to read as  
45 follows:

46 44. A government aggregator that chooses to provide a

1 government energy aggregation program that includes residential or  
2 business customers shall provide such residential and business  
3 customers the opportunity to participate in a government energy  
4 aggregation program on a voluntary basis and in a clear and consistent  
5 manner. Any business or residential customer that elects to purchase  
6 electric generation service or gas supply service through a government  
7 energy aggregation program must do so affirmatively and voluntarily,  
8 as evidenced by [a signature authorizing the customer's participation  
9 in a government energy aggregation program for electric generation  
10 service or a gas supply service] the customer's written signature; the  
11 customer's electronic signature; an audio recording of a telephone call  
12 initiated by the customer; independent, third-party verification, in  
13 accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a  
14 telephone call initiated by the government aggregator; or such  
15 alternative forms of verification as the board, in consultation with the  
16 Division of Consumer Affairs, may permit; and where the terms and  
17 conditions of the program are clearly and plainly articulated [in  
18 writing] to the customer [before the customer's signature].  
19 Residential and business customers who do not voluntarily and  
20 affirmatively choose [, as evidenced by a written signature,] to  
21 participate in a government energy aggregation program shall  
22 continue to be entitled to contract with and purchase electric  
23 generation service or gas supply service from any corporation or entity  
24 authorized by law to engage in the retail sale of such services.  
25 (cf: P.L.1999, c.23, s.44)

26

27 4. Section 45 of P.L.1999, c.23 (C.48:3-94) is amended to read as  
28 follows:

29 45. A government aggregator that is a municipality or a county  
30 may, notwithstanding the provisions of section 44 of this act to the  
31 contrary, operate a limited government energy aggregation program  
32 that provides for the aggregation of residential electric generation  
33 service or gas supply service without the initial, affirmative, voluntary,  
34 written consent of residential customers for electric generation service  
35 or gas supply service, either separately or bundled, in accordance with  
36 the following procedures:

37 a. electric generation service or gas supply service for residential  
38 customers may be aggregated together with electric generation  
39 service, electric related service, gas supply service or gas related  
40 service, either separately or bundled, for the government aggregator's  
41 own facilities or with other government aggregators, provided that:

42 (1) the governing body adopts an ordinance in the case of a  
43 municipality, or resolution in the case of a county, indicating its intent  
44 to solicit bids for the provision of electric generation service or gas  
45 supply service, either separately or bundled, without the affirmative,  
46 voluntary [, written] consent of the residential customer, which

1 approval shall require passage by a majority plus one vote of the full  
2 membership of the governing body;

3 (2) within 15 days of the adoption of such an ordinance or  
4 resolution, as appropriate, the governing body provides notice, in a  
5 form as determined by the board, to its residential customers advising  
6 them of their individual right to affirmatively decline participation in  
7 the government energy aggregation program, and providing 30 days  
8 for residential customers to respond in writing to the governing body  
9 of their decision to affirmatively decline participation in the  
10 government energy aggregation program; and

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

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

27 (2) Upon receipt of the bids, the governing body shall evaluate the  
28 proposals. The governing body shall select a licensed electric power  
29 supplier or licensed gas supplier, or both, based on the most  
30 advantageous, price and other factors considered. The governing body  
31 shall only select a licensed electric power supplier to be awarded a  
32 contract for service where the rate is lower than that guaranteed by the  
33 State-mandated rate reductions pursuant to section 4 of this act and  
34 the price of basic generation service pursuant to section 9 of this act.

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

39 (1) the contract with the selected licensed electric power supplier  
40 or licensed gas supplier, or both, for the government aggregator's own  
41 load;

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

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

1 d. After entering into a written agreement with the selected  
2 licensed supplier, the governing body shall submit, to the board for  
3 approval, the proposed contract to be entered into by the selected  
4 licensed electric power supplier or licensed gas supplier, or both, with  
5 each residential customer who affirmatively consents to enter into a  
6 contract with the selected licensed electric power supplier or licensed  
7 gas supplier, or both. This submission shall include the proposed  
8 contract and any other information deemed appropriate by the board.

9 (1) Within 30 days of receipt of the submission, the board shall  
10 determine whether the submission is complete. If it is determined to  
11 be incomplete, it shall be returned, forthwith, along with a notice  
12 specifying the deficiency or deficiencies. The governing body shall  
13 correct the deficiency or deficiencies and resubmit the submission to  
14 the board.

15 (2) Upon being notified by the board that the submission is  
16 complete, the governing body shall cause a copy to be forwarded to  
17 the Division of the Ratepayer Advocate. Within 45 days of receipt,  
18 the Division of the Ratepayer Advocate shall recommend to the board  
19 to approve, modify or reject the submission.

20 (3) The board shall approve, reject or modify the submission within  
21 60 days of the date the submission is deemed complete.

22 e. Upon approval of the proposed contract to be entered into by  
23 the selected licensed electric power supplier or licensed gas supplier,  
24 or both, with each residential customer who affirmatively consents to  
25 enter into a contract with the selected licensed electric power supplier  
26 or licensed gas supplier, or both, the governing body shall authorize  
27 the selected licensed electric power supplier or licensed gas supplier,  
28 or both, to [solicit the affirmative and voluntary written consent to  
29 participate in the government energy aggregation program of any]  
30 enroll each residential customer within the municipality who did not  
31 initially affirmatively decline to be part of a government energy  
32 aggregation program pursuant to the provisions of paragraph (2) of  
33 subsection a. of this section.

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

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

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

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

46 j. Nothing in this section shall preclude a limited government

1 energy aggregation program from including business customers as  
2 participants pursuant to section 44 of this act.  
3 (cf: P.L.1999, c.23, s.45)

4

5 5. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 Among the innovations that the "Electric Discount and Energy  
11 Competition Act" (P.L.1999, c.23) brought to New Jersey's energy  
12 marketplace is a method by which residential and small business  
13 customers can pool their energy purchases through their local  
14 governments. This method, known as government or municipal  
15 aggregation, offers these customers greater buying power, with the  
16 hope of lower prices, than they would otherwise have as individual  
17 consumers. Unfortunately, the complex statutory process for  
18 government aggregation has hindered municipalities' attempts to create  
19 buying pools. As a result, there has been no successful government  
20 aggregation of residential customers. This bill makes several  
21 amendments to this act to streamline the process for government  
22 aggregation.

