

48:3-51

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2002 **CHAPTER:** 84

NJSA: 48:3-51 (Utilities—deregulation)

BILL NO: S869 (Substituted for A2108)

SPONSOR(S): Bark and others

DATE INTRODUCED: February 11, 2002

COMMITTEE: **ASSEMBLY:** ----

SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 20, 2002

SENATE: May 16, 2002

DATE OF APPROVAL: September 9, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)
(Amendments during passage denoted by superscript numbers)

S869

[SPONSORS STATEMENT:](#) (Begins on page 14 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2108

[SPONSORS STATEMENT:](#) (Begins on page 14 of original bill) [Yes](#)
Bill and Sponsors Statement identical to S869

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

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 633-2111 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"New law aims to lower utility rate hikes," 9-7-2002 Star Ledger, p20

"Law could limit NJ utility rate hikes," 9-7-2002 The Times, p.C11

"Law to reduce electricity burden," 9-7-2002 Home News & Tribune, p.A3

"Law may reduce impact of debt on ratepayers," 9-7-2002 Asbury Park Press, p.A10

P.L. 2002, CHAPTER 84, *approved September 9, 2002*
Senate, No. 869 (*First Reprint*)

1 AN ACT concerning transition bonds and amending P.L.1999, c.23.

2

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

5

6 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
7 follows:

8 3. As used in this act:

9 "Assignee" means a person to which an electric public utility or
10 another assignee assigns, sells or transfers, other than as security, all
11 or a portion of its right to or interest in bondable transition property.
12 Except as specifically provided in this act, an assignee shall not be
13 subject to the public utility requirements of Title 48 or any rules or
14 regulations adopted pursuant thereto;

15 "Basic gas supply service" means gas supply service that is provided
16 to any customer that has not chosen an alternative gas supplier,
17 whether or not the customer has received offers as to competitive
18 supply options, including, but not limited to, any customer that cannot
19 obtain such service for any reason, including non-payment for services.
20 Basic gas supply service is not a competitive service and shall be fully
21 regulated by the board;

22 "Basic generation service" means electric generation service that is
23 provided, pursuant to section 9 of this act, to any customer that has
24 not chosen an alternative electric power supplier, whether or not the
25 customer has received offers as to competitive supply options,
26 including, but not limited to, any customer that cannot obtain such
27 service from an electric power supplier for any reason, including
28 non-payment for services. Basic generation service is not a
29 competitive service and shall be fully regulated by the board;

30 "Basic generation service transition costs" means the amount by
31 which the payments by an electric public utility for the procurement of
32 power for basic generation service and related ancillary and
33 administrative costs exceeds the net revenues from the basic
34 generation service charge established by the board pursuant to section
35 9 of P.L.1999, c.23 (C.48:3-57) during the transition period, together
36 with interest on the balance at the board-approved rate, that is
37 reflected in a deferred balance account approved by the board in an
38 order addressing the electric public utility's unbundled rates, stranded
39 costs, and restructuring filings pursuant to P.L.1999, c.23 (C.48:3-49
40 et al.). Basic generation service transition costs shall include, but are

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:

¹ Senate SEG committee amendments adopted March 26, 2002.

1 not limited to, costs of purchases from the spot market, bilateral
2 contracts, contracts with non-utility generators, parting contracts with
3 the purchaser of the electric public utility's divested generation assets,
4 short-term advance purchases, and financial instruments such as
5 hedging, forward contracts, and options. Basic generation service
6 transition costs shall also include the payments by an electric public
7 utility pursuant to a competitive procurement process for basic
8 generation service supply during the transition period, and costs of any
9 such process used to procure the basic generation service supply;

10 "Board" means the New Jersey Board of Public Utilities or any
11 successor agency;

12 "Bondable stranded costs" means any stranded costs or basic
13 generation service transition costs of an electric public utility approved
14 by the board for recovery pursuant to the provisions of this act,
15 together with, as approved by the board: (1) the cost of retiring
16 existing debt or equity capital of the electric public utility, including
17 accrued interest, premium and other fees, costs and charges relating
18 thereto, with the proceeds of the financing of bondable transition
19 property; (2) if requested by an electric public utility in its application
20 for a bondable stranded costs rate order, federal, State and local tax
21 liabilities associated with stranded costs recovery or basic generation
22 service transition cost recovery or the transfer or financing of such
23 property or both, including taxes, whose recovery period is modified
24 by the effect of a stranded costs recovery order, a bondable stranded
25 costs rate order or both; and (3) the costs incurred to issue, service or
26 refinance transition bonds, including interest, acquisition or
27 redemption premium, and other financing costs, whether paid upon
28 issuance or over the life of the transition bonds, including, but not
29 limited to, credit enhancements, service charges, overcollateralization,
30 interest rate cap, swap or collar, yield maintenance, maturity guarantee
31 or other hedging agreements, equity investments, operating costs and
32 other related fees, costs and charges, or to assign, sell or otherwise
33 transfer bondable transition property;

34 "Bondable stranded costs rate order" means one or more
35 irrevocable written orders issued by the board pursuant to this act
36 which determines the amount of bondable stranded costs and the initial
37 amount of transition bond charges authorized to be imposed to recover
38 such bondable stranded costs, including the costs to be financed from
39 the proceeds of the transition bonds, as well as on-going costs
40 associated with servicing and credit enhancing the transition bonds,
41 and provides the electric public utility specific authority to issue or
42 cause to be issued, directly or indirectly, transition bonds through a
43 financing entity and related matters as provided in this act, which order
44 shall become effective immediately upon the written consent of the
45 related electric public utility to such order as provided in this act;

46 "Bondable transition property" means the property consisting of the

1 irrevocable right to charge, collect and receive, and be paid from
2 collections of, transition bond charges in the amount necessary to
3 provide for the full recovery of bondable stranded costs which are
4 determined to be recoverable in a bondable stranded costs rate order,
5 all rights of the related electric public utility under such bondable
6 stranded costs rate order including, without limitation, all rights to
7 obtain periodic adjustments of the related transition bond charges
8 pursuant to subsection b. of section 15 of this act, and all revenues,
9 collections, payments, money and proceeds arising under, or with
10 respect to, all of the foregoing;

11 "Broker" means a duly licensed electric power supplier that assumes
12 the contractual and legal responsibility for the sale of electric
13 generation service, transmission or other services to end-use retail
14 customers, but does not take title to any of the power sold, or a duly
15 licensed gas supplier that assumes the contractual and legal obligation
16 to provide gas supply service to end-use retail customers, but does not
17 take title to the gas;

18 "Buydown" means an arrangement or arrangements involving the
19 buyer and seller in a given power purchase contract and, in some cases
20 third parties, for consideration to be given by the buyer in order to
21 effectuate a reduction in the pricing, or the restructuring of other
22 terms to reduce the overall cost of the power contract, for the
23 remaining succeeding period of the purchased power arrangement or
24 arrangements;

25 "Buyout" means an arrangement or arrangements involving the
26 buyer and seller in a given power purchase contract and, in some cases
27 third parties, for consideration to be given by the buyer in order to
28 effectuate a termination of such power purchase contract;

29 "Class I renewable energy" means electric energy produced from
30 solar technologies, photovoltaic technologies, wind energy, fuel cells,
31 geothermal technologies, wave or tidal action, and methane gas from
32 landfills or a biomass facility, provided that the biomass is cultivated
33 and harvested in a sustainable manner;

34 "Class II renewable energy" means electric energy produced at a
35 resource recovery facility or hydropower facility, provided that such
36 facility is located where retail competition is permitted and provided
37 further that the Commissioner of Environmental Protection has
38 determined that such facility meets the highest environmental
39 standards and minimizes any impacts to the environment and local
40 communities;

41 "Competitive service" means any service offered by an electric
42 public utility or a gas public utility that the board determines to be
43 competitive pursuant to section 8 or section 10 of this act or that is
44 not regulated by the board;

45 "Comprehensive resource analysis" means an analysis including, but
46 not limited to, an assessment of existing market barriers to the

1 implementation of energy efficiency and renewable technologies that
2 are not or cannot be delivered to customers through a competitive
3 marketplace;

4 "Customer" means any person that is an end user and is connected
5 to any part of the transmission and distribution system within an
6 electric public utility's service territory or a gas public utility's service
7 territory within this State;

8 "Customer account service" means metering, billing, or such other
9 administrative activity associated with maintaining a customer account;

10 "Demand side management" means the management of customer
11 demand for energy service through the implementation of
12 cost-effective energy efficiency technologies, including, but not limited
13 to, installed conservation, load management and energy efficiency
14 measures on and in the residential, commercial, industrial, institutional
15 and governmental premises and facilities in this State;

16 "Electric generation service" means the provision of retail electric
17 energy and capacity which is generated off-site from the location at
18 which the consumption of such electric energy and capacity is metered
19 for retail billing purposes, including agreements and arrangements
20 related thereto;

21 "Electric power generator" means an entity that proposes to
22 construct, own, lease or operate, or currently owns, leases or operates,
23 an electric power production facility that will sell or does sell at least
24 90 percent of its output, either directly or through a marketer, to a
25 customer or customers located at sites that are not on or contiguous
26 to the site on which the facility will be located or is located. The
27 designation of an entity as an electric power generator for the
28 purposes of this act shall not, in and of itself, affect the entity's status
29 as an exempt wholesale generator under the Public Utility Holding
30 Company Act of 1935, 15 U.S.C. s.79 et seq.;

31 "Electric power supplier" means a person or entity that is duly
32 licensed pursuant to the provisions of this act to offer and to assume
33 the contractual and legal responsibility to provide electric generation
34 service to retail customers, and includes load serving entities,
35 marketers and brokers that offer or provide electric generation service
36 to retail customers. The term excludes an electric public utility that
37 provides electric generation service only as a basic generation service
38 pursuant to section 9 of this act;

39 "Electric public utility" means a public utility, as that term is defined
40 in R.S.48:2-13, that transmits and distributes electricity to end users
41 within this State;

42 "Electric related service" means a service that is directly related to
43 the consumption of electricity by an end user, including, but not
44 limited to, the installation of demand side management measures at the
45 end user's premises, the maintenance, repair or replacement of
46 appliances, lighting, motors or other energy-consuming devices at the

1 end user's premises, and the provision of energy consumption
2 measurement and billing services;

3 "Electronic signature" means an electronic sound, symbol or
4 process, attached to, or logically associated with, a contract or other
5 record, and executed or adopted by a person with the intent to sign the
6 record;

7 "Energy agent" means a person that is duly registered pursuant to
8 the provisions of this act, that arranges the sale of retail electricity or
9 electric related services or retail gas supply or gas related services
10 between government aggregators or private aggregators and electric
11 power suppliers or gas suppliers, but does not take title to the electric
12 or gas sold;

13 "Energy consumer" means a business or residential consumer of
14 electric generation service or gas supply service located within the
15 territorial jurisdiction of a government aggregator;

16 "Financing entity" means an electric public utility, a special purpose
17 entity, or any other assignee of bondable transition property, which
18 issues transition bonds. Except as specifically provided in this act, a
19 financing entity which is not itself an electric public utility shall not be
20 subject to the public utility requirements of Title 48 or any rules or
21 regulations adopted pursuant thereto;

22 "Gas public utility" means a public utility, as that term is defined in
23 R.S.48:2-13, that distributes gas to end users within this State;

24 "Gas related service" means a service that is directly related to the
25 consumption of gas by an end user, including, but not limited to, the
26 installation of demand side management measures at the end user's
27 premises, the maintenance, repair or replacement of appliances or
28 other energy-consuming devices at the end user's premises, and the
29 provision of energy consumption measurement and billing services;

