

# 48:3-77.1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2009                    **CHAPTER:** 240

**NJSA:** 48:3-77.1            (Concerns on-site generation facilities)

**BILL NO:** A3339 (Substituted for S2557)

**SPONSOR(S)** Chivukula and Others

**DATE INTRODUCED:** October 23, 2008

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

**SENATE:** Budget and Appropriations

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** January 11, 2010

**SENATE:** January 7, 2010

**DATE OF APPROVAL:** January 16, 2010

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Assembly Committee Substitute (First Reprint) for Assembly Committee Substitute enacted)

**A3339/3439**

<b>SPONSOR'S STATEMENT (A3339):</b> (Begins on page 13 of introduced bill)	Yes	
<b>SPONSOR'S STATEMENT (A3439):</b> (Begins on page 3 of introduced bill)	Yes	
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	Yes    Tele. 12-8-08 App. 12-3-09
	<b>SENATE:</b>	Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

<b>FLOOR AMENDMENT STATEMENT:</b>	No	
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes	10-16-09 12-9-09 1-12-10

**S2557**

<b>SPONSOR'S STATEMENT:</b> (Begins on page 13 of introduced bill)	Yes	
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	No
	<b>SENATE:</b>	Yes    Econ. 2-26-09 Budg. 1-4-10

(continued)

**FLOOR AMENDMENT STATEMENT:**

No

**LEGISLATIVE FISCAL ESTIMATE:**

Yes

6-11-09

11-2-09

**VETO MESSAGE:**

No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

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[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
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**ASSEMBLY, Nos. 3339 and 3439**

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**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

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ADOPTED DECEMBER 3, 2009

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Co-Sponsored by:**

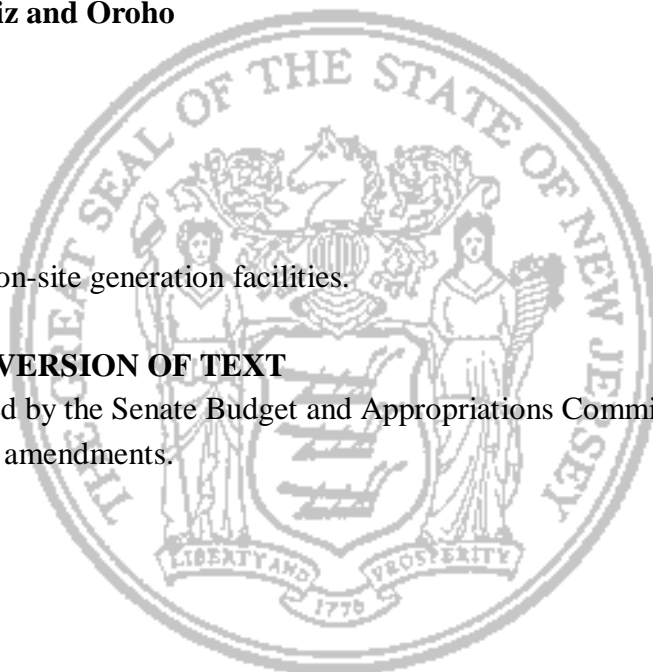
**Assemblywoman Quijano, Assemblymen Conaway, Wisniewski, Egan,  
Senators Ruiz and Oroho**

**SYNOPSIS**

Concerns on-site generation facilities.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on January 4, 2010, with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 **AN ACT** concerning on-site generation facilities, providing a sales  
2 and use tax exemption for the purchase of natural gas and utility  
3 service used for co-generation, amending and supplementing  
4 P.L.1999, c.23, and amending P.L.1997, c.162.

5

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

8

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

11 3. As used in this act:

12 "Assignee" means a person to which an electric public utility or  
13 another assignee assigns, sells or transfers, other than as security,  
14 all or a portion of its right to or interest in bondable transition  
15 property. Except as specifically provided in P.L.1999, c.23  
16 (C.48:3-49 et al.), an assignee shall not be subject to the public  
17 utility requirements of Title 48 or any rules or regulations adopted  
18 pursuant thereto;

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

26 "Basic generation service" means electric generation service that  
27 is provided, pursuant to section 9 of P.L.1999, c.23 (C.48:3-57), to  
28 any customer that has not chosen an alternative electric power  
29 supplier, whether or not the customer has received offers as to  
30 competitive supply options, including, but not limited to, any  
31 customer that cannot obtain such service from an electric power  
32 supplier for any reason, including non-payment for services. Basic  
33 generation service is not a competitive service and shall be fully  
34 regulated by the board;

