

# 54:32B-8.47a

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2007 **CHAPTER:** 94

**NJSA:** 54:32B-8.47a (Exempts from payment for seven years certain taxes and energy charges for certain manufacturing facilities)

**BILL NO:** A3759 (Substituted for S2410)

**SPONSOR(S)** Pou and Others

**DATE INTRODUCED:** December 4, 2006

**COMMITTEE:** **ASSEMBLY:** Appropriations; Telecommunications and Utilities

**SENATE:**

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** February 22, 2007

**SENATE:** March 12, 2007

**DATE OF APPROVAL:** May 10, 2007 (filed/not approved)

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (First reprint enacted)

#### A3759

**[SPONSOR'S STATEMENT:](#)** (Begins on page 20 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes [Telecommunications 12-4-06](#)  
[Appropriations 2-8-07](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes [2-14-07](#)  
[3-8-07](#)

#### S2410

**[SPONSOR'S STATEMENT:](#)** (Begins on page 20 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

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

**FLOOR AMENDMENT STATEMENT:** Yes [2-5-07](#)  
[2-22-07](#)

**[LEGISLATIVE FISCAL ESTIMATE:](#)** [Yes](#)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH 4/30/08

P.L. 2007, CHAPTER 94, *filed May 10, 2007*

Assembly, No. 3759 (*First Reprint*)

1 AN ACT concerning certain taxes and energy charges of certain  
2 manufacturing facilities, and amending 'and supplementing'  
3 P.L.1997, c.162 '[and P.L.1999, c.23]'<sup>1</sup> and supplementing Title  
4 48 of the Revised Statutes.

5

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

8

9 1. Section 33 of P.L.1997, c.162 (C.54:32B-8.47) is amended  
10 to read as follows:

11 33. a. Receipts from the sale or use of energy and utility service  
12 to or by a utility corporation or person that was subject to the  
13 provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1,  
14 1997, or currently or formerly subject to taxation pursuant to  
15 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and  
16 consumption, are exempt from the tax imposed under the "Sales and  
17 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

18 b. Receipts from the sale or use of energy and utility service  
19 made pursuant to a contract described in section 59 of P.L.1997,  
20 c.162 (C.48:2-21.31) shall be exempt from the tax imposed under  
21 the "Sales and Use Tax Act."

22 c. (1) As used in this subsection, "manufacturing facility"  
23 means a facility:

24 (a) with respect to which the owner of the facility shall have  
25 entered into an off-tariff rate agreement with an electric public  
26 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
27 et seq.):

28 (b) that manufactures products made from using "postconsumer  
29 material," as that term is defined in 40 C.F.R. s.247.3, and other  
30 recovered material feedstocks that meet the requirements of the  
31 Comprehensive Procurement Guideline For Products Containing  
32 Recovered Materials as promulgated by the United States  
33 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
34 pursuant to the "Resource Conservation and Recovery Act,"  
35 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
36 13101, issued by the President of the United States on September  
37 14, 1998, provided that at least 75 percent of the manufacturing  
38 facility's total annual sales dollar volume of such products that are  
39 produced in New Jersey meet the recycled content standards within  
40 such guidelines;

41 (c) for which a "comprehensive energy audit," as that term is

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted February 8, 2007.

1 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
2 been undertaken within 90 days after the effective date of P.L. ,  
3 c. (C. ) (pending before the Legislature as this bill), which  
4 audit shall have evaluated cost-effective energy efficiency and  
5 conservation measures as part of the efforts to reduce energy costs;

6 (d) that has been in operation in this State for at least 25 years as  
7 of the effective date of P.L. , c. (C. )(pending before the  
8 Legislature as this bill); and

9 (e) at which at least 800 employees are employed on the first  
10 business or work day after the expiration of such off-tariff rate  
11 agreement.

12 (2) For a period of seven years commencing on the first day  
13 after the expiration of an off-tariff rate agreement, entered into or  
14 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
15 21.24 et seq.), receipts from the sale to or use by a manufacturing  
16 facility of energy and utility service for use or consumption directly  
17 and primarily in the production of tangible personal property, other  
18 than energy, shall be exempt from the tax imposed under the "Sales  
19 and Use Tax Act."

20 (3) [The State Treasurer shall adopt rules for the  
21 reimbursement to the owner of the manufacturing facility of an  
22 amount representing the sales and use taxes paid for the period that  
23 commenced on the first day after the expiration of the off-tariff rate  
24 agreement described under subparagraph (a) of the definition of  
25 "manufacturing facility" set forth in paragraph (1) of this subsection  
26 and ended on the effective date of P.L. , c. (C. ) (pending  
27 before the Legislature as this bill] Notwithstanding the provisions  
28 of the exemption provided in this section, a seller of energy and  
29 utility service shall charge and collect the tax from the owner of the  
30 manufacturing facility and the owner shall be refunded the tax paid  
31 by the filing, within 30 days following the close of a calendar  
32 quarter in which the exemption applies, of a claim with the New  
33 Jersey Division of Taxation for a refund of sales and use taxes paid  
34 for energy and utility service, which refund shall be paid within 30  
35 days of the refund claim being filed. Proof of claim for refund shall  
36 be made by the submission of such records and other documentation  
37 as the Director of the Division of Taxation may require.

38 d. If the owner of the manufacturing facility at any time during  
39 the sales and use tax exemption period relocates the manufacturing  
40 facility to a location outside of this State, the owner shall pay to the  
41 Director of the Division of Taxation the amount of sales and use tax  
42 for which an exemption shall have been allowed and refund  
43 obtained under this section. The State Treasurer shall notify the  
44 director of the relocation of a manufacturing facility to a location  
45 outside of this State, and the director shall issue a tax assessment  
46 for the recapture of tax, equal to the amount of sales and use tax for  
47 which an exemption shall have been allowed and refund obtained  
48 under this section. The recapture of tax shall be a State tax subject

1 to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and  
2 shall be deposited in the General Fund<sup>1</sup> .  
3 (cf: P.L.1997, c.162, s.33)

4

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

7 67. a. As used in this section:

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

13 "Base year" means the calendar year 1996;

14 "Board" means the Board of Public Utilities;

15 "Manufacturing facility" means a facility:

16 (1) with respect to which the owner of the facility shall have  
17 entered into an off-tariff rate agreement with an electric public  
18 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
19 et seq.);

20 (2) that manufactures products made from using "postconsumer  
21 material," as that term is defined in 40 C.F.R. s.247.3, and other  
22 recovered material feedstocks that meet the requirements of the  
23 Comprehensive Procurement Guideline For Products Containing  
24 Recovered Materials as promulgated by the United States  
25 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
26 pursuant to the "Resource Conservation and Recovery Act,"  
27 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
28 13101, issued by the President of the United States on September  
29 14, 1998, provided that at least 75 percent of the manufacturing  
30 facility's total annual sales dollar volume of such products that are  
31 produced in New Jersey meet the recycled content standards within  
32 such guidelines;

33 (3) for which a "comprehensive energy audit," as that term is  
34 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
35 been undertaken within 90 days after the effective date of P.L. ,  
36 c. (C. ) (pending before the Legislature as this bill), which  
37 audit shall have evaluated cost-effective energy efficiency and  
38 conservation measures as part of the efforts to reduce energy costs;

39 (4) that has been in operation in this State for at least 25 years as  
40 of the effective date of P.L. , c. (C. )(pending before the  
41 Legislature as this bill); and

42 (5) at which at least 800 employees are employed on the first  
43 business or work day after the expiration of such off-tariff rate  
44 agreement.

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

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

3 "Utility service" means the supply, transmission, distribution or  
4 transportation of electricity, natural gas or telecommunications  
5 services or any combination of such commodities, processes or  
6 services.

7 b. No later than 60 days after the date this act is enacted, each  
8 electric, gas and telecommunications utility subject to the  
9 provisions of this act shall file with the board, and shall  
10 simultaneously provide copies to the Director of the Division of the  
11 Ratepayer Advocate, revised tariffs and such other supporting  
12 schedules, narrative and documentation required by this act, as set  
13 forth in this section, to reflect in the utility's rates the changes in tax  
14 liability effected pursuant to this act. No later than 90 days after the  
15 date of the utility's filing, and after determining that the filing and  
16 the rate changes provided for therein are in compliance with the  
17 provisions of this act, the board shall approve the utility's filing and  
18 associated rates for billing to the utility's customers, effective for  
19 utility service rendered on and after January 1, 1998. If the board  
20 determines that the utility's filing and the associated rate changes  
21 provided for therein are not in compliance with the provisions of  
22 this act, the board shall require the utility to amend or otherwise  
23 modify its filing to render it in compliance. The board may also  
24 permit the rates provided for in the utility's filing to be implemented  
25 on an interim basis pending the board's final determination in the  
26 event the board, in its discretion, determines that due to the filing's  
27 complexity, or for other valid reasons, including but not limited to  
28 the enactment of this act after June 30, 1997, additional time is  
29 needed for the board to complete its review of the filing. If the  
30 rates approved by the board upon its final determination are less  
31 than the rates implemented on an interim basis, the difference shall  
32 be refunded to the utility's customers with interest computed in  
33 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments  
34 implemented pursuant to this act shall not constitute a fixing of  
35 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing  
36 requirements set forth in that section.

37 c. As of the effective date of the rate changes implemented  
38 pursuant to this act, and except for rates applicable to sales that  
39 were or are currently exempt from the unit-based energy taxes  
40 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)  
41 and rates applicable to sales to which section 59 of P.L.1997, c.162  
42 (C.48:2-21.31) applies, the board shall remove from the base rates  
43 of each electric public utility and gas public utility the unit tax rates  
44 included therein for the recovery of those unit-based energy taxes,  
45 and include therein provision for the recovery of corporation  
46 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et  
47 seq.), and additionally shall authorize the collection of the sales and

1 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as  
2 follows:

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

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

13 To permit the board to make this determination, in addition to  
14 including in its filing schedules showing its net income earned in  
15 the base year as booked, the utility shall include adjustments to such  
16 booked income to eliminate the effect of revenues, expenses and  
17 extraordinary or other charges that are non-recurring, atypical, or  
18 both, including, but not limited to an adjustment to eliminate the  
19 effect of unusually hot or cold weather, and that would otherwise  
20 make the utility's base year net income unusually high or low or  
21 otherwise unrepresentative of the utility's prospective net income.  
22 If the adjustment is being made to eliminate the effect of unusually  
23 hot or cold weather, associated revenue and expense adjustments  
24 shall also be made. Subject to the board's approval, such adjusted  
25 income shall be the basis for the calculation of the initial provision  
26 for corporation business tax to be included in the utility's base rates.

27 The utility shall also include a calculation of its rate of return on  
28 common equity achieved in the base year, both as booked and as  
29 adjusted in accordance with the foregoing. The calculation shall be  
30 made employing the methodology set forth in N.J.A.C.14:12-  
31 4.2(b)1, and shall separately show the effect of reflecting  
32 adjustments to the calculation, if any, that may have been employed  
33 historically in establishing the utility's rate of return on common  
34 equity allowed for ratemaking purposes. The utility's filing shall  
35 also include copies of its audited financial statements for the base  
36 year and associated quarterly and other reports filed with the  
37 Securities and Exchange Commission.

38 To reflect the provision for corporation business tax in base  
39 rates, the demand charges, or charges per kilowatt, decatherm or  
40 million cubic feet; the energy charges, or charges per kilowatthour  
41 or per therm; and the customer charges, or charges other than  
42 demand and energy charges, set forth in each base rate schedule,  
43 and the floor price employed in parity rate schedules, included in  
44 the utility's tariff filed with and approved by the board shall be  
45 increased by amounts determined by multiplying such charges by  
46 the adjustment factor, "A e, g" derived below:





1 (4) The utility's filing with the board to implement the rate  
2 changes provided for by this act shall include an analysis,  
3 description, and quantification of the effect of the changes in rates  
4 and tax payments implemented pursuant to this act on the utility's  
5 requirement for cash working capital, and if such requirement is  
6 less than the cash working capital allowed for the collection and  
7 payment of unit-based energy taxes formerly imposed pursuant to  
8 P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base  
9 rates in effect prior to the rate changes implemented pursuant to this  
10 act, and to the extent the working capital reduction is not offset by a  
11 reduction in net deferred taxes as provided for below, such base  
12 rates shall be reduced by the reduction in the utility's revenue  
13 requirement associated with the remaining reduction in the working  
14 capital requirement not so offset, if any. The reduction in working  
15 capital shall be determined by using the same methodology  
16 employed in establishing the working capital allowance related to  
17 unit-based energy taxes reflected in the utility's base rates in effect  
18 prior to the rate changes implemented pursuant to this act. The  
19 reduction in the utility's revenue requirement associated with the  
20 reduced working capital requirement shall be calculated using the  
21 utility's last overall rate of return allowed by the board, including  
22 provision for federal income taxes and the corporation business tax  
23 implemented pursuant to this act payable on the equity portion of  
24 the return, and shall be implemented on the effective date of the rate  
25 changes provided for, and in the manner set forth in paragraph (2)  
26 of this subsection.

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

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

38 The utility's filing with the board to implement the rate changes  
39 provided for by this act shall also include an analysis, description  
40 and quantification of net deferred taxes. For the purposes of this  
41 section, "net deferred taxes" means deferred corporation business  
42 taxes, net of federal deferred income taxes, associated with the tax  
43 and rate changes implemented pursuant to this act, including  
44 deferred corporation business tax recorded in accordance with  
45 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the  
46 calendar year in which this act takes effect and for each year of the  
47 tax life of the asset giving rise to the deferred corporation business  
48 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

1        If the change in such net deferred taxes projected for the calendar  
2 year in which the rate changes implemented pursuant to this act  
3 takes effect is negative and if the utility's requirement for working  
4 capital is reduced as a result of the changes in rates and tax  
5 payments implemented pursuant to this act, the working capital-  
6 related rate reduction that otherwise would have been implemented  
7 pursuant to this subsection shall be treated as set forth in  
8 subparagraph (a) or (b) of this paragraph. For the purposes of this  
9 act, a change in net deferred taxes is considered negative when it  
10 reduces an existing deferred tax liability or creates a deferred tax  
11 asset on the utility's balance sheet. An appropriate rate adjustment  
12 for the working capital impacts of this act, reflecting all relevant  
13 facts and circumstances at the time of the adjustment, shall be made  
14 in the year when the earlier of the following events occur:

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

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

27        (ii) The accumulated balance of such negative net deferred taxes  
28 shall include net deferred taxes associated with all assets and  
29 liabilities originally placed in service by the utility and held by the  
30 utility or a company affiliated with the utility regardless of whether  
31 or not such assets continue to be subject to regulation by the New  
32 Jersey Board of Public Utilities.