30 "Gas supplier" means a person that is duly licensed pursuant to the
31 provisions of this act to offer and assume the contractual and legal
32 obligation to provide gas supply service to retail customers, and
33 includes, but is not limited to, marketers and brokers. A non-public
34 utility affiliate of a public utility holding company may be a gas
35 supplier, but a gas public utility or any subsidiary of a gas utility is not
36 a gas supplier. In the event that a gas public utility is not part of a
37 holding company legal structure, a related competitive business
38 segment of that gas public utility may be a gas supplier, provided that
39 related competitive business segment is structurally separated from the
40 gas public utility, and provided that the interactions between the gas
41 public utility and the related competitive business segment are subject
42 to the affiliate relations standards adopted by the board pursuant to
43 subsection k. of section 10 of this act;

44 "Gas supply service" means the provision to customers of the retail
45 commodity of gas, but does not include any regulated distribution
46 service;

1 "Government aggregator" means any government entity subject to
2 the requirements of the "Local Public Contracts Law," P.L.1971,
3 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
4 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
5 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
6 contract with a licensed electric power supplier or a licensed gas
7 supplier for: (1) the provision of electric generation service, electric
8 related service, gas supply service, or gas related service for its own
9 use or the use of other government aggregators; or (2) if a municipal
10 or county government, the provision of electric generation service or
11 gas supply service on behalf of business or residential customers within
12 its territorial jurisdiction;

13 "Government energy aggregation program" means a program and
14 procedure pursuant to which a government aggregator enters into a
15 written contract for the provision of electric generation service or gas
16 supply service on behalf of business or residential customers within its
17 territorial jurisdiction;

18 "Governmental entity" means any federal, state, municipal, local or
19 other governmental department, commission, board, agency, court,
20 authority or instrumentality having competent jurisdiction;

21 "Market transition charge" means a charge imposed pursuant to
22 section 13 of this act by an electric public utility, at a level determined
23 by the board, on the electric public utility customers for a limited
24 duration transition period to recover stranded costs created as a result
25 of the introduction of electric power supply competition pursuant to
26 the provisions of this act;

27 "Marketer" means a duly licensed electric power supplier that takes
28 title to electric energy and capacity, transmission and other services
29 from electric power generators and other wholesale suppliers and then
30 assumes contractual and legal obligation to provide electric generation
31 service, and may include transmission and other services, to an end-use
32 retail customer or customers, or a duly licensed gas supplier that takes
33 title to gas and then assumes the contractual and legal obligation to
34 provide gas supply service to an end-use customer or customers;

35 "Net proceeds" means proceeds less transaction and other related
36 costs as determined by the board;

37 "Net revenues" means revenues less related expenses, including
38 applicable taxes, as determined by the board;

39 "On-site generation facility" means a generation facility, and
40 equipment and services appurtenant to electric sales by such facility to
41 the end use customer located on the property or on property
42 contiguous to the property on which the end user is located. An
43 on-site generation facility shall not be considered a public utility. The
44 property of the end use customer and the property on which the
45 on-site generation facility is located shall be considered contiguous if
46 they are geographically located next to each other, but may be

1 otherwise separated by an easement, public thoroughfare,
2 transportation or utility-owned right-of-way;

3 "Person" means an individual, partnership, corporation, association,
4 trust, limited liability company, governmental entity or other legal
5 entity;

6 "Private aggregator" means a non-government aggregator that is a
7 duly-organized business or non-profit organization authorized to do
8 business in this State that enters into a contract with a duly licensed
9 electric power supplier for the purchase of electric energy and
10 capacity, or with a duly licensed gas supplier for the purchase of gas
11 supply service, on behalf of multiple end-use customers by combining
12 the loads of those customers;

13 "Public utility holding company" means: (1) any company that,
14 directly or indirectly, owns, controls, or holds with power to vote, ten
15 percent or more of the outstanding voting securities of an electric
16 public utility or a gas public utility or of a company which is a public
17 utility holding company by virtue of this definition, unless the
18 Securities and Exchange Commission, or its successor, by order
19 declares such company not to be a public utility holding company
20 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
21 et seq., or its successor; or (2) any person that the Securities and
22 Exchange Commission, or its successor, determines, after notice and
23 opportunity for hearing, directly or indirectly, to exercise, either alone
24 or pursuant to an arrangement or understanding with one or more
25 other persons, such a controlling influence over the management or
26 policies of an electric public utility or a gas public utility or public
27 utility holding company as to make it necessary or appropriate in the
28 public interest or for the protection of investors or consumers that
29 such person be subject to the obligations, duties, and liabilities
30 imposed in the Public Utility Holding Company Act of 1935 or its
31 successor;

32 "Regulatory asset" means an asset recorded on the books of an
33 electric public utility or gas public utility pursuant to the Statement of
34 Financial Accounting Standards, No. 71, entitled "Accounting for the
35 Effects of Certain Types of Regulation," or any successor standard and
36 as deemed recoverable by the board;

37 "Related competitive business segment of an electric public utility
38 or gas public utility" means any business venture of an electric public
39 utility or gas public utility including, but not limited to, functionally
40 separate business units, joint ventures, and partnerships, that offers to
41 provide or provides competitive services;

42 "Related competitive business segment of a public utility holding
43 company" means any business venture of a public utility holding
44 company, including, but not limited to, functionally separate business
45 units, joint ventures, and partnerships and subsidiaries, that offers to
46 provide or provides competitive services, but does not include any

1 related competitive business segments of an electric public utility or
2 gas public utility;

3 "Resource recovery facility" means a solid waste facility
4 constructed and operated for the incineration of solid waste for energy
5 production and the recovery of metals and other materials for reuse;

6 "Restructuring related costs" means reasonably incurred costs
7 directly related to the restructuring of the electric power industry,
8 including the closure, sale, functional separation and divestiture of
9 generation and other competitive utility assets by a public utility, or
10 the provision of competitive services as such costs are determined by
11 the board, and which are not stranded costs as defined in this act but
12 may include, but not be limited to, investments in management
13 information systems, and which shall include expenses related to
14 employees affected by restructuring which result in efficiencies and
15 which result in benefits to ratepayers, such as training or retraining at
16 the level equivalent to one year's training at a vocational or technical
17 school or county community college, the provision of severance pay
18 of two weeks of base pay for each year of full-time employment, and
19 a maximum of 24 months' continued health care coverage. Except as
20 to expenses related to employees affected by restructuring,
21 "restructuring related costs" shall not include going forward costs;

22 "Retail choice" means the ability of retail customers to shop for
23 electric generation or gas supply service from electric power or gas
24 suppliers, or opt to receive basic generation service or basic gas
25 service, and the ability of an electric power or gas supplier to offer
26 electric generation service or gas supply service to retail customers,
27 consistent with the provisions of this act;

28 "Shopping credit" means an amount deducted from the bill of an
29 electric public utility customer to reflect the fact that such customer
30 has switched to an electric power supplier and no longer takes basic
31 generation service from the electric public utility;

32 "Social program" means a program implemented with board
33 approval to provide assistance to a group of disadvantaged customers,
34 to provide protection to consumers, or to accomplish a particular
35 societal goal, and includes, but is not limited to, the winter moratorium
36 program, utility practices concerning "bad debt" customers, low
37 income assistance, deferred payment plans, weatherization programs,
38 and late payment and deposit policies, but does not include any
39 demand side management program or any environmental requirements
40 or controls;

41 "Societal benefits charge" means a charge imposed by an electric
42 public utility, at a level determined by the board, pursuant to, and in
43 accordance with, section 12 of this act;

44 "Stranded cost" means the amount by which the net cost of an
45 electric public utility's electric generating assets or electric power
46 purchase commitments, as determined by the board consistent with the

1 provisions of this act, exceeds the market value of those assets or
2 contractual commitments in a competitive supply marketplace and the
3 costs of buydowns or buyouts of power purchase contracts;

4 "Stranded costs recovery order" means each order issued by the
5 board in accordance with subsection c. of section 13 of this act which
6 sets forth the amount of stranded costs, if any, the board has
7 determined an electric public utility is eligible to recover and collect
8 in accordance with the standards set forth in section 13 and the
9 recovery mechanisms therefor;

10 "Transition bond charge" means a charge, expressed as an amount
11 per kilowatt hour, that is authorized by and imposed on electric public
12 utility ratepayers pursuant to a bondable stranded costs rate order, as
13 modified at any time pursuant to the provisions of this act;

14 "Transition bonds" means bonds, notes, certificates of participation
15 or beneficial interest or other evidences of indebtedness or ownership
16 issued pursuant to an indenture, contract or other agreement of an
17 electric public utility or a financing entity, the proceeds of which are
18 used, directly or indirectly, to recover, finance or refinance bondable
19 stranded costs and which are, directly or indirectly, secured by or
20 payable from bondable transition property. References in this act to
21 principal, interest, and acquisition or redemption premium with respect
22 to transition bonds which are issued in the form of certificates of
23 participation or beneficial interest or other evidences of ownership
24 shall refer to the comparable payments on such securities;

25 "Transmission and distribution system" means, with respect to an
26 electric public utility, any facility or equipment that is used for the
27 transmission, distribution or delivery of electricity to the customers of
28 the electric public utility including, but not limited to, the land,
29 structures, meters, lines, switches and all other appurtenances thereof
30 and thereto, owned or controlled by the electric public utility within
31 this State; [and]

32 "Transition period" means the period from August 1, 1999 through
33 July 31, 2003; and

34 "Universal service" means any service approved by the board with
35 the purpose of assisting low-income residential customers in obtaining
36 or retaining electric generation or delivery service.

37 (cf: P.L.2001, c.242, s.1)

38

39 2. Section 14 of P.L.1999, c.23 (C.48:3-62) is amended to read
40 as follows:

41 14. a. For purposes of recovering a portion of the stranded costs
42 of an electric public utility that are deemed eligible for rate recovery
43 in a stranded cost recovery order consistent with the provisions of
44 section 13 of this act, and for compliance by the electric public utility
45 with the rate reduction requirements determined by the board to be
46 necessary and appropriate consistent with the provisions of sections 4

1 and 13 of this act, or for the purposes of recovering basic generation
2 service transition costs of an electric public utility, the board may
3 authorize the issuance of transition bonds by the electric public utility
4 or other financing entity approved by the board. Such bonds shall be
5 secured through an irrevocable bondable stranded cost rate order
6 imposing a non-bypassable transition bond charge as provided in
7 section 18 of this act and shall provide for collection of the transition
8 bond charge by the electric public utility or another entity approved by
9 the board. This transition bond charge shall be assessed in connection
10 with the recovery of stranded costs pursuant to section 13 of this act
11 or basic generation service transition costs pursuant to this section, but
12 each electric public utility shall maintain separate accounting for
13 transition bond charges so that the board can determine, at any time,
14 the amount of each type of charge that has been assessed and collected
15 by the electric public utility. The net proceeds of the transition bonds
16 shall be used by or on behalf of the electric public utility solely for the
17 purposes of reducing the amount of its otherwise recovery-eligible
18 stranded costs, as determined by the board in accordance with the
19 provisions of section 13 of this act, or reducing the amount of basic
20 generation service transition costs through the refinancing or
21 retirement of electric public utility debt or equity, or both, or the
22 buyout, buydown or other restructuring of a power purchase
23 agreement if such buyout, buydown or restructuring leads directly to
24 substantial customer benefits over the term of the power purchase
25 agreement. The entire amount of cost savings achieved as a result of
26 the issuance of such transition bonds, whether as a result of a
27 reduction in capital costs or a lengthened recovery period associated
28 with otherwise recovery-eligible stranded costs or basic generation
29 service transition costs or as a source of cash for the buyout, buydown
30 or other restructuring of a power purchase agreement, shall be passed
31 on to the customers of the electric public utility in the form of reduced
32 rates or mitigated rate increases for electricity. Anything in this act or
33 any other law to the contrary notwithstanding, except for adjustments
34 authorized under paragraph (2) of subsection a. and subsection b. of
35 section 15 of this act, transition bond charges approved by the board
36 in a bondable stranded costs rate order shall not be offset, reduced,
37 adjusted or otherwise diminished either directly or indirectly.