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

**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> Senate SBA committee amendments adopted January 4, 2010.

1 (C.48:3-49 et al.). Basic generation service transition costs shall  
2 include, but are not limited to, costs of purchases from the spot  
3 market, bilateral contracts, contracts with non-utility generators,  
4 parting contracts with the purchaser of the electric public utility's  
5 divested generation assets, short-term advance purchases, and  
6 financial instruments such as hedging, forward contracts, and  
7 options. Basic generation service transition costs shall also include  
8 the payments by an electric public utility pursuant to a competitive  
9 procurement process for basic generation service supply during the  
10 transition period, and costs of any such process used to procure the  
11 basic generation service supply;

12 "Board" means the New Jersey Board of Public Utilities or any  
13 successor agency;

14 "Bondable stranded costs" means any stranded costs or basic  
15 generation service transition costs of an electric public utility  
16 approved by the board for recovery pursuant to the provisions of  
17 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the  
18 board: (1) the cost of retiring existing debt or equity capital of the  
19 electric public utility, including accrued interest, premium and other  
20 fees, costs and charges relating thereto, with the proceeds of the  
21 financing of bondable transition property; (2) if requested by an  
22 electric public utility in its application for a bondable stranded costs  
23 rate order, federal, State and local tax liabilities associated with  
24 stranded costs recovery or basic generation service transition cost  
25 recovery or the transfer or financing of such property or both,  
26 including taxes, whose recovery period is modified by the effect of  
27 a stranded costs recovery order, a bondable stranded costs rate order  
28 or both; and (3) the costs incurred to issue, service or refinance  
29 transition bonds, including interest, acquisition or redemption  
30 premium, and other financing costs, whether paid upon issuance or  
31 over the life of the transition bonds, including, but not limited to,  
32 credit enhancements, service charges, overcollateralization, interest  
33 rate cap, swap or collar, yield maintenance, maturity guarantee or  
34 other hedging agreements, equity investments, operating costs and  
35 other related fees, costs and charges, or to assign, sell or otherwise  
36 transfer bondable transition property;

37 "Bondable stranded costs rate order" means one or more  
38 irrevocable written orders issued by the board pursuant to P.L.1999,  
39 c.23 (C.48:3-49 et al.) which determines the amount of bondable  
40 stranded costs and the initial amount of transition bond charges  
41 authorized to be imposed to recover such bondable stranded costs,  
42 including the costs to be financed from the proceeds of the  
43 transition bonds, as well as on-going costs associated with servicing  
44 and credit enhancing the transition bonds, and provides the electric  
45 public utility specific authority to issue or cause to be issued,  
46 directly or indirectly, transition bonds through a financing entity  
47 and related matters as provided in P.L.1999, c.23, which order shall

1 become effective immediately upon the written consent of the  
2 related electric public utility to such order as provided in P.L.1999,  
3 c.23;

4 "Bondable transition property" means the property consisting of  
5 the irrevocable right to charge, collect and receive, and be paid  
6 from collections of, transition bond charges in the amount necessary  
7 to provide for the full recovery of bondable stranded costs which  
8 are determined to be recoverable in a bondable stranded costs rate  
9 order, all rights of the related electric public utility under such  
10 bondable stranded costs rate order including, without limitation, all  
11 rights to obtain periodic adjustments of the related transition bond  
12 charges pursuant to subsection b. of section 15 of P.L.1999, c.23  
13 (C.48:3-64), and all revenues, collections, payments, money and  
14 proceeds arising under, or with respect to, all of the foregoing;

15 "British thermal unit" or "Btu" means the amount of heat  
16 required to increase the temperature of one pound of water by one  
17 degree Fahrenheit;

18 "Broker" means a duly licensed electric power supplier that  
19 assumes the contractual and legal responsibility for the sale of  
20 electric generation service, transmission or other services to end-use  
21 retail customers, but does not take title to any of the power sold, or  
22 a duly licensed gas supplier that assumes the contractual and legal  
23 obligation to provide gas supply service to end-use retail customers,  
24 but does not take title to the gas;

25 "Buydown" means an arrangement or arrangements involving the  
26 buyer and seller in a given power purchase contract and, in some  
27 cases third parties, for consideration to be given by the buyer in  
28 order to effectuate a reduction in the pricing, or the restructuring of  
29 other terms to reduce the overall cost of the power contract, for the  
30 remaining succeeding period of the purchased power arrangement  
31 or arrangements;

