

48:3-88

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 248
NJSA: 48:3-88 (“Electric Discount and Energy Competition Act”)
BILL NO: S812 (Substituted for A183)

SPONSOR(S): Cardinale and others

DATE INTRODUCED: January 24, 2002

COMMITTEE: **ASSEMBLY:** Telecommunications and Utilities

SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 12, 2004

SENATE: September 30, 2002

DATE OF APPROVAL: January 14, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

(Amendments denoted by

asterisks)

S812

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

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

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A183

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

Bill and Sponsors Statement identical to S812

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

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

P.L. 2003, CHAPTER 248, *approved January 14, 2004*
Senate, No. 812 (*First Reprint*)

1 AN ACT concerning ¹[certain municipalities] municipal electric power
2 systems¹ and ¹rural¹ electric cooperatives and amending P.L.1999,
3 c.23 ¹[(C.48:3-49 et seq.)]¹
4

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

8 1. Section 39 of P.L.1999, c.23 (C.48:3-88) is amended to read as
9 follows:

10 39. a. ¹[A [municipal electric corporation, a municipal electric
11 utility,] municipality that provides light, heat or power or a
12 [cooperative electric utility] rural electric cooperative that existed
13 prior to the effective date of this act shall not be subject to the
14 requirements of this act, except that a local governmental entity in a
15 municipality that provides light, heat or power or the board of
16 directors of a rural electric cooperative may choose to [require the
17 municipal electric corporation, municipal electric utility or cooperative
18 electric utility to] implement retail choice, or except as otherwise
19 provided in subsection b. of this section.

20 b. (1) A [municipal electric corporation] municipality that
21 provides light, heat or power only within the corporate limits of the
22 municipality shall become subject to the provisions of this act if [it
23 was an exclusive provider of retail power within its municipal
24 boundaries prior to the effective date of this act, and] subsequent to
25 the effective date of this act, it chooses to become an electric power
26 supplier as defined by this act to serve retail customers outside of its
27 municipal boundaries.

28 (2) A [municipal electric utility that is subject to board regulation
29 pursuant to R.S.40:62-24] municipality that provides light, heat or
30 power beyond its corporate limits shall become subject to the
31 provisions of this act, if subsequent to the effective date of this act, it
32 chooses to become an electric power supplier as defined by this act to
33 serve retail customers outside of its franchise area.

34 (3) A [cooperative electric utility]rural electric cooperative shall
35 become subject to the provisions of this act, if subsequent to the
36 effective date of this act, it chooses to become an electric power
37 supplier as defined by this act to serve retail customers outside of its
38 franchise area.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted September 19, 2002.

1 c. (1) A [municipal electric corporation or cooperative electric
2 utility] municipality that provides light, heat or power that becomes
3 subject to the provisions of this act pursuant to paragraphs (1) and
4 [(3)] (12) of subsection b. of this section shall be subject to regulation
5 as a public utility under Title 48 of the Revised Statutes pursuant to
6 R.S.40:62-24.

7 (2) A rural electric cooperative that becomes subject to the
8 provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to paragraph
9 (3) of subsection b. of this section shall be subject to regulation as a
10 public utility under Title 48 of the Revised Statutes as to service to
11 retail customers outside of its franchise area.]

12 (1) A municipal system, or a rural electric cooperative, that was
13 established prior to the effective date of P.L.1999, c.23 (C.48:3-49 et
14 seq.), shall not be subject to the provisions of P.L.1999, c.23 except
15 as provided in paragraph (2) of subsection a. of this section or
16 subsection b. of this section.

17 (2) The governing body of a municipality that operates such a
18 municipal system, or the board of directors of a rural electric
19 cooperative, may require that system or cooperative, as the case may
20 be, to implement retail choice.

21 b. (1) A municipal system subject to this section that serves retail
22 electric power customers solely within the corporate limits of its
23 municipality and that, on or after the effective date P.L. , c. ()
24 (now before the Legislature as this bill), is authorized by the governing
25 body of the municipality to provide electric generation service beyond
26 those corporate limits shall become licensed as an electric power
27 supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78) and shall
28 be subject to the provisions of sections 31 through 38 of P.L.1999,
29 c.23 (C.48:3-80 through C.48:3-87) for the purpose of and to the
30 extent of the provision of such electric generation service.