38 b. [The] For the purposes of recovering stranded costs of an
39 electric public utility, the issuance of transition bonds for an electric
40 public utility may be authorized by the board if all the following
41 findings are made by the board in connection with its review of a
42 stranded cost filing made by an electric public utility pursuant to
43 section 13 of this act:

44 (1) The electric public utility has taken reasonable measures to
45 date, and has the appropriate incentives or plans in place to take
46 reasonable measures, to mitigate the total amount of its stranded costs;

1 (2) The electric public utility will not be able to achieve the level
2 of rate reduction deemed by the board to be necessary and appropriate
3 pursuant to the provisions of sections 4 and 13 of this act absent the
4 issuance of transition bonds;

5 (3) The issuance of such bonds will provide tangible and
6 quantifiable benefits to ratepayers, including greater rate reductions
7 than would have been achieved absent the issuance of such bonds and
8 net present value savings over the term of the bonds; and

9 (4) The structuring and pricing of the transition bonds assure that
10 the electric public utility's customers pay the lowest transition bond
11 charges consistent with market conditions and the terms of the
12 bondable stranded costs rate order. If so authorized in the financing
13 order by the board, the structure and pricing of the transition bonds
14 shall be conclusively deemed to satisfy this requirement if so certified
15 by a designee of the board upon the pricing of the transition bonds,
16 which certification will be final and uncontestable as of its date.

17 c. Subject to the other requirements of this section:

18 (1) The board may authorize the issuance of transition bonds for
19 utility generation plant stranded costs determined by the board to be
20 recoverable pursuant to paragraph (1) of subsection a. of section 13
21 of this act in a principal amount of up to 75 percent of the total
22 amount of the electric public utility's recovery-eligible utility
23 generation plant stranded costs, as determined by the board in
24 accordance with the provisions of section 13 of this act, or, in the
25 event that an electric public utility divests itself of a majority of its
26 generating assets, which divestiture will result in a lower market
27 transition charge than that which would have been collected from
28 customers had the electric public utility not divested such assets, and
29 the utility has established, as determined by the board, the stranded
30 cost amount with certainty attributable to its remaining generating
31 asset or assets, the board may authorize the issuance of transition
32 bonds in a principal amount up to the full stranded cost value of such
33 remaining generating asset or assets based on the following criteria:

34 (a) The greater the level of aggregate rate reduction provided
35 pursuant to subsections d. and e. of section 4 of this act, the higher the
36 percentage of stranded costs for which transition bonds may be issued;

37 (b) The higher the degree of certainty, such as might be obtained
38 by auction or sale of the assets, as to the magnitude of the electric
39 public utility's actual stranded costs, the larger the magnitude of
40 transition bonds which may be permitted; and

41 (c) Based on evidence on the record, such amount will produce
42 substantial and quantifiable savings for the customers of that utility;
43 [and]

44 (2) The board may authorize the issuance of transition bonds for
45 the buyout or buydown of long-term power purchase contracts with
46 non-utility generators determined by the board to be recoverable

1 pursuant to paragraph (3) of subsection a. of section 13 of this act in
2 a principal amount to be determined by the board in accordance with
3 the provisions of section 13 of this act, based on the following criteria:

4 (a) The greater the level of aggregate rate reduction provided
5 pursuant to subsections d. and e. of section 4 of this act, the higher the
6 percentage of stranded costs that may be securitized;

7 (b) The higher the degree of certainty as to the magnitude of the
8 electric public utility's actual stranded costs, the larger the magnitude
9 of transition bonds which may be permitted; and

10 (c) Based on evidence on the record, such amount will produce
11 substantial and quantifiable savings for the customers of that electric
12 public utility because the amount of the buyout or buydown payment
13 is substantially less than the total projected stranded costs associated
14 with the contract; and

15 (3) The board may authorize the issuance of transition bonds for
16 the recovery of up to the full amount of an electric public utility's
17 ¹reasonably and prudently incurred¹ basic generation service transition
18 costs based on the criteria that such amount will produce benefits for
19 customers of the electric public utility ¹which include the lowest
20 transition bond charges consistent with market conditions and the
21 terms of the bondable stranded costs rate order¹.

22 d. The board may approve transition bonds with scheduled
23 amortization upon issuance of up to:

24 (1) Fifteen years if the electric public utility intends to utilize the
25 proceeds from such transition bonds to reduce the stranded costs
26 related to utility-owned generation; [or]

27 (2) The remaining term of a power purchase agreement if the
28 electric public utility intends to utilize the proceeds from such
29 transition bonds solely for the purposes and requirements of paragraph
30 (2) of subsection c. of this section; or

31 (3) Fifteen years if the electric public utility intends to utilize the
32 proceeds from such transition bonds for the purpose of the recovery
33 of basic generation service transition costs.

34 e. Transition bonds for the purpose and requirements of
35 paragraphs (1) [and], (2) or (3) of subsection c. of this section may
36 be issued in one or more series, in one or more offerings, and each
37 such series may consist of one or more classes of transition bonds.

38 f. The board shall issue orders with respect to each electric public
39 utility's amortization of stranded costs or basic generation service
40 transition costs through the transition bond charges pursuant to this
41 section.

42 g. For the purpose of recovering basic generation service
43 transition costs, an electric public utility may make a filing in a form
44 to be adopted by the board to request the board to authorize the
45 issuance of transition bonds and to issue a bondable stranded cost rate
46 order. The board shall review such filing, and after providing

1 ¹appropriate¹ notice and an opportunity for ¹[public comment, shall]
2 hearing, may¹ render a determination authorizing the issuance of
3 transition bonds ¹[, if the following findings are or previously have
4 been made by the board:

5 (1) The basic generation service transition costs to be recovered
6 are reasonable and prudently incurred costs consistent with P.L.1999,
7 c.23 (C.48:3-49 et al.):

8 (2) The issuance of transition bonds will enable the mitigation of
9 rate increases to customers resulting from the recovery of basic
10 generation service transition costs; and

11 (3) The structuring and pricing of the transition bonds assure that
12 the electric public utility's customers pay the lowest transition bond
13 charges consistent with market conditions and the terms of the
14 bondable stranded costs rate order]¹. If so authorized in the financing
15 order by the board, the structure and pricing of the transition bonds
16 shall be conclusively deemed to ¹[satisfy this requirement if] assure
17 the lowest transition bond charges consistent with market conditions
18 and the terms of the bondable stranded costs rate order when¹ so
19 certified by a designee of the board upon the pricing of the transition
20 bonds, which certification will be final and uncontestable as of its date.

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

22

23 3. This act shall take effect immediately.

24

25

26

27

28 Permits BPU to authorize the securitization of deferred balances of
29 electric public utilities for the provision of basic generation service.

SENATE, No. 869

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 11, 2002

Sponsored by:

Senator MARTHA W. BARK

District 8 (Burlington)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

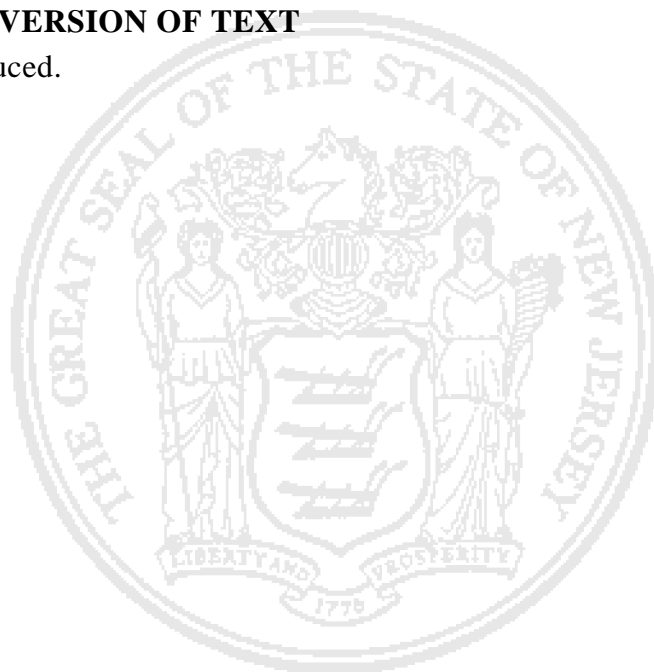
Senator Cardinale

SYNOPSIS

Permits BPU to authorize the securitization of deferred balances of electric public utilities for the provision of basic generation service.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2002)

1 AN ACT concerning transition bonds and amending P.L.1999, c.23.

2

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

5

6 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
7 follows:

8 3. As used in this act:

9 "Assignee" means a person to which an electric public utility or
10 another assignee assigns, sells or transfers, other than as security, all
11 or a portion of its right to or interest in bondable transition property.
12 Except as specifically provided in this act, an assignee shall not be
13 subject to the public utility requirements of Title 48 or any rules or
14 regulations adopted pursuant thereto;

15 "Basic gas supply service" means gas supply service that is provided
16 to any customer that has not chosen an alternative gas supplier,
17 whether or not the customer has received offers as to competitive
18 supply options, including, but not limited to, any customer that cannot
19 obtain such service for any reason, including non-payment for services.
20 Basic gas supply service is not a competitive service and shall be fully
21 regulated by the board;

22 "Basic generation service" means electric generation service that is
23 provided, pursuant to section 9 of this act, to any customer that has
24 not chosen an alternative electric power supplier, whether or not the
25 customer has received offers as to competitive supply options,
26 including, but not limited to, any customer that cannot obtain such
27 service from an electric power supplier for any reason, including
28 non-payment for services. Basic generation service is not a
29 competitive service and shall be fully regulated by the board;

30 "Basic generation service transition costs" means the amount by
31 which the payments by an electric public utility for the procurement of
32 power for basic generation service and related ancillary and
33 administrative costs exceeds the net revenues from the basic
34 generation service charge established by the board pursuant to section
35 9 of P.L.1999, c.23 (C.48:3-57) during the transition period, together
36 with interest on the balance at the board-approved rate, that is
37 reflected in a deferred balance account approved by the board in an
38 order addressing the electric public utility's unbundled rates, stranded
39 costs, and restructuring filings pursuant to P.L.1999, c.23 (C.48:3-49
40 et al.). Basic generation service transition costs shall include, but are
41 not limited to, costs of purchases from the spot market, bilateral
42 contracts, contracts with non-utility generators, parting contracts with
43 the purchaser of the electric public utility's divested generation assets,

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 short-term advance purchases, and financial instruments such as
2 hedging, forward contracts, and options. Basic generation service
3 transition costs shall also include the payments by an electric public
4 utility pursuant to a competitive procurement process for basic
5 generation service supply during the transition period, and costs of any
6 such process used to procure the basic generation service supply;

7 "Board" means the New Jersey Board of Public Utilities or any
8 successor agency;

9 "Bondable stranded costs" means any stranded costs or basic
10 generation service transition costs of an electric public utility approved
11 by the board for recovery pursuant to the provisions of this act,
12 together with, as approved by the board: (1) the cost of retiring
13 existing debt or equity capital of the electric public utility, including
14 accrued interest, premium and other fees, costs and charges relating
15 thereto, with the proceeds of the financing of bondable transition
16 property; (2) if requested by an electric public utility in its application
17 for a bondable stranded costs rate order, federal, State and local tax
18 liabilities associated with stranded costs recovery or basic generation
19 service transition cost recovery or the transfer or financing of such
20 property or both, including taxes, whose recovery period is modified
21 by the effect of a stranded costs recovery order, a bondable stranded
22 costs rate order or both; and (3) the costs incurred to issue, service or
23 refinance transition bonds, including interest, acquisition or
24 redemption premium, and other financing costs, whether paid upon
25 issuance or over the life of the transition bonds, including, but not
26 limited to, credit enhancements, service charges, overcollateralization,
27 interest rate cap, swap or collar, yield maintenance, maturity guarantee
28 or other hedging agreements, equity investments, operating costs and
29 other related fees, costs and charges, or to assign, sell or otherwise
30 transfer bondable transition property;