33        (b) The year in which both an appropriate working capital  
34 adjustment and the accumulated balance of negative deferred taxes,  
35 as described in (ii) of subparagraph (a) of this paragraph (4), are  
36 reflected in the utility's rate base in a rate proceeding before the  
37 board. It is the intent of this section to fully compensate utilities on  
38 a present value basis, for the carrying costs associated with negative  
39 net deferred taxes arising as a result of this act, and to remit to  
40 ratepayers any credit due them as a result of any overcompensation  
41 as may have occurred due to the treatment of working capital and  
42 deferred taxes as set forth herein or in subparagraph (a) of this  
43 paragraph (4). At the time the above base rate adjustment is made,  
44 an analysis shall be made to determine if such carrying costs have  
45 been or will be fully recovered pursuant to the intent of this  
46 provision and any additional credit or charge to ratepayers to adjust  
47 for ratepayer overpayments or underpayments, if any shall be  
48 addressed.

1 If the change in net deferred taxes is positive, the increase shall  
2 be added to, or increase, the reduction in the utility's requirement  
3 for working capital if the requirement is reduced as a result of the  
4 rate and tax payment changes implemented pursuant to this act, or  
5 subtracted from the working capital requirement if it is increased,  
6 and the resultant net working capital requirement shall be reflected  
7 in rates or accrue carrying costs in the same manner as prescribed  
8 for changes in the utility's requirement for working capital above.

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

13 d. (1) Electric and gas utilities shall file, for the board's review  
14 and approval, initial TEFA unit rate surcharges determined by  
15 deducting from each unit-based energy tax unit tax rate effective  
16 January 1, 1997 the following:

17 (a) An amount per kilowatthour or per therm determined by  
18 multiplying the total revenue received in the base year from sales to  
19 which that unit tax rate would have been applicable by the factor  
20  $R_u/(1 + R_u)$ , where  $R_u$  is the sales and use tax rate imposed under  
21 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and  
22 dividing the result by the kilowatthours or therms billed in that unit  
23 tax rate class in the base year; and

24 (b) An amount per kilowatthour or per therm determined by  
25 dividing the revenue that would have been received in the base year  
26 from the inclusion, in the manner prescribed in paragraph (2) of  
27 subsection c. of this section, of the corporation business tax in the  
28 rates applicable to sales billed in that unit tax rate class by the  
29 kilowatthours or therms billed in that rate class. In each case, the  
30 determination shall reflect the effect of adjustments that affect the  
31 level of sales and revenue, if any, as provided in subsection c. of  
32 this section. Of the resultant rate per kilowatthour or per therm, the  
33 portion for recovery of the utility's transitional energy facilities  
34 assessment liability shall be determined by multiplying such rate by  
35 the factor  $(1 - R_s)$ , where  $R_s$  is the corporation business tax rate  
36 expressed as a decimal.

37 The TEFA unit rate surcharges shall constitute non-bypassable  
38 wires and/or mains charges of the utility, and shall be applied to all  
39 sales within the customer classes to which they apply, regardless of  
40 whether such customers are purchasing bundled or unbundled  
41 services from the utility, but shall not be applied to sales:

42 (i) that were or are currently exempt from unit-based energy  
43 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et  
44 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)  
45 applies, and

46 (ii) for a period of seven years commencing on the first day after  
47 the expiration of an off-tariff rate agreement, entered into or  
48 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-

1 21.24 et seq.), to a manufacturing facility for use or consumption  
2 directly and primarily in the production of tangible personal  
3 property, other than energy.

4 <sup>1</sup> [The State Treasurer shall adopt rules for the reimbursement to  
5 the owner of the manufacturing facility of an amount representing  
6 the TEFA unit rate surcharges paid for the period that commenced  
7 on the first day after the expiration of the off-tariff rate agreement  
8 described under this sub-subparagraph of the definition of  
9 “manufacturing facility” set forth in subsection a. of this section  
10 and ended on the effective date of P.L. , c. (C. )(pending  
11 before the Legislature as this bill)] Notwithstanding the provisions  
12 of the exemption provided in this sub-subparagraph (ii) of  
13 subparagraph (b) of paragraph (1) of subsection d. of this section,  
14 the TEFA unit rate surcharge shall be applied to the sales to the  
15 owner of the manufacturing facility and the owner shall be refunded  
16 an amount equal to the TEFA unit rate surcharge paid by the filing,  
17 within 30 days following the close of a calendar quarter in which  
18 the exemption applies, of a claim with the New Jersey Division of  
19 Taxation for a refund of the TEFA unit rate surcharge paid, which  
20 refund shall be paid within 30 days of the refund claim being filed.  
21 Proof of claim for refund shall be made by the submission of such  
22 records and other documentation as the Director of the Division of  
23 Taxation may require. If the owner of the manufacturing facility at  
24 any time during the exemption period relocates the manufacturing  
25 facility to a location outside of this State, the owner shall pay to the  
26 Director of the Division of Taxation the amount of TEFA unit rate  
27 surcharge for which an exemption shall have been allowed and  
28 refund obtained under this section. The State Treasurer shall notify  
29 the director of the relocation of a manufacturing facility to a  
30 location outside of this State, and the director shall issue a tax  
31 assessment for the recapture of tax, equal to the amount of TEFA  
32 unit rate surcharge for which an exemption shall have been allowed  
33 and refund obtained under this section. The recapture of tax shall  
34 be a State tax subject to the State Uniform Tax Procedure Law,  
35 R.S.54:48-1 et seq., and shall be deposited in the General Fund<sup>1</sup> .

36 If, following the effective date of this act, a customer taking  
37 bundled service from the utility shall elect to obtain its  
38 requirements from another supplier and take transportation or  
39 wheeling service from the utility, the TEFA unit rate surcharge  
40 applicable to the bundled service shall continue to apply to the  
41 transportation or wheeling service. The TEFA components of the  
42 unit rate surcharges determined pursuant to this subsection (the  
43 components of the surcharges remaining after deducting the  
44 provision for corporation business tax included therein) shall be  
45 used to determine the transitional energy facility assessment  
46 liability pursuant to sections 36 through 49 of P.L.1997, c.162  
47 (C.54:30A-100 through C.54:30A-113).

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

5	January 1, 1999,	20%
6	January 1, 2000,	40%
7	January 1, 2001,	60%

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

11 (a) The sum of the estimated, or actual when known, (i) TEFA  
 12 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-  
 13 107), and sales and use taxes collected and corporation business  
 14 taxes booked for the year 1998 by the gas and electric utilities and  
 15 other entities subject to the TEFA provisions of this act (the year  
 16 1998 liability), and (ii) the TEFA liabilities of those utilities and  
 17 entities in all years following the year 1998 through the year in  
 18 which a determination is being made pursuant to this subsection  
 19 (the determination year); and

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

26	Determination Year	% of
27		Year 1998
28		TEFA
29	-----	-----
30	1999	80%
31	2000	60%

32 by the Year 1998 TEFA,  
 33 where the Year 1998 TEFA is calculated as the total of each  
 34 remitter's base year liability less the sales and use taxes collected  
 35 and the corporation business taxes booked for the privilege period  
 36 ending in calendar year 1998 by the gas and electric utilities and  
 37 other entities subject to the TEFA provisions of this act. For  
 38 purposes of this subsection, the amounts assumed for the  
 39 determination year, including the year 1998 liability when first  
 40 determined for the purposes of this subsection, shall be estimates  
 41 based on nine months of actual data through and including the  
 42 month of September, and three months of data forecast for the  
 43 months of October through December.

44 (4) If the TEFA surcharge adjustment determined for the  
 45 determination year is positive (that is, if the amount determined  
 46 pursuant to subparagraph (a) of paragraph (3) of this subsection is  
 47 greater than the amount determined pursuant to subparagraph (b) of  
 48 paragraph (3) of this subsection), no reduction shall be made in the

1 reduction in the TEFA unit rate surcharges provided for in  
 2 paragraph (2) of this subsection for the year following the  
 3 determination year. If the TEFA surcharge adjustment is negative,  
 4 the reduction in the TEFA unit rate surcharges that otherwise would  
 5 have been implemented on January 1 of the year following the  
 6 determination year pursuant to paragraph (2) of this subsection shall  
 7 be reduced by an amount (by percentage points) equal to the  
 8 percentage the TEFA surcharge adjustment is of the total of the  
 9 base year transitional energy facility assessment of all remitters, as  
 10 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided  
 11 however, that such reduction in the reduction in the TEFA unit rate  
 12 surcharges shall not exceed the percentage shown in paragraph (2)  
 13 of this subsection for that year; and provided further that in the first  
 14 two years, that such reduction shall not exceed 10 percentage points  
 15 for each year.

16 (5) (a) The TEFA unit rate surcharges for calendar years 2002  
 17 through 2008 shall be the same as the TEFA unit rate surcharges in  
 18 effect for calendar year 2001.

19 (b) The TEFA unit rate surcharges in effect for calendar year  
 20 2008 shall be reduced on January 1, 2009 and January 1, 2010 by  
 21 the following percentages:

22	January 1, 2009	25%
23	January 1, 2010	50%

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

43 f. The board may, in its discretion, permit the rate changes  
 44 provided for this act to be implemented as part of a pending base  
 45 rate case or other proceeding in which the utility's rates are to be  
 46 changed, provided that the effective date of the changes is not  
 47 delayed beyond the date on which the changes would have been  
 48 implemented under subsection c. of this section. The board may

1 also, pursuant to its powers provided by law, permit or require  
2 further modifications in the implementation of this section to  
3 address unforeseen consequences arising out of the implementation  
4 of this act.

5 g. Customers of the utility who are exempt from the sales and  
6 use tax imposed on sales of gas and/or electricity or as a result of  
7 rate changes occurring prior to the effective date of this act or for  
8 other valid reasons are due a refund of sales or use tax inadvertently  
9 imposed on such customers as a result of implementing the rate  
10 changes provided for by this act shall file with the State Treasurer  
11 to obtain such refunds. The State Treasurer shall promptly notify  
12 the utility of customers granted refunds under this provision in  
13 order to prevent additional collections of the sales and use tax from  
14 such customers.

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

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

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

47 (3) For the purposes of this section, "cogenerator" means a  
48 person or business entity that owns or operates a cogeneration

1 facility in the State of New Jersey, which facility is a plant,  
2 installation or other structure whose primary purpose is the  
3 sequential production of electricity and steam or other forms of  
4 useful energy which are used for industrial, commercial, heating or  
5 cooling purposes, and which is designated by the Federal Energy  
6 Regulatory Commission, or its successor, as a "qualifying facility"  
7 pursuant to the provisions of the "Public Utility Regulatory Policies  
8 Act of 1978," Pub.L.95-617.

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

10

11 <sup>1</sup>[3. Section 12 of P.L.1999, c.23 (C.48:3-60) is amended to  
12 read as follows:

13 12. a. **[Simultaneously]** Except as provided for in subsection c.  
14 of this section, simultaneously with the starting date for the  
15 implementation of retail choice as determined by the board pursuant  
16 to subsection a. of section 5 of this act the board shall permit each  
17 electric public utility and gas public utility to recover some or all of  
18 the following costs through a societal benefits charge that shall be  
19 collected as a non-bypassable charge imposed on all electric public  
20 utility customers and gas public utility customers, as appropriate:

21 (1) The costs for the social programs for which rate recovery  
22 was approved by the board prior to April 30, 1997. For the purpose  
23 of establishing initial unbundled rates pursuant to section 4 of this  
24 act, the societal benefits charge shall be set to recover the same  
25 level of social program costs as is being collected in the bundled  
26 rates of the electric public utility on the effective date of this act.  
27 The board may subsequently order, pursuant to its rules and  
28 regulations, an increase or decrease in the societal benefits charge  
29 to reflect changes in the costs to the utility of administering existing  
30 social programs. Nothing in this act shall be construed to abolish  
31 or change any social program required by statute or board order or  
32 rule or regulation to be provided by an electric public utility. Any  
33 such social program shall continue to be provided by the utility  
34 until otherwise provided by law, unless the board determines that it  
35 is no longer appropriate for the electric public utility to provide the  
36 program, or the board chooses to modify the program;

37 (2) Nuclear plant decommissioning costs;

38 (3) The costs of demand side management programs that were  
39 approved by the board pursuant to its demand side management  
40 regulations prior to April 30, 1997. For the purpose of establishing  
41 initial unbundled rates pursuant to section 4 of this act, the societal  
42 benefits charge shall be set to recover the same level of demand  
43 side management program costs as is being collected in the bundled  
44 rates of the electric public utility on the effective date of this act.  
45 Within four months of the effective date of this act, and every four  
46 years thereafter, the board shall initiate a proceeding and cause to  
47 be undertaken a comprehensive resource analysis of energy  
48 programs, and within eight months of initiating such proceeding



1 and after notice, provision of the opportunity for public comment,  
2 and public hearing, the board, in consultation with the Department  
3 of Environmental Protection, shall determine the appropriate level  
4 of funding for energy efficiency and Class I renewable energy  
5 programs that provide environmental benefits above and beyond  
6 those provided by standard offer or similar programs in effect as of  
7 the effective date of this act; provided that the funding for such  
8 programs be no less than 50% of the total Statewide amount being  
9 collected in public electric and gas utility rates for demand side  
10 management programs on the effective date of this act for an initial  
11 period of four years from the issuance of the first comprehensive  
12 resource analysis following the effective date of this act, and  
13 provided that 25% of this amount shall be used to provide funding  
14 for Class I renewable energy projects in the State. In each of the  
15 following fifth through eighth years, the Statewide funding for such  
16 programs shall be no less than 50 percent of the total Statewide  
17 amount being collected in public electric and gas utility rates for  
18 demand side management programs on the effective date of this act,  
19 except that as additional funds are made available as a result of the  
20 expiration of past standard offer or similar commitments, the  
21 minimum amount of funding for such programs shall increase by an  
22 additional amount equal to 50 percent of the additional funds made  
23 available, until the minimum amount of funding dedicated to such  
24 programs reaches \$140,000,000 total. After the eighth year the  
25 board shall make a determination as to the appropriate level of  
26 funding for these programs. Such programs shall include a program  
27 to provide financial incentives for the installation of Class I  
28 renewable energy projects in the State, and the board, in  
29 consultation with the Department of Environmental Protection, shall  
30 determine the level and total amount of such incentives as well as  
31 the renewable technologies eligible for such incentives which shall  
32 include, at a minimum, photovoltaic, wind, and fuel cells. The  
33 board shall simultaneously determine, as a result of the  
34 comprehensive resource analysis, the programs to be funded by the  
35 societal benefits charge, the level of cost recovery and performance  
36 incentives for old and new programs and whether the recovery of  
37 demand side management programs' costs currently approved by the  
38 board may be reduced or extended over a longer period of time.  
39 The board shall make these determinations taking into consideration  
40 existing market barriers and environmental benefits, with the  
41 objective of transforming markets, capturing lost opportunities,  
42 making energy services more affordable for low income customers  
43 and eliminating subsidies for programs that can be delivered in the  
44 marketplace without electric public utility and gas public utility  
45 customer funding;

46 (4) Manufactured gas plant remediation costs, which shall be  
47 determined initially in a manner consistent with mechanisms in the

1 remediation adjustment clauses for the electric public utility and gas  
2 public utility adopted by the board; and

3 (5) The cost, of consumer education, as determined by the  
4 board, which shall be in an amount that, together with the consumer  
5 education surcharge imposed on electric power supplier license fees  
6 pursuant to subsection h. of section 29 of this act and the consumer  
7 education surcharge imposed on gas supplier license fees pursuant  
8 to subsection g. of section 30 of this act, shall be sufficient to fund  
9 the consumer education program established pursuant to section 36  
10 of this act.