23 This bill provides that an energy customer's name, address and the  
24 current energy company from which the customer purchase electricity,  
25 gas or both may be disclosed, without the customer's written consent,  
26 to electric power or gas suppliers (including energy marketers and  
27 brokers), energy agents, or municipal governments acting as energy  
28 purchasing aggregators, for the purposes of entering into municipal  
29 energy aggregation contracts. Any such information may be used only  
30 for the provision of electric generation service, gas supply service, or  
31 related electric or gas services to that customer.

32 The bill eliminates the "one contract" limitation, which now  
33 prevents a municipality from obtaining services from two or more  
34 energy suppliers. This will allow a government aggregator to obtain  
35 service from a variety of sources that best fit the needs of the  
36 participating customers.

37 The bill provides additional means of verification of a customer's  
38 agreement to participate in an "opt-in" government aggregation  
39 program. The verification options are consistent with the medium of  
40 the transaction, i.e., an electronic signature for Internet transactions,  
41 an audio recording (which can include such technologies as interactive  
42 voice response) of telephone calls initiated by the customer, or  
43 independent, third-party verification of telephone calls initiated by the  
44 government aggregator, in addition to the "wet signature" and such  
45 other methods as the Board of Public Utilities may approve. These  
46 additional means of verification are identical to those allowed for

1 private aggregators in the recently enacted P.L.2001, c.242.

2 Finally, the bill eliminates the requirement, in "opt-out" government  
3 aggregation programs, that energy suppliers obtain affirmative consent  
4 from each participating customer. In such opt-out programs,  
5 residential customers will already have been asked by their municipal  
6 governing body if they choose to participate or not at the time the  
7 governing body adopted the ordinance or resolution indicating the  
8 intention to solicit bids for energy services.



ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2165**

**STATE OF NEW JERSEY**

DATED: MAY 16, 2002

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 2165.

As substituted, this bill provides that an energy customer's name, address and the current energy company from which the customer purchases electricity, gas or both may be disclosed, without the customer's written consent, to electric power or gas suppliers (including energy marketers and brokers), energy agents, or municipal governments acting as energy purchasing aggregators, for the purposes of entering into municipal energy aggregation contracts. Any such information shall be used only for the provision of electric generation service, gas supply service, or related electric or gas services to that customer.

Among the innovations that the "Electric Discount and Energy Competition Act" (P.L.1999, c.23) brought to New Jersey's energy marketplace is a method by which residential and small business customers can pool their energy purchases through their local governments. This method, known as government or municipal aggregation, offers these customers greater buying power, with the hope of lower prices, than they would otherwise have as individual consumers. Unfortunately, the complex statutory process for government aggregation has hindered municipalities' and counties' attempts to create buying pools. As a result, there has been no successful government aggregation of residential customers. This substitute bill makes several amendments to this act to streamline the process for government aggregation.

The committee substitute eliminates the "one contract" limitation, which now prevents a municipality from obtaining services from two or more energy suppliers. This will allow a government aggregator to obtain service from a variety of sources that best fit the needs of the participating customers.

The committee substitute also eliminates the "residential" limitation of section 45 of P.L.1999, c.23 (C.48:3-94) to clarify that government aggregators may aggregate both residential and non-residential

customers. In addition, the committee substitute also eliminates provisions for the written consent of customers for electric and gas service in section 45 of P.L.1999, c.23 to improve the aggregation process.

The committee substitute provides for the Board of Public Utilities (the "board") to review existing regulations and standards within 90 days of the effective date of the bill relating to the disclosure of customer information without the customer's written consent, the development of a board-approved agreement between the disclosing party and receiving party and the creation of a cost-recovery mechanism for the disclosing utility to recover its reasonable incremental costs of providing such information.

The committee substitute authorizes the governing body of a municipality or county to aggregate electric generation or gas supply customers without their written consent by adopting an ordinance or resolution, as appropriate, indicating the governing body's intent to solicit bids for such service, to commence the bidding process according to the "Local Public Contracts Law," P.L.1991, c.198 (C.40A:11-1) et seq.) to receive bids and to thereafter evaluate the proposals and select a supplier based on the most advantageous proposal, considering price and other factors.

The committee substitute requires the governing body entering into such a written agreement with the selected supplier to submit the agreement for review and comment by the board and the Division of the Ratepayer Advocate which shall review the proposal within 30 days and provide comments to the governing body which may accept or reject comments. Thereafter the governing body shall notify customers of their right to "opt out" of participation in the government energy aggregation program and shall provide 30 days for customers to respond with their decision to decline participation. The committee substitute authorizes the governing body to permit the selected supplier to enroll each customer who does not decline to participate in the program.

The committee substitute also establishes a "Renewable Energy Municipal and County Aggregation Fund" consisting of 50% of the monies collected pursuant to section 12a.(3) of P.L.1999, c.23 (C.48:3-60 a.(3)) dedicated to Class I renewable energy programs. The committee substitute also requires the monies in the fund to be used only for incentive grants for municipal and county government aggregators that enter into agreements with energy suppliers having a "Green-E" certification or other comparable recognition of their use of renewable sources of energy.

#### REPEALED SECTION

The committee substitute repeals section 44 of P.L.1999, c.23 (C.48:3-93) that requires government aggregators to obtain written signatures from customers before including them as participants in a government energy aggregation program.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2165**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 19, 2002

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2165 with committee amendments.

Assembly Bill No. 2165 (ACS), as amended, streamlines the process for "government aggregation," a method by which residential and small business customers can pool their energy purchases through their local governments, and provides a pilot program of incentive grants to local government aggregators that enter into agreements with energy suppliers who can demonstrate that at least 10% of the energy to be supplied is Class I renewable energy from post-1997 facilities.