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

36 "Class I renewable energy" means electric energy produced from  
37 solar technologies, photovoltaic technologies, wind energy, fuel  
38 cells, geothermal technologies, wave or tidal action, and methane  
39 gas from landfills or a biomass facility, provided that the biomass is  
40 cultivated and harvested in a sustainable manner;

41 "Class II renewable energy" means electric energy produced at a  
42 resource recovery facility or hydropower facility, provided that  
43 such facility is located where retail competition is permitted and  
44 provided further that the Commissioner of Environmental  
45 Protection has determined that such facility meets the highest  
46 environmental standards and minimizes any impacts to the  
47 environment and local communities;

1       "Co-generation" means the sequential production of electricity  
2 and steam or other forms of useful energy used for industrial or  
3 commercial heating and cooling purposes;

4       "Combined heat and power facility" <sup>1</sup>or "co-generation facility"<sup>1</sup>  
5 means a <sup>1</sup>generation<sup>1</sup> facility which produces electric energy,  
6 steam<sup>1</sup>,<sup>1</sup> or other forms of useful energy such as heat, which are  
7 used for industrial<sup>1</sup>[,] or<sup>1</sup> commercial<sup>1</sup>[,]<sup>1</sup> heating or cooling  
8 purposes <sup>1</sup>. A combined heat and power facility or co-generation  
9 facility shall not be considered a public utility<sup>1</sup>;

10       "Competitive service" means any service offered by an electric  
11 public utility or a gas public utility that the board determines to be  
12 competitive pursuant to section 8 or section 10 of P.L.1999, c.23  
13 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

14       "Commercial and industrial energy pricing class customer" or  
15 "CIEP class customer" means that group of non-residential  
16 customers with high peak demand, as determined by periodic board  
17 order, which either is eligible or which would be eligible, as  
18 determined by periodic board order, to receive funds from the Retail  
19 Margin Fund established pursuant to section 9 of P.L.1999, c.23  
20 (C.48:3-57) and for which basic generation service is hourly-priced;

21       "Comprehensive resource analysis" means an analysis including,  
22 but not limited to, an assessment of existing market barriers to the  
23 implementation of energy efficiency and renewable technologies  
24 that are not or cannot be delivered to customers through a  
25 competitive marketplace;

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

30       "Customer account service" means metering, billing, or such  
31 other administrative activity associated with maintaining a customer  
32 account;

33       "Demand side management" means the management of customer  
34 demand for energy service through the implementation of cost-  
35 effective energy efficiency technologies, including, but not limited  
36 to, installed conservation, load management and energy efficiency  
37 measures on and in the residential, commercial, industrial,  
38 institutional and governmental premises and facilities in this State;

39       "Electric generation service" means the provision of retail  
40 electric energy and capacity which is generated off-site from the  
41 location at which the consumption of such electric energy and  
42 capacity is metered for retail billing purposes, including agreements  
43 and arrangements related thereto;

44       "Electric power generator" means an entity that proposes to  
45 construct, own, lease or operate, or currently owns, leases or  
46 operates, an electric power production facility that will sell or does  
47 sell at least 90 percent of its output, either directly or through a

1 marketer, to a customer or customers located at sites that are not on  
2 or contiguous to the site on which the facility will be located or is  
3 located. The designation of an entity as an electric power generator  
4 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in  
5 and of itself, affect the entity's status as an exempt wholesale  
6 generator under the Public Utility Holding Company Act of 1935,  
7 15 U.S.C.s.79 et seq.;

8 "Electric power supplier" means a person or entity that is duly  
9 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et  
10 al.) to offer and to assume the contractual and legal responsibility to  
11 provide electric generation service to retail customers, and includes  
12 load serving entities, marketers and brokers that offer or provide  
13 electric generation service to retail customers. The term excludes an  
14 electric public utility that provides electric generation service only  
15 as a basic generation service pursuant to section 9 of P.L.1999, c.23  
16 (C.48:3-57);

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

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

27 "Electronic signature" means an electronic sound, symbol or  
28 process, attached to, or logically associated with, a contract or other  
29 record, and executed or adopted by a person with the intent to sign  
30 the record;