11 b. There is established in the Board of Public Utilities a  
12 nonlapsing fund to be known as the "Universal Service Fund." The  
13 board shall determine: the level of funding and the appropriate  
14 administration of the fund; the purposes and programs to be funded  
15 with monies from the fund; which social programs shall be provided  
16 by an electric public utility as part of the provision of its regulated  
17 services which provide a public benefit; whether the funds  
18 appropriated to fund the "Lifeline Credit Program" established  
19 pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants'  
20 Lifeline Assistance Program" established pursuant to P.L.1981,  
21 c.210 (C.48:2-29.31 et seq.), the funds received pursuant to the Low  
22 Income Home Energy Assistance Program established pursuant to  
23 42 U.S.C. s.8621 et seq., and funds collected by electric and natural  
24 gas utilities, as authorized by the board, to offset uncollectible  
25 electricity and natural gas bills should be deposited in the fund; and  
26 whether new charges should be imposed to fund new or expanded  
27 social programs.

28 c. (1) As used in this subsection, "manufacturing facility"  
29 means a facility:

30 (a) with respect to which the owner of the facility shall have  
31 entered into an off-tariff rate agreement with an electric public  
32 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
33 et seq.);

34 (b) that manufactures products made from using "postconsumer  
35 material," as that term is defined in 40 C.F.R. s.247.3, and other  
36 recovered material feedstocks that meet the requirements of the  
37 Comprehensive Procurement Guideline For Products Containing  
38 Recovered Materials as promulgated by the United States  
39 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
40 pursuant to the "Resource Conservation and Recovery Act,"  
41 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
42 13101, issued by the President of the United States on September  
43 14, 1998, provided that at least 75 percent of the manufacturing  
44 facility's total annual sales dollar volume of such products that are  
45 produced in New Jersey meet the recycled content standards within  
46 such guidelines;

47 (c) for which a "comprehensive energy audit," as that term is  
48 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have

1 been undertaken within 90 days after the effective date of P.L. ,  
 2 c. (C. ) (pending before the Legislature as this bill), which  
 3 audit shall have evaluated cost-effective energy efficiency and  
 4 conservation measures as part of the efforts to reduce energy costs;

5 (d) that has been in operation in this State for at least 25 years as  
 6 of the effective date of P.L. , c. (C. )(pending before the  
 7 Legislature as this bill); and

8 (e) at which at least 800 employees are employed on the first  
 9 business or work day after the expiration of such off-tariff rate  
 10 agreement.

11 (2) For a period of seven years commencing on the first day  
 12 after the expiration of an off-tariff rate agreement, entered into or  
 13 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
 14 21.24 et seq.), no societal benefits charge shall be imposed on an  
 15 electric public utility customer or a gas public utility customer that  
 16 is a manufacturing facility.

17 (3) The board shall adopt rules for the reimbursement to the  
 18 owner of the manufacturing facility of an amount representing the  
 19 societal benefits charges paid for the period that commenced on the  
 20 first day after the expiration of the off-tariff rate agreement  
 21 described under subparagraph (a) of the definition of  
 22 “manufacturing facility” set forth in paragraph (1) of this subsection  
 23 and ended on the effective date of P.L. , c. (C. )(pending  
 24 before the Legislature as this bill).

25 (cf: P.L.1999, c.23, s.12)]<sup>1</sup>

26

27 <sup>1</sup>[4.]<sup>3.</sup> (New section) a. As used in this section,  
 28 "manufacturing facility" means a facility:

29 (1) with respect to which the owner of the facility shall have  
 30 entered into an off-tariff rate agreement with an electric public  
 31 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
 32 et seq.);

33 (2) that manufactures products made from using “postconsumer  
 34 material,” as that term is defined in 40 C.F.R. s.247.3, and other  
 35 recovered material feedstocks that meet the requirements of the  
 36 Comprehensive Procurement Guideline For Products Containing  
 37 Recovered Materials as promulgated by the United States  
 38 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
 39 pursuant to the "Resource Conservation and Recovery Act,"  
 40 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
 41 13101, issued by the President of the United States on September  
 42 14, 1998, provided that at least 75 percent of the manufacturing  
 43 facility’s total annual sales dollar volume of such products that are  
 44 produced in New Jersey meet the recycled content standards within  
 45 such guidelines;

46 (3) for which a “comprehensive energy audit,” as that term is  
 47 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
 48 been undertaken within 90 days after the effective date of

1 P.L. , c. (C. )(pending before the Legislature as this bill),  
2 which audit shall have evaluated cost-effective energy efficiency  
3 and conservation measures as part of the efforts to reduce energy  
4 costs;

5 (4) that has been in operation in this State for at least 25 years as  
6 of the effective date of P.L. , c. (C. )(pending before the  
7 Legislature as this bill); and

8 (5) at which at least 800 employees are employed on the first  
9 business or work day after the expiration of such off-tariff rate  
10 agreement.

11 b. An electric public utility or a gas public utility may enter  
12 into an agreement with the owner of a manufacturing facility that  
13 establishes a price for the transmission or distribution of electricity  
14 or natural gas, as appropriate, to that manufacturing facility that is  
15 different from, but in no case higher than, that specified in the  
16 electric public utility's or gas public utility's current cost-of-service  
17 based tariff rate for transmission or distribution service otherwise  
18 applicable to the manufacturing facility.

19 c. The board shall approve the agreement if such agreement  
20 meets all of the following conditions:

21 (1) The agreement shall be filed with the board and the Division  
22 of Rate Counsel in the Department of the Public Advocate;

23 (2) The agreement shall contain a provision that the owner of  
24 the manufacturing facility would have relocated the facility outside  
25 of the State to a location where electric power or natural gas supply  
26 could be obtained at a lower cost, had it not entered into the  
27 agreement;

28 (3) There shall be no retroactive recovery by the electric public  
29 utility or gas public utility, as appropriate, from its general  
30 ratepayer base of any revenue erosion that occurs prior to the  
31 conclusion of the utility's next base rate case. Subsequent to the  
32 conclusion of the utility's next base rate case, any such recovery  
33 shall be prospective only. The board may require the utility to  
34 provide proof that there shall be no such retroactive recovery;

35 (4) There shall be no undue transfer of cost allocation or  
36 revenue recovery responsibility by the electric public utility or gas  
37 public utility, as appropriate, from the utility to its general ratepayer  
38 base. The utility agrees to be subject to an independent audit or  
39 such accounting and reporting systems the board may deem as  
40 necessary to ensure that costs are allocated properly and that  
41 revenue recovery responsibility is not transferred; and

42 (5) The term of the rate agreement shall begin within one year  
43 of the effective date of P.L. , c. (C. )(pending before the  
44 Legislature as this bill) and shall not exceed seven years in  
45 duration.

46

47 <sup>1</sup>[5.]4. (New section) The Division of Taxation in the  
48 Department of the Treasury shall annually review the financial

1 records of a manufacturing facility that is eligible for a sales and  
2 use tax exemption pursuant to section 1 of P.L. , c. (C. )  
3 (pending before the Legislature as this bill) and that is eligible for a  
4 TEFA unit rate surcharge exemption pursuant to section 2 of  
5 P.L. , c. (C. )(pending before the Legislature as this bill), in  
6 order to determine whether it is economically feasible for the State  
7 to continue to allow such manufacturing facility to receive such  
8 exemptions. Upon the completion of the review required by this  
9 section, the division shall prepare and submit a report to the  
10 Legislature containing the division's recommendation as to whether  
11 the sales and use tax exemption and TEFA unit rate surcharge  
12 exemption should be continued or whether the exemptions should  
13 be altered or repealed. The first such report shall be submitted to  
14 the Legislature within 90 days following the date of enactment of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
16 shall review the period beginning with the first day after the  
17 expiration of an off-tariff rate agreement entered into or negotiated  
18 by a manufacturing facility and extending to the last day of the  
19 month in which P.L. , c. (C. ) (pending before the Legislature  
20 as this bill) is enacted. Thereafter, subsequent reports shall be  
21 submitted within 90 days following the expiration of each  
22 successive one-year period for the duration of the seven year period  
23 prescribed by sections 1 and 2 of P.L. , c. (C. ) (pending  
24 before the Legislature as this bill) or until such time as the  
25 exemptions have been repealed, and such reports shall review the  
26 financial records of such a manufacturing facility for the preceding  
27 one-year period. As a condition of receiving the sales and use tax  
28 exemption and TEFA unit rate surcharge exemption, the  
29 manufacturing facility shall make its financial records available to  
30 the division and shall provide such other information as may be  
31 needed by the division to complete its review and assessment  
32 pursuant to this section.

33

34 <sup>1</sup>[6. (New section) The Board of Public Utilities shall annually  
35 review the financial records of a manufacturing facility that is  
36 eligible for a societal benefits charge exemption pursuant to section  
37 3 of P.L. , c. (C. ) (pending before the Legislature as this  
38 bill), in order to determine whether it is economically feasible to  
39 continue funding the programs funded by the societal benefits  
40 charge pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) if the  
41 manufacturing facility continues to receive such an exemption.  
42 Upon the completion of the review required by this section, the  
43 board shall prepare and submit a report to the Legislature  
44 containing the board's recommendation as to whether the societal  
45 benefits charge exemption should be continued or whether the  
46 exemption should be altered or repealed. The first such report shall  
47 be submitted to the Legislature within 90 days following the date of  
48 enactment of P.L. , c. (C. ) (pending before the Legislature

1 as this bill) and shall review the period beginning with the first day  
2 after the expiration of an off-tariff rate agreement entered into or  
3 negotiated by a manufacturing facility and extending to the last day  
4 of the month in which P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) is enacted. Thereafter, subsequent reports  
6 shall be submitted within 90 days following the expiration of each  
7 successive one-year period for the duration of the seven year period  
8 prescribed by section 3 of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill) or until such time as the exemption has been  
10 repealed, and such reports shall review the financial records of such  
11 a manufacturing facility for the preceding one-year period. As a  
12 condition of receiving the societal benefits charge exemption, the  
13 manufacturing facility shall make its financial records available to  
14 the board and shall provide such other information as may be  
15 needed by the board to complete its review and assessment pursuant  
16 to this section.】<sup>1</sup>

17

18 '【7.】 5.' This act shall take effect immediately.

19

20

21

22

23 Exempts from payment for seven years certain taxes and energy  
24 charges for certain manufacturing facilities.

# ASSEMBLY, No. 3759

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 4, 2006

**Sponsored by:**

**Assemblywoman NELLIE POU**

**District 35 (Bergen and Passaic)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**Co-Sponsored by:**

**Assemblyman Egan**

**SYNOPSIS**

Exempts from payment for seven years certain taxes and energy charges for certain manufacturing facilities.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning certain taxes and energy charges of certain  
2 manufacturing facilities, and amending P.L.1997, c.162 and  
3 P.L.1999, c.23 and supplementing Title 48 of the Revised  
4 Statutes.

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

8  
9 1. Section 33 of P.L.1997, c.162 (C.54:32B-8.47) is amended  
10 to read as follows:

11 33. a. Receipts from the sale or use of energy and utility service  
12 to or by a utility corporation or person that was subject to the  
13 provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1,  
14 1997, or currently or formerly subject to taxation pursuant to  
15 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and  
16 consumption, are exempt from the tax imposed under the "Sales and  
17 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

18 b. Receipts from the sale or use of energy and utility service  
19 made pursuant to a contract described in section 59 of P.L.1997,  
20 c.162 (C.48:2-21.31) shall be exempt from the tax imposed under  
21 the "Sales and Use Tax Act."

22 c. (1) As used in this subsection, "manufacturing facility"  
23 means a facility:

24 (a) with respect to which the owner of the facility shall have  
25 entered into an off-tariff rate agreement with an electric public  
26 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
27 et seq.);

28 (b) that manufactures products made from using "postconsumer  
29 material," as that term is defined in 40 C.F.R. s.247.3, and other  
30 recovered material feedstocks that meet the requirements of the  
31 Comprehensive Procurement Guideline For Products Containing  
32 Recovered Materials as promulgated by the United States  
33 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
34 pursuant to the "Resource Conservation and Recovery Act,"  
35 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
36 13101, issued by the President of the United States on September  
37 14, 1998, provided that at least 75 percent of the manufacturing  
38 facility's total annual sales dollar volume of such products that are  
39 produced in New Jersey meet the recycled content standards within  
40 such guidelines;

41 (c) for which a "comprehensive energy audit," as that term is  
42 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
43 been undertaken within 90 days after the effective date of P.L. ,  
44 c. (C. ) (pending before the Legislature as this bill), which  
45 audit shall have evaluated cost-effective energy efficiency and

**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 conservation measures as part of the efforts to reduce energy costs;  
2 (d) that has been in operation in this State for at least 25 years as  
3 of the effective date of P.L. , c. (C. )(pending before the  
4 Legislature as this bill); and

5 (e) at which at least 800 employees are employed on the first  
6 business or work day after the expiration of such off-tariff rate  
7 agreement.

8 (2) For a period of seven years commencing on the first day after  
9 the expiration of an off-tariff rate agreement, entered into or  
10 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
11 21.24 et seq.), receipts from the sale to or use by a manufacturing  
12 facility of energy and utility service for use or consumption directly  
13 and primarily in the production of tangible personal property, other  
14 than energy, shall be exempt from the tax imposed under the "Sales  
15 and Use Tax Act."

16 (3) The State Treasurer shall adopt rules for the reimbursement  
17 to the owner of the manufacturing facility of an amount  
18 representing the sales and use taxes paid for the period that  
19 commenced on the first day after the expiration of the off-tariff rate  
20 agreement described under subparagraph (a) of the definition of  
21 "manufacturing facility" set forth in paragraph (1) of this subsection  
22 and ended on the effective date of P.L. , c. (C. )(pending  
23 before the Legislature as this bill.