Among the innovations that the "Electric Discount and Energy Competition Act" (P.L.1999, c.23) brought to New Jersey's energy marketplace is a method by which residential and small business customers can pool their energy purchases through their local governments. This method, known as government or municipal aggregation, offers these customers greater buying power, with the hope of lower prices, than they would otherwise have as individual consumers. Unfortunately, the complex statutory process for government aggregation has hindered municipalities' and counties' attempts to create buying pools. As a result, there has been no successful government aggregation of residential customers. This bill makes several amendments to this act to streamline the process for government aggregation.

The bill removes a requirement that the consent of an energy customer to disclose the customer's name, address and the current energy company from which the customer purchases electricity, gas or both be in writing, and further allows that disclosure, without the customer's consent, to electric power or gas suppliers (including energy marketers and brokers), energy agents, or municipal governments acting as energy purchasing aggregators, for the purposes of entering into municipal energy aggregation contracts. That information disclosed without consent shall be used only for the provision of electric generation service, gas supply service, or related electric or gas services to that customer.

The bill requires that the Board of Public Utilities review existing regulations and standards within 90 days of the effective date of the bill relating to the disclosure of customer information without the customer's written consent, the development of a board-approved agreement between the disclosing party and receiving party and the creation of a cost-recovery mechanism for the disclosing utility to recover its reasonable incremental costs of providing such information.

The bill eliminates the "one contract" limitation, which now prevents a municipality from obtaining services from two or more energy suppliers to allow a government aggregator to obtain service from a variety of sources that best fit the needs of the participating customers.

To improve the aggregation process, the bill also eliminates provisions for the written consent of residential electric and gas service customers in section 45 of P.L.1999, c.23 prior to public bidding for service, replacing this provision with an "opt out" for residential customers, discussed below. (The bill specifies that a government energy aggregation program is not precluded from including business customers as participants as well; however, business customers enter on a voluntary "opt in" basis, and must be included in a clear and consistent manner.)

Under the bill the governing body of a municipality or county is authorized to aggregate electric generation or gas supply customers without their written consent by adopting an ordinance or resolution, as appropriate, indicating the governing body's intent to solicit bids for such service, to commence the bidding process according to the "Local Public Contracts Law," P.L.1991, c.198 (C.40A:11-1) et seq.) to receive bids and to thereafter evaluate the proposals and select a supplier based on the most advantageous proposal, considering price and other factors.

The bill requires the governing body entering into such a written agreement with the selected supplier to submit the agreement for review and comment by the Board of Public Utilities and the Division of the Ratepayer Advocate, which shall review the proposal within 15 days and provide comments to the governing body which may accept or reject the comments. Thereafter the governing body shall notify customers in writing of their right to "opt out" of participation in the government energy aggregation program and shall provide 30 days for customers to respond with their decision to decline participation. The bill authorizes the governing body to permit the selected supplier to enroll each customer who does not decline to participate in the program.

The bill establishes a "Renewable Energy Municipal and County Aggregation Fund" consisting of \$4,000,000 of the monies collected pursuant to section 12a.(3) of P.L.1999, c.23 (C.48:3-60 a.(3)) and dedicated to Class I renewable energy programs. The bill requires the monies in the fund to be used only for a two year pilot program for the providing grants of between \$10,000 and \$50,000 each to municipal

or county government aggregators that enter into an agreements with energy suppliers that can demonstrate that at least 10% of the energy to be supplied under the agreement is Class I renewable energy derived from facilities constructed after January 1, 1998.

FISCAL IMPACT:

The bill establishes a "Renewable Energy Municipal and County Aggregation Fund" consisting of \$4,000,000 of the monies collected pursuant to section 12a.(3) of P.L.1999, c.23 (C.48:3-60 a.(3)) and dedicated to Class I renewable energy programs. The bill requires the monies in the fund to be used only for a two year pilot program for the providing grants of between \$10,000 and \$50,000 each to municipal or county government aggregators that enter into an agreements with energy suppliers that can demonstrate that at least 10% of the energy to be supplied under the agreement is Class I renewable energy derived from facilities constructed after January 1, 1998.

COMMITTEE AMENDMENTS:

The amendments delete requirements that customer consent to disclosure of customer information be in writing; allow an aggregation contract for service to residential customers to be awarded if the rate is the same, as well as lower than, that guaranteed under P.L.1999, c.23; allow customers to be enrolled in an aggregation program without an affirmative advance choice (while providing a later election out); require that the notice given to customers of their right to opt out be a written notice; preserve the "residential customer" initial limitation of section 45 of P.L.1999, c.23 (C.48:3-94); decrease the period for the Board of Public Utilities and the Division of the Ratepayer Advocate to review the local government's written agreement with the selected supplier from 30 to 15 days; clarify the business customers may participate in a program as well on a voluntary "opt in" basis; affirm the right of a residential customer who did not affirmatively decline to participate in a limited government energy aggregation program to switch electric service to another electric power supplier or to basic generation service; and provide for the pilot grant program in place of a permanent grant program similarly based on use of renewable resources.

Minority Statement

by

Assemblymen Gregg and Corodemus, Assemblywoman Heck and  
Assemblyman Pennachio

Prior to the enactment of the "Electric Discount and Energy Competition Act" (P.L. 1999, c. 23), much time and effort were put into establishing a statutory framework for government aggregation. Safeguards were enacted to make sure a customer's energy provider

could not be switched without that customer's consent. Emphasis was placed on making sure gas and electric customers have the final say in determining who will provide their energy. This bill takes away these safeguards. By eliminating the requirement that energy consumers must "opt-in" to the government aggregation, many will become unwilling participants. "Slamming" will become a regular occurrence. The safeguards put into the original legislation were included for a reason and should not be undone.

Secondarily, the bill requires an electric power supplier, a gas supplier, an electric public utility or a gas public utility to provide its customer list, including the name, address and current electric power or gas supplier to other power suppliers and municipalities for the purpose of entering into a municipal aggregation contract. Obtaining the consent of the customer before releasing the information no longer will be required. No safeguards are included in the legislation to protect privacy. Personal information will become public without the customer ever knowing.

This bill is an important piece of legislation, parts of which are needed to further promote a local government's ability to obtain reduced energy costs for its residents. However, for the above reasons we cannot support this legislation.