31 "Energy agent" means a person that is duly registered pursuant to  
32 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the  
33 sale of retail electricity or electric related services or retail gas  
34 supply or gas related services between government aggregators or  
35 private aggregators and electric power suppliers or gas suppliers,  
36 but does not take title to the electric or gas sold;

37 "Energy consumer" means a business or residential consumer of  
38 electric generation service or gas supply service located within the  
39 territorial jurisdiction of a government aggregator;

40 "Financing entity" means an electric public utility, a special  
41 purpose entity, or any other assignee of bondable transition  
42 property, which issues transition bonds. Except as specifically  
43 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity  
44 which is not itself an electric public utility shall not be subject to  
45 the public utility requirements of Title 48 or any rules or regulations  
46 adopted pursuant thereto;



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

3 "Gas related service" means a service that is directly related to  
4 the consumption of gas by an end user, including, but not limited to,  
5 the installation of demand side management measures at the end  
6 user's premises, the maintenance, repair or replacement of  
7 appliances or other energy-consuming devices at the end user's  
8 premises, and the provision of energy consumption measurement  
9 and billing services;

10 "Gas supplier" means a person that is duly licensed pursuant to  
11 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and  
12 assume the contractual and legal obligation to provide gas supply  
13 service to retail customers, and includes, but is not limited to,  
14 marketers and brokers. A non-public utility affiliate of a public  
15 utility holding company may be a gas supplier, but a gas public  
16 utility or any subsidiary of a gas utility is not a gas supplier. In the  
17 event that a gas public utility is not part of a holding company legal  
18 structure, a related competitive business segment of that gas public  
19 utility may be a gas supplier, provided that related competitive  
20 business segment is structurally separated from the gas public  
21 utility, and provided that the interactions between the gas public  
22 utility and the related competitive business segment are subject to  
23 the affiliate relations standards adopted by the board pursuant to  
24 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

25 "Gas supply service" means the provision to customers of the  
26 retail commodity of gas, but does not include any regulated  
27 distribution service;

28 "Government aggregator" means any government entity subject  
29 to the requirements of the "Local Public Contracts Law," P.L.1971,  
30 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"  
31 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"  
32 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written  
33 contract with a licensed electric power supplier or a licensed gas  
34 supplier for: (1) the provision of electric generation service, electric  
35 related service, gas supply service, or gas related service for its own  
36 use or the use of other government aggregators; or (2) if a  
37 municipal or county government, the provision of electric  
38 generation service or gas supply service on behalf of business or  
39 residential customers within its territorial jurisdiction;

40 "Government energy aggregation program" means a program and  
41 procedure pursuant to which a government aggregator enters into a  
42 written contract for the provision of electric generation service or  
43 gas supply service on behalf of business or residential customers  
44 within its territorial jurisdiction;

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

1 "Market transition charge" means a charge imposed pursuant to  
2 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public  
3 utility, at a level determined by the board, on the electric public  
4 utility customers for a limited duration transition period to recover  
5 stranded costs created as a result of the introduction of electric  
6 power supply competition pursuant to the provisions of P.L.1999,  
7 c.23 (C.48:3-49 et al.);

8 "Marketer" means a duly licensed electric power supplier that  
9 takes title to electric energy and capacity, transmission and other  
10 services from electric power generators and other wholesale  
11 suppliers and then assumes the contractual and legal obligation to  
12 provide electric generation service, and may include transmission  
13 and other services, to an end-use retail customer or customers, or a  
14 duly licensed gas supplier that takes title to gas and then assumes  
15 the contractual and legal obligation to provide gas supply service to  
16 an end-use customer or customers;

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

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

21 "Off-site end use thermal energy services customer" means an  
22 end use customer that purchases thermal energy services from an  
23 on-site generation facility, combined heat and power facility, or co-  
24 generation facility, and that is located on property that is separated  
25 from the property on which the on-site generation facility,  
26 combined heat and power facility, or co-generation facility is  
27 located by more than one easement, public thoroughfare, or  
28 transportation or utility-owned right-of-way;<sup>1</sup>