24 (cf: P.L.1997, c.162, s.33)

25

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

28 67. a. As used in this section:

29 "Base rates" means the rates, including minimum bills, charged  
30 for utility commodities or service subject to the board's jurisdiction,  
31 other than the rates charged under a utility's levelized energy  
32 adjustment clause, hereinafter "LEAC," or levelized gas adjustment  
33 clause, hereinafter "LGAC," or equivalent rate provision;

34 "Base year" means the calendar year 1996;

35 "Board" means the Board of Public Utilities;

36 "Manufacturing facility" means a facility:

37 (1) with respect to which the owner of the facility shall have  
38 entered into an off-tariff rate agreement with an electric public  
39 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
40 et seq.);

41 (2) that manufactures products made from using "postconsumer  
42 material," as that term is defined in 40 C.F.R. s.247.3, and other  
43 recovered material feedstocks that meet the requirements of the  
44 Comprehensive Procurement Guideline For Products Containing  
45 Recovered Materials as promulgated by the United States  
46 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
47 pursuant to the "Resource Conservation and Recovery Act,"  
48 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.

1 13101, issued by the President of the United States on September  
2 14, 1998, provided that at least 75 percent of the manufacturing  
3 facility's total annual sales dollar volume of such products that are  
4 produced in New Jersey meet the recycled content standards within  
5 such guidelines;

6 (3) for which a "comprehensive energy audit," as that term is  
7 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
8 been undertaken within 90 days after the effective date of P.L. ,  
9 c. (C. ) (pending before the Legislature as this bill), which  
10 audit shall have evaluated cost-effective energy efficiency and  
11 conservation measures as part of the efforts to reduce energy costs;

12 (4) that has been in operation in this State for at least 25 years as  
13 of the effective date of P.L. , c. (C. )(pending before the  
14 Legislature as this bill); and

15 (5) at which at least 800 employees are employed on the first  
16 business or work day after the expiration of such off-tariff rate  
17 agreement.

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

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

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

27 b. No later than 60 days after the date this act is enacted, each  
28 electric, gas and telecommunications utility subject to the  
29 provisions of this act shall file with the board, and shall  
30 simultaneously provide copies to the Director of the Division of the  
31 Ratepayer Advocate, revised tariffs and such other supporting  
32 schedules, narrative and documentation required by this act, as set  
33 forth in this section, to reflect in the utility's rates the changes in tax  
34 liability effected pursuant to this act. No later than 90 days after the  
35 date of the utility's filing, and after determining that the filing and  
36 the rate changes provided for therein are in compliance with the  
37 provisions of this act, the board shall approve the utility's filing and  
38 associated rates for billing to the utility's customers, effective for  
39 utility service rendered on and after January 1, 1998. If the board  
40 determines that the utility's filing and the associated rate changes  
41 provided for therein are not in compliance with the provisions of  
42 this act, the board shall require the utility to amend or otherwise  
43 modify its filing to render it in compliance. The board may also  
44 permit the rates provided for in the utility's filing to be implemented  
45 on an interim basis pending the board's final determination in the  
46 event the board, in its discretion, determines that due to the filing's  
47 complexity, or for other valid reasons, including but not limited to  
48 the enactment of this act after June 30, 1997, additional time is

1 needed for the board to complete its review of the filing. If the  
2 rates approved by the board upon its final determination are less  
3 than the rates implemented on an interim basis, the difference shall  
4 be refunded to the utility's customers with interest computed in  
5 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments  
6 implemented pursuant to this act shall not constitute a fixing of  
7 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing  
8 requirements set forth in that section.

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

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

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

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

46 The utility shall also include a calculation of its rate of return on  
47 common equity achieved in the base year, both as booked and as  
48 adjusted in accordance with the foregoing. The calculation shall be

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

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

$$18 \quad A e, g = \frac{((I e, g) \times [Rs/(1-Re)])}{19 \quad \text{-----}} \\ 20 \quad \quad \quad (Br e, g)$$

21 where:

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

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

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

38 "Rs" means the corporation business tax rate, expressed as a  
 39 decimal;

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

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

43 The utility shall account for the changes in tax liability provided  
 44 for by this act effective January 1, 1998. Such accounting shall  
 45 include the recording on the utility's income statement and balance  
 46 sheet of deferred corporation business tax defined, for book  
 47 accounting purposes, as differences in corporation business tax

1 expense arising from timing differences in the recognition of  
2 revenue and expenses for book and tax purposes.

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

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

44 If the utility's requirement for cash working capital is increased  
45 as a result of the changes in rates and tax payments implemented  
46 pursuant to this act, the utility may accrue carrying costs, calculated  
47 at its last overall rate of return allowed by the board and applied on  
48 a simple annual interest basis without compounding, on the

1 increased working capital requirement and request recovery of such  
2 carrying costs in a rate proceeding before the board.

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

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

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

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

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

44 (ii) The accumulated balance of such negative net deferred taxes  
45 shall include net deferred taxes associated with all assets and  
46 liabilities originally placed in service by the utility and held by the  
47 utility or a company affiliated with the utility regardless of whether

1 or not such assets continue to be subject to regulation by the New  
2 Jersey Board of Public Utilities.

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

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

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

31 d. (1) Electric and gas utilities shall file, for the board's review  
32 and approval, initial TEFA unit rate surcharges determined by  
33 deducting from each unit-based energy tax unit tax rate effective  
34 January 1, 1997 the following:

35 (a) An amount per kilowatthour or per therm determined by  
36 multiplying the total revenue received in the base year from sales to  
37 which that unit tax rate would have been applicable by the factor  
38  $R_u/(1 + R_u)$ , where  $R_u$  is the sales and use tax rate imposed under  
39 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and  
40 dividing the result by the kilowatthours or therms billed in that unit  
41 tax rate class in the base year; and

42 (b) An amount per kilowatthour or per therm determined by  
43 dividing the revenue that would have been received in the base year  
44 from the inclusion, in the manner prescribed in paragraph (2) of  
45 subsection c. of this section, of the corporation business tax in the  
46 rates applicable to sales billed in that unit tax rate class by the  
47 kilowatthours or therms billed in that rate class. In each case, the  
48 determination shall reflect the effect of adjustments that affect the

1 level of sales and revenue, if any, as provided in subsection c. of  
 2 this section. Of the resultant rate per kilowatthour or per therm, the  
 3 portion for recovery of the utility's transitional energy facilities  
 4 assessment liability shall be determined by multiplying such rate by  
 5 the factor  $(1 - R_s)$ , where  $R_s$  is the corporation business tax rate  
 6 expressed as a decimal.

7 The TEFA unit rate surcharges shall constitute non-bypassable  
 8 wires and/or mains charges of the utility, and shall be applied to all  
 9 sales within the customer classes to which they apply, regardless of  
 10 whether such customers are purchasing bundled or unbundled  
 11 services from the utility, but shall not be applied to sales:

12 (i) that were or are currently exempt from unit-based energy  
 13 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et  
 14 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)  
 15 applies, and

16 (ii) for a period of seven years commencing on the first day after  
 17 the expiration of an off-tariff rate agreement, entered into or  
 18 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
 19 21.24 et seq.), to a manufacturing facility for use or consumption  
 20 directly and primarily in the production of tangible personal  
 21 property, other than energy.

22 The State Treasurer shall adopt rules for the reimbursement to  
 23 the owner of the manufacturing facility of an amount representing  
 24 the TEFA unit rate surcharges paid for the period that commenced  
 25 on the first day after the expiration of the off-tariff rate agreement  
 26 described under this sub-subparagraph of the definition of  
 27 “manufacturing facility” set forth in subsection a. of this section  
 28 and ended on the effective date of P.L. , c. (C. )(pending  
 29 before the Legislature as this bill).

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

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

46	January 1, 1999,	20%
47	January 1, 2000,	40%
48	January 1, 2001,	60%



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

4 (a) The sum of the estimated, or actual when known, (i) TEFA  
 5 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-  
 6 107), and sales and use taxes collected and corporation business  
 7 taxes booked for the year 1998 by the gas and electric utilities and  
 8 other entities subject to the TEFA provisions of this act (the year  
 9 1998 liability), and (ii) the TEFA liabilities of those utilities and  
 10 entities in all years following the year 1998 through the year in  
 11 which a determination is being made pursuant to this subsection  
 12 (the determination year); and

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

	Determination Year	% of Year 1998 TEFA
	-----	
	1999	80%
	2000	60%

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

31 (4) If the TEFA surcharge adjustment determined for the  
 32 determination year is positive (that is, if the amount determined  
 33 pursuant to subparagraph (a) of paragraph (3) of this subsection is  
 34 greater than the amount determined pursuant to subparagraph (b) of  
 35 paragraph (3) of this subsection), no reduction shall be made in the  
 36 reduction in the TEFA unit rate surcharges provided for in  
 37 paragraph (2) of this subsection for the year following the  
 38 determination year. If the TEFA surcharge adjustment is negative,  
 39 the reduction in the TEFA unit rate surcharges that otherwise would  
 40 have been implemented on January 1 of the year following the  
 41 determination year pursuant to paragraph (2) of this subsection shall  
 42 be reduced by an amount (by percentage points) equal to the  
 43  
 44  
 45  
 46  
 47  
 48

1 percentage the TEFA surcharge adjustment is of the total of the  
 2 base year transitional energy facility assessment of all remitters, as  
 3 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided  
 4 however, that such reduction in the reduction in the TEFA unit rate  
 5 surcharges shall not exceed the percentage shown in paragraph (2)  
 6 of this subsection for that year; and provided further that in the first  
 7 two years, that such reduction shall not exceed 10 percentage points  
 8 for each year.

9 (5) (a) The TEFA unit rate surcharges for calendar years 2002  
 10 through 2008 shall be the same as the TEFA unit rate surcharges in  
 11 effect for calendar year 2001.

12 (b) The TEFA unit rate surcharges in effect for calendar year  
 13 2008 shall be reduced on January 1, 2009 and January 1, 2010 by  
 14 the following percentages:

15	January 1, 2009	25%
16	January 1, 2010	50%

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

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

46 g. Customers of the utility who are exempt from the sales and  
 47 use tax imposed on sales of gas and/or electricity or as a result of  
 48 rate changes occurring prior to the effective date of this act or for

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

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

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

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

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

1 pursuant to the provisions of the "Public Utility Regulatory Policies  
2 Act of 1978," Pub.L.95-617.  
3 (cf: P.L.2006, c.40, s.1)

4  
5 3. Section 12 of P.L.1999, c.23 (C.48:3-60) is amended to read  
6 as follows:

7 12. a. **【Simultaneously】** Except as provided for in subsection c.  
8 of this section, simultaneously with the starting date for the  
9 implementation of retail choice as determined by the board pursuant  
10 to subsection a. of section 5 of this act the board shall permit each  
11 electric public utility and gas public utility to recover some or all of  
12 the following costs through a societal benefits charge that shall be  
13 collected as a non-bypassable charge imposed on all electric public  
14 utility customers and gas public utility customers, as appropriate:

15 (1) The costs for the social programs for which rate recovery  
16 was approved by the board prior to April 30, 1997. For the purpose  
17 of establishing initial unbundled rates pursuant to section 4 of this  
18 act, the societal benefits charge shall be set to recover the same  
19 level of social program costs as is being collected in the bundled  
20 rates of the electric public utility on the effective date of this act.  
21 The board may subsequently order, pursuant to its rules and  
22 regulations, an increase or decrease in the societal benefits charge  
23 to reflect changes in the costs to the utility of administering existing  
24 social programs. Nothing in this act shall be construed to abolish  
25 or change any social program required by statute or board order or  
26 rule or regulation to be provided by an electric public utility. Any  
27 such social program shall continue to be provided by the utility  
28 until otherwise provided by law, unless the board determines that it  
29 is no longer appropriate for the electric public utility to provide the  
30 program, or the board chooses to modify the program;

31 (2) Nuclear plant decommissioning costs;

32 (3) The costs of demand side management programs that were  
33 approved by the board pursuant to its demand side management  
34 regulations prior to April 30, 1997. For the purpose of establishing  
35 initial unbundled rates pursuant to section 4 of this act, the societal  
36 benefits charge shall be set to recover the same level of demand  
37 side management program costs as is being collected in the bundled  
38 rates of the electric public utility on the effective date of this act.  
39 Within four months of the effective date of this act, and every four  
40 years thereafter, the board shall initiate a proceeding and cause to  
41 be undertaken a comprehensive resource analysis of energy  
42 programs, and within eight months of initiating such proceeding  
43 and after notice, provision of the opportunity for public comment,  
44 and public hearing, the board, in consultation with the Department  
45 of Environmental Protection, shall determine the appropriate level  
46 of funding for energy efficiency and Class I renewable energy  
47 programs that provide environmental benefits above and beyond  
48 those provided by standard offer or similar programs in effect as of

1 the effective date of this act; provided that the funding for such  
2 programs be no less than 50% of the total Statewide amount being  
3 collected in public electric and gas utility rates for demand side  
4 management programs on the effective date of this act for an initial  
5 period of four years from the issuance of the first comprehensive  
6 resource analysis following the effective date of this act, and  
7 provided that 25% of this amount shall be used to provide funding  
8 for Class I renewable energy projects in the State. In each of the  
9 following fifth through eighth years, the Statewide funding for such  
10 programs shall be no less than 50 percent of the total Statewide  
11 amount being collected in public electric and gas utility rates for  
12 demand side management programs on the effective date of this act,  
13 except that as additional funds are made available as a result of the  
14 expiration of past standard offer or similar commitments, the  
15 minimum amount of funding for such programs shall increase by an  
16 additional amount equal to 50 percent of the additional funds made  
17 available, until the minimum amount of funding dedicated to such  
18 programs reaches \$140,000,000 total. After the eighth year the  
19 board shall make a determination as to the appropriate level of  
20 funding for these programs. Such programs shall include a program  
21 to provide financial incentives for the installation of Class I  
22 renewable energy projects in the State, and the board, in  
23 consultation with the Department of Environmental Protection, shall  
24 determine the level and total amount of such incentives as well as  
25 the renewable technologies eligible for such incentives which shall  
26 include, at a minimum, photovoltaic, wind, and fuel cells. The  
27 board shall simultaneously determine, as a result of the  
28 comprehensive resource analysis, the programs to be funded by the  
29 societal benefits charge, the level of cost recovery and performance  
30 incentives for old and new programs and whether the recovery of  
31 demand side management programs' costs currently approved by the  
32 board may be reduced or extended over a longer period of time.  
33 The board shall make these determinations taking into consideration  
34 existing market barriers and environmental benefits, with the  
35 objective of transforming markets, capturing lost opportunities,  
36 making energy services more affordable for low income customers  
37 and eliminating subsidies for programs that can be delivered in the  
38 marketplace without electric public utility and gas public utility  
39 customer funding;

40 (4) Manufactured gas plant remediation costs, which shall be  
41 determined initially in a manner consistent with mechanisms in the  
42 remediation adjustment clauses for the electric public utility and gas  
43 public utility adopted by the board; and

44 (5) The cost, of consumer education, as determined by the  
45 board, which shall be in an amount that, together with the consumer  
46 education surcharge imposed on electric power supplier license fees  
47 pursuant to subsection h. of section 29 of this act and the consumer  
48 education surcharge imposed on gas supplier license fees pursuant

1 to subsection g. of section 30 of this act, shall be sufficient to fund  
2 the consumer education program established pursuant to section 36  
3 of this act.