SENATE ECONOMIC GROWTH AND AGRICULTURE  
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2165**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 12, 2002

The Senate Economic Growth and Agriculture Committee reports favorably Assembly Bill No. 2165 ACS (1R) with committee amendments.

A-2165 ACS (1R), with committee amendments, would amend and supplement the "Electric Discount and Energy Competitive Act" (EDECA), P.L.1999, c.23, to restructure the procedure under which a municipality or county could establish an electricity or gas aggregation program for residential and non-residential customers.

Under this bill, municipalities and counties would have a choice of two processes under which they could establish government energy aggregation programs: one (authorized in section 2 of the bill) consisting of a process to be adopted by the Board of Public Utilities, and the other consisting of a process set forth in the amendments made to the "Electric Discount and Energy Competition Act" (EDECA) in this bill.

Under the first option set forth in section 2 of the bill, the Board of Public Utilities would adopt rules and regulations establishing a government energy aggregation process under which the governing body of a municipality or a county proposing to establish a government energy aggregation program would request its local public electric or gas utility to assist it in establishing an aggregation program. The process established by the board under this section of the bill would:

(1) require a government aggregator that is a municipality or a county to establish a government energy aggregation program by ordinance or resolution, as appropriate, and to award a contract for the government energy aggregation program to a licensed electric power supplier or licensed gas supplier pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A-11-1 et seq.);

(2) include residential customers on an opt-out basis prior to the solicitation of bids from a licensed electric power supplier or licensed gas supplier and non-residential customers on an opt-in basis;

(3) require an electric public utility or gas public utility, as the case may be, to notify utility customers, after the adoption of an ordinance or resolution, of the proposed government energy aggregation program and of the customer's right to decline to participate in the program;

(4) require an electric public utility or a gas public utility, as the case may be, to provide appropriate customer information to a government aggregator that is a municipality or a county after the government aggregator has awarded a contract for a government energy aggregation program to a licensed electric power supplier or licensed gas supplier, as the case may be;

(5) provide that an electric public utility or a gas public utility shall exercise reasonable care in the disclosure of customer information pursuant to this section but shall not be responsible for errors of omissions in the preparation or the content of the customer information;

(6) provide that an electric public utility or gas public utility shall not disclose to any governing body, licensed electric power supplier or licensed gas supplier the name, load profile, or any other customer information about a non-residential customer prior to that non-residential customer opting in to the government energy aggregation program; and

(7) authorize electric public utilities and gas public utilities to prioritize requests made by governing bodies pursuant to this section.

In addition, utilities would be authorized to recover any costs incurred in assisting a governing body in establishing an aggregation program, and would not be required to recover such costs from their shareholders or ratepayers.

Under the second option provided in this bill (in sections 3, 4, and 5 which amend sections 36, 43, and 45 of EDECA), municipal and county aggregation programs could be established for residential customers on an opt-out basis (that is, without the prior consent of the customer) and for commercial and industrial customers on an opt-in basis (that is, with the consent of the customer). In addition, appliance repair services could be aggregated by separate bid on an opt-in basis. This bill also facilitates the transfer of customer information from a public gas or electric utility to a municipality or county establishing an aggregation program, provides certain safeguards to limit the use of this information, and provides a limitation on liability of the public utility transmitting the information.

EDECA established a two part process for government energy aggregation programs. Section 44 of the act established as a general principle that government energy aggregation programs for residential customers must be established on an opt-in basis. Section 45 of the act established a process for municipal energy aggregation programs



which was partially opt-in and partially opt-out.

This bill would repeal section 44 and restructure section 45 to set forth a new process for the establishment of a government energy aggregation program on an opt-out basis for residential customers and an opt-in basis for non residential customers. The steps in the process set forth in the amended section 45 are as follows:

1. A municipality or county adopts, by majority vote, an ordinance or resolution stating the intent of the governing body to establish an aggregation program for electric or gas service on an opt-out basis for residential customers and (optional) an opt-in basis for industrial and commercial customers, and for appliance repair services for residential and non-residential customers on an opt-in basis.

If the aggregation program is to include non-residential customers on a voluntary basis, they would have 30 days from the adoption of the ordinance to opt in. The same time frame would apply for opting in to an appliance repair program.

2. The governing body begins public bidding pursuant to the "Local Public Contracts Law" to identify an electric or gas supplier, and a provider of appliance repair services, as the case may be. Appliance repair services would be bid separately. The bid notice and bidding documents may ask for bids at one or more load levels, to account for different levels of participation in the aggregation program.

Thirty days prior to starting the public bidding, the governing body would submit the bid notice and bid documents to the Board of Public Utilities and the Division of the Ratepayer Advocate for review. The Board and the Ratepayer Advocate would have 15 days to submit comments to the governing body, which could accept or reject the comments.

3. After receiving bids, the governing body would select an electricity or gas supplier and a provider of appliance repair services, as the case may be, for the aggregation program. The governing body would be required to select a gas or electric supplier offering a rate equal to or lower than the price of basis generation server or gas supply (which is determined by the Board) except in the case of electric service which is derived from renewable energy sources, where the price could be higher. If the governing body chooses such a higher rate it must so inform the customers. A copy of the contract would be sent to the Board and the Division of the Ratepayer Advocate, each of which would have 15 days to submit any comments to the governing body.

4. After selecting the supplier the governing body would enter into written contract with the supplier. After the contract is signed, the governing body would give written notice to all residential customer advising them of their right to not participate in the aggregation program. Customers who do not want to participate would have 30 days to so notify the governing body. The opt-out option for

residential customers thus is available at the end of the aggregation process.

5. After the 30 day opt-out period the governing body would determine the number of residential customers and non-residential customers (if any) to be served by the aggregation program and would authorize the supplier to enroll the participating customers, who would then receive their electricity, gas, or appliance repair services, as the case may be, from the selected supplier.

6. Any customer enrolled in the aggregation program would, pursuant to Board rules adopted pursuant to the anti-slamming provisions of section 37 of EDECA, have 14 days to opt-out of the aggregation program.