29 "On-site generation facility" means a generation facility, and  
30 equipment and services appurtenant to electric sales by such facility  
31 to the end use customer located on the property or on property  
32 contiguous to the property on which the end user is located. An on-  
33 site generation facility shall not be considered a public utility. The  
34 property of the end use customer and the property on which the on-  
35 site generation facility is located shall be considered contiguous if  
36 they are geographically located next to each other, but may be  
37 otherwise separated by an easement, public thoroughfare,  
38 transportation or utility-owned right-of-way[;] , or if the end use  
39 customer is purchasing thermal energy services produced by the on-  
40 site generation facility, for use for heating <sup>1</sup>[, air conditioning] or  
41 cooling<sup>1</sup>, or both, regardless of <sup>1</sup>[any intervening property, public  
42 thoroughfare, or transportation or utility-owned right-of-way. To  
43 avoid duplication of required electrical infrastructure and to  
44 maximize economic efficiency and electrical safety, the delivery of  
45 electric power from an on-site generation facility to an end use  
46 customer's property that is not geographically located next to the  
47 facility, or is otherwise separated from the facility by an easement,

1 public thoroughfare, transportation or utility-owned right-of-way,  
2 shall utilize existing locally franchised public utility electric  
3 distribution infrastructure. The electric public utility having  
4 franchise rights within the geographical area involved shall provide  
5 electric delivery services at the standard prevailing tariff rate that is  
6 normally applicable to the individual end use thermal customer]  
7 whether the customer is located on property that is separated from  
8 the property on which the on-site generation facility is located by  
9 more than one easement, public thoroughfare, or transportation or  
10 utility-owned right-of-way<sup>1</sup>;

11 "Person" means an individual, partnership, corporation,  
12 association, trust, limited liability company, governmental entity or  
13 other legal entity;

14 "Private aggregator" means a non-government aggregator that is  
15 a duly-organized business or non-profit organization authorized to  
16 do business in this State that enters into a contract with a duly  
17 licensed electric power supplier for the purchase of electric energy  
18 and capacity, or with a duly licensed gas supplier for the purchase  
19 of gas supply service, on behalf of multiple end-use customers by  
20 combining the loads of those customers;

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

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

45 "Related competitive business segment of an electric public  
46 utility or gas public utility" means any business venture of an  
47 electric public utility or gas public utility including, but not limited

1 to, functionally separate business units, joint ventures, and  
2 partnerships, that offers to provide or provides competitive services;

3 "Related competitive business segment of a public utility holding  
4 company" means any business venture of a public utility holding  
5 company, including, but not limited to, functionally separate  
6 business units, joint ventures, and partnerships and subsidiaries, that  
7 offers to provide or provides competitive services, but does not  
8 include any related competitive business segments of an electric  
9 public utility or gas public utility;

10 "Resource recovery facility" means a solid waste facility  
11 constructed and operated for the incineration of solid waste for  
12 energy production and the recovery of metals and other materials  
13 for reuse;

14 "Restructuring related costs" means reasonably incurred costs  
15 directly related to the restructuring of the electric power industry,  
16 including the closure, sale, functional separation and divestiture of  
17 generation and other competitive utility assets by a public utility, or  
18 the provision of competitive services as such costs are determined  
19 by the board, and which are not stranded costs as defined in  
20 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited  
21 to, investments in management information systems, and which  
22 shall include expenses related to employees affected by  
23 restructuring which result in efficiencies and which result in  
24 benefits to ratepayers, such as training or retraining at the level  
25 equivalent to one year's training at a vocational or technical school  
26 or county community college, the provision of severance pay of two  
27 weeks of base pay for each year of full-time employment, and a  
28 maximum of 24 months' continued health care coverage. Except as  
29 to expenses related to employees affected by restructuring,  
30 "restructuring related costs" shall not include going forward costs;

31 "Retail choice" means the ability of retail customers to shop for  
32 electric generation or gas supply service from electric power or gas  
33 suppliers, or opt to receive basic generation service or basic gas  
34 service, and the ability of an electric power or gas supplier to offer  
35 electric generation service or gas supply service to retail customers,  
36 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

37 "Retail margin" means an amount, reflecting differences in  
38 prices that electric power suppliers and electric public utilities may  
39 charge in providing electric generation service and basic generation  
40 service, respectively, to retail customers, excluding residential  
41 customers, which the board may authorize to be charged to  
42 categories of basic generation service customers of electric public  
43 utilities in this State, other than residential customers, under the  
44 board's continuing regulation of basic generation service pursuant to  
45 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
46 purpose of promoting a competitive retail market for the supply of  
47 electricity;