4 b. There is established in the Board of Public Utilities a  
5 nonlapsing fund to be known as the "Universal Service Fund." The  
6 board shall determine: the level of funding and the appropriate  
7 administration of the fund; the purposes and programs to be funded  
8 with monies from the fund; which social programs shall be provided  
9 by an electric public utility as part of the provision of its regulated  
10 services which provide a public benefit; whether the funds  
11 appropriated to fund the "Lifeline Credit Program" established  
12 pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants'  
13 Lifeline Assistance Program" established pursuant to P.L.1981,  
14 c.210 (C.48:2-29.31 et seq.), the funds received pursuant to the Low  
15 Income Home Energy Assistance Program established pursuant to  
16 42 U.S.C. s.8621 et seq., and funds collected by electric and natural  
17 gas utilities, as authorized by the board, to offset uncollectible  
18 electricity and natural gas bills should be deposited in the fund; and  
19 whether new charges should be imposed to fund new or expanded  
20 social programs.

21 c. (1) As used in this subsection, "manufacturing facility"  
22 means a facility:

23 (a) with respect to which the owner of the facility shall have  
24 entered into an off-tariff rate agreement with an electric public  
25 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
26 et seq.);

27 (b) that manufactures products made from using "postconsumer  
28 material," as that term is defined in 40 C.F.R. s.247.3, and other  
29 recovered material feedstocks that meet the requirements of the  
30 Comprehensive Procurement Guideline For Products Containing  
31 Recovered Materials as promulgated by the United States  
32 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
33 pursuant to the "Resource Conservation and Recovery Act,"  
34 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
35 13101, issued by the President of the United States on September  
36 14, 1998, provided that at least 75 percent of the manufacturing  
37 facility's total annual sales dollar volume of such products that are  
38 produced in New Jersey meet the recycled content standards within  
39 such guidelines;

40 (c) for which a "comprehensive energy audit," as that term is  
41 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
42 been undertaken within 90 days after the effective date of P.L. ,  
43 c. (C. ) (pending before the Legislature as this bill), which  
44 audit shall have evaluated cost-effective energy efficiency and  
45 conservation measures as part of the efforts to reduce energy costs;

46 (d) that has been in operation in this State for at least 25 years as  
47 of the effective date of P.L. , c. (C. )(pending before the  
48 Legislature as this bill); and

1       (e) at which at least 800 employees are employed on the first  
2 business or work day after the expiration of such off-tariff rate  
3 agreement.

4       (2) For a period of seven years commencing on the first day after  
5 the expiration of an off-tariff rate agreement, entered into or  
6 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
7 21.24 et seq.), no societal benefits charge shall be imposed on an  
8 electric public utility customer or a gas public utility customer that  
9 is a manufacturing facility.

10       (3) The board shall adopt rules for the reimbursement to the  
11 owner of the manufacturing facility of an amount representing the  
12 societal benefits charges paid for the period that commenced on the  
13 first day after the expiration of the off-tariff rate agreement  
14 described under subparagraph (a) of the definition of  
15 “manufacturing facility” set forth in paragraph (1) of this subsection  
16 and ended on the effective date of P.L. , c. (C. )(pending  
17 before the Legislature as this bill).

18 (cf: P.L.1999, c.23, s.12)

19

20       4. (New section) a. As used in this section, "manufacturing  
21 facility" means a facility:

22       (1) with respect to which the owner of the facility shall have  
23 entered into an off-tariff rate agreement with an electric public  
24 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
25 et seq.);

26       (2) that manufactures products made from using “postconsumer  
27 material,” as that term is defined in 40 C.F.R. s.247.3, and other  
28 recovered material feedstocks that meet the requirements of the  
29 Comprehensive Procurement Guideline For Products Containing  
30 Recovered Materials as promulgated by the United States  
31 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
32 pursuant to the "Resource Conservation and Recovery Act,"  
33 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
34 13101, issued by the President of the United States on September  
35 14, 1998, provided that at least 75 percent of the manufacturing  
36 facility’s total annual sales dollar volume of such products that are  
37 produced in New Jersey meet the recycled content standards within  
38 such guidelines;

39       (3) for which a “comprehensive energy audit,” as that term is  
40 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
41 been undertaken within 90 days after the effective date of  
42 P.L. , c. (C. )(pending before the Legislature as this bill),  
43 which audit shall have evaluated cost-effective energy efficiency  
44 and conservation measures as part of the efforts to reduce energy  
45 costs;

46       (4) that has been in operation in this State for at least 25 years as  
47 of the effective date of P.L. , c. (C. )(pending before the  
48 Legislature as this bill); and

1 (5) at which at least 800 employees are employed on the first  
2 business or work day after the expiration of such off-tariff rate  
3 agreement.

4 b. An electric public utility or a gas public utility may enter into  
5 an agreement with the owner of a manufacturing facility that  
6 establishes a price for the transmission or distribution of electricity  
7 or natural gas, as appropriate, to that manufacturing facility that is  
8 different from, but in no case higher than, that specified in the  
9 electric public utility's or gas public utility's current cost-of-service  
10 based tariff rate for transmission or distribution service otherwise  
11 applicable to the manufacturing facility.

12 c. The board shall approve the agreement if such agreement  
13 meets all of the following conditions:

14 (1) The agreement shall be filed with the board and the Division  
15 of Rate Counsel in the Department of the Public Advocate;

16 (2) The agreement shall contain a provision that the owner of the  
17 manufacturing facility would have relocated the facility outside of  
18 the State to a location where electric power or natural gas supply  
19 could be obtained at a lower cost, had it not entered into the  
20 agreement;

21 (3) There shall be no retroactive recovery by the electric public  
22 utility or gas public utility, as appropriate, from its general  
23 ratepayer base of any revenue erosion that occurs prior to the  
24 conclusion of the utility's next base rate case. Subsequent to the  
25 conclusion of the utility's next base rate case, any such recovery  
26 shall be prospective only. The board may require the utility to  
27 provide proof that there shall be no such retroactive recovery;

28 (4) There shall be no undue transfer of cost allocation or revenue  
29 recovery responsibility by the electric public utility or gas public  
30 utility, as appropriate, from the utility to its general ratepayer base.  
31 The utility agrees to be subject to an independent audit or such  
32 accounting and reporting systems the board may deem as necessary  
33 to ensure that costs are allocated properly and that revenue recovery  
34 responsibility is not transferred; and

35 (5) The term of the rate agreement shall begin within one year of  
36 the effective date of P.L. , c. (C. )(pending before the  
37 Legislature as this bill) and shall not exceed seven years in  
38 duration.

39

40 5. (New section) The Division of Taxation in the Department  
41 of the Treasury shall annually review the financial records of a  
42 manufacturing facility that is eligible for a sales and use tax  
43 exemption pursuant to section 1 of P.L. , c. (C. )(pending  
44 before the Legislature as this bill) and that is eligible for a TEFA  
45 unit rate surcharge exemption pursuant to section 2 of P.L. ,  
46 c. (C. )(pending before the Legislature as this bill), in order to  
47 determine whether it is economically feasible for the State to  
48 continue to allow such manufacturing facility to receive such



1 exemptions. Upon the completion of the review required by this  
2 section, the division shall prepare and submit a report to the  
3 Legislature containing the division's recommendation as to whether  
4 the sales and use tax exemption and TEFA unit rate surcharge  
5 exemption should be continued or whether the exemptions should  
6 be altered or repealed. The first such report shall be submitted to  
7 the Legislature within 90 days following the date of enactment of  
8 P.L. , c. (C. )(pending before the Legislature as this bill) and  
9 shall review the period beginning with the first day after the  
10 expiration of an off-tariff rate agreement entered into or negotiated  
11 by a manufacturing facility and extending to the last day of the  
12 month in which P.L. , c. (C. ) (pending before the Legislature  
13 as this bill) is enacted. Thereafter, subsequent reports shall be  
14 submitted within 90 days following the expiration of each  
15 successive one-year period for the duration of the seven year period  
16 prescribed by sections 1 and 2 of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill) or until such time as the exemptions  
18 have been repealed, and such reports shall review the financial  
19 records of such a manufacturing facility for the preceding one-year  
20 period. As a condition of receiving the sales and use tax exemption  
21 and TEFA unit rate surcharge exemption, the manufacturing facility  
22 shall make its financial records available to the division and shall  
23 provide such other information as may be needed by the division to  
24 complete its review and assessment pursuant to this section.

25

26 6. (New section) The Board of Public Utilities shall annually  
27 review the financial records of a manufacturing facility that is  
28 eligible for a societal benefits charge exemption pursuant to section  
29 3 of P.L. , c. (C. )(pending before the Legislature as this  
30 bill), in order to determine whether it is economically feasible to  
31 continue funding the programs funded by the societal benefits  
32 charge pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) if the  
33 manufacturing facility continues to receive such an exemption.  
34 Upon the completion of the review required by this section, the  
35 board shall prepare and submit a report to the Legislature  
36 containing the board's recommendation as to whether the societal  
37 benefits charge exemption should be continued or whether the  
38 exemption should be altered or repealed. The first such report shall  
39 be submitted to the Legislature within 90 days following the date of  
40 enactment of P.L. , c. (C. )(pending before the Legislature  
41 as this bill) and shall review the period beginning with the first day  
42 after the expiration of an off-tariff rate agreement entered into or  
43 negotiated by a manufacturing facility and extending to the last day  
44 of the month in which P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) is enacted. Thereafter, subsequent reports  
46 shall be submitted within 90 days following the expiration of each  
47 successive one-year period for the duration of the seven year period  
48 prescribed by section 3 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) or until such time as the exemption has been  
2 repealed, and such reports shall review the financial records of such  
3 a manufacturing facility for the preceding one-year period. As a  
4 condition of receiving the societal benefits charge exemption, the  
5 manufacturing facility shall make its financial records available to  
6 the board and shall provide such other information as may be  
7 needed by the board to complete its review and assessment pursuant  
8 to this section.

9  
10 7. This act shall take effect immediately.

11  
12  
13 STATEMENT

14  
15 This bill exempts, for a period of seven years, the sale or use of  
16 energy utility service to certain manufacturing facilities, as defined  
17 in the bill, from the sales and use tax, the transitional energy facility  
18 assessment (“TEFA”) unit rate surcharge, and the societal benefits  
19 charge.

20 Further, the bill would allow electric and gas public utilities to  
21 enter into agreements, for a period of seven years and under certain  
22 conditions, with owners of these manufacturing facilities that  
23 establish a price for the transmission or distribution of electricity or  
24 natural gas, as appropriate, to that manufacturing facility that is  
25 different from, but in no case higher than, that specified in the  
26 electric public utility's or gas public utility's current cost-of-service  
27 based tariff rate for transmission or distribution service otherwise  
28 applicable to the manufacturing facility.

29 The bill also requires the Division of Taxation and the Board of  
30 Public Utilities to annually review the economic feasibility of  
31 continuing to provide a manufacturing facility with the exemptions  
32 from certain taxes and energy charges and to submit their  
33 recommendations to the Legislature as to whether such exemptions  
34 should be continued.

35 Manufacturers are among the largest users of electricity and  
36 natural gas. High energy costs are reported as a major state-level  
37 obstacle to manufacturing success in this State. The exemptions  
38 provided under this bill are designed to encourage manufacturers to  
39 stay in New Jersey and to expand their operations here.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3759**

**STATE OF NEW JERSEY**

DATED: DECEMBER 4, 2006

The Assembly Telecommunications and Utilities Committee favorably reports Assembly Bill No. 3759.

As reported, this bill exempts, for a period of seven years, the sale or use of energy utility service to certain manufacturing facilities, as defined in the bill, from the sales and use tax, the transitional energy facility assessment (“TEFA”) unit rate surcharge, and the societal benefits charge.

Further, the bill would allow electric and gas public utilities to enter into agreements, for a period of seven years and under certain conditions, with owners of these manufacturing facilities that establish a price for the transmission or distribution of electricity or natural gas, as appropriate, to that manufacturing facility that is different from, but in no case higher than, that specified in the electric public utility's or gas public utility's current cost-of-service based tariff rate for transmission or distribution service otherwise applicable to the manufacturing facility.

The bill also requires the Division of Taxation and the Board of Public Utilities to annually review the economic feasibility of continuing to provide a manufacturing facility with the exemptions from certain taxes and energy charges and to submit their recommendations to the Legislature as to whether such exemptions should be continued.

Manufacturers are among the largest users of electricity and natural gas. High energy costs are reported as a major state-level obstacle to manufacturing success in this State. The exemptions provided under this bill are designed to encourage manufacturers to stay in New Jersey and to expand their operations here.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3759**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 8, 2007

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3759, with committee amendments.

This bill, as amended, provides to certain large, long-operating, energy-efficiency audited manufacturing facilities producing products meeting certain recycled content standards, a seven period of exemption from the sales and use tax on their purchase and use of energy and utility service and from the transitional energy facility assessment (“TEFA”) unit rate surcharge.

The bill requires that the owners of the manufacturing facilities will continue to pay the sales tax and TEFA unit rate surcharge as the price of energy and utility service is collected; the manufacturing facility owner shall then file for quarterly refunds of the sales tax and TEFA surcharge under the exemptions.

The bill requires that the tax refunds shall be repaid by the owner to the Director of the Division of Taxation as tax otherwise due if the owner of a manufacturing facility relocates the manufacturing facility to a location outside of this State during the exemption period.

The bill allows electric and gas public utilities to enter into agreements, for a period of seven years and under certain conditions, with owners of these manufacturing facilities, that establish a price for the transmission or distribution of electricity or natural gas, as appropriate, to that manufacturing facility that is different from, but in no case higher than, that specified in the electric public utility's or gas public utility's current cost-of-service based tariff rate for transmission or distribution service otherwise applicable to the manufacturing facility.

The bill requires the Division of Taxation to annually review the economic feasibility of continuing to provide an eligible manufacturing facility with the exemptions, and to submit recommendations to the Legislature as to whether the temporary exemptions should be continued.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify the annual revenue loss the State would incur. The specific, limited eligibility criteria for a manufacturing facility under the bill may however apply to very few manufacturers. Testimony provided by a representative of Marcal Paper Mills, Inc. before the Assembly Telecommunications and Utilities Committee on December 4, 2006, on this bill indicated that the Marcal Paper Mills manufacturing facility in Elmwood Park, New Jersey, would become a beneficiary and submitted to that committee the facility's monthly energy expenditures data. Based on that information, the OLS projects that the bill's total annual State cost would range from about \$3.0 million (\$2.1 million sales tax and \$900,000 TEFA) to \$4 million (\$2.9 million sales tax and \$1.1 million TEFA), assuming that only Marcal Paper Mills would be eligible for the tax exemptions.