In addition to the amendments to section 45 of EDECA, this bill would authorize electric and gas public utilities to disclose customer information to a municipality or county for the purpose of establishing a government energy aggregation program. The number of customers and their rate class would be disclosed at the time the governing body began the bidding process for an energy provider, and the name, address, and account number of customers would be disclosed only after a contract is awarded to an energy supplier. Electric public utilities and gas public utilities would not be responsible for errors in the information provided to the governing body, and the participation of an electric public utility, a gas public utility in a government energy aggregation program would be limited to providing the municipality or county with customer information. Customer information disclosed by a utility to a municipality or county would not be considered a government record and would be exempt from the provisions of P.L.2001, c.404 (Open Public Records Act).

This bill (in section 6) also imposes strict restrictions on political contributions made by electric and gas suppliers, and appliance repair service suppliers bidding for a government energy aggregation program contract. Essentially this bill would prohibit political contributions by such suppliers, with exceptions for limited contributions by individuals working for such supplies (\$250 for State candidates, and \$500 to State, county, or local political committees). Suppliers making covered contributions in the year preceding the bidding for government energy aggregation would not be eligible to bid on a contract. Contributions made prior to the effective date of this bill would be included in this calculation. Any supplier who makes prohibited contribution would have any current contract terminated and would be barred from bidding for or receiving future contracts.

The committee amendments to A-2165 ACS (1R) would also delete section 4 of the bill, which amended section 12 of EDECA to establish the "Renewable Energy Municipal and County Aggregation Fund."

Committee amendments to the bill would:

(1) Establish the alternative process for establishing a government energy aggregation program;

(2) Delete the section of the bill establishing the "Renewable Energy Municipal and County Aggregation Fund;"

(3) Clarify and limit the role of public utilities in government energy aggregation programs and provided privacy protection for residential and non-residential customer information;

(4) Add a section restricting political contributions by electric and gas suppliers and providers of appliance repair services;

(5) Allow government energy aggregation programs to include appliance repair services residential customers on an opt-out basis;

(6) Provide that government energy aggregation programs could include residential customers on an opt-out basis, non-residential customers on an opt-in basis, and clarified the bidding procedure and the role of State-level renewal of a government energy aggregation program.

(7) Provide that existing contracts with third party suppliers of gas or electricity suppliers would not be affected by a government energy aggregation program.

(8) Clarify the treatment of cost compliance with renewable energy requirements in the calculation of the basic generation service rate; and

(9) Allow a government aggregator to chose a electric power supplier with a rate higher than the basic generation service rate if the electricity would be derived from renewable sources and that customers are informed of the higher rate.

As reported and amended by the committee, A-2165 ACS (1R) is identical to S-1433 SCS.

STATEMENT TO  
[Second Reprint]  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2165**

with Senate Floor Amendments  
(Proposed By Senator SWEENEY)

ADOPTED: DECEMBER 16, 2002

These floor amendments would:

(1) require that the rules and regulations adopted by the Board of Public Utilities pursuant to section 2 of the bill to establish a government energy aggregation process be adopted within 90 days of the effective date of the bill;

(2) provide that a contract awarded by a government aggregator under the process established by the Board of Public Utilities may be awarded on the basis of the most advantageous proposal, price and other factors considered;

(3) make a technical correction to clarify that in releasing customer information for the purpose of establishing a government energy aggregation program electric and gas utilities would not be responsible for errors or omissions;

(4) clarify that if a government aggregator awards a contract to an electric power supplier at a price higher than the price of basic generation service, it can do so only if the electricity to be provided contains a greater percentage of electricity derived from renewable resources that the percentage required by P.L.1999, c.23; and

(5) require the Board of Public Utilities to adopt rules and regulations providing for notification of new customers of the availability of a government energy aggregation program and establishing a process under which customers enrolled in an aggregation program and who move to a new location where the same aggregation program is available can re-enroll without reverting to basic electric or gas service.

**SENATE, No. 1433**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED MARCH 26, 2002

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Revises process for governmental energy aggregation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/14/2002)**

S1433 SWEENEY, INVERSO

2

1 AN ACT concerning governmental energy aggregation and amending  
2 P.L.1999, c.23.

3

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

6

7 1. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as  
8 follows:

9 36. a. Notwithstanding any provisions of the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
11 the board, in consultation with the Division of Consumer Affairs in the  
12 Department of Law and Public Safety, shall initiate a proceeding and  
13 shall adopt, after notice, provision of the opportunity for comment,  
14 and public hearing, interim consumer protection standards for electric  
15 power suppliers or gas suppliers, within 90 days of February 9, 1999,  
16 including, but not limited to, standards for collections, credit,  
17 contracts, authorized changes of an energy consumer's electric power  
18 supplier or gas supplier, for the prohibition of discriminatory  
19 marketing, for advertising and for disclosure. Such standards shall be  
20 effective as regulations immediately upon filing with the Office of  
21 Administrative Law and shall be effective for a period not to exceed  
22 18 months, and may, thereafter, be amended, adopted or readopted by  
23 the board in accordance with the provisions of the "Administrative  
24 Procedure Act."

25 (1) Contract standards shall include, but not be limited to,  
26 requirements that electric power supply contracts or gas supply  
27 contracts must conspicuously disclose the duration of the contract;  
28 state the price per kilowatt hour or per therm or other pricing  
29 determinant approved by the board; have the customer's written  
30 signature; the customer's electronic signature; an audio recording of  
31 a telephone call initiated by the customer; independent, third-party  
32 verification, in accordance with section 37 of P.L.1999, c.23  
33 (C.48:3-86), of a telephone call initiated by an electric power supplier,  
34 gas supplier or private aggregator; or such alternative forms of  
35 verification as the board, in consultation with the Division of  
36 Consumer Affairs, may permit for switching electric power suppliers  
37 or gas suppliers and for contract renewal; and include termination  
38 procedures, notice of any fees, and toll-free or local telephone  
39 numbers for the electric power supplier or gas supplier and for the  
40 board.

41 (2) Standards for the prohibition of discriminatory marketing  
42 standards shall provide at a minimum that a decision made by an  
43 electric power supplier or a gas supplier to accept or reject a customer

**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 shall not be based on race, color, national origin, age, gender, religion,  
2 source of income, receipt of public benefits, family status, sexual  
3 preference, or geographic location. The board shall adopt reporting  
4 requirements to monitor compliance with such standards.