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

5 "Social program" means a program implemented with board  
6 approval to provide assistance to a group of disadvantaged  
7 customers, to provide protection to consumers, or to accomplish a  
8 particular societal goal, and includes, but is not limited to, the  
9 winter moratorium program, utility practices concerning "bad debt"  
10 customers, low income assistance, deferred payment plans,  
11 weatherization programs, and late payment and deposit policies, but  
12 does not include any demand side management program or any  
13 environmental requirements or controls;

14 "Societal benefits charge" means a charge imposed by an electric  
15 public utility, at a level determined by the board, pursuant to, and in  
16 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

17 "Stranded cost" means the amount by which the net cost of an  
18 electric public utility's electric generating assets or electric power  
19 purchase commitments, as determined by the board consistent with  
20 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the  
21 market value of those assets or contractual commitments in a  
22 competitive supply marketplace and the costs of buydowns or  
23 buyouts of power purchase contracts;

24 "Stranded costs recovery order" means each order issued by the  
25 board in accordance with subsection c. of section 13 of P.L.1999,  
26 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if  
27 any, the board has determined an electric public utility is eligible to  
28 recover and collect in accordance with the standards set forth in  
29 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery  
30 mechanisms therefor;

31 "Thermal efficiency" means the useful electric energy output of a  
32 facility, plus the useful thermal energy output of the facility,  
33 expressed as a percentage of the total energy input to the facility;

34 "Transition bond charge" means a charge, expressed as an  
35 amount per kilowatt hour, that is authorized by and imposed on  
36 electric public utility ratepayers pursuant to a bondable stranded  
37 costs rate order, as modified at any time pursuant to the provisions  
38 of P.L.1999, c.23 (C.48:3-49 et al.);

39 "Transition bonds" means bonds, notes, certificates of  
40 participation or beneficial interest or other evidences of  
41 indebtedness or ownership issued pursuant to an indenture, contract  
42 or other agreement of an electric public utility or a financing entity,  
43 the proceeds of which are used, directly or indirectly, to recover,  
44 finance or refinance bondable stranded costs and which are, directly  
45 or indirectly, secured by or payable from bondable transition  
46 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to  
47 principal, interest, and acquisition or redemption premium with

1 respect to transition bonds which are issued in the form of  
2 certificates of participation or beneficial interest or other evidences  
3 of ownership shall refer to the comparable payments on such  
4 securities;

5 "Transition period" means the period from August 1, 1999  
6 through July 31, 2003;

7 "Transmission and distribution system" means, with respect to an  
8 electric public utility, any facility or equipment that is used for the  
9 transmission, distribution or delivery of electricity to the customers  
10 of the electric public utility including, but not limited to, the land,  
11 structures, meters, lines, switches and all other appurtenances  
12 thereof and thereto, owned or controlled by the electric public  
13 utility within this State; and

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

17 (cf: P.L.2009, c.34, s.1)

18

19 <sup>1</sup>[2.(New section) a. Whenever an on-site generation facility  
20 produces power that is not consumed by the on-site customer, and  
21 that power is delivered to an off-site end use customer in this State,  
22 all of the charges listed in paragraphs (1) through (3) of this  
23 subsection shall be levied on the sale or delivery of such power to  
24 the off-site customer:

25 (1) the societal benefits charge or its equivalent, imposed  
26 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

27 (2) the market transition charge or its equivalent, imposed  
28 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

29 (3) the transition bond charge or its equivalent, imposed  
30 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

31 b. Except as provided in subsection c. of this section, upon a  
32 determination by the board that the power generated by an on-site  
33 generation facility that was installed subsequent to the starting date  
34 of retail competition as provided in subsection a. of section 5 of  
35 P.L.1999, c.23 (C.48:3-53) has, in the aggregate, displaced  
36 customer purchases from an electric public utility by an amount  
37 such that the kilowatt hours distributed by the electric public utility  
38 have been reduced to an amount equal to 92.5 percent of the  
39 kilowatt hours distributed by the electric public utility in calendar  
40 year 1999, the board shall impose the charges listed in paragraphs  
41 (1) through (3) of this subsection on the on-site customer of the on-  
42 site generation facilities:

43 (1) the societal benefits charge or its equivalent, imposed  
44 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

45 (2) the market transition charge or its equivalent, imposed  
46 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

47 (3) the transition bond charge or its equivalent, imposed

1 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

2 None of the charges listed in paragraphs (1) through (3) of this  
3 subsection shall be levied on the sale or delivery of power to the on-  
4 site customer by an on-site generation facility that occurred prior to  
5 the date of the board's determination with regard to the facility  
6 serving that customer pursuant to this subsection.