31 (2) A municipal system subject to this section that serves retail
32 electric power customers beyond the corporate limits of its
33 municipality and that, on or after the effective date of P.L. , c.
34 () (now before the Legislature as this bill), is authorized by the
35 governing body of the municipality to provide electric generation
36 service beyond its franchise area shall become licensed as an electric
37 power supplier pursuant to section 29 of P.L.1999, c.23 (C.48:3-78)
38 and shall be subject to the provisions of sections 31 through 38 of
39 P.L.1999, c.23 (C.48:3-80 through C.48:3-87) for the purpose of and
40 to the extent of the provision of such electric generation service.

41 (3) A rural electric cooperative subject to this section that, on or
42 after the effective date of P.L. , c. () (now before the
43 Legislature as this bill), is authorized by its board of directors to
44 provide electric generation service beyond its franchise area shall
45 become licensed as an electric power supplier pursuant to section 29
46 of P.L.1999, c.23 (C.48:3-78) and shall be subject to the provisions of

1 sections 31 through 38 of P.L.1999, c.23 (C.48:3-80 through C.48:3-
2 87) for the purpose of and to the extent of the provision of such
3 electric generation service.

4 (4) A municipal system or rural electric cooperative that becomes
5 licensed as an electric power supplier and otherwise subject to the
6 provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to the
7 provisions of this section shall, in conjunction with the provision of
8 electric generation service, provide for retail choice for the retail
9 electric power customers within its prior service or franchise area, as
10 appropriate.

11 c. For the purposes of this section, "municipal system" means a
12 municipality that provides light, heat or power pursuant to the
13 provisions of R.S.40:62-12 et seq.¹

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

15

16 2. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as
17 follows:

18 42. a. Pursuant to the provisions of sections 42 through 45 of this
19 act, a government aggregator may obtain: electric generation service,
20 electric related service, gas supply service or gas related service, either
21 separately or bundled, for its own facilities or with other government
22 aggregators; and a government aggregator that is a county or
23 municipality may contract for the provision of electric generation
24 service or gas supply service, either separately or bundled, for the
25 business and residential customers within the territorial jurisdiction of
26 the government aggregator. Such a government aggregator may
27 combine the need for its own facilities for electric generation service
28 or gas supply service with that of business and residential customers.

29 b. A government aggregator shall purchase electric generation
30 service and gas supply service only from licensed electric power
31 suppliers and licensed gas suppliers.

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

40 d. Nothing in this act shall preclude the State government or any
41 State independent authority or State college from exercising authority
42 to obtain electric generation service, electric related service, gas
43 supply service or gas related service, either separately or bundled, for
44 its own facilities on an aggregated basis.

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

4 f. Nothing in this act shall preclude any interstate authority or
5 agency from exercising authority to obtain electric generation service
6 or gas supply service, either separately or bundled, for its own
7 facilities in this State, including tenants in this State and other utility
8 customers in this State at such facilities, on an aggregated basis. By
9 exercising such authority, no interstate authority or agency shall be
10 deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided,
11 however, that nothing in this act shall be construed to exempt such
12 authority or agency from the payment of the market transition charge
13 or its equivalent, imposed pursuant to section 13 of this act, the
14 transition bond charge or its equivalent, imposed pursuant to section
15 18 of this act and any societal benefits charge or its equivalent, which
16 may be imposed pursuant to section 12 of this act, to the same extent
17 that other customers of an electric public utility pay such charges in
18 conjunction with any transmission and distribution service provided by
19 an electric public utility to the authority or agency.