31 "Bondable stranded costs rate order" means one or more
32 irrevocable written orders issued by the board pursuant to this act
33 which determines the amount of bondable stranded costs and the initial
34 amount of transition bond charges authorized to be imposed to recover
35 such bondable stranded costs, including the costs to be financed from
36 the proceeds of the transition bonds, as well as on-going costs
37 associated with servicing and credit enhancing the transition bonds,
38 and provides the electric public utility specific authority to issue or
39 cause to be issued, directly or indirectly, transition bonds through a
40 financing entity and related matters as provided in this act, which order
41 shall become effective immediately upon the written consent of the
42 related electric public utility to such order as provided in this act;

43 "Bondable transition property" means the property consisting of the
44 irrevocable right to charge, collect and receive, and be paid from
45 collections of, transition bond charges in the amount necessary to
46 provide for the full recovery of bondable stranded costs which are

1 determined to be recoverable in a bondable stranded costs rate order,
2 all rights of the related electric public utility under such bondable
3 stranded costs rate order including, without limitation, all rights to
4 obtain periodic adjustments of the related transition bond charges
5 pursuant to subsection b. of section 15 of this act, and all revenues,
6 collections, payments, money and proceeds arising under, or with
7 respect to, all of the foregoing;

8 "Broker" means a duly licensed electric power supplier that assumes
9 the contractual and legal responsibility for the sale of electric
10 generation service, transmission or other services to end-use retail
11 customers, but does not take title to any of the power sold, or a duly
12 licensed gas supplier that assumes the contractual and legal obligation
13 to provide gas supply service to end-use retail customers, but does not
14 take title to the gas;

15 "Buydown" means an arrangement or arrangements involving the
16 buyer and seller in a given power purchase contract and, in some cases
17 third parties, for consideration to be given by the buyer in order to
18 effectuate a reduction in the pricing, or the restructuring of other
19 terms to reduce the overall cost of the power contract, for the
20 remaining succeeding period of the purchased power arrangement or
21 arrangements;

22 "Buyout" means an arrangement or arrangements involving the
23 buyer and seller in a given power purchase contract and, in some cases
24 third parties, for consideration to be given by the buyer in order to
25 effectuate a termination of such power purchase contract;

26 "Class I renewable energy" means electric energy produced from
27 solar technologies, photovoltaic technologies, wind energy, fuel cells,
28 geothermal technologies, wave or tidal action, and methane gas from
29 landfills or a biomass facility, provided that the biomass is cultivated
30 and harvested in a sustainable manner;

31 "Class II renewable energy" means electric energy produced at a
32 resource recovery facility or hydropower facility, provided that such
33 facility is located where retail competition is permitted and provided
34 further that the Commissioner of Environmental Protection has
35 determined that such facility meets the highest environmental
36 standards and minimizes any impacts to the environment and local
37 communities;

38 "Competitive service" means any service offered by an electric
39 public utility or a gas public utility that the board determines to be
40 competitive pursuant to section 8 or section 10 of this act or that is
41 not regulated by the board;

42 "Comprehensive resource analysis" means an analysis including, but
43 not limited to, an assessment of existing market barriers to the
44 implementation of energy efficiency and renewable technologies that

1 are not or cannot be delivered to customers through a competitive
2 marketplace;

3 "Customer" means any person that is an end user and is connected
4 to any part of the transmission and distribution system within an
5 electric public utility's service territory or a gas public utility's service
6 territory within this State;

7 "Customer account service" means metering, billing, or such other
8 administrative activity associated with maintaining a customer account;

9 "Demand side management" means the management of customer
10 demand for energy service through the implementation of
11 cost-effective energy efficiency technologies, including, but not limited
12 to, installed conservation, load management and energy efficiency
13 measures on and in the residential, commercial, industrial, institutional
14 and governmental premises and facilities in this State;

15 "Electric generation service" means the provision of retail electric
16 energy and capacity which is generated off-site from the location at
17 which the consumption of such electric energy and capacity is metered
18 for retail billing purposes, including agreements and arrangements
19 related thereto;

20 "Electric power generator" means an entity that proposes to
21 construct, own, lease or operate, or currently owns, leases or operates,
22 an electric power production facility that will sell or does sell at least
23 90 percent of its output, either directly or through a marketer, to a
24 customer or customers located at sites that are not on or contiguous
25 to the site on which the facility will be located or is located. The
26 designation of an entity as an electric power generator for the
27 purposes of this act shall not, in and of itself, affect the entity's status
28 as an exempt wholesale generator under the Public Utility Holding
29 Company Act of 1935, 15 U.S.C. s.79 et seq.;

30 "Electric power supplier" means a person or entity that is duly
31 licensed pursuant to the provisions of this act to offer and to assume
32 the contractual and legal responsibility to provide electric generation
33 service to retail customers, and includes load serving entities,
34 marketers and brokers that offer or provide electric generation service
35 to retail customers. The term excludes an electric public utility that
36 provides electric generation service only as a basic generation service
37 pursuant to section 9 of this act;

38 "Electric public utility" means a public utility, as that term is defined
39 in R.S.48:2-13, that transmits and distributes electricity to end users
40 within this State;

41 "Electric related service" means a service that is directly related to
42 the consumption of electricity by an end user, including, but not
43 limited to, the installation of demand side management measures at the
44 end user's premises, the maintenance, repair or replacement of
45 appliances, lighting, motors or other energy-consuming devices at the
46 end user's premises, and the provision of energy consumption

1 measurement and billing services;

2 "Electronic signature" means an electronic sound, symbol or
3 process, attached to, or logically associated with, a contract or other
4 record, and executed or adopted by a person with the intent to sign the
5 record;

6 "Energy agent" means a person that is duly registered pursuant to
7 the provisions of this act, that arranges the sale of retail electricity or
8 electric related services or retail gas supply or gas related services
9 between government aggregators or private aggregators and electric
10 power suppliers or gas suppliers, but does not take title to the electric
11 or gas sold;

12 "Energy consumer" means a business or residential consumer of
13 electric generation service or gas supply service located within the
14 territorial jurisdiction of a government aggregator;

15 "Financing entity" means an electric public utility, a special purpose
16 entity, or any other assignee of bondable transition property, which
17 issues transition bonds. Except as specifically provided in this act, a
18 financing entity which is not itself an electric public utility shall not be
19 subject to the public utility requirements of Title 48 or any rules or
20 regulations adopted pursuant thereto;

21 "Gas public utility" means a public utility, as that term is defined in
22 R.S.48:2-13, that distributes gas to end users within this State;

23 "Gas related service" means a service that is directly related to the
24 consumption of gas by an end user, including, but not limited to, the
25 installation of demand side management measures at the end user's
26 premises, the maintenance, repair or replacement of appliances or
27 other energy-consuming devices at the end user's premises, and the
28 provision of energy consumption measurement and billing services;

29 "Gas supplier" means a person that is duly licensed pursuant to the
30 provisions of this act to offer and assume the contractual and legal
31 obligation to provide gas supply service to retail customers, and
32 includes, but is not limited to, marketers and brokers. A non-public
33 utility affiliate of a public utility holding company may be a gas
34 supplier, but a gas public utility or any subsidiary of a gas utility is not
35 a gas supplier. In the event that a gas public utility is not part of a
36 holding company legal structure, a related competitive business
37 segment of that gas public utility may be a gas supplier, provided that
38 related competitive business segment is structurally separated from the
39 gas public utility, and provided that the interactions between the gas
40 public utility and the related competitive business segment are subject
41 to the affiliate relations standards adopted by the board pursuant to
42 subsection k. of section 10 of this act;

43 "Gas supply service" means the provision to customers of the retail
44 commodity of gas, but does not include any regulated distribution
45 service;

46 "Government aggregator" means any government entity subject to

1 the requirements of the "Local Public Contracts Law," P.L.1971,
2 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
3 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
4 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
5 contract with a licensed electric power supplier or a licensed gas
6 supplier for: (1) the provision of electric generation service, electric
7 related service, gas supply service, or gas related service for its own
8 use or the use of other government aggregators; or (2) if a municipal
9 or county government, the provision of electric generation service or
10 gas supply service on behalf of business or residential customers within
11 its territorial jurisdiction;

12 "Government energy aggregation program" means a program and
13 procedure pursuant to which a government aggregator enters into a
14 written contract for the provision of electric generation service or gas
15 supply service on behalf of business or residential customers within its
16 territorial jurisdiction;

17 "Governmental entity" means any federal, state, municipal, local or
18 other governmental department, commission, board, agency, court,
19 authority or instrumentality having competent jurisdiction;

20 "Market transition charge" means a charge imposed pursuant to
21 section 13 of this act by an electric public utility, at a level determined
22 by the board, on the electric public utility customers for a limited
23 duration transition period to recover stranded costs created as a result
24 of the introduction of electric power supply competition pursuant to
25 the provisions of this act;

26 "Marketer" means a duly licensed electric power supplier that takes
27 title to electric energy and capacity, transmission and other services
28 from electric power generators and other wholesale suppliers and then
29 assumes contractual and legal obligation to provide electric generation
30 service, and may include transmission and other services, to an end-use
31 retail customer or customers, or a duly licensed gas supplier that takes
32 title to gas and then assumes the contractual and legal obligation to
33 provide gas supply service to an end-use customer or customers;

34 "Net proceeds" means proceeds less transaction and other related
35 costs as determined by the board;

36 "Net revenues" means revenues less related expenses, including
37 applicable taxes, as determined by the board;

38 "On-site generation facility" means a generation facility, and
39 equipment and services appurtenant to electric sales by such facility to
40 the end use customer located on the property or on property
41 contiguous to the property on which the end user is located. An
42 on-site generation facility shall not be considered a public utility. The
43 property of the end use customer and the property on which the
44 on-site generation facility is located shall be considered contiguous if
45 they are geographically located next to each other, but may be
46 otherwise separated by an easement, public thoroughfare,

1 transportation or utility-owned right-of-way;

2 "Person" means an individual, partnership, corporation, association,
3 trust, limited liability company, governmental entity or other legal
4 entity;

5 "Private aggregator" means a non-government aggregator that is a
6 duly-organized business or non-profit organization authorized to do
7 business in this State that enters into a contract with a duly licensed
8 electric power supplier for the purchase of electric energy and
9 capacity, or with a duly licensed gas supplier for the purchase of gas
10 supply service, on behalf of multiple end-use customers by combining
11 the loads of those customers;

12 "Public utility holding company" means: (1) any company that,
13 directly or indirectly, owns, controls, or holds with power to vote, ten
14 percent or more of the outstanding voting securities of an electric
15 public utility or a gas public utility or of a company which is a public
16 utility holding company by virtue of this definition, unless the
17 Securities and Exchange Commission, or its successor, by order
18 declares such company not to be a public utility holding company
19 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
20 et seq., or its successor; or (2) any person that the Securities and
21 Exchange Commission, or its successor, determines, after notice and
22 opportunity for hearing, directly or indirectly, to exercise, either alone
23 or pursuant to an arrangement or understanding with one or more
24 other persons, such a controlling influence over the management or
25 policies of an electric public utility or a gas public utility or public
26 utility holding company as to make it necessary or appropriate in the
27 public interest or for the protection of investors or consumers that
28 such person be subject to the obligations, duties, and liabilities
29 imposed in the Public Utility Holding Company Act of 1935 or its
30 successor;