7 c. A societal benefits charge, market transition charge, and  
8 transition bond charge, or their equivalent, shall not be imposed on  
9 the sale or delivery of power to an on-site customer that is derived  
10 from the on-site generation facility serving that customer if:

11 (1) the on-site customer or its agent installed the on-site  
12 generation facility, or expanded such a facility, prior to the effective  
13 date of P.L.1999, c.23 (C.48:3-49 et al.), for the continued on-site  
14 power consumption by the same on-site customer and such power  
15 consumption by that on-site customer occurs after the effective date  
16 of P.L.1999, c.23 (C.48:3-49 et al.); or

17 (2) the on-site customer or its agent has made, on or before the  
18 effective date of P.L.1999, c.23 (C.48:3-49 et al.), substantial  
19 financial and contractual commitments in planning and  
20 development, including any expansion of such a facility and having  
21 applied for any appropriate air permit from the Department of  
22 Environmental Protection, for the continued provision of on-site  
23 power consumption by the same on-site customer that occurs after  
24 the effective date of P.L.1999, c.23 (C.48:3-49 et al.).<sup>1</sup>

25

26 <sup>1</sup>2. Section 28 of P.L.1999, c.23 (C.48:3-77) is amended to read  
27 as follows:

28 28. a. Whenever an on-site generation facility produces power  
29 that is not consumed by the on-site customer, and that power is  
30 delivered to an off-site end-use customer in this State, all the  
31 following charges shall apply to the sale or delivery of such power  
32 to the off-site customer:

33 (1) The societal benefits charge or its equivalent, imposed  
34 pursuant to section 12 of **[this act] P.L.1999, c.23 (C.48:3-60)**;

35 (2) The market transition charge or its equivalent, imposed  
36 pursuant to section 13 of **[this act] P.L.1999, c.23 (C.48:3-61)**; and

37 (3) The transition bond charge or its equivalent, imposed  
38 pursuant to section 18 of **[this act] P.L.1999, c.23 (C.48:3-67)**.

39 b. None of the following charges shall be imposed on the  
40 electricity sold solely to the on-site customer of an on-site  
41 generating facility, except pursuant to subsection c. of this section:

42 (1) The societal benefits charge or its equivalent, imposed  
43 pursuant to section 12 of **[this act] P.L.1999, c.23 (C.48:3-60)**;

44 (2) The market transition charge or its equivalent, imposed  
45 pursuant to section 13 of **[this act] P.L.1999, c.23 (C.48:3-61)**; and

46 (3) The transition bond charge or its equivalent, imposed  
47 pursuant to section 18 of **[this act] P.L.1999, c.23 (C.48:3-67)**.

1 c. Upon finding that generation from on-site generation facilities  
2 installed subsequent to the starting date of retail competition as  
3 provided in subsection a. of section 5 of **[this act] P.L.1999, c.23**  
4 (C.48:3-53) has, in the aggregate, displaced customer purchases  
5 from an electric public utility by an amount such that the kilowatt  
6 hours distributed by the electric public utility have been reduced to  
7 an amount equal to 92.5 percent of the 1999 kilowatt hours  
8 distributed by the electric public utility, the board shall impose,  
9 except as provided in subsection d. of this section, the charges listed  
10 in subsections a., b., and c. of this section on the on-site customer.  
11 Such charges shall not be levied on any power consumption that is  
12 displaced by an on-site generation facility that is installed before  
13 the date of such finding:

14 (1) The societal benefits charge or its equivalent, imposed  
15 pursuant to section 12 of **[this act] P.L.1999, c.23 (C.48:3-60)**;

16 (2) The market transition charge or its equivalent, imposed  
17 pursuant to section 13 of **[this act] P.L.1999, c.23 (C.48:3-61)**; and

18 (3) The transition bond charge or its equivalent, imposed  
19 pursuant to section 18 of **[this act] P.L.1999, c.23 (C.48:3-67)**.