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

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

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

26 b. (1) An electric power supplier, a gas supplier, an electric public  
27 utility, and a gas public utility shall not disclose, sell or transfer  
28 individual proprietary information, including, but not limited to, a  
29 customer's name, address, telephone number, energy usage and electric  
30 power payment history, to a third party without the written consent of  
31 the customer ; provided, however, that a customer's name, address and  
32 current electric power supplier or gas supplier or electric or gas public  
33 utility, may be so conveyed to an electric power supplier, a gas  
34 supplier, an energy agent, a government aggregator that is a  
35 municipality, or any combination thereof, without such consent, for the  
36 purposes of entering into a municipal aggregation contract pursuant to  
37 sections 42 through 45 of P.L.1999, c.23 (C.48:3-91 through 94).  
38 Whenever [such] any individual proprietary information is disclosed,  
39 sold or transferred, [upon the written consent of the customer]  
40 pursuant to this paragraph, it may be used only for the provision of  
41 continued electric generation service, electric related service, gas  
42 supply service or gas related service to that customer. In the case of  
43 a transfer or sale of a business, customer consent shall not be required  
44 for the transfer of customer proprietary information to the subsequent  
45 owner of the business for maintaining the continuation of such  
46 services.

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

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

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

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

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

18 d. The board, in consultation with the Division of Consumer  
19 Affairs in the Department of Law and Public Safety, shall establish, or  
20 cause to be established, a multi-lingual electric and gas consumer  
21 education program. The goal of the consumer education program shall  
22 be to educate residential, small business, and special needs consumers  
23 about the implications for consumers of the restructuring of the  
24 electric power and gas industries. The consumer education program  
25 shall include, but need not be limited to, the dissemination of  
26 information to enable consumers to make informed choices among  
27 available electricity and gas services and suppliers, notification of  
28 residential electric and gas customers of the right to submit their  
29 names to the board pursuant to paragraph (1) of subsection e. of this  
30 section, and the communication to consumers of the consumer  
31 protection provisions of this act.

32 The board shall ensure the neutrality of the content and message of  
33 advertisements and materials.

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

38 e. (1) Residential electric or gas customers may submit their names  
39 in writing to the board for inclusion on a list established by the board  
40 of customers not wanting to receive telephone solicitations by electric  
41 power suppliers, gas suppliers or private aggregators.

42 (2) As a condition of licensing, pursuant to standards adopted by  
43 the board, an electric power supplier, gas supplier or private  
44 aggregator shall not engage in telephone solicitation of any residential  
45 electric or gas customer, as appropriate, whose name is on the list  
46 established by the board, pursuant to paragraph (1) of this subsection.  
47 (cf: P.L.2001, c.242, s.2)



1       2. Section 43 of P.L.1999, c.23 (C.48:3-92) is amended to read as  
2 follows:

3       43. Government energy aggregation programs shall be subject to  
4 the following provisions:

5       a. A contract between a government aggregator and a licensed  
6 electric power supplier or licensed gas supplier shall include the  
7 following provisions:

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

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

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

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

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

26       (b) The terms of the proposed contract;

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

29       (d) Default and remedies; and

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

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

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

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

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

45       (9) Procedures to ensure that participation in the aggregation  
46 program is the result of an affirmative choice by energy consumers[.

1 as evidenced by a written signature,] and is consistent with rules and  
2 regulations adopted by the board;

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

7 (11) Such other terms and conditions as the government aggregator  
8 deems necessary.

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

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

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

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

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

31 (1) A county government may enter into a contract for a  
32 government energy aggregation program only if one or more  
33 constituent municipalities in the county adopt an ordinance authorizing  
34 the county to enter into such a contract.

35 (2) A county government energy aggregation program shall only  
36 be conducted for residential and business customers located within the  
37 constituent municipalities that have approved participation in the  
38 county's government energy aggregation program.

39 (cf: P.L.1999, c.23, s.43)

40

41 3. Section 44 of P.L.1999, c.23 (C.48:3-93) is amended to read as  
42 follows:

43 44. A government aggregator that chooses to provide a  
44 government energy aggregation program that includes residential or  
45 business customers shall provide such residential and business  
46 customers the opportunity to participate in a government energy

1 aggregation program on a voluntary basis and in a clear and consistent  
2 manner. Any business or residential customer that elects to purchase  
3 electric generation service or gas supply service through a government  
4 energy aggregation program must do so affirmatively and voluntarily,  
5 as evidenced by [a signature authorizing the customer's participation  
6 in a government energy aggregation program for electric generation  
7 service or a gas supply service] the customer's written signature; the  
8 customer's electronic signature; an audio recording of a telephone call  
9 initiated by the customer; independent, third-party verification, in  
10 accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a  
11 telephone call initiated by the government aggregator; or such  
12 alternative forms of verification as the board, in consultation with the  
13 Division of Consumer Affairs, may permit; and where the terms and  
14 conditions of the program are clearly and plainly articulated [in  
15 writing] to the customer [before the customer's signature].  
16 Residential and business customers who do not voluntarily and  
17 affirmatively choose [, as evidenced by a written signature,] to  
18 participate in a government energy aggregation program shall  
19 continue to be entitled to contract with and purchase electric  
20 generation service or gas supply service from any corporation or entity  
21 authorized by law to engage in the retail sale of such services.  
22 (cf: P.L.1999, c.23, s.44)

23

24 4. Section 45 of P.L.1999, c.23 (C.48:3-94) is amended to read as  
25 follows:

26 45. A government aggregator that is a municipality or a county  
27 may, notwithstanding the provisions of section 44 of this act to the  
28 contrary, operate a limited government energy aggregation program  
29 that provides for the aggregation of residential electric generation  
30 service or gas supply service without the initial, affirmative, voluntary,  
31 written consent of residential customers for electric generation service  
32 or gas supply service, either separately or bundled, in accordance with  
33 the following procedures:

34 a. electric generation service or gas supply service for residential  
35 customers may be aggregated together with electric generation  
36 service, electric related service, gas supply service or gas related  
37 service, either separately or bundled, for the government aggregator's  
38 own facilities or with other government aggregators, provided that:

39 (1) the governing body adopts an ordinance in the case of a  
40 municipality, or resolution in the case of a county, indicating its intent  
41 to solicit bids for the provision of electric generation service or gas  
42 supply service, either separately or bundled, without the affirmative,  
43 voluntary [, written] consent of the residential customer, which  
44 approval shall require passage by a majority plus one vote of the full  
45 membership of the governing body;

46 (2) within 15 days of the adoption of such an ordinance or

1 resolution, as appropriate, the governing body provides notice, in a  
2 form as determined by the board, to its residential customers advising  
3 them of their individual right to affirmatively decline participation in  
4 the government energy aggregation program, and providing 30 days  
5 for residential customers to respond in writing to the governing body  
6 of their decision to affirmatively decline participation in the  
7 government energy aggregation program; and

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

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

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

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

36 (1) the contract with the selected licensed electric power supplier  
37 or licensed gas supplier, or both, for the government aggregator's own  
38 load;

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

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

44 d. After entering into a written agreement with the selected  
45 licensed supplier, the governing body shall submit, to the board for  
46 approval, the proposed contract to be entered into by the selected

1 licensed electric power supplier or licensed gas supplier, or both, with  
2 each residential customer who affirmatively consents to enter into a  
3 contract with the selected licensed electric power supplier or licensed  
4 gas supplier, or both. This submission shall include the proposed  
5 contract and any other information deemed appropriate by the board.

6 (1) Within 30 days of receipt of the submission, the board shall  
7 determine whether the submission is complete. If it is determined to  
8 be incomplete, it shall be returned, forthwith, along with a notice  
9 specifying the deficiency or deficiencies. The governing body shall  
10 correct the deficiency or deficiencies and resubmit the submission to  
11 the board.

12 (2) Upon being notified by the board that the submission is  
13 complete, the governing body shall cause a copy to be forwarded to  
14 the Division of the Ratepayer Advocate. Within 45 days of receipt,  
15 the Division of the Ratepayer Advocate shall recommend to the board  
16 to approve, modify or reject the submission.

17 (3) The board shall approve, reject or modify the submission within  
18 60 days of the date the submission is deemed complete.

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

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

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

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

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

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

46 (cf: P.L.1999, c.23, s.45)

1       5. This act shall take effect immediately.

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STATEMENT

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6       Among the innovations that the "Electric Discount and Energy  
7       Competition Act" (P.L.1999, c.23) brought to New Jersey's energy  
8       marketplace is a method by which residential and small business  
9       customers can pool their energy purchases through their local  
10      governments. This method, known as government or municipal  
11      aggregation, offers these customers greater buying power, with the  
12      hope of lower prices, than they would otherwise have as individual  
13      consumers. Unfortunately, the complex statutory process for  
14      government aggregation has hindered municipalities' attempts to create  
15      buying pools. As a result, there has been no successful government  
16      aggregation of residential customers. This bill makes several  
17      amendments to this act to streamline the process for government  
18      aggregation.

19      This bill provides that an energy customer's name, address and the  
20      current energy company from which the customer purchase electricity,  
21      gas or both may be disclosed, without the customer's written consent,  
22      to electric power or gas suppliers (including energy marketers and  
23      brokers), energy agents, or municipal governments acting as energy  
24      purchasing aggregators, for the purposes of entering into municipal  
25      energy aggregation contracts. Any such information may be used only  
26      for the provision of electric generation service, gas supply service, or  
27      related electric or gas services to that customer.

28      The bill eliminates the "one contract" limitation, which now  
29      prevents a municipality from obtaining services from two or more  
30      energy suppliers. This will allow a government aggregator to obtain  
31      service from a variety of sources that best fit the needs of the  
32      participating customers.

33      The bill provides additional means of verification of a customer's  
34      agreement to participate in an "opt-in" government aggregation  
35      program. The verification options are consistent with the medium of  
36      the transaction, i.e., an electronic signature for Internet transactions,  
37      an audio recording (which can include such technologies as interactive  
38      voice response) of telephone calls initiated by the customer, or  
39      independent, third-party verification of telephone calls initiated by the  
40      government aggregator, in addition to the "wet signature" and such  
41      other methods as the Board of Public Utilities may approve. These  
42      additional means of verification are identical to those allowed for  
43      private aggregators in the recently enacted P.L.2001, c.242.

44      Finally, the bill eliminates the requirement, in "opt-out" government  
45      aggregation programs, that energy suppliers obtain affirmative consent  
46      from each participating customer. In such opt-out programs,

**S1433 SWEENEY, INVERSO**

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1 residential customers will already have been asked by their municipal  
2 governing body if they choose to participate or not at the time the  
3 governing body adopted the ordinance or resolution indicating the  
4 intention to solicit bids for energy services.

SENATE ECONOMIC GROWTH AND AGRICULTURE  
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE No. 1433**

**STATE OF NEW JERSEY**

DATED: DECEMBER 12, 2002

The Senate Economic Growth and Agriculture Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1433.

The Senate Committee Substitute for S1433 would amend and supplement the "Electric Discount and Energy Competitive Act" (EDECA), P.L.1999, c.23, to restructure the procedure under which a municipality or county could establish an electricity or gas aggregation program for residential and non-residential customers.

Under this bill, municipalities and counties would have a choice of two processes under which they could establish government energy aggregation programs: one (authorized in section 2 of the bill) consisting of a process to be adopted by the Board of Public Utilities, and the other consisting of a process set forth in the amendments made to the "Electric Discount and Energy Competition Act" (EDECA) in this bill.