31 "Regulatory asset" means an asset recorded on the books of an
32 electric public utility or gas public utility pursuant to the Statement of
33 Financial Accounting Standards, No. 71, entitled "Accounting for the
34 Effects of Certain Types of Regulation," or any successor standard and
35 as deemed recoverable by the board;

36 "Related competitive business segment of an electric public utility
37 or gas public utility" means any business venture of an electric public
38 utility or gas public utility including, but not limited to, functionally
39 separate business units, joint ventures, and partnerships, that offers to
40 provide or provides competitive services;

41 "Related competitive business segment of a public utility holding
42 company" means any business venture of a public utility holding
43 company, including, but not limited to, functionally separate business
44 units, joint ventures, and partnerships and subsidiaries, that offers to
45 provide or provides competitive services, but does not include any
46 related competitive business segments of an electric public utility or

1 gas public utility;

2 "Resource recovery facility" means a solid waste facility
3 constructed and operated for the incineration of solid waste for energy
4 production and the recovery of metals and other materials for reuse;

5 "Restructuring related costs" means reasonably incurred costs
6 directly related to the restructuring of the electric power industry,
7 including the closure, sale, functional separation and divestiture of
8 generation and other competitive utility assets by a public utility, or
9 the provision of competitive services as such costs are determined by
10 the board, and which are not stranded costs as defined in this act but
11 may include, but not be limited to, investments in management
12 information systems, and which shall include expenses related to
13 employees affected by restructuring which result in efficiencies and
14 which result in benefits to ratepayers, such as training or retraining at
15 the level equivalent to one year's training at a vocational or technical
16 school or county community college, the provision of severance pay
17 of two weeks of base pay for each year of full-time employment, and
18 a maximum of 24 months' continued health care coverage. Except as
19 to expenses related to employees affected by restructuring,
20 "restructuring related costs" shall not include going forward costs;

21 "Retail choice" means the ability of retail customers to shop for
22 electric generation or gas supply service from electric power or gas
23 suppliers, or opt to receive basic generation service or basic gas
24 service, and the ability of an electric power or gas supplier to offer
25 electric generation service or gas supply service to retail customers,
26 consistent with the provisions of this act;

27 "Shopping credit" means an amount deducted from the bill of an
28 electric public utility customer to reflect the fact that such customer
29 has switched to an electric power supplier and no longer takes basic
30 generation service from the electric public utility;

31 "Social program" means a program implemented with board
32 approval to provide assistance to a group of disadvantaged customers,
33 to provide protection to consumers, or to accomplish a particular
34 societal goal, and includes, but is not limited to, the winter moratorium
35 program, utility practices concerning "bad debt" customers, low
36 income assistance, deferred payment plans, weatherization programs,
37 and late payment and deposit policies, but does not include any
38 demand side management program or any environmental requirements
39 or controls;

40 "Societal benefits charge" means a charge imposed by an electric
41 public utility, at a level determined by the board, pursuant to, and in
42 accordance with, section 12 of this act;

43 "Stranded cost" means the amount by which the net cost of an
44 electric public utility's electric generating assets or electric power
45 purchase commitments, as determined by the board consistent with the
46 provisions of this act, exceeds the market value of those assets or

1 contractual commitments in a competitive supply marketplace and the
2 costs of buydowns or buyouts of power purchase contracts;

3 "Stranded costs recovery order" means each order issued by the
4 board in accordance with subsection c. of section 13 of this act which
5 sets forth the amount of stranded costs, if any, the board has
6 determined an electric public utility is eligible to recover and collect
7 in accordance with the standards set forth in section 13 and the
8 recovery mechanisms therefor;

9 "Transition bond charge" means a charge, expressed as an amount
10 per kilowatt hour, that is authorized by and imposed on electric public
11 utility ratepayers pursuant to a bondable stranded costs rate order, as
12 modified at any time pursuant to the provisions of this act;

13 "Transition bonds" means bonds, notes, certificates of participation
14 or beneficial interest or other evidences of indebtedness or ownership
15 issued pursuant to an indenture, contract or other agreement of an
16 electric public utility or a financing entity, the proceeds of which are
17 used, directly or indirectly, to recover, finance or refinance bondable
18 stranded costs and which are, directly or indirectly, secured by or
19 payable from bondable transition property. References in this act to
20 principal, interest, and acquisition or redemption premium with respect
21 to transition bonds which are issued in the form of certificates of
22 participation or beneficial interest or other evidences of ownership
23 shall refer to the comparable payments on such securities;

24 "Transmission and distribution system" means, with respect to an
25 electric public utility, any facility or equipment that is used for the
26 transmission, distribution or delivery of electricity to the customers of
27 the electric public utility including, but not limited to, the land,
28 structures, meters, lines, switches and all other appurtenances thereof
29 and thereto, owned or controlled by the electric public utility within
30 this State; [and]

31 "Transition period" means the period from August 1, 1999 through
32 July 31, 2003; and

33 "Universal service" means any service approved by the board with
34 the purpose of assisting low-income residential customers in obtaining
35 or retaining electric generation or delivery service.

36 (cf: P.L.2001, c.242, s.1)

37

38 2. Section 14 of P.L.1999, c.23 (C.48:3-62) is amended to read
39 as follows:

40 14. a. For purposes of recovering a portion of the stranded costs
41 of an electric public utility that are deemed eligible for rate recovery
42 in a stranded cost recovery order consistent with the provisions of
43 section 13 of this act, and for compliance by the electric public utility
44 with the rate reduction requirements determined by the board to be
45 necessary and appropriate consistent with the provisions of sections 4
46 and 13 of this act, or for the purposes of recovering basic generation

1 service transition costs of an electric public utility, the board may
2 authorize the issuance of transition bonds by the electric public utility
3 or other financing entity approved by the board. Such bonds shall be
4 secured through an irrevocable bondable stranded cost rate order
5 imposing a non-bypassable transition bond charge as provided in
6 section 18 of this act and shall provide for collection of the transition
7 bond charge by the electric public utility or another entity approved by
8 the board. This transition bond charge shall be assessed in connection
9 with the recovery of stranded costs pursuant to section 13 of this act
10 or basic generation service transition costs pursuant to this section, but
11 each electric public utility shall maintain separate accounting for
12 transition bond charges so that the board can determine, at any time,
13 the amount of each type of charge that has been assessed and collected
14 by the electric public utility. The net proceeds of the transition bonds
15 shall be used by or on behalf of the electric public utility solely for the
16 purposes of reducing the amount of its otherwise recovery-eligible
17 stranded costs, as determined by the board in accordance with the
18 provisions of section 13 of this act, or reducing the amount of basic
19 generation service transition costs through the refinancing or
20 retirement of electric public utility debt or equity, or both, or the
21 buyout, buydown or other restructuring of a power purchase
22 agreement if such buyout, buydown or restructuring leads directly to
23 substantial customer benefits over the term of the power purchase
24 agreement. The entire amount of cost savings achieved as a result of
25 the issuance of such transition bonds, whether as a result of a
26 reduction in capital costs or a lengthened recovery period associated
27 with otherwise recovery-eligible stranded costs or basic generation
28 service transition costs or as a source of cash for the buyout, buydown
29 or other restructuring of a power purchase agreement, shall be passed
30 on to the customers of the electric public utility in the form of reduced
31 rates or mitigated rate increases for electricity. Anything in this act or
32 any other law to the contrary notwithstanding, except for adjustments
33 authorized under paragraph (2) of subsection a. and subsection b. of
34 section 15 of this act, transition bond charges approved by the board
35 in a bondable stranded costs rate order shall not be offset, reduced,
36 adjusted or otherwise diminished either directly or indirectly.

37 b. **[The]** For the purposes of recovering stranded costs of an
38 electric public utility, the issuance of transition bonds for an electric
39 public utility may be authorized by the board if all the following
40 findings are made by the board in connection with its review of a
41 stranded cost filing made by an electric public utility pursuant to
42 section 13 of this act:

43 (1) The electric public utility has taken reasonable measures to
44 date, and has the appropriate incentives or plans in place to take
45 reasonable measures, to mitigate the total amount of its stranded costs;

46 (2) The electric public utility will not be able to achieve the level

1 of rate reduction deemed by the board to be necessary and appropriate
2 pursuant to the provisions of sections 4 and 13 of this act absent the
3 issuance of transition bonds;

4 (3) The issuance of such bonds will provide tangible and
5 quantifiable benefits to ratepayers, including greater rate reductions
6 than would have been achieved absent the issuance of such bonds and
7 net present value savings over the term of the bonds; and

8 (4) The structuring and pricing of the transition bonds assure that
9 the electric public utility's customers pay the lowest transition bond
10 charges consistent with market conditions and the terms of the
11 bondable stranded costs rate order. If so authorized in the financing
12 order by the board, the structure and pricing of the transition bonds
13 shall be conclusively deemed to satisfy this requirement if so certified
14 by a designee of the board upon the pricing of the transition bonds,
15 which certification will be final and uncontestable as of its date.

16 c. Subject to the other requirements of this section:

17 (1) The board may authorize the issuance of transition bonds for
18 utility generation plant stranded costs determined by the board to be
19 recoverable pursuant to paragraph (1) of subsection a. of section 13
20 of this act in a principal amount of up to 75 percent of the total
21 amount of the electric public utility's recovery-eligible utility
22 generation plant stranded costs, as determined by the board in
23 accordance with the provisions of section 13 of this act, or, in the
24 event that an electric public utility divests itself of a majority of its
25 generating assets, which divestiture will result in a lower market
26 transition charge than that which would have been collected from
27 customers had the electric public utility not divested such assets, and
28 the utility has established, as determined by the board, the stranded
29 cost amount with certainty attributable to its remaining generating
30 asset or assets, the board may authorize the issuance of transition
31 bonds in a principal amount up to the full stranded cost value of such
32 remaining generating asset or assets based on the following criteria:

33 (a) The greater the level of aggregate rate reduction provided
34 pursuant to subsections d. and e. of section 4 of this act, the higher the
35 percentage of stranded costs for which transition bonds may be issued;

36 (b) The higher the degree of certainty, such as might be obtained
37 by auction or sale of the assets, as to the magnitude of the electric
38 public utility's actual stranded costs, the larger the magnitude of
39 transition bonds which may be permitted; and

40 (c) Based on evidence on the record, such amount will produce
41 substantial and quantifiable savings for the customers of that utility;

42 **[and]**

43 (2) The board may authorize the issuance of transition bonds for
44 the buyout or buydown of long-term power purchase contracts with
45 non-utility generators determined by the board to be recoverable
46 pursuant to paragraph (3) of subsection a. of section 13 of this act in

1 a principal amount to be determined by the board in accordance with
2 the provisions of section 13 of this act, based on the following criteria:

3 (a) The greater the level of aggregate rate reduction provided
4 pursuant to subsections d. and e. of section 4 of this act, the higher the
5 percentage of stranded costs that may be securitized;

6 (b) The higher the degree of certainty as to the magnitude of the
7 electric public utility's actual stranded costs, the larger the magnitude
8 of transition bonds which may be permitted; and

9 (c) Based on evidence on the record, such amount will produce
10 substantial and quantifiable savings for the customers of that electric
11 public utility because the amount of the buyout or buydown payment
12 is substantially less than the total projected stranded costs associated
13 with the contract; and

14 (3) The board may authorize the issuance of transition bonds for
15 the recovery of up to the full amount of an electric public utility's basic
16 generation service transition costs based on the criteria that such
17 amount will produce benefits for customers of the electric public
18 utility.

19 d. The board may approve transition bonds with scheduled
20 amortization upon issuance of up to:

21 (1) Fifteen years if the electric public utility intends to utilize the
22 proceeds from such transition bonds to reduce the stranded costs
23 related to utility-owned generation; **[or]**

24 (2) The remaining term of a power purchase agreement if the
25 electric public utility intends to utilize the proceeds from such
26 transition bonds solely for the purposes and requirements of paragraph
27 (2) of subsection c. of this section; or

28 (3) Fifteen years if the electric public utility intends to utilize the
29 proceeds from such transition bonds for the purpose of the recovery
30 of basic generation service transition costs.