COMMITTEE AMENDMENTS:

The amendments delete provisions of the bill that would have provided such manufacturing facilities a seven year exemption from societal benefits charges that are collected from utility customers as a non-bypassable charge to support 1) certain social programs (including the Universal Service Fund); 2) nuclear plant decommissioning costs; 3) Demand Side Management Program costs; 4) manufactured gas plant remediation costs; and 5) consumer education costs.

The amendments require that the owner of the manufacturing facility pay the sales tax and TEFA unit rate surcharge as the price of energy and utility service and then file for refunds.

The amendments require that the refunds be repaid to the State if the owner of a manufacturing facility relocates the manufacturing facility to a location outside of this State during the exemption period.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 3759**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: FEBRUARY 14, 2007

**SUMMARY**

**Synopsis:** Exempts from payment for seven years certain taxes and energy charges for certain manufacturing facilities.

**Type of Impact:** A Seven-Year Revenue Loss to the State General Fund, the Clean Energy Fund, and the Universal Services Fund.

**Agencies Affected:** Department of the Treasury;  
Board of Public Utilities.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>	<b><u>Fiscal Year 2009</u></b>
<b>State Revenue Loss</b>	Indeterminate, but at least \$4,000,000 per year		

- The Office of Legislative Services (OLS) cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill’s stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them. Based on energy expenditure information submitted by the company (but which the OLS cannot verify), the OLS projects that the bill's total annual State cost would range from \$4.0 million to \$5.5 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions.
- Any revenue loss would occur over seven years, reflecting the bill’s sunset provision.

**BILL DESCRIPTION**

Assembly Bill No. 3759 of 2006 provides a seven-year exemption for energy utility service purchases by certain manufacturing facilities from the sales and use tax, the transitional energy facility assessment (TEFA) unit rate surcharge, and the societal benefits charge. To qualify for the exemptions, a manufacturer must make products from “postconsumer material”, must have at least 800 employees, must have been in operation in New Jersey for at least 25 years, and must have had an off-tariff rate agreement with an electric public utility.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill's stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them.

In testimony submitted to the Assembly Telecommunications and Utilities Committee on December 4, 2006, Marcal Paper Mills identified itself as a beneficiary of the bill and submitted data on its monthly energy expenditures, which the OLS cannot not verify. Accepting that information, the OLS projects that the bill's total annual State cost would range from \$4.0 million to \$5.5 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions. The table below details the estimate's components.

	<b>Total</b>	<b>Sales Tax</b>	<b>TEFA</b>	<b>Societal Benefits Charge</b>
<b>Low-End Cost Estimate</b>	<b>\$4,000,000</b>	\$2,100,000	\$800,000	\$1,100,000
<b>High-End Cost Estimate</b>	<b>\$5,500,000</b>	\$2,900,000	\$1,100,000	\$1,500,000

The low-end scenario assumes a monthly energy expenditure of \$2.5 million and the high-end scenario of \$3.5 million. Marcal Paper Mill's actual monthly 2006 energy cost through November averaged around \$3.0 million (based on its now defunct off-tariff rate agreement). While the OLS refrains from forecasting energy price changes over the next seven years, it points out that prices tend to fluctuate significantly in this volatile market, thereby complicating the generation of any reliable estimate.

For the projection's sales tax component, the OLS applies the seven percent sales and use tax rate to Marcal's estimated energy expenditures.

For the TEFA portion, the agency uses a crude estimation method, as TEFA is notoriously complex and historic data are limited. Hence, the OLS applies to Marcal's estimated energy cost the proportion of 2005 TEFA collections (\$247 million, or the average of fiscal year 2005 and 2006 collections) to total New Jersey 2005 electricity sales (\$8.9 billion) as reported by the Energy Information Administration in the United States Department of Energy, or 2.8 percent.

For the societal benefits charge, the OLS applies 3.5 percent to Marcal's estimated energy expenditures, according to information obtained from the Public Service Enterprise Group.

*Section: Revenue, Finance and Appropriations*

*Analyst: Thomas Koenig  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3759

### STATE OF NEW JERSEY 212th LEGISLATURE

DATED: MARCH 8, 2007

#### SUMMARY

- Synopsis:** Exempts from payment for seven years certain taxes and energy charges for certain manufacturing facilities.
- Type of Impact:** A Seven-Year Revenue Loss to the State General Fund.
- Agencies Affected:** Department of the Treasury.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>	<b><u>Fiscal Year 2009</u></b>
<b>State Revenue Loss</b>	Indeterminate, but at least \$2,900,000 per year		

- The Office of Legislative Services (OLS) cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill's stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them. Based on energy expenditure information submitted by the company (but which the OLS cannot verify), the OLS projects that the bill's total annual State cost would range from \$2.9 million to \$4.0 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions.
- Any revenue loss would occur over seven years, reflecting the bill's sunset provision.

#### BILL DESCRIPTION

Assembly Bill No. 3759 (1R) of 2006 provides a seven-year exemption for energy utility service purchases by certain manufacturing facilities from the sales and use tax and the transitional energy facility assessment (TEFA) unit rate surcharge. To qualify for the exemptions, a manufacturer must make products from "postconsumer material", must have at least 800 employees, must have been in operation in New Jersey for at least 25 years, and must have had an off-tariff rate agreement with an electric public utility.



## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill's stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them.

In testimony submitted to the Assembly Telecommunications and Utilities Committee on December 4, 2006, Marcal Paper Mills identified itself as a beneficiary of the bill and submitted data on its monthly energy expenditures, which the OLS cannot not verify. Accepting that information, the OLS projects that the bill's total annual State cost would range from \$2.9 million to \$4.0 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions. The table below details the estimate's components.

	<b>Total</b>	<b>Sales Tax</b>	<b>TEFA</b>
<b>Low-End Cost Estimate</b>	<b>\$2,900,000</b>	\$2,100,000	\$800,000
<b>High-End Cost Estimate</b>	<b>\$4,000,000</b>	\$2,900,000	\$1,100,000

The low-end scenario assumes a monthly energy expenditure of \$2.5 million and the high-end scenario of \$3.5 million. Marcal Paper Mill's actual monthly 2006 energy cost through November averaged around \$3.0 million (based on its now defunct off-tariff rate agreement). While the OLS refrains from forecasting energy price changes over the next seven years, it points out that prices tend to fluctuate significantly in this volatile market, thereby complicating the generation of any reliable estimate.

For the projection's sales tax component, the OLS applies the seven percent sales and use tax rate to Marcal's estimated energy expenditures.

For the TEFA portion, the agency uses a crude estimation method, as TEFA is notoriously complex and historic data are limited. Hence, the OLS applies to Marcal's estimated energy cost the proportion of 2005 TEFA collections (\$247 million, or the average of fiscal year 2005 and 2006 collections) to total New Jersey 2005 electricity sales (\$8.9 billion) as reported by the Energy Information Administration in the United States Department of Energy, or 2.8 percent.

*Section: Revenue, Finance and Appropriations*

*Analyst: Thomas Koenig  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

# SENATE, No. 2410

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 11, 2006

**Sponsored by:**

**Senator JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Senator RICHARD J. CODEY**

**District 27 (Essex)**

**SYNOPSIS**

Exempts from payment for seven years certain taxes and energy charges for certain manufacturing facilities.

**CURRENT VERSION OF TEXT**

As introduced.



S2410 DORIA, CODEY

2

1 AN ACT concerning certain taxes and energy charges of certain  
2 manufacturing facilities, and amending P.L.1997, c.162 and  
3 P.L.1999, c.23 and supplementing Title 48 of the Revised  
4 Statutes.

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

8  
9 1. Section 33 of P.L.1997, c.162 (C.54:32B-8.47) is amended to  
10 read as follows:

11 33. a. Receipts from the sale or use of energy and utility service  
12 to or by a utility corporation or person that was subject to the  
13 provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1,  
14 1997, or currently or formerly subject to taxation pursuant to  
15 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and  
16 consumption, are exempt from the tax imposed under the "Sales and  
17 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

18 b. Receipts from the sale or use of energy and utility service  
19 made pursuant to a contract described in section 59 of P.L.1997,  
20 c.162 (C.48:2-21.31) shall be exempt from the tax imposed under  
21 the "Sales and Use Tax Act."

22 c. (1) As used in this subsection, "manufacturing facility" means  
23 a facility:

24 (a) with respect to which the owner of the facility shall have  
25 entered into an off-tariff rate agreement with an electric public  
26 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
27 et seq.);

28 (b) that manufactures products made from using "postconsumer  
29 material," as that term is defined in 40 C.F.R. s.247.3, and other  
30 recovered material feedstocks that meet the requirements of the  
31 Comprehensive Procurement Guideline For Products Containing  
32 Recovered Materials as promulgated by the United States  
33 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
34 pursuant to the "Resource Conservation and Recovery Act,"  
35 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
36 13101, issued by the President of the United States on September  
37 14, 1998, provided that at least 75 percent of the manufacturing  
38 facility's total annual sales dollar volume of such products that are  
39 produced in New Jersey meet the recycled content standards within  
40 such guidelines;

41 (c) for which a "comprehensive energy audit," as that term is  
42 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
43 been undertaken within 90 days after the effective date of P.L. , c.  
44 (C. )(pending before the Legislature as this bill), which audit  
45 shall have evaluated cost-effective energy efficiency and

**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 conservation measures as part of the efforts to reduce energy costs;  
2 (d) that has been in operation in this State for at least 25 years as  
3 of the effective date of P.L. , c. (C. )(pending before the  
4 Legislature as this bill); and

5 (e) at which at least 800 employees are employed on the first  
6 business or work day after the expiration of such off-tariff rate  
7 agreement.

8 (2) For a period of seven years commencing on the first day after  
9 the expiration of an off-tariff rate agreement, entered into or  
10 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
11 21.24 et seq.), receipts from the sale to or use by a manufacturing  
12 facility of energy and utility service for use or consumption directly  
13 and primarily in the production of tangible personal property, other  
14 than energy, shall be exempt from the tax imposed under the "Sales  
15 and Use Tax Act."

16 (3) The State Treasurer shall adopt rules for the reimbursement  
17 to the owner of the manufacturing facility of an amount  
18 representing the sales and use taxes paid for the period that  
19 commenced on the first day after the expiration of the off-tariff rate  
20 agreement described under subparagraph (a) of the definition of  
21 "manufacturing facility" set forth in paragraph (1) of this subsection  
22 and ended on the effective date of P.L. , c. (C. )(pending  
23 before the Legislature as this bill.

24 (cf: P.L.1997, c.162, s.33)

25

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

28 67. a. As used in this section:

29 "Base rates" means the rates, including minimum bills, charged  
30 for utility commodities or service subject to the board's jurisdiction,  
31 other than the rates charged under a utility's levelized energy  
32 adjustment clause, hereinafter "LEAC," or levelized gas adjustment  
33 clause, hereinafter "LGAC," or equivalent rate provision;

34 "Base year" means the calendar year 1996;

35 "Board" means the Board of Public Utilities;

36 "Manufacturing facility" means a facility:

37 (1) with respect to which the owner of the facility shall have  
38 entered into an off-tariff rate agreement with an electric public  
39 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
40 et seq.);

41 (2) that manufactures products made from using "postconsumer  
42 material," as that term is defined in 40 C.F.R. s.247.3, and other  
43 recovered material feedstocks that meet the requirements of the  
44 Comprehensive Procurement Guideline For Products Containing  
45 Recovered Materials as promulgated by the United States  
46 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
47 pursuant to the "Resource Conservation and Recovery Act,"  
48 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order

S2410 DORIA, CODEY

4

1 No. 13101, issued by the President of the United States on  
2 September 14, 1998, provided that at least 75 percent of the  
3 manufacturing facility's total annual sales dollar volume of such  
4 products that are produced in New Jersey meet the recycled content  
5 standards within such guidelines;

6 (3) for which a "comprehensive energy audit," as that term is  
7 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
8 been undertaken within 90 days after the effective date of P.L. , c.  
9 (C. )(pending before the Legislature as this bill), which audit  
10 shall have evaluated cost-effective energy efficiency and  
11 conservation measures as part of the efforts to reduce energy costs;

12 (4) that has been in operation in this State for at least 25 years as  
13 of the effective date of P.L. , c. (C. )(pending before the  
14 Legislature as this bill); and

15 (5) at which at least 800 employees are employed on the first  
16 business or work day after the expiration of such off-tariff rate  
17 agreement.

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

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

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

27 b. No later than 60 days after the date this act is enacted, each  
28 electric, gas and telecommunications utility subject to the  
29 provisions of this act shall file with the board, and shall  
30 simultaneously provide copies to the Director of the Division of the  
31 Ratepayer Advocate, revised tariffs and such other supporting  
32 schedules, narrative and documentation required by this act, as set  
33 forth in this section, to reflect in the utility's rates the changes in tax  
34 liability effected pursuant to this act. No later than 90 days after the  
35 date of the utility's filing, and after determining that the filing and  
36 the rate changes provided for therein are in compliance with the  
37 provisions of this act, the board shall approve the utility's filing and  
38 associated rates for billing to the utility's customers, effective for  
39 utility service rendered on and after January 1, 1998. If the board  
40 determines that the utility's filing and the associated rate changes  
41 provided for therein are not in compliance with the provisions of  
42 this act, the board shall require the utility to amend or otherwise  
43 modify its filing to render it in compliance. The board may also  
44 permit the rates provided for in the utility's filing to be implemented  
45 on an interim basis pending the board's final determination in the  
46 event the board, in its discretion, determines that due to the filing's  
47 complexity, or for other valid reasons, including but not limited to  
48 the enactment of this act after June 30, 1997, additional time is

1 needed for the board to complete its review of the filing. If the  
2 rates approved by the board upon its final determination are less  
3 than the rates implemented on an interim basis, the difference shall  
4 be refunded to the utility's customers with interest computed in  
5 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments  
6 implemented pursuant to this act shall not constitute a fixing of  
7 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing  
8 requirements set forth in that section.