20 g. Notwithstanding any other provision of this act to the contrary,
21 a private aggregator that is a private institution of higher education
22 may enter into a contract with a licensed electric power supplier other
23 than a [municipal electric corporation, a municipal electric utility,]
24 ¹[municipality that provides light, heat or power] municipal system¹
25 or [cooperative electric utility] rural electric cooperative for the
26 provision of electric generation service or electric related service,
27 either separately or bundled, including any private aggregator that is
28 a four-year private institution of higher education which is located
29 within the jurisdiction of a ¹[municipality that] municipal system¹
30 [contains a municipal electric corporation or a municipal electric
31 utility] ¹[provides light, heat or power]¹, or within the franchise area
32 of a rural electric cooperative, as the case may be. The right
33 hereunder of a four-year private institution of higher education to
34 enter into a contract with a licensed electric power supplier other than
35 the [municipal electric corporation or municipal electric utility]
36 ¹[municipality] municipal system¹ or rural electric cooperative shall
37 be subject to the condition that the [municipal electric corporation or
38 municipal electric utility] ¹[municipality] municipal system¹ or rural
39 electric cooperative shall have the right of first refusal to offer a
40 competitive, market-based price for electric power. ¹For the purposes
41 of this subsection, "municipal system" means a municipality that
42 provides light, heat or power pursuant to the provisions of R.S.40:62-
43 12 et seq.¹

44 h. The "New Jersey School Boards Association," established
45 pursuant to N.J.S.18A:6-45, is authorized to serve as a government

1 aggregator to obtain electric generation service, electric related
2 service, gas supply service or gas related service, either separately or
3 bundled, in accordance with the "Public School Contracts Law,"
4 N.J.S.18A:18A-1 et seq., for members of the association who wish to
5 voluntarily participate.

6 i. Notwithstanding any provisions of the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board
8 shall initiate a proceeding and shall adopt, after notice, provision of
9 the opportunity for comment, and public hearing, interim standards
10 governing government energy aggregation programs. Such standards
11 shall be effective as regulations immediately upon filing with the Office
12 of Administrative Law and shall be effective for a period not to exceed
13 18 months, and may, thereafter, be amended, adopted or readopted by
14 the board in accordance with the provisions of the "Administrative
15 Procedure Act."

16 j. No government aggregator shall implement the provisions of
17 section 42, 43, 44, or 45 of this act, as appropriate, prior to the
18 starting date of retail competition pursuant to section 5 of this act, or
19 the date on which the board adopts interim standards pursuant to
20 subsection i. of this section, whichever is earlier.
21 (cf: P.L.1999, c.23, s.42)

22

23 3. This act shall take effect immediately.

24

25

26

27

28 Clarifies provisions of "Electric Discount and Energy Competition
29 Act" concerning municipal electric power systems and rural electric
30 cooperatives.

SENATE, No. 812

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JANUARY 24, 2002

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator BARBARA BUONO

District 18 (Middlesex)

Co-Sponsored by:

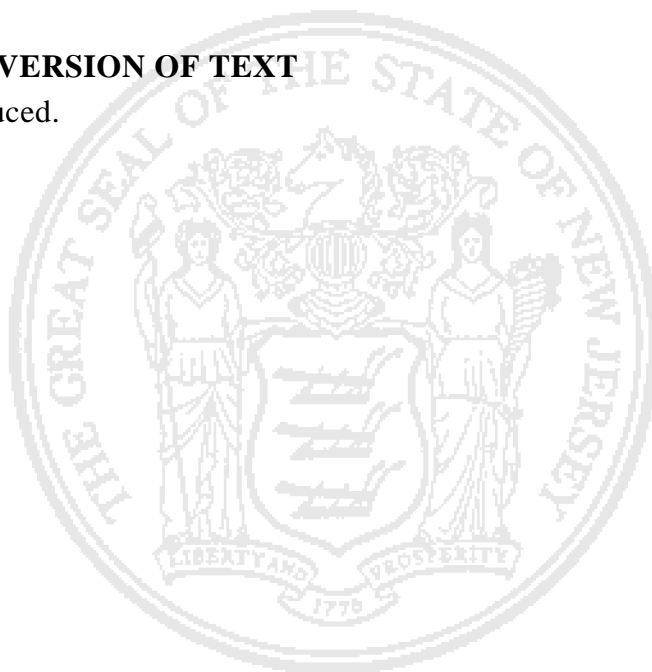
Senators Ciesla, Connors and Inverso

SYNOPSIS

Revises certain sections of the "Electric Discount and Energy Competition Act" concerning municipal providers of utility services and rural electric cooperatives.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/10/2002)

S812 CARDINALE, BUONO

2

1 AN ACT concerning certain municipalities and electric cooperatives
2 and amending P.L.1999, c.23 (C.48:3-49 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 39 of P.L.1999, c.23 (C.48:3-88) is amended to read as
8 follows:

9 39. a. A [municipal electric corporation, a municipal electric
10 utility,] municipality that provides light, heat or power or a
11 [cooperative electric utility] rural electric cooperative that existed
12 prior to the effective date of this act shall not be subject to the
13 requirements of this act, except that a local governmental entity in a
14 municipality that provides light, heat or power or the board of
15 directors of a rural electric cooperative may choose to [require the
16 municipal electric corporation, municipal electric utility or cooperative
17 electric utility to] implement retail choice, or except as otherwise
18 provided in subsection b. of this section.

19 b. (1) A [municipal electric corporation] municipality that
20 provides light, heat or power only within the corporate limits of the
21 municipality shall become subject to the provisions of this act if [it
22 was an exclusive provider of retail power within its municipal
23 boundaries prior to the effective date of this act, and] subsequent to
24 the effective date of this act, it chooses to become an electric power
25 supplier as defined by this act to serve retail customers outside of its
26 municipal boundaries.

27 (2) A [municipal electric utility that is subject to board regulation
28 pursuant to R.S.40:62-24] municipality that provides light, heat or
29 power beyond its corporate limits shall become subject to the
30 provisions of this act, if subsequent to the effective date of this act, it
31 chooses to become an electric power supplier as defined by this act to
32 serve retail customers outside of its franchise area.

33 (3) A [cooperative electric utility] rural electric cooperative shall
34 become subject to the provisions of this act, if subsequent to the
35 effective date of this act, it chooses to become an electric power
36 supplier as defined by this act to serve retail customers outside of its
37 franchise area.

38 c. (1) A [municipal electric corporation or cooperative electric
39 utility] municipality that provides light, heat or power that becomes
40 subject to the provisions of this act pursuant to paragraphs (1) and
41 [(3)] (12) of subsection b. of this section shall be subject to regulation

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

Matter underlined thus is new matter.

1 as a public utility under Title 48 of the Revised Statutes pursuant to
2 R.S.40:62-24.

3 (2) A rural electric cooperative that becomes subject to the
4 provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to paragraph
5 (3) of subsection b. of this section shall be subject to regulation as a
6 public utility under Title 48 of the Revised Statutes as to service to
7 retail customers outside of its franchise area.

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

9

10 2. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as
11 follows:

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

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

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

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

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

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

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

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

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

39 i. Notwithstanding any provisions of the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board
41 shall initiate a proceeding and shall adopt, after notice, provision of
42 the opportunity for comment, and public hearing, interim standards
43 governing government energy aggregation programs. Such standards
44 shall be effective as regulations immediately upon filing with the Office
45 of Administrative Law and shall be effective for a period not to exceed
46 18 months, and may, thereafter, be amended, adopted or readopted by

1 the board in accordance with the provisions of the "Administrative
2 Procedure Act."

3 j. No government aggregator shall implement the provisions of
4 section 42, 43, 44, or 45 of this act, as appropriate, prior to the
5 starting date of retail competition pursuant to section 5 of this act, or
6 the date on which the board adopts interim standards pursuant to
7 subsection i. of this section, whichever is earlier.

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

9

10 3. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill amends sections 39 and 42 of the "Electric Discount and
16 Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et seq.)
17 (hereinafter "the act") to provide for greater consistency between these
18 sections and Title 40 of the Revised Statutes with regard to
19 municipalities that provide utility services and rural electric
20 cooperatives.

21 The bill also deletes certain language in section 39 of the act in
22 order to clarify that a municipality may provide electric service to all
23 customers within its boundaries without losing its exemption under the
24 act.

25 In addition, the bill clarifies section 39 of the act by providing that
26 in the case of a rural electric cooperative, the board of directors of the
27 cooperative may choose to implement retail choice.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 812

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Telecommunications and Utilities Committee reports favorably Senate Bill No. 812 (1R).

As reported, this bill further clarifies those provisions of the "Electric Discount and Energy Competition Act," ("EDECA") (P.L.1999, c.23) that concern municipal electric power systems and rural electric cooperatives as contained in sections 39 (C.48:3-88) and 42 (C.48:3-91) of EDECA.