31 e. Transition bonds for the purpose and requirements of
32 paragraphs (1) **[and]**, (2) or (3) of subsection c. of this section may
33 be issued in one or more series, in one or more offerings, and each
34 such series may consist of one or more classes of transition bonds.

35 f. The board shall issue orders with respect to each electric public
36 utility's amortization of stranded costs or basic generation service
37 transition costs through the transition bond charges pursuant to this
38 section.

39 g. For the purpose of recovering basic generation service
40 transition costs, an electric public utility may make a filing in a form
41 to be adopted by the board to request the board to authorize the
42 issuance of transition bonds and to issue a bondable stranded cost rate
43 order. The board shall review such filing, and after providing notice
44 and an opportunity for public comment, shall render a determination
45 authorizing the issuance of transition bonds, if the following findings
46 are or previously have been made by the board:

S869 BARK, LESNIAK

15

- 1 full amount of a utility's BGS transition costs based on the criteria that
- 2 such amount will produce benefits for customers of the utility.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 869

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 26, 2002

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably and with committee amendments Senate Bill No. 869.

This bill, as amended, permits the Board of Public Utilities ("BPU") to authorize the securitization of deferred balances of electric public utilities for the provision of basic generation service ("BGS") through the issuance of "transition" bonds with an amortization period not to exceed 15 years. Under current law, BGS is electric generation service provided to a customer within a utility's service territory who chooses not to have such service provided by an alternative electric power supplier. Deferred balances occur as the result of dramatic increases in prices for power supply in the wholesale market that the utility must purchase to provide BGS while the rates the utility charges BGS customer are capped during the four-year transition period (August 1, 1999 through July 31, 2003). By authorizing the securitization of deferred balances, the bill seeks to mitigate the impact of large rate increases in August 2003 by reducing the costs of financing those balances.

The bill authorizes the BPU to permit the issuance of a utility's transition bonds to recover BGS transition costs that are reasonably and prudently incurred. The BPU may authorize the issuance of transition bonds for the recovery of up to the full amount of the utility's BGS transition costs based on the criteria that such amount will produce benefits for customers of the utility, including the lowest transition bond charges consistent with market conditions and the terms of the bondable stranded costs rate order when so certified by a designee of the BPU upon the pricing of the transition bonds, which certification will be final and uncontestable as of its date.

The committee amended the bill to clarify that the BPU may authorize the issuance of transition bonds after providing appropriate notice and an opportunity for hearing for the recovery of up to the full amount of the utility's BGS transition costs based on the criteria that such amount will produce benefits for customers of the utility,

including the lowest transition bond charges consistent with market conditions and the terms of the bondable stranded costs rate order when so certified by a designee of the BPU upon the pricing of the transition bonds, which certification will be final and uncontestable as of its date.

ASSEMBLY, No. 2108

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 18, 2002

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman MATT AHEARN

District 38 (Bergen)

SYNOPSIS

Permits BPU to authorize the securitization of deferred balances of electric public utilities for the provision of basic generation service.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning transition bonds and amending P.L.1999, c.23.

2

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

5

6 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
7 follows:

8 3. As used in this act:

9 "Assignee" means a person to which an electric public utility or
10 another assignee assigns, sells or transfers, other than as security, all
11 or a portion of its right to or interest in bondable transition property.
12 Except as specifically provided in this act, an assignee shall not be
13 subject to the public utility requirements of Title 48 or any rules or
14 regulations adopted pursuant thereto;

15 "Basic gas supply service" means gas supply service that is provided
16 to any customer that has not chosen an alternative gas supplier,
17 whether or not the customer has received offers as to competitive
18 supply options, including, but not limited to, any customer that cannot
19 obtain such service for any reason, including non-payment for services.
20 Basic gas supply service is not a competitive service and shall be fully
21 regulated by the board;

22 "Basic generation service" means electric generation service that is
23 provided, pursuant to section 9 of this act, to any customer that has
24 not chosen an alternative electric power supplier, whether or not the
25 customer has received offers as to competitive supply options,
26 including, but not limited to, any customer that cannot obtain such
27 service from an electric power supplier for any reason, including
28 non-payment for services. Basic generation service is not a
29 competitive service and shall be fully regulated by the board;

30 "Basic generation service transition costs" means the amount by
31 which the payments by an electric public utility for the procurement of
32 power for basic generation service and related ancillary and
33 administrative costs exceeds the net revenues from the basic
34 generation service charge established by the board pursuant to section
35 9 of P.L.1999, c.23 (C.48:3-57) during the transition period, together
36 with interest on the balance at the board-approved rate, that is
37 reflected in a deferred balance account approved by the board in an
38 order addressing the electric public utility's unbundled rates, stranded
39 costs, and restructuring filings pursuant to P.L.1999, c.23 (C.48:3-49
40 et al.). Basic generation service transition costs shall include, but are
41 not limited to, costs of purchases from the spot market, bilateral
42 contracts, contracts with non-utility generators, parting contracts with
43 the purchaser of the electric public utility's divested generation assets,

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 short-term advance purchases, and financial instruments such as
2 hedging, forward contracts, and options. Basic generation service
3 transition costs shall also include the payments by an electric public
4 utility pursuant to a competitive procurement process for basic
5 generation service supply during the transition period, and costs of any
6 such process used to procure the basic generation service supply;

7 "Board" means the New Jersey Board of Public Utilities or any
8 successor agency;

9 "Bondable stranded costs" means any stranded costs or basic
10 generation service transition costs of an electric public utility approved
11 by the board for recovery pursuant to the provisions of this act,
12 together with, as approved by the board: (1) the cost of retiring
13 existing debt or equity capital of the electric public utility, including
14 accrued interest, premium and other fees, costs and charges relating
15 thereto, with the proceeds of the financing of bondable transition
16 property; (2) if requested by an electric public utility in its application
17 for a bondable stranded costs rate order, federal, State and local tax
18 liabilities associated with stranded costs recovery or basic generation
19 service transition cost recovery or the transfer or financing of such
20 property or both, including taxes, whose recovery period is modified
21 by the effect of a stranded costs recovery order, a bondable stranded
22 costs rate order or both; and (3) the costs incurred to issue, service or
23 refinance transition bonds, including interest, acquisition or
24 redemption premium, and other financing costs, whether paid upon
25 issuance or over the life of the transition bonds, including, but not
26 limited to, credit enhancements, service charges, overcollateralization,
27 interest rate cap, swap or collar, yield maintenance, maturity guarantee
28 or other hedging agreements, equity investments, operating costs and
29 other related fees, costs and charges, or to assign, sell or otherwise
30 transfer bondable transition property;

31 "Bondable stranded costs rate order" means one or more
32 irrevocable written orders issued by the board pursuant to this act
33 which determines the amount of bondable stranded costs and the initial
34 amount of transition bond charges authorized to be imposed to recover
35 such bondable stranded costs, including the costs to be financed from
36 the proceeds of the transition bonds, as well as on-going costs
37 associated with servicing and credit enhancing the transition bonds,
38 and provides the electric public utility specific authority to issue or
39 cause to be issued, directly or indirectly, transition bonds through a
40 financing entity and related matters as provided in this act, which order
41 shall become effective immediately upon the written consent of the
42 related electric public utility to such order as provided in this act;

43 "Bondable transition property" means the property consisting of the
44 irrevocable right to charge, collect and receive, and be paid from
45 collections of, transition bond charges in the amount necessary to
46 provide for the full recovery of bondable stranded costs which are

1 determined to be recoverable in a bondable stranded costs rate order,
2 all rights of the related electric public utility under such bondable
3 stranded costs rate order including, without limitation, all rights to
4 obtain periodic adjustments of the related transition bond charges
5 pursuant to subsection b. of section 15 of this act, and all revenues,
6 collections, payments, money and proceeds arising under, or with
7 respect to, all of the foregoing;

8 "Broker" means a duly licensed electric power supplier that assumes
9 the contractual and legal responsibility for the sale of electric
10 generation service, transmission or other services to end-use retail
11 customers, but does not take title to any of the power sold, or a duly
12 licensed gas supplier that assumes the contractual and legal obligation
13 to provide gas supply service to end-use retail customers, but does not
14 take title to the gas;

15 "Buydown" means an arrangement or arrangements involving the
16 buyer and seller in a given power purchase contract and, in some cases
17 third parties, for consideration to be given by the buyer in order to
18 effectuate a reduction in the pricing, or the restructuring of other
19 terms to reduce the overall cost of the power contract, for the
20 remaining succeeding period of the purchased power arrangement or
21 arrangements;

22 "Buyout" means an arrangement or arrangements involving the
23 buyer and seller in a given power purchase contract and, in some cases
24 third parties, for consideration to be given by the buyer in order to
25 effectuate a termination of such power purchase contract;

26 "Class I renewable energy" means electric energy produced from
27 solar technologies, photovoltaic technologies, wind energy, fuel cells,
28 geothermal technologies, wave or tidal action, and methane gas from
29 landfills or a biomass facility, provided that the biomass is cultivated
30 and harvested in a sustainable manner;

31 "Class II renewable energy" means electric energy produced at a
32 resource recovery facility or hydropower facility, provided that such
33 facility is located where retail competition is permitted and provided
34 further that the Commissioner of Environmental Protection has
35 determined that such facility meets the highest environmental
36 standards and minimizes any impacts to the environment and local
37 communities;

38 "Competitive service" means any service offered by an electric
39 public utility or a gas public utility that the board determines to be
40 competitive pursuant to section 8 or section 10 of this act or that is
41 not regulated by the board;

42 "Comprehensive resource analysis" means an analysis including, but
43 not limited to, an assessment of existing market barriers to the
44 implementation of energy efficiency and renewable technologies that
45 are not or cannot be delivered to customers through a competitive
46 marketplace;

1 "Customer" means any person that is an end user and is connected
2 to any part of the transmission and distribution system within an
3 electric public utility's service territory or a gas public utility's service
4 territory within this State;

5 "Customer account service" means metering, billing, or such other
6 administrative activity associated with maintaining a customer account;

7 "Demand side management" means the management of customer
8 demand for energy service through the implementation of
9 cost-effective energy efficiency technologies, including, but not limited
10 to, installed conservation, load management and energy efficiency
11 measures on and in the residential, commercial, industrial, institutional
12 and governmental premises and facilities in this State;

13 "Electric generation service" means the provision of retail electric
14 energy and capacity which is generated off-site from the location at
15 which the consumption of such electric energy and capacity is metered
16 for retail billing purposes, including agreements and arrangements
17 related thereto;

18 "Electric power generator" means an entity that proposes to
19 construct, own, lease or operate, or currently owns, leases or operates,
20 an electric power production facility that will sell or does sell at least
21 90 percent of its output, either directly or through a marketer, to a
22 customer or customers located at sites that are not on or contiguous
23 to the site on which the facility will be located or is located. The
24 designation of an entity as an electric power generator for the
25 purposes of this act shall not, in and of itself, affect the entity's status
26 as an exempt wholesale generator under the Public Utility Holding
27 Company Act of 1935, 15 U.S.C. s.79 et seq.;

28 "Electric power supplier" means a person or entity that is duly
29 licensed pursuant to the provisions of this act to offer and to assume
30 the contractual and legal responsibility to provide electric generation
31 service to retail customers, and includes load serving entities,
32 marketers and brokers that offer or provide electric generation service
33 to retail customers. The term excludes an electric public utility that
34 provides electric generation service only as a basic generation service
35 pursuant to section 9 of this act;