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

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

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

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

46 The utility shall also include a calculation of its rate of return on  
47 common equity achieved in the base year, both as booked and as  
48 adjusted in accordance with the foregoing. The calculation shall be

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

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

$$18 \quad A e, g = \frac{((I e, g) \times [Rs/(1-Re)])}{19 \quad \text{-----}} \\ 20 \quad \quad \quad (Br e,g)$$

21 where:

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

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

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

38 "Rs" means the corporation business tax rate, expressed as a  
 39 decimal;

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

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

43 The utility shall account for the changes in tax liability provided  
 44 for by this act effective January 1, 1998. Such accounting shall  
 45 include the recording on the utility's income statement and balance  
 46 sheet of deferred corporation business tax defined, for book  
 47 accounting purposes, as differences in corporation business tax

1 expense arising from timing differences in the recognition of  
2 revenue and expenses for book and tax purposes.

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

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

44 If the utility's requirement for cash working capital is increased  
45 as a result of the changes in rates and tax payments implemented  
46 pursuant to this act, the utility may accrue carrying costs, calculated  
47 at its last overall rate of return allowed by the board and applied on  
48 a simple annual interest basis without compounding, on the



1 increased working capital requirement and request recovery of such  
2 carrying costs in a rate proceeding before the board.

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

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

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

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

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

44 (ii) The accumulated balance of such negative net deferred taxes  
45 shall include net deferred taxes associated with all assets and  
46 liabilities originally placed in service by the utility and held by the  
47 utility or a company affiliated with the utility regardless of whether

1 or not such assets continue to be subject to regulation by the New  
2 Jersey Board of Public Utilities.

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

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

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

31 d. (1) Electric and gas utilities shall file, for the board's review  
32 and approval, initial TEFA unit rate surcharges determined by  
33 deducting from each unit-based energy tax unit tax rate effective  
34 January 1, 1997 the following:

35 (a) An amount per kilowatthour or per therm determined by  
36 multiplying the total revenue received in the base year from sales to  
37 which that unit tax rate would have been applicable by the factor  
38  $Ru/(1 + Ru)$ , where  $Ru$  is the sales and use tax rate imposed under  
39 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and  
40 dividing the result by the kilowatthours or therms billed in that unit  
41 tax rate class in the base year; and

42 (b) An amount per kilowatthour or per therm determined by  
43 dividing the revenue that would have been received in the base year  
44 from the inclusion, in the manner prescribed in paragraph (2) of  
45 subsection c. of this section, of the corporation business tax in the  
46 rates applicable to sales billed in that unit tax rate class by the  
47 kilowatthours or therms billed in that rate class. In each case, the  
48 determination shall reflect the effect of adjustments that affect the

1 level of sales and revenue, if any, as provided in subsection c. of  
 2 this section. Of the resultant rate per kilowatthour or per therm, the  
 3 portion for recovery of the utility's transitional energy facilities  
 4 assessment liability shall be determined by multiplying such rate by  
 5 the factor  $(1 - R_s)$ , where  $R_s$  is the corporation business tax rate  
 6 expressed as a decimal.

7 The TEFA unit rate surcharges shall constitute non-bypassable  
 8 wires and/or mains charges of the utility, and shall be applied to all  
 9 sales within the customer classes to which they apply, regardless of  
 10 whether such customers are purchasing bundled or unbundled  
 11 services from the utility, but shall not be applied to sales:

12 (i) that were or are currently exempt from unit-based energy  
 13 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et  
 14 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)  
 15 applies, and

16 (ii) for a period of seven years commencing on the first day after  
 17 the expiration of an off-tariff rate agreement, entered into or  
 18 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
 19 21.24 et seq.), to a manufacturing facility for use or consumption  
 20 directly and primarily in the production of tangible personal  
 21 property, other than energy.

22 The State Treasurer shall adopt rules for the reimbursement to  
 23 the owner of the manufacturing facility of an amount representing  
 24 the TEFA unit rate surcharges paid for the period that commenced  
 25 on the first day after the expiration of the off-tariff rate agreement  
 26 described under this sub-subparagraph of the definition of  
 27 “manufacturing facility” set forth in subsection a. of this section  
 28 and ended on the effective date of P.L. , c. (C. )(pending  
 29 before the Legislature as this bill).

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

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

46	January 1, 1999,	20%
47	January 1, 2000,	40%
48	January 1, 2001,	60%

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

4 (a) The sum of the estimated, or actual when known, (i) TEFA  
 5 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-  
 6 107), and sales and use taxes collected and corporation business  
 7 taxes booked for the year 1998 by the gas and electric utilities and  
 8 other entities subject to the TEFA provisions of this act (the year  
 9 1998 liability), and (ii) the TEFA liabilities of those utilities and  
 10 entities in all years following the year 1998 through the year in  
 11 which a determination is being made pursuant to this subsection  
 12 (the determination year); and

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

Determination Year	% of Year 1998 TEFA
-----	
1999	80%
2000	60%

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

31 (4) If the TEFA surcharge adjustment determined for the  
 32 determination year is positive (that is, if the amount determined  
 33 pursuant to subparagraph (a) of paragraph (3) of this subsection is  
 34 greater than the amount determined pursuant to subparagraph (b) of  
 35 paragraph (3) of this subsection), no reduction shall be made in the  
 36 reduction in the TEFA unit rate surcharges provided for in  
 37 paragraph (2) of this subsection for the year following the  
 38 determination year. If the TEFA surcharge adjustment is negative,  
 39 the reduction in the TEFA unit rate surcharges that otherwise would  
 40 have been implemented on January 1 of the year following the  
 41 determination year pursuant to paragraph (2) of this subsection shall  
 42 be reduced by an amount (by percentage points) equal to the  
 43  
 44  
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1 percentage the TEFA surcharge adjustment is of the total of the  
2 base year transitional energy facility assessment of all remitters, as  
3 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided  
4 however, that such reduction in the reduction in the TEFA unit rate  
5 surcharges shall not exceed the percentage shown in paragraph (2)  
6 of this subsection for that year; and provided further that in the first  
7 two years, that such reduction shall not exceed 10 percentage points  
8 for each year.

9 (5) (a) The TEFA unit rate surcharges for calendar years 2002  
10 through 2008 shall be the same as the TEFA unit rate surcharges in  
11 effect for calendar year 2001.

12 (b) The TEFA unit rate surcharges in effect for calendar year  
13 2008 shall be reduced on January 1, 2009 and January 1, 2010 by  
14 the following percentages:

15	January 1, 2009	25%
16	January 1, 2010	50%

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

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

46 g. Customers of the utility who are exempt from the sales and  
47 use tax imposed on sales of gas and/or electricity or as a result of  
48 rate changes occurring prior to the effective date of this act or for

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

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

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

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

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

1 pursuant to the provisions of the "Public Utility Regulatory Policies  
2 Act of 1978," Pub.L.95-617.  
3 (cf: P.L.2006, c.40, s.1)  
4

5 3. Section 12 of P.L.1999, c.23 (C.48:3-60) is amended to read  
6 as follows:

7 12. a. **【Simultaneously】** Except as provided for in subsection c.  
8 of this section, simultaneously with the starting date for the  
9 implementation of retail choice as determined by the board pursuant  
10 to subsection a. of section 5 of this act the board shall permit each  
11 electric public utility and gas public utility to recover some or all of  
12 the following costs through a societal benefits charge that shall be  
13 collected as a non-bypassable charge imposed on all electric public  
14 utility customers and gas public utility customers, as appropriate:

15 (1) The costs for the social programs for which rate recovery  
16 was approved by the board prior to April 30, 1997. For the purpose  
17 of establishing initial unbundled rates pursuant to section 4 of this  
18 act, the societal benefits charge shall be set to recover the same  
19 level of social program costs as is being collected in the bundled  
20 rates of the electric public utility on the effective date of this act.  
21 The board may subsequently order, pursuant to its rules and  
22 regulations, an increase or decrease in the societal benefits charge  
23 to reflect changes in the costs to the utility of administering existing  
24 social programs. Nothing in this act shall be construed to abolish  
25 or change any social program required by statute or board order or  
26 rule or regulation to be provided by an electric public utility. Any  
27 such social program shall continue to be provided by the utility  
28 until otherwise provided by law, unless the board determines that it  
29 is no longer appropriate for the electric public utility to provide the  
30 program, or the board chooses to modify the program;

31 (2) Nuclear plant decommissioning costs;

32 (3) The costs of demand side management programs that were  
33 approved by the board pursuant to its demand side management  
34 regulations prior to April 30, 1997. For the purpose of establishing  
35 initial unbundled rates pursuant to section 4 of this act, the societal  
36 benefits charge shall be set to recover the same level of demand  
37 side management program costs as is being collected in the bundled  
38 rates of the electric public utility on the effective date of this act.  
39 Within four months of the effective date of this act, and every four  
40 years thereafter, the board shall initiate a proceeding and cause to  
41 be undertaken a comprehensive resource analysis of energy  
42 programs, and within eight months of initiating such proceeding  
43 and after notice, provision of the opportunity for public comment,  
44 and public hearing, the board, in consultation with the Department  
45 of Environmental Protection, shall determine the appropriate level  
46 of funding for energy efficiency and Class I renewable energy  
47 programs that provide environmental benefits above and beyond  
48 those provided by standard offer or similar programs in effect as of

1 the effective date of this act; provided that the funding for such  
2 programs be no less than 50% of the total Statewide amount being  
3 collected in public electric and gas utility rates for demand side  
4 management programs on the effective date of this act for an initial  
5 period of four years from the issuance of the first comprehensive  
6 resource analysis following the effective date of this act, and  
7 provided that 25% of this amount shall be used to provide funding  
8 for Class I renewable energy projects in the State. In each of the  
9 following fifth through eighth years, the Statewide funding for such  
10 programs shall be no less than 50 percent of the total Statewide  
11 amount being collected in public electric and gas utility rates for  
12 demand side management programs on the effective date of this act,  
13 except that as additional funds are made available as a result of the  
14 expiration of past standard offer or similar commitments, the  
15 minimum amount of funding for such programs shall increase by an  
16 additional amount equal to 50 percent of the additional funds made  
17 available, until the minimum amount of funding dedicated to such  
18 programs reaches \$140,000,000 total. After the eighth year the  
19 board shall make a determination as to the appropriate level of  
20 funding for these programs. Such programs shall include a program  
21 to provide financial incentives for the installation of Class I  
22 renewable energy projects in the State, and the board, in  
23 consultation with the Department of Environmental Protection, shall  
24 determine the level and total amount of such incentives as well as  
25 the renewable technologies eligible for such incentives which shall  
26 include, at a minimum, photovoltaic, wind, and fuel cells. The  
27 board shall simultaneously determine, as a result of the  
28 comprehensive resource analysis, the programs to be funded by the  
29 societal benefits charge, the level of cost recovery and performance  
30 incentives for old and new programs and whether the recovery of  
31 demand side management programs' costs currently approved by the  
32 board may be reduced or extended over a longer period of time.  
33 The board shall make these determinations taking into consideration  
34 existing market barriers and environmental benefits, with the  
35 objective of transforming markets, capturing lost opportunities,  
36 making energy services more affordable for low income customers  
37 and eliminating subsidies for programs that can be delivered in the  
38 marketplace without electric public utility and gas public utility  
39 customer funding;

40 (4) Manufactured gas plant remediation costs, which shall be  
41 determined initially in a manner consistent with mechanisms in the  
42 remediation adjustment clauses for the electric public utility and gas  
43 public utility adopted by the board; and

44 (5) The cost, of consumer education, as determined by the  
45 board, which shall be in an amount that, together with the consumer  
46 education surcharge imposed on electric power supplier license fees  
47 pursuant to subsection h. of section 29 of this act and the consumer  
48 education surcharge imposed on gas supplier license fees pursuant



1 to subsection g. of section 30 of this act, shall be sufficient to fund  
2 the consumer education program established pursuant to section 36  
3 of this act.

4 b. There is established in the Board of Public Utilities a  
5 nonlapsing fund to be known as the "Universal Service Fund." The  
6 board shall determine: the level of funding and the appropriate  
7 administration of the fund; the purposes and programs to be funded  
8 with monies from the fund; which social programs shall be provided  
9 by an electric public utility as part of the provision of its regulated  
10 services which provide a public benefit; whether the funds  
11 appropriated to fund the "Lifeline Credit Program" established  
12 pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants'  
13 Lifeline Assistance Program" established pursuant to P.L.1981,  
14 c.210 (C.48:2-29.31 et seq.), the funds received pursuant to the Low  
15 Income Home Energy Assistance Program established pursuant to  
16 42 U.S.C. s.8621 et seq., and funds collected by electric and natural  
17 gas utilities, as authorized by the board, to offset uncollectible  
18 electricity and natural gas bills should be deposited in the fund; and  
19 whether new charges should be imposed to fund new or expanded  
20 social programs.

21 c. (1) As used in this subsection, "manufacturing facility" means  
22 a facility:

23 (a) with respect to which the owner of the facility shall have  
24 entered into an off-tariff rate agreement with an electric public  
25 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
26 et seq.);

27 (b) that manufactures products made from using "postconsumer  
28 material," as that term is defined in 40 C.F.R. s.247.3, and other  
29 recovered material feedstocks that meet the requirements of the  
30 Comprehensive Procurement Guideline For Products Containing  
31 Recovered Materials as promulgated by the United States  
32 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
33 pursuant to the "Resource Conservation and Recovery Act,"  
34 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
35 13101, issued by the President of the United States on September  
36 14, 1998, provided that at least 75 percent of the manufacturing  
37 facility's total annual sales dollar volume of such products that are  
38 produced in New Jersey meet the recycled content standards within  
39 such guidelines;

40 (c) for which a "comprehensive energy audit," as that term is  
41 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
42 been undertaken within 90 days after the effective date of P.L. , c.  
43 (C. )(pending before the Legislature as this bill), which audit  
44 shall have evaluated cost-effective energy efficiency and  
45 conservation measures as part of the efforts to reduce energy costs;

46 (d) that has been in operation in this State for at least 25 years as  
47 of the effective date of P.L. , c. (C. )(pending before the  
48 Legislature as this bill); and

1       (e) at which at least 800 employees are employed on the first  
2 business or work day after the expiration of such off-tariff rate  
3 agreement.

4       (2) For a period of seven years commencing on the first day after  
5 the expiration of an off-tariff rate agreement, entered into or  
6 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-  
7 21.24 et seq.), no societal benefits charge shall be imposed on an  
8 electric public utility customer or a gas public utility customer that  
9 is a manufacturing facility.

10       (3) The board shall adopt rules for the reimbursement to the  
11 owner of the manufacturing facility of an amount representing the  
12 societal benefits charges paid for the period that commenced on the  
13 first day after the expiration of the off-tariff rate agreement  
14 described under subparagraph (a) of the definition of  
15 “manufacturing facility” set forth in paragraph (1) of this subsection  
16 and ended on the effective date of P.L. , c. (C. )(pending  
17 before the Legislature as this bill).