Specifically, the bill provides that a "municipal system" or a rural cooperative established prior to the enactment date of EDECA shall not be subject to EDECA except as provided in subsection b. of section 1 of the bill or pursuant to a decision by the municipal governing body or board of directors of the cooperative, as appropriate.

Subsection b. of section 1 of the bill provides that a "municipal system" or rural electric cooperative that, on or after the effective date of the bill, is authorized by its municipal governing body or board of directors to provide electric generation service beyond the pertinent corporate limits or franchise area, shall become licensed as an electric power supplier and subject to the appropriate provisions of EDECA for the purpose of and to the extent of the provision of such electric generation service.

The bill provides for reciprocity, by requiring that a municipal system or cooperative that becomes an electric power supplier shall provide retail choice for its electric power customers within its prior service or franchise area, as appropriate.

The bill removes the current provisions of s.39 of P.L.1999, c.23 (C.48:3-88) and the provisions of paragraph (2) of subsection c. of section 1 of the bill, both of which would subject municipal and cooperative systems to regulation as public utilities if they engage in "extraterritorial" service.

The bill defines a "municipal system" as a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

As reported by the committee, this bill is identical to Assembly Bill No. 183(1R).

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 812

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2002

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably and with committee amendments Senate Bill No. 812.

This bill, as amended by the committee, further clarifies those provisions of the "Electric Discount and Energy Competition Act," ("EDECA") (P.L.1999, c.23) that concern municipal electric power systems and rural electric cooperatives as contained in sections 39 (C.48:3-88) and 42 (C.48:3-91) of EDECA.

Specifically, the bill provides that a "municipal system" or a rural cooperative established prior to the enactment date of EDECA shall not be subject to EDECA except as provided in subsection b. of section 1 of the bill or pursuant to a decision by the municipal governing body or board of directors of the cooperative, as appropriate.

Subsection b. of section 1 of the bill provides that a "municipal system" or rural electric cooperative that, on or after the effective date of the bill, is authorized by its municipal governing body or board of directors to provide electric generation service beyond the pertinent corporate limits or franchise area, shall become licensed as an electric power supplier and subject to the appropriate provisions of EDECA for the purpose of and to the extent of the provision of such electric generation service.

The bill provides for reciprocity, by requiring that a municipal system or cooperative that becomes an electric power supplier shall provide retail choice for its electric power customers within its prior service or franchise area, as appropriate.

The bill removes the current provisions of s.39 of P.L.1999, c.23 (C.48:3-88) and the provisions of paragraph (2) of subsection c. of section 1 of the bill, both of which would subject municipal and cooperative systems to regulation as public utilities if they engage in "extraterritorial" service.

The bill defines a "municipal system" as a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

The committee amended the bill to:

(1) provide that a "municipal system" or a rural cooperative established prior to the enactment date of EDECA shall not be subject to EDECA except as provided in subsection b. of section 1 of the bill or pursuant to a decision by the municipal governing body or board of directors of the cooperative, as appropriate;

(2) provide that a "municipal system" or rural electric cooperative that, on or after the effective date of the bill, is authorized by its municipal governing body or board of directors to provide electric generation service beyond the pertinent corporate limits or franchise area, shall become licensed as an electric power supplier and subject to the appropriate provisions of EDECA for the purpose of and to the extent of the provision of such electric generation service;

(3) provide for reciprocity, by requiring that a system or cooperative that becomes an electric power supplier shall provide retail choice for its prior electric power customers within its prior service or franchise area, as appropriate;

(4) remove the current provisions of s.39 of P.L.1999, c.23 (C.48:3-88) and the provisions of paragraph (2) of subsection c. of section 1 of the bill, both of which would subject municipal systems to regulation as public utilities if they engage in "extraterritorial" service; and

(5) define a "municipal system" as a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

ASSEMBLY, No. 183

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

Co-Sponsored by:

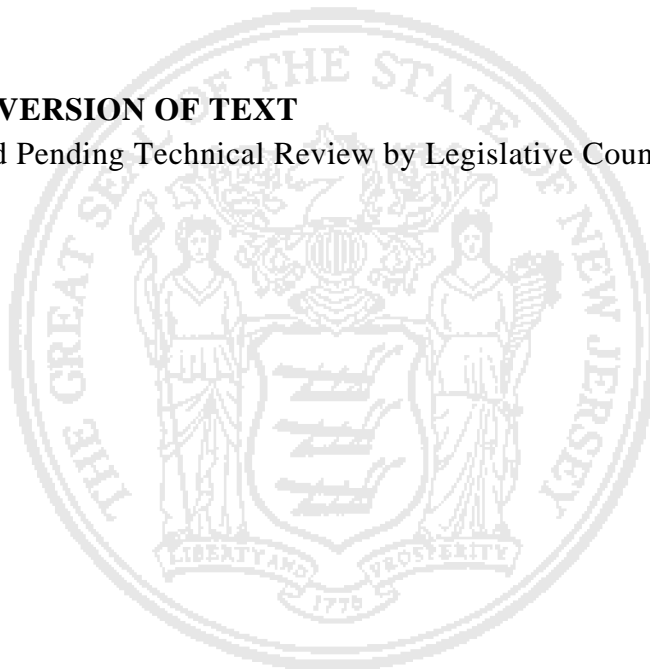
**Assemblymen Garrett, Asselta, Connors, Moran, Rooney, Wolfe, Cottrell,
Malone, Holzapfel, DeCroce, Gregg and Pennacchio**

SYNOPSIS

Revises certain sections of the "Electric Discount and Energy Competition Act" concerning municipal providers of utility services and rural electric cooperatives.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/26/2002)

1 AN ACT concerning certain municipalities and electric cooperatives
2 and amending P.L.1999, c.23 (C.48:3-49 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 39 of P.L.1999, c.23 (C.48:3-88) is amended to read as
8 follows:

9 39. a. A [municipal electric corporation, a municipal electric
10 utility,] municipality that provides light, heat or power or a
11 [cooperative electric utility] rural electric cooperative that existed
12 prior to the effective date of this act shall not be subject to the
13 requirements of this act, except that a local governmental entity in a
14 municipality that provides light, heat or power or the board of
15 directors of a rural electric cooperative may choose to [require the
16 municipal electric corporation, municipal electric utility or cooperative
17 electric utility to] implement retail choice, or except as otherwise
18 provided in subsection b. of this section.

19 b. (1) A [municipal electric corporation] municipality that
20 provides light, heat or power only within the corporate limits of the
21 municipality shall become subject to the provisions of this act if [it
22 was an exclusive provider of retail power within its municipal
23 boundaries prior to the effective date of this act, and] subsequent to
24 the effective date of this act, it chooses to become an electric power
25 supplier as defined by this act to serve retail customers outside of its
26 municipal boundaries.

27 (2) A [municipal electric utility that is subject to board regulation
28 pursuant to R.S.40:62-24] municipality that provides light, heat or
29 power beyond its corporate limits shall become subject to the
30 provisions of this act, if subsequent to the effective date of this act, it
31 chooses to become an electric power supplier as defined by this act to
32 serve retail customers outside of its franchise area.

33 (3) A [cooperative electric utility] rural electric cooperative shall
34 become subject to the provisions of this act, if subsequent to the
35 effective date of this act, it chooses to become an electric power
36 supplier as defined by this act to serve retail customers outside of its
37 franchise area.

38 c. (1) A [municipal electric corporation or cooperative electric
39 utility] municipality that provides light, heat or power that becomes
40 subject to the provisions of this act pursuant to paragraphs (1) and
41 [(3)] (12) of subsection b. of this section shall be subject to regulation

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

Matter underlined thus is new matter.

1 as a public utility under Title 48 of the Revised Statutes pursuant to
2 R.S.40:62-24.

3 (2) A rural electric cooperative that becomes subject to the
4 provisions of P.L.1999, c.23 (C.48:3-49 et seq.) pursuant to paragraph
5 (3) of subsection b. of this section shall be subject to regulation as a
6 public utility under Title 48 of the Revised Statutes as to service to
7 retail customers outside of its franchise area.