36 "Electric public utility" means a public utility, as that term is defined
37 in R.S.48:2-13, that transmits and distributes electricity to end users
38 within this State;

39 "Electric related service" means a service that is directly related to
40 the consumption of electricity by an end user, including, but not
41 limited to, the installation of demand side management measures at the
42 end user's premises, the maintenance, repair or replacement of
43 appliances, lighting, motors or other energy-consuming devices at the
44 end user's premises, and the provision of energy consumption
45 measurement and billing services;

46 "Electronic signature" means an electronic sound, symbol or

1 process, attached to, or logically associated with, a contract or other
2 record, and executed or adopted by a person with the intent to sign the
3 record;

4 "Energy agent" means a person that is duly registered pursuant to
5 the provisions of this act, that arranges the sale of retail electricity or
6 electric related services or retail gas supply or gas related services
7 between government aggregators or private aggregators and electric
8 power suppliers or gas suppliers, but does not take title to the electric
9 or gas sold;

10 "Energy consumer" means a business or residential consumer of
11 electric generation service or gas supply service located within the
12 territorial jurisdiction of a government aggregator;

13 "Financing entity" means an electric public utility, a special purpose
14 entity, or any other assignee of bondable transition property, which
15 issues transition bonds. Except as specifically provided in this act, a
16 financing entity which is not itself an electric public utility shall not be
17 subject to the public utility requirements of Title 48 or any rules or
18 regulations adopted pursuant thereto;

19 "Gas public utility" means a public utility, as that term is defined in
20 R.S.48:2-13, that distributes gas to end users within this State;

21 "Gas related service" means a service that is directly related to the
22 consumption of gas by an end user, including, but not limited to, the
23 installation of demand side management measures at the end user's
24 premises, the maintenance, repair or replacement of appliances or
25 other energy-consuming devices at the end user's premises, and the
26 provision of energy consumption measurement and billing services;

27 "Gas supplier" means a person that is duly licensed pursuant to the
28 provisions of this act to offer and assume the contractual and legal
29 obligation to provide gas supply service to retail customers, and
30 includes, but is not limited to, marketers and brokers. A non-public
31 utility affiliate of a public utility holding company may be a gas
32 supplier, but a gas public utility or any subsidiary of a gas utility is not
33 a gas supplier. In the event that a gas public utility is not part of a
34 holding company legal structure, a related competitive business
35 segment of that gas public utility may be a gas supplier, provided that
36 related competitive business segment is structurally separated from the
37 gas public utility, and provided that the interactions between the gas
38 public utility and the related competitive business segment are subject
39 to the affiliate relations standards adopted by the board pursuant to
40 subsection k. of section 10 of this act;

41 "Gas supply service" means the provision to customers of the retail
42 commodity of gas, but does not include any regulated distribution
43 service;

44 "Government aggregator" means any government entity subject to
45 the requirements of the "Local Public Contracts Law," P.L.1971,
46 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"

1 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
2 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
3 contract with a licensed electric power supplier or a licensed gas
4 supplier for: (1) the provision of electric generation service, electric
5 related service, gas supply service, or gas related service for its own
6 use or the use of other government aggregators; or (2) if a municipal
7 or county government, the provision of electric generation service or
8 gas supply service on behalf of business or residential customers within
9 its territorial jurisdiction;

10 "Government energy aggregation program" means a program and
11 procedure pursuant to which a government aggregator enters into a
12 written contract for the provision of electric generation service or gas
13 supply service on behalf of business or residential customers within its
14 territorial jurisdiction;

15 "Governmental entity" means any federal, state, municipal, local or
16 other governmental department, commission, board, agency, court,
17 authority or instrumentality having competent jurisdiction;

18 "Market transition charge" means a charge imposed pursuant to
19 section 13 of this act by an electric public utility, at a level determined
20 by the board, on the electric public utility customers for a limited
21 duration transition period to recover stranded costs created as a result
22 of the introduction of electric power supply competition pursuant to
23 the provisions of this act;

24 "Marketer" means a duly licensed electric power supplier that takes
25 title to electric energy and capacity, transmission and other services
26 from electric power generators and other wholesale suppliers and then
27 assumes contractual and legal obligation to provide electric generation
28 service, and may include transmission and other services, to an end-use
29 retail customer or customers, or a duly licensed gas supplier that takes
30 title to gas and then assumes the contractual and legal obligation to
31 provide gas supply service to an end-use customer or customers;

32 "Net proceeds" means proceeds less transaction and other related
33 costs as determined by the board;

34 "Net revenues" means revenues less related expenses, including
35 applicable taxes, as determined by the board;

36 "On-site generation facility" means a generation facility, and
37 equipment and services appurtenant to electric sales by such facility to
38 the end use customer located on the property or on property
39 contiguous to the property on which the end user is located. An
40 on-site generation facility shall not be considered a public utility. The
41 property of the end use customer and the property on which the
42 on-site generation facility is located shall be considered contiguous if
43 they are geographically located next to each other, but may be
44 otherwise separated by an easement, public thoroughfare,
45 transportation or utility-owned right-of-way;

46 "Person" means an individual, partnership, corporation, association,

1 trust, limited liability company, governmental entity or other legal
2 entity;

3 "Private aggregator" means a non-government aggregator that is a
4 duly-organized business or non-profit organization authorized to do
5 business in this State that enters into a contract with a duly licensed
6 electric power supplier for the purchase of electric energy and
7 capacity, or with a duly licensed gas supplier for the purchase of gas
8 supply service, on behalf of multiple end-use customers by combining
9 the loads of those customers;

10 "Public utility holding company" means: (1) any company that,
11 directly or indirectly, owns, controls, or holds with power to vote, ten
12 percent or more of the outstanding voting securities of an electric
13 public utility or a gas public utility or of a company which is a public
14 utility holding company by virtue of this definition, unless the
15 Securities and Exchange Commission, or its successor, by order
16 declares such company not to be a public utility holding company
17 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
18 et seq., or its successor; or (2) any person that the Securities and
19 Exchange Commission, or its successor, determines, after notice and
20 opportunity for hearing, directly or indirectly, to exercise, either alone
21 or pursuant to an arrangement or understanding with one or more
22 other persons, such a controlling influence over the management or
23 policies of an electric public utility or a gas public utility or public
24 utility holding company as to make it necessary or appropriate in the
25 public interest or for the protection of investors or consumers that
26 such person be subject to the obligations, duties, and liabilities
27 imposed in the Public Utility Holding Company Act of 1935 or its
28 successor;

29 "Regulatory asset" means an asset recorded on the books of an
30 electric public utility or gas public utility pursuant to the Statement of
31 Financial Accounting Standards, No. 71, entitled "Accounting for the
32 Effects of Certain Types of Regulation," or any successor standard and
33 as deemed recoverable by the board;

34 "Related competitive business segment of an electric public utility
35 or gas public utility" means any business venture of an electric public
36 utility or gas public utility including, but not limited to, functionally
37 separate business units, joint ventures, and partnerships, that offers to
38 provide or provides competitive services;

39 "Related competitive business segment of a public utility holding
40 company" means any business venture of a public utility holding
41 company, including, but not limited to, functionally separate business
42 units, joint ventures, and partnerships and subsidiaries, that offers to
43 provide or provides competitive services, but does not include any
44 related competitive business segments of an electric public utility or
45 gas public utility;

46 "Resource recovery facility" means a solid waste facility

1 constructed and operated for the incineration of solid waste for energy
2 production and the recovery of metals and other materials for reuse;

3 "Restructuring related costs" means reasonably incurred costs
4 directly related to the restructuring of the electric power industry,
5 including the closure, sale, functional separation and divestiture of
6 generation and other competitive utility assets by a public utility, or
7 the provision of competitive services as such costs are determined by
8 the board, and which are not stranded costs as defined in this act but
9 may include, but not be limited to, investments in management
10 information systems, and which shall include expenses related to
11 employees affected by restructuring which result in efficiencies and
12 which result in benefits to ratepayers, such as training or retraining at
13 the level equivalent to one year's training at a vocational or technical
14 school or county community college, the provision of severance pay
15 of two weeks of base pay for each year of full-time employment, and
16 a maximum of 24 months' continued health care coverage. Except as
17 to expenses related to employees affected by restructuring,
18 "restructuring related costs" shall not include going forward costs;

19 "Retail choice" means the ability of retail customers to shop for
20 electric generation or gas supply service from electric power or gas
21 suppliers, or opt to receive basic generation service or basic gas
22 service, and the ability of an electric power or gas supplier to offer
23 electric generation service or gas supply service to retail customers,
24 consistent with the provisions of this act;

25 "Shopping credit" means an amount deducted from the bill of an
26 electric public utility customer to reflect the fact that such customer
27 has switched to an electric power supplier and no longer takes basic
28 generation service from the electric public utility;

29 "Social program" means a program implemented with board
30 approval to provide assistance to a group of disadvantaged customers,
31 to provide protection to consumers, or to accomplish a particular
32 societal goal, and includes, but is not limited to, the winter moratorium
33 program, utility practices concerning "bad debt" customers, low
34 income assistance, deferred payment plans, weatherization programs,
35 and late payment and deposit policies, but does not include any
36 demand side management program or any environmental requirements
37 or controls;

38 "Societal benefits charge" means a charge imposed by an electric
39 public utility, at a level determined by the board, pursuant to, and in
40 accordance with, section 12 of this act;

41 "Stranded cost" means the amount by which the net cost of an
42 electric public utility's electric generating assets or electric power
43 purchase commitments, as determined by the board consistent with the
44 provisions of this act, exceeds the market value of those assets or
45 contractual commitments in a competitive supply marketplace and the
46 costs of buydowns or buyouts of power purchase contracts;

1 "Stranded costs recovery order" means each order issued by the
2 board in accordance with subsection c. of section 13 of this act which
3 sets forth the amount of stranded costs, if any, the board has
4 determined an electric public utility is eligible to recover and collect
5 in accordance with the standards set forth in section 13 and the
6 recovery mechanisms therefor;

7 "Transition bond charge" means a charge, expressed as an amount
8 per kilowatt hour, that is authorized by and imposed on electric public
9 utility ratepayers pursuant to a bondable stranded costs rate order, as
10 modified at any time pursuant to the provisions of this act;

11 "Transition bonds" means bonds, notes, certificates of participation
12 or beneficial interest or other evidences of indebtedness or ownership
13 issued pursuant to an indenture, contract or other agreement of an
14 electric public utility or a financing entity, the proceeds of which are
15 used, directly or indirectly, to recover, finance or refinance bondable
16 stranded costs and which are, directly or indirectly, secured by or
17 payable from bondable transition property. References in this act to
18 principal, interest, and acquisition or redemption premium with respect
19 to transition bonds which are issued in the form of certificates of
20 participation or beneficial interest or other evidences of ownership
21 shall refer to the comparable payments on such securities;

22 "Transmission and distribution system" means, with respect to an
23 electric public utility, any facility or equipment that is used for the
24 transmission, distribution or delivery of electricity to the customers of
25 the electric public utility including, but not limited to, the land,
26 structures, meters, lines, switches and all other appurtenances thereof
27 and thereto, owned or controlled by the electric public utility within
28 this State; [and]

29 "Transition period" means the period from August 1, 1999 through
30 July 31, 2003; and

31 "Universal service" means any service approved by the board with
32 the purpose of assisting low-income residential customers in obtaining
33 or retaining electric generation or delivery service.