Under the first option set forth in section 2 of the bill, the Board of Public Utilities would adopt rules and regulations establishing a government energy aggregation process under which the governing body of a municipality or a county proposing to establish a government energy aggregation program would request its local public electric or gas utility to assist it in establishing an aggregation program. The process established by the board under this section of the bill would:

(1) require a government aggregator that is a municipality or a county to establish a government energy aggregation program by ordinance or resolution, as appropriate, and to award a contract for the government energy aggregation program to a licensed electric power supplier or licensed gas supplier pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C. 40:A-11-1 et seq.);

(2) include residential customers on an opt-out basis prior to the solicitation of bids from a licensed electric power supplier or licensed gas supplier and non-residential customers on an opt-in basis;

(3) require an electric public utility or gas public utility, as the case may be, to notify utility customers, after the adoption of an



ordinance or resolution, of the proposed government energy aggregation program and of the customer's right to decline to participate in the program;

(4) require an electric public utility or a gas public utility, as the case may be, to provide appropriate customer information to a government aggregator that is a municipality or a county after the government aggregator has awarded a contract for a government energy aggregation program to a licensed electric power supplier or licensed gas supplier, as the case may be;

(5) provide that an electric public utility or a gas public utility shall exercise reasonable care in the disclosure of customer information pursuant to this section but shall not be responsible for errors of omissions in the preparation or the content of the customer information;

(6) provide that an electric public utility or gas public utility shall not disclose to any governing body, licensed electric power supplier or licensed gas supplier the name, load profile, or any other customer information about a non-residential customer prior to that non-residential customer opting in to the government energy aggregation program; and

(7) authorize electric public utilities and gas public utilities to prioritize requests made by governing bodies pursuant to this section.

In addition, utilities would be authorized to recover any costs incurred in assisting a governing body in establishing an aggregation program, and would not be required to recover such costs from their shareholders or ratepayers.

Under the second option provided in this bill (in sections 3, 4, and 5 which amend sections 36, 43, and 45 of EDECA), municipal and county aggregation programs could be established for residential customers on an opt-out basis (that is, without the prior consent of the customer) and for commercial and industrial customers on an opt-in basis (that is, with the consent of the customer). In addition, appliance repair services could be aggregated by separate bid on an opt-in basis. This bill also facilitates the transfer of customer information from a public gas or electric utility to a municipality or county establishing an aggregation program, provides certain safeguards to limit the use of this information, and provides a limitation on liability of the public utility transmitting the information.

EDECA established a two part process for government energy aggregation programs. Section 44 of the act established as a general principle that government energy aggregation programs for residential customers must be established on an opt-in basis. Section 45 of the act established a process for municipal energy aggregation programs which was partially opt-in and partially opt-out.

This bill would repeal section 44 and restructure section 45 to set forth a new process for the establishment of a government energy aggregation program on an opt-out basis for residential customers and an opt-in basis for non residential customers. The steps in the process

set forth in the amended section 45 are as follows:

1. A municipality or county adopts, by majority vote, an ordinance or resolution stating the intent of the governing body to establish an aggregation program for electric or gas service on an opt-out basis for residential customers and (optional) an opt-in basis for industrial and commercial customers, and for appliance repair services for residential and non-residential customers on an opt-in basis.

If the aggregation program is to include non-residential customers on a voluntary basis, they would have 30 days from the adoption of the ordinance to opt in. The same time frame would apply for opting in to an appliance repair program.

2. The governing body begins public bidding pursuant to the "Local Public Contracts Law" to identify an electric or gas supplier, and a provider of appliance repair services, as the case may be. Appliance repair services would be bid separately. The bid notice and bidding documents may ask for bids at one or more load levels, to account for different levels of participation in the aggregation program.

Thirty days prior to starting the public bidding, the governing body would submit the bid notice and bid documents to the Board of Public Utilities and the Division of the Ratepayer Advocate for review. The Board and the Ratepayer Advocate would have 15 days to submit comments to the governing body, which could accept or reject the comments.

3. After receiving bids, the governing body would select an electricity or gas supplier and a provider of appliance repair services, as the case may be, for the aggregation program. The governing body would be required to select a gas or electric supplier offering a rate equal to or lower than the price of basis generation server or gas supply (which is determined by the Board) except in the case of electric service which is derived from renewable energy sources, where the price could be higher. If the governing body chooses such a higher rate it must so inform the customers. A copy of the contract would be sent to the Board and the Division of the Ratepayer Advocate, each of which would have 15 days to submit any comments to the governing body.

4. After selecting the supplier the governing body would enter into written contract with the supplier. After the contract is signed, the governing body would give written notice to all residential customer advising them of their right to not participate in the aggregation program. Customers who do not want to participate would have 30 days to so notify the governing body. The opt-out option for residential customers thus is available at the end of the aggregation process.

5. After the 30 day opt-out period the governing body would determine the number of residential customers and non-residential customers (if any) to be served by the aggregation program and would authorize the supplier to enroll the participating customers, who would

then receive their electricity, gas, or appliance repair services, as the case may be, from the selected supplier.

6. Any customer enrolled in the aggregation program would, pursuant to Board rules adopted pursuant to the anti-slamming provisions of section 37 of EDECA, have 14 days to opt-out of the aggregation program.

In addition to the amendments to section 45 of EDECA, this bill would authorize electric and gas public utilities to disclose customer information to a municipality or county for the purpose of establishing a government energy aggregation program. The number of customers and their rate class would be disclosed at the time the governing body began the bidding process for an energy provider, and the name, address, and account number of customers would be disclosed only after a contract is awarded to an energy supplier. Electric public utilities and gas public utilities would not be responsible for errors in the information provided to the governing body, and the participation of an electric public utility, a gas public utility in a government energy aggregation program would be limited to providing the municipality or county with customer information. Customer information disclosed by a utility to a municipality or county would not be considered a government record and would be exempt from the provisions of P.L.2001, c.404 (Open Public Records Act).

This bill (in section 6) also imposes strict restrictions on political contributions made by electric and gas suppliers, and appliance repair service suppliers bidding for a government energy aggregation program contract. Essentially this bill would prohibit political contributions by such suppliers, with exceptions for limited contributions by individuals working for such supplies (\$250 for State candidates, and \$500 to State, county, or local political committees). Suppliers making covered contributions in the year preceding the bidding for government energy aggregation would not be eligible to bid on a contract. Contributions made prior to the effective date of this bill would be included in this calculation. Any supplier who makes prohibited contribution would have any current contract terminated and would be barred from bidding for or receiving future contracts.

As reported by the committee, the Senate Committee Substitute for S1433 is identical to A2165 ACS (1R) as reported with committee amendments.