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

9

10 2. Section 42 of P.L.1999, c.23 (C.48:3-91) is amended to read as
11 follows:

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

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

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

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

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

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

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

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

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

39 i. Notwithstanding any provisions of the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board
41 shall initiate a proceeding and shall adopt, after notice, provision of
42 the opportunity for comment, and public hearing, interim standards
43 governing government energy aggregation programs. Such standards
44 shall be effective as regulations immediately upon filing with the Office
45 of Administrative Law and shall be effective for a period not to exceed
46 18 months, and may, thereafter, be amended, adopted or readopted by

1 the board in accordance with the provisions of the "Administrative
2 Procedure Act."

3 j. No government aggregator shall implement the provisions of
4 section 42, 43, 44, or 45 of this act, as appropriate, prior to the
5 starting date of retail competition pursuant to section 5 of this act, or
6 the date on which the board adopts interim standards pursuant to
7 subsection i. of this section, whichever is earlier.

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

9

10 3. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill amends sections 39 and 42 of the "Electric Discount and
16 Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et
17 seq.)(hereinafter "the act") to provide for greater consistency between
18 these sections and Title 40 of the Revised Statutes with regard to
19 municipalities that provide utility services and rural electric
20 cooperatives.

21 The bill also deletes certain language in section 39 of the act in
22 order to clarify that a municipality may provide electric service to all
23 customers within its boundaries without losing its exemption under the
24 act.

25 In addition, the bill clarifies section 39 of the act by providing that
26 in the case of a rural electric cooperative, the board of directors of the
27 cooperative may choose to implement retail choice.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 183

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 21, 2002

The Assembly Telecommunications and Utilities Committee reports favorably and with committee amendments Assembly Bill No. 183.

As amended, this bill clarifies the provisions of sections 39 and 42 of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-88; 48:3-91) ("EDECA") with regard to municipal electric power systems ("municipal system") and rural electric cooperatives ("cooperative").

Specifically, the bill provides that a municipal system or a cooperative established prior to the enactment date of EDECA shall not be subject to EDECA except as provided in subsection b. of section 1 of the bill or pursuant to a decision by the municipal governing body or board of directors of the cooperative, as appropriate. The bill defines a municipal system as a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

Subsection b. of section 1 of the bill provides that a municipal system or cooperative that, on or after the effective date of the bill, is authorized by its municipal governing body or board of directors to provide electric generation service beyond the pertinent corporate limits or franchise area, shall become licensed as an electric power supplier and subject to the appropriate provisions of EDECA for the purpose of and to the extent of the provision of such electric generation service.

The bill provides for reciprocity, by requiring that a municipal system or cooperative that becomes an electric power supplier shall provide retail choice for its electric power customers within its prior service or franchise area, as appropriate.

The bill removes the current provisions of section 39 of P.L.1999, c.23 (C.48:3-88) and the provisions of paragraph (2) of subsection c. of section 1 of the bill, both of which would subject municipal and cooperative systems to regulation as public utilities if they engage in "extraterritorial" service. As reported, this bill is identical to Senate Bill No. 812 (1R).

Committee Amendments

The committee amended the bill to:

(1) provide that a municipal system or a cooperative established prior to the enactment date of EDECA shall not be subject to EDECA except as provided in subsection b. of section 1 of the bill or pursuant to a decision by the municipal governing body or board of directors of the cooperative, as appropriate;

(2) provide that a municipal system or cooperative that, on or after the effective date of the bill, is authorized by its municipal governing body or board of directors to provide electric generation service beyond the pertinent corporate limits or franchise area, shall become licensed as an electric power supplier and subject to the appropriate provisions of EDECA for the purpose of and to the extent of the provision of such electric generation service;

(3) provide for reciprocity, by requiring that a municipal system or cooperative that becomes an electric power supplier shall provide retail choice for its electric power customers within its prior service or franchise area, as appropriate;

(4) remove the current provisions of section 39 of P.L.1999, c.23 (C.48:3-88) and the provisions of paragraph (2) of subsection c. of section 1 of the bill, both of which would subject municipal systems and cooperatives to regulation as public utilities if they engage in "extraterritorial" service; and

(5) define a municipal system as a municipality that provides light, heat or power pursuant to the provisions of R.S.40:62-12 et seq.

This bill was prefiled for introduction in the 2002-2003 session pending technical review. As reported, this bill includes the changes required by technical review which has been performed.