34 (cf: P.L.2001, c.242, s.1)

35

36 2. Section 14 of P.L.1999, c.23 (C.48:3-62) is amended to read
37 as follows:

38 14. a. For purposes of recovering a portion of the stranded costs
39 of an electric public utility that are deemed eligible for rate recovery
40 in a stranded cost recovery order consistent with the provisions of
41 section 13 of this act, and for compliance by the electric public utility
42 with the rate reduction requirements determined by the board to be
43 necessary and appropriate consistent with the provisions of sections 4
44 and 13 of this act, or for the purposes of recovering basic generation
45 service transition costs of an electric public utility, the board may
46 authorize the issuance of transition bonds by the electric public utility

1 or other financing entity approved by the board. Such bonds shall be
2 secured through an irrevocable bondable stranded cost rate order
3 imposing a non-bypassable transition bond charge as provided in
4 section 18 of this act and shall provide for collection of the transition
5 bond charge by the electric public utility or another entity approved by
6 the board. This transition bond charge shall be assessed in connection
7 with the recovery of stranded costs pursuant to section 13 of this act
8 or basic generation service transition costs pursuant to this section, but
9 each electric public utility shall maintain separate accounting for
10 transition bond charges so that the board can determine, at any time,
11 the amount of each type of charge that has been assessed and collected
12 by the electric public utility. The net proceeds of the transition bonds
13 shall be used by or on behalf of the electric public utility solely for the
14 purposes of reducing the amount of its otherwise recovery-eligible
15 stranded costs, as determined by the board in accordance with the
16 provisions of section 13 of this act, or reducing the amount of basic
17 generation service transition costs through the refinancing or
18 retirement of electric public utility debt or equity, or both, or the
19 buyout, buydown or other restructuring of a power purchase
20 agreement if such buyout, buydown or restructuring leads directly to
21 substantial customer benefits over the term of the power purchase
22 agreement. The entire amount of cost savings achieved as a result of
23 the issuance of such transition bonds, whether as a result of a
24 reduction in capital costs or a lengthened recovery period associated
25 with otherwise recovery-eligible stranded costs or basic generation
26 service transition costs or as a source of cash for the buyout, buydown
27 or other restructuring of a power purchase agreement, shall be passed
28 on to the customers of the electric public utility in the form of reduced
29 rates or mitigated rate increases for electricity. Anything in this act or
30 any other law to the contrary notwithstanding, except for adjustments
31 authorized under paragraph (2) of subsection a. and subsection b. of
32 section 15 of this act, transition bond charges approved by the board
33 in a bondable stranded costs rate order shall not be offset, reduced,
34 adjusted or otherwise diminished either directly or indirectly.

35 b. [The] For the purposes of recovering stranded costs of an
36 electric public utility, the issuance of transition bonds for an electric
37 public utility may be authorized by the board if all the following
38 findings are made by the board in connection with its review of a
39 stranded cost filing made by an electric public utility pursuant to
40 section 13 of this act:

41 (1) The electric public utility has taken reasonable measures to
42 date, and has the appropriate incentives or plans in place to take
43 reasonable measures, to mitigate the total amount of its stranded costs;

44 (2) The electric public utility will not be able to achieve the level
45 of rate reduction deemed by the board to be necessary and appropriate
46 pursuant to the provisions of sections 4 and 13 of this act absent the

1 issuance of transition bonds;

2 (3) The issuance of such bonds will provide tangible and
3 quantifiable benefits to ratepayers, including greater rate reductions
4 than would have been achieved absent the issuance of such bonds and
5 net present value savings over the term of the bonds; and

6 (4) The structuring and pricing of the transition bonds assure that
7 the electric public utility's customers pay the lowest transition bond
8 charges consistent with market conditions and the terms of the
9 bondable stranded costs rate order. If so authorized in the financing
10 order by the board, the structure and pricing of the transition bonds
11 shall be conclusively deemed to satisfy this requirement if so certified
12 by a designee of the board upon the pricing of the transition bonds,
13 which certification will be final and uncontestable as of its date.

14 c. Subject to the other requirements of this section:

15 (1) The board may authorize the issuance of transition bonds for
16 utility generation plant stranded costs determined by the board to be
17 recoverable pursuant to paragraph (1) of subsection a. of section 13
18 of this act in a principal amount of up to 75 percent of the total
19 amount of the electric public utility's recovery-eligible utility
20 generation plant stranded costs, as determined by the board in
21 accordance with the provisions of section 13 of this act, or, in the
22 event that an electric public utility divests itself of a majority of its
23 generating assets, which divestiture will result in a lower market
24 transition charge than that which would have been collected from
25 customers had the electric public utility not divested such assets, and
26 the utility has established, as determined by the board, the stranded
27 cost amount with certainty attributable to its remaining generating
28 asset or assets, the board may authorize the issuance of transition
29 bonds in a principal amount up to the full stranded cost value of such
30 remaining generating asset or assets based on the following criteria:

31 (a) The greater the level of aggregate rate reduction provided
32 pursuant to subsections d. and e. of section 4 of this act, the higher the
33 percentage of stranded costs for which transition bonds may be issued;

34 (b) The higher the degree of certainty, such as might be obtained
35 by auction or sale of the assets, as to the magnitude of the electric
36 public utility's actual stranded costs, the larger the magnitude of
37 transition bonds which may be permitted; and

38 (c) Based on evidence on the record, such amount will produce
39 substantial and quantifiable savings for the customers of that utility;
40 [and]

41 (2) The board may authorize the issuance of transition bonds for
42 the buyout or buydown of long-term power purchase contracts with
43 non-utility generators determined by the board to be recoverable
44 pursuant to paragraph (3) of subsection a. of section 13 of this act in
45 a principal amount to be determined by the board in accordance with
46 the provisions of section 13 of this act, based on the following criteria:

1 (a) The greater the level of aggregate rate reduction provided
2 pursuant to subsections d. and e. of section 4 of this act, the higher the
3 percentage of stranded costs that may be securitized;

4 (b) The higher the degree of certainty as to the magnitude of the
5 electric public utility's actual stranded costs, the larger the magnitude
6 of transition bonds which may be permitted; and

7 (c) Based on evidence on the record, such amount will produce
8 substantial and quantifiable savings for the customers of that electric
9 public utility because the amount of the buyout or buydown payment
10 is substantially less than the total projected stranded costs associated
11 with the contract; and

12 (3) The board may authorize the issuance of transition bonds for
13 the recovery of up to the full amount of an electric public utility's basic
14 generation service transition costs based on the criteria that such
15 amount will produce benefits for customers of the electric public
16 utility.

17 d. The board may approve transition bonds with scheduled
18 amortization upon issuance of up to:

19 (1) Fifteen years if the electric public utility intends to utilize the
20 proceeds from such transition bonds to reduce the stranded costs
21 related to utility-owned generation; **[or]**

22 (2) The remaining term of a power purchase agreement if the
23 electric public utility intends to utilize the proceeds from such
24 transition bonds solely for the purposes and requirements of paragraph
25 (2) of subsection c. of this section; or

26 (3) Fifteen years if the electric public utility intends to utilize the
27 proceeds from such transition bonds for the purpose of the recovery
28 of basic generation service transition costs.

29 e. Transition bonds for the purpose and requirements of paragraphs
30 (1) **[and]**, (2) or (3) of subsection c. of this section may be issued in
31 one or more series, in one or more offerings, and each such series may
32 consist of one or more classes of transition bonds.

33 f. The board shall issue orders with respect to each electric public
34 utility's amortization of stranded costs or basic generation service
35 transition costs through the transition bond charges pursuant to this
36 section.

37 g. For the purpose of recovering basic generation service transition
38 costs, an electric public utility may make a filing in a form to be
39 adopted by the board to request the board to authorize the issuance of
40 transition bonds and to issue a bondable stranded cost rate order. The
41 board shall review such filing, and after providing notice and an
42 opportunity for public comment, shall render a determination
43 authorizing the issuance of transition bonds, if the following findings
44 are or previously have been made by the board:

45 (1) The basic generation service transition costs to be recovered
46 are reasonable and prudently incurred costs consistent with P.L.1999,

1 c.23 (C.48:3-49 et al.);

2 (2) The issuance of transition bonds will enable the mitigation of
3 rate increases to customers resulting from the recovery of basic
4 generation service transition costs; and

5 (3) The structuring and pricing of the transition bonds assure that
6 the electric public utility's customers pay the lowest transition bond
7 charges consistent with market conditions and the terms of the
8 bondable stranded costs rate order. If so authorized in the financing
9 order by the board, the structure and pricing of the transition bonds
10 shall be conclusively deemed to satisfy this requirement if so certified
11 by a designee of the board upon the pricing of the transition bonds,
12 which certification will be final and uncontestable as of its date.

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

14

15 3. This act shall take effect immediately.

16

17

18 STATEMENT

19

20 This bill permits the Board of Public Utilities ("BPU") to authorize
21 the securitization of deferred balances of electric public utilities for the
22 provision of basic generation service ("BGS") through the issuance of
23 "transition" bonds with an amortization period not to exceed 15 years.
24 Under current law, BGS is electric generation service provided to a
25 customer within a utility's service territory who chooses not to have
26 such service provided by an alternative electric power supplier.
27 Deferred balances occur as the result of dramatic increases in prices
28 for power supply in the wholesale market that the utility must purchase
29 to provide BGS while the rates the utility charges BGS customer are
30 capped during the four-year transition period (August 1, 1999 though
31 July 31, 2003). By authorizing the securitization of deferred balances,
32 the bill seeks to mitigate the impact of large rate increases in August
33 2003 by reducing the costs of financing those balances.

34 The bill authorizes the BPU to permit the issuance of a utility's
35 transition bonds under the following conditions: (1) the BGS transition
36 costs to be recovered are reasonable and prudently incurred costs
37 consistent with P.L.1999, c.23 (C.48:3-49 et al.); (2) the issuance of
38 transition bonds will enable the mitigation of rate increases to
39 customers resulting from the recovery of BGS transition costs; and (3)
40 the structuring and pricing of the transition bonds assure that the
41 electric public utility's customers pay the lowest transition bond
42 charges consistent with market conditions and the terms of the
43 bondable stranded costs rate order. In addition, the BPU may
44 authorize the issuance of transition bonds for the recovery of up to the
45 full amount of a utility's BGS transition costs based on the criteria that
46 such amount will produce benefits for customers of the utility.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2108

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 2002

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 2108 with committee amendments.

As amended, this bill permits the Board of Public Utilities ("BPU") to authorize the securitization of deferred balances of electric public utilities for the provision of basic generation service ("BGS") through the issuance of "transition" bonds with an amortization period not to exceed 15 years. Under current law, BGS is electric generation service provided to a customer within a utility's service territory who chooses not to have such service provided by an alternative electric power supplier. Deferred balances occur as the result of dramatic increases in prices for power supply in the wholesale market that the utility must purchase to provide BGS while the rates the utility charges BGS customer are capped during the four-year transition period (August 1, 1999 through July 31, 2003). By authorizing the securitization of deferred balances, the bill seeks to mitigate the impact of large rate increases in August 2003 by reducing the costs of financing those balances.

As amended, the bill authorizes the BPU to permit the issuance of a utility's transition bonds to recover BGS transition costs that are reasonably and prudently incurred. The BPU may authorize the issuance of transition bonds for the recovery of up to the full amount of the utility's BGS transition costs based on the criteria that such amount will produce benefits for customers of the utility, including the lowest transition bond charges consistent with market conditions and the terms of the bondable stranded costs rate order when so certified by a designee of the BPU upon the pricing of the transition bonds, which certification will be final and uncontestable as of its date.

COMMITTEE AMENDMENTS

The committee amended the bill to clarify that the BPU may authorize the issuance of transition bonds after providing appropriate notice and an opportunity for hearing for the recovery of up to the full amount of the utility's BGS transition costs based

on the criteria that such amount will produce benefits for customers of the utility, including the lowest transition bond charges consistent with market conditions and the terms of the bondable stranded costs rate order when so certified by a designee of the BPU upon the pricing of the transition bonds, which certification will be final and uncontestable as of its date.

The amendments adopted by the committee make this bill identical to Senate Bill No. 869 (1R).