18 (cf: P.L.1999, c.23, s.12)

19

20       4. (New section) a. As used in this section, "manufacturing  
21 facility" means a facility:

22       (1) with respect to which the owner of the facility shall have  
23 entered into an off-tariff rate agreement with an electric public  
24 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24  
25 et seq.);

26       (2) that manufactures products made from using “postconsumer  
27 material,” as that term is defined in 40 C.F.R. s.247.3, and other  
28 recovered material feedstocks that meet the requirements of the  
29 Comprehensive Procurement Guideline For Products Containing  
30 Recovered Materials as promulgated by the United States  
31 Environmental Protection Agency in 40 C.F.R. s.247.1 et seq.,  
32 pursuant to the "Resource Conservation and Recovery Act,"  
33 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.  
34 13101, issued by the President of the United States on September  
35 14, 1998, provided that at least 75 percent of the manufacturing  
36 facility’s total annual sales dollar volume of such products that are  
37 produced in New Jersey meet the recycled content standards within  
38 such guidelines;

39       (3) for which a “comprehensive energy audit,” as that term is  
40 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have  
41 been undertaken within 90 days after the effective date of P.L. , c.  
42 (C. )(pending before the Legislature as this bill), which audit  
43 shall have evaluated cost-effective energy efficiency and  
44 conservation measures as part of the efforts to reduce energy costs;

45       (4) that has been in operation in this State for at least 25 years as  
46 of the effective date of P.L. , c. (C. )(pending before the  
47 Legislature as this bill); and

1 (5) at which at least 800 employees are employed on the first  
2 business or work day after the expiration of such off-tariff rate  
3 agreement.

4 b. An electric public utility or a gas public utility may enter into  
5 an agreement with the owner of a manufacturing facility that  
6 establishes a price for the transmission or distribution of electricity  
7 or natural gas, as appropriate, to that manufacturing facility that is  
8 different from, but in no case higher than, that specified in the  
9 electric public utility's or gas public utility's current cost-of-service  
10 based tariff rate for transmission or distribution service otherwise  
11 applicable to the manufacturing facility.

12 c. The board shall approve the agreement if such agreement  
13 meets all of the following conditions:

14 (1) The agreement shall be filed with the board and the Division  
15 of Rate Counsel in the Department of the Public Advocate;

16 (2) The agreement shall contain a provision that the owner of the  
17 manufacturing facility would have relocated the facility outside of  
18 the State to a location where electric power or natural gas supply  
19 could be obtained at a lower cost, had it not entered into the  
20 agreement;

21 (3) There shall be no retroactive recovery by the electric public  
22 utility or gas public utility, as appropriate, from its general  
23 ratepayer base of any revenue erosion that occurs prior to the  
24 conclusion of the utility's next base rate case. Subsequent to the  
25 conclusion of the utility's next base rate case, any such recovery  
26 shall be prospective only. The board may require the utility to  
27 provide proof that there shall be no such retroactive recovery;

28 (4) There shall be no undue transfer of cost allocation or revenue  
29 recovery responsibility by the electric public utility or gas public  
30 utility, as appropriate, from the utility to its general ratepayer base.  
31 The utility agrees to be subject to an independent audit or such  
32 accounting and reporting systems the board may deem as necessary  
33 to ensure that costs are allocated properly and that revenue recovery  
34 responsibility is not transferred; and

35 (5) The term of the rate agreement shall begin within one year of  
36 the effective date of P.L. , c. (C. )(pending before the  
37 Legislature as this bill) and shall not exceed seven years in  
38 duration.

39

40 5. (New section) The Division of Taxation in the Department of  
41 the Treasury shall annually review the financial records of a  
42 manufacturing facility that is eligible for a sales and use tax  
43 exemption pursuant to section 1 of P.L. , c. (C. )(pending  
44 before the Legislature as this bill) and that is eligible for a TEFA  
45 unit rate surcharge exemption pursuant to section 2 of P.L. , c.  
46 (C. )(pending before the Legislature as this bill), in order to  
47 determine whether it is economically feasible for the State to  
48 continue to allow such manufacturing facility to receive such

1 exemptions. Upon the completion of the review required by this  
2 section, the division shall prepare and submit a report to the  
3 Legislature containing the division's recommendation as to whether  
4 the sales and use tax exemption and TEFA unit rate surcharge  
5 exemption should be continued or whether the exemptions should  
6 be altered or repealed. The first such report shall be submitted to  
7 the Legislature within 90 days following the date of enactment of  
8 P.L. , c. (C. )(pending before the Legislature as this bill) and  
9 shall review the period beginning with the first day after the  
10 expiration of an off-tariff rate agreement entered into or negotiated  
11 by a manufacturing facility and extending to the last day of the  
12 month in which P.L. , c. (C. ) (pending before the Legislature  
13 as this bill) is enacted. Thereafter, subsequent reports shall be  
14 submitted within 90 days following the expiration of each  
15 successive one-year period for the duration of the seven year period  
16 prescribed by sections 1 and 2 of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill) or until such time as the exemptions  
18 have been repealed, and such reports shall review the financial  
19 records of such a manufacturing facility for the preceding one-year  
20 period. As a condition of receiving the sales and use tax exemption  
21 and TEFA unit rate surcharge exemption, the manufacturing facility  
22 shall make its financial records available to the division and shall  
23 provide such other information as may be needed by the division to  
24 complete its review and assessment pursuant to this section.

25  
26 6. (New section) The Board of Public Utilities shall annually  
27 review the financial records of a manufacturing facility that is  
28 eligible for a societal benefits charge exemption pursuant to section  
29 3 of P.L. , c. (C. )(pending before the Legislature as this  
30 bill), in order to determine whether it is economically feasible to  
31 continue funding the programs funded by the societal benefits  
32 charge pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) if the  
33 manufacturing facility continues to receive such an exemption.  
34 Upon the completion of the review required by this section, the  
35 board shall prepare and submit a report to the Legislature  
36 containing the board's recommendation as to whether the societal  
37 benefits charge exemption should be continued or whether the  
38 exemption should be altered or repealed. The first such report shall  
39 be submitted to the Legislature within 90 days following the date of  
40 enactment of P.L. , c. (C. )(pending before the Legislature as  
41 this bill) and shall review the period beginning with the first day  
42 after the expiration of an off-tariff rate agreement entered into or  
43 negotiated by a manufacturing facility and extending to the last day  
44 of the month in which P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) is enacted. Thereafter, subsequent reports  
46 shall be submitted within 90 days following the expiration of each  
47 successive one-year period for the duration of the seven year period  
48 prescribed by section 3 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) or until such time as the exemption has been  
2 repealed, and such reports shall review the financial records of such  
3 a manufacturing facility for the preceding one-year period. As a  
4 condition of receiving the societal benefits charge exemption, the  
5 manufacturing facility shall make its financial records available to  
6 the board and shall provide such other information as may be  
7 needed by the board to complete its review and assessment pursuant  
8 to this section.

9  
10 7. This act shall take effect immediately.

11  
12  
13 STATEMENT

14  
15 This bill exempts, for a period of seven years, the sale or use of  
16 energy utility service to certain manufacturing facilities, as defined  
17 in the bill, from the sales and use tax, the transitional energy facility  
18 assessment (“TEFA”) unit rate surcharge, and the societal benefits  
19 charge.

20 Further, the bill would allow electric and gas public utilities to  
21 enter into agreements, for a period of seven years and under certain  
22 conditions, with owners of these manufacturing facilities that  
23 establish a price for the transmission or distribution of electricity or  
24 natural gas, as appropriate, to that manufacturing facility that is  
25 different from, but in no case higher than, that specified in the  
26 electric public utility's or gas public utility's current cost-of-service  
27 based tariff rate for transmission or distribution service otherwise  
28 applicable to the manufacturing facility.

29 The bill also requires the Division of Taxation and the Board of  
30 Public Utilities to annually review the economic feasibility of  
31 continuing to provide a manufacturing facility with the exemptions  
32 from certain taxes and energy charges and to submit their  
33 recommendations to the Legislature as to whether such exemptions  
34 should be continued.

35 Manufacturers are among the largest users of electricity and  
36 natural gas. High energy costs are reported as a major state-level  
37 obstacle to manufacturing success in this State. The exemptions  
38 provided under this bill are designed to encourage manufacturers to  
39 stay in New Jersey and to expand their operations here.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2410**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 29, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2410, with committee amendments.

Senate Bill No. 2410, with committee amendments, provides to certain large, long-operating, energy-efficiency audited manufacturing facilities producing products meeting certain recycled content standards, a seven period of exemption from the sales and use tax on their purchase and use of energy and utility service and from the transitional energy facility assessment (“TEFA”) unit rate surcharge.

The bill also allows electric and gas public utilities to enter into agreements, for a period of seven years and under certain conditions, with owners of these manufacturing facilities, that establish a price for the transmission or distribution of electricity or natural gas, as appropriate, to that manufacturing facility that is different from, but in no case higher than, that specified in the electric public utility's or gas public utility's current cost-of-service based tariff rate for transmission or distribution service otherwise applicable to the manufacturing facility.

The bill also requires the Division of Taxation to annually review the economic feasibility of continuing to provide an eligible manufacturing facility with the tax exemptions and to submit recommendations to the Legislature whether the temporary tax exemptions should be continued.

#### COMMITTEE AMENDMENTS:

The committee amendments delete provisions of the bill that would have provided such facilities a seven year exemption from societal benefits charges that are collected from utility customers as a non-bypassable charge to support 1) certain social programs including the Universal Service Fund); 2) Nuclear Plant Decommissioning costs; 3) Demand Side Management Program costs; 4) Manufactured Gas Plant Remediation costs; and 5) Consumer Education Costs. The committee amendments also clarify the authority to pay the reimbursement of any sales tax and TEFA surcharge paid by a manufacturing facility after the expiration of a previous off-tariff rate

agreement and until the tax exemptions are in effect.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify the annual revenue loss the State would incur. The specific, limited eligibility criteria for a manufacturing facility under the bill may however apply to very few manufacturers. Testimony provided by a representative of Marcal Paper Mills, Inc. before the Assembly Telecommunications and Utilities Committee on December 4, 2006, on an identical bill, indicated that the Marcal Paper Mills manufacturing facility in Elmwood Park, New Jersey, would become a beneficiary and submitted to the committee the facility's monthly energy expenditures data. Based on that information, the OLS projects that the bill's total annual State cost would range from about \$3.0 million (\$2.1 million sales tax and \$900,000 TEFA) to \$4 million (\$2.9 million sales tax and \$1.1 million TEFA), assuming that only Marcal Paper Mills would be eligible for the tax exemptions.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 2410**

with Senate Floor Amendments  
(Proposed By Senator DORIA)

ADOPTED: FEBRUARY 5, 2007

This amendment provides that the sales tax and TEFA unit rate surcharge shall be paid as the price of energy and utility service is collected and the manufacturing facility owner shall then file for quarterly refunds under the tax exemptions. The amendment also provides that the tax refunds shall be repaid by the owner to the Director of the Division of Taxation as tax otherwise due if there is a sale or other transfer of ownership of a facility, or closure of the operation of a facility, during the exemption period.



STATEMENT TO  
[Second Reprint]  
**SENATE, No. 2410**

with Senate Floor amendments  
(Proposed By Senator DORIA)

ADOPTED: FEBRUARY 22, 2007

This amendment changes the trigger for the recapture of sales tax and TEFA unit rate surcharge refunds to the relocation of a manufacturing facility to a location outside this State.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 2410 STATE OF NEW JERSEY 212th LEGISLATURE

DATED: FEBRUARY 14, 2007

### SUMMARY

- Synopsis:** Provides certain manufacturing facilities making certain recycled content standards products a seven year energy and utility service sales and use tax exemption, transitional energy facility assessment exemption and authority for an energy off-tariff rate agreement.
- Type of Impact:** A Seven-Year Revenue Loss to the State General Fund.
- Agencies Affected:** Department of the Treasury.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>	<b><u>Fiscal Year 2009</u></b>
<b>State Revenue Loss</b>	Indeterminate, but at least \$2,900,000 per year		

- The Office of Legislative Services (OLS) cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill's stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them. Based on energy expenditure information submitted by the company (but which the OLS cannot verify), the OLS projects that the bill's total annual State cost would range from \$2.9 million to \$4.0 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions.
- Any revenue loss would occur over seven years, reflecting the bill's sunset provision.

### BILL DESCRIPTION

Senate Bill No. 2410 (1R) of 2006 provides a seven-year exemption for energy utility service purchases by certain manufacturing facilities from the sales and use tax and the transitional energy facility assessment (TEFA) unit rate surcharge. To qualify for the exemptions, a

manufacturer must make products from “postconsumer material”, must have at least 800 employees, must have been in operation in New Jersey for at least 25 years, and must have had an off-tariff rate agreement with an electric public utility.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS cannot quantify the annual revenue loss this legislation would impose on the State, as the agency cannot determine the number of manufacturers conforming with the bill’s stringent eligibility requirements. Their restrictiveness, however, leads the agency to surmise that very few manufacturers would be likely to qualify for the tax exemptions. Marcal Paper Mills, Inc. would be one of them.

In testimony submitted to the Assembly Telecommunications and Utilities Committee on December 4, 2006, Marcal Paper Mills identified itself as a beneficiary of the bill and submitted data on its monthly energy expenditures, which the OLS cannot not verify. Accepting that information, the OLS projects that the bill’s total annual State cost would range from \$2.9 million to \$4.0 million, if Marcal Paper Mills was the only manufacturer eligible for the tax exemptions. The table below details the estimate’s components.

	<b>Total</b>	<b>Sales Tax</b>	<b>TEFA</b>
<b>Low-End Cost Estimate</b>	<b>\$2,900,000</b>	\$2,100,000	\$800,000
<b>High-End Cost Estimate</b>	<b>\$4,000,000</b>	\$2,900,000	\$1,100,000

The low-end scenario assumes a monthly energy expenditure of \$2.5 million and the high-end scenario of \$3.5 million. Marcal Paper Mill’s actual monthly 2006 energy cost through November averaged around \$3.0 million (based on its now defunct off-tariff rate agreement). While the OLS refrains from forecasting energy price changes over the next seven years, it points out that prices tend to fluctuate significantly in this volatile market, thereby complicating the generation of any reliable estimate.

For the projection’s sales tax component, the OLS applies the seven percent sales and use tax rate to Marcal’s estimated energy expenditures.

For the TEFA portion, the agency uses a crude estimation method, as TEFA is notoriously complex and historic data are limited. Hence, the OLS applies to Marcal’s estimated energy cost the proportion of 2005 TEFA collections (\$247 million, or the average of fiscal year 2005 and 2006 collections) to total New Jersey 2005 electricity sales (\$8.9 billion) as reported by the Energy Information Administration in the United States Department of Energy, or 2.8 percent.

*Section: Revenue, Finance and Appropriations*

*Analyst: Thomas Koenig  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.