20 d. Notwithstanding the provisions of subsection c. of this  
21 section, a charge shall not be imposed on power consumption by the  
22 on-site customer that is derived from an on-site generation facility:

23 (1) That the on-site customer or its agent installed on or before  
24 the effective date of **[this act] P.L.1999, c.23 (C.48:3-49 et al.)**,  
25 including any expansion of such a facility for the continued  
26 provision of on-site power consumption by the same on-site  
27 customer that occurs after the effective date of **[this act] P.L.1999,**  
28 **c.23**; or

29 (2) For which the on-site customer or its agent has made, on or  
30 before the effective date of **[this act] P.L.1999, c.23 (C.48:3-49 et**  
31 **al.)**, substantial financial and contractual commitments in planning  
32 and development, including having applied for any appropriate air  
33 permit from the Department of Environmental Protection, including  
34 any expansion of such a facility for the continued provision of on-  
35 site power consumption by the same on-site customer that occurs  
36 after the effective date of **[this act] P.L.1999, c.23**.

37 e. A societal benefits charge, market transition charge, transition  
38 bond charge, and transitional energy facilities assessment or their  
39 equivalent, shall be imposed on the sale or delivery of power to an  
40 off-site end use thermal energy services customer that is derived  
41 from the on-site generation facility serving that customer.<sup>1</sup>

42 (cf: P.L.1999, c.23, s.28)

43

44 3. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to  
45 read as follows:



1       26. a. Receipts from the sale, exchange, delivery or use of  
2 electricity are exempt from the tax imposed under the **【Sales and**  
3 **Use Tax Act】** "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1  
4 et seq.) if the electricity:

5       (1) (a) Is sold by a municipal electric corporation in existence as  
6 of December 31, 1995 and used within its municipal boundaries  
7 except if the customer is located within a franchise area served by  
8 an electric public utility other than the municipal electric  
9 corporation. If a municipal electric corporation makes sales of  
10 electricity used outside of its municipal boundaries or within a  
11 franchise area served by an electric public utility other than the  
12 municipal electric corporation, then receipts from those sales of  
13 electricity by the municipal electric corporation shall be subject to  
14 tax under P.L.1966, c.30; or

15       (b) Is sold by a municipal electric utility in existence as of  
16 December 31, 1995, and used within its municipal boundaries.  
17 However, a municipal electric utility's receipts from the sale,  
18 exchange, delivery or use of electricity used by customers outside  
19 of its municipal boundaries and within its franchise area existing as  
20 of December 31, 1995 shall be subject to tax. If a municipal  
21 electric utility makes sales of electricity used outside of its  
22 franchise area existing as of December 31, 1995, then receipts from  
23 those sales of electricity by the municipal electric utility shall be  
24 subject to tax under P.L.1966, c.30;

25       (2) Was generated by a facility located on the user's property or  
26 property purchased or leased from the user by the person owning  
27 the generation facility and such property is contiguous to the user's  
28 property, and the electricity was consumed by the one on-site end  
29 user on the user's property, and was not transported to the user over  
30 wires that cross a property line or public thoroughfare unless the  
31 property line or public thoroughfare merely bifurcated the user's or  
32 generation facility owner's otherwise contiguous property or the  
33 electricity was consumed by an affiliated user on the same site, or  
34 by a non-affiliated user on the same site with an electric distribution  
35 system which is integrated and interconnected with the user on or  
36 before March 10, 1997; the director may promulgate rules and  
37 regulations and issue guidance with respect to all issues related to  
38 affiliated users; or

39       (3) Is sold for resale.

40       For the purpose of electric sales by an on-site generation facility  
41 pursuant to this subsection, an end use customer's property shall be  
42 considered contiguous to the property on which the on-site  
43 generation facility serving that customer is located if the customer  
44 is purchasing thermal energy services produced by the facility, for  
45 use for heating <sup>1</sup>【, air conditioning】 or cooling<sup>1</sup> , or both,  
46 regardless of any intervening property, public thoroughfare, or  
47 transportation<sup>1</sup>【,】<sup>1</sup> or utility-owned right-of-way.

1 The State Treasurer shall monitor monies deposited into the  
2 Energy Tax Receipts Property Tax Relief Fund on an annual basis  
3 and may report the results of the State Treasurer's analysis on the  
4 fund to the Governor and the Legislature, along with any  
5 recommendations on the exemptions in this subsection.

6 b. Receipts from the purchase or use of the following are exempt  
7 from the tax imposed under the **[Sales and Use Tax Act]** "Sales and  
8 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.):

9 (1) Natural gas or utility service that is used to generate  
10 electricity that is sold for resale or to an end user other than the end  
11 user upon whose property is located a co-generation facility or self-  
12 generation unit that generated the electricity or upon the property  
13 purchased or leased from the end user by the person owning the co-  
14 generation facility or self-generation unit if such property is  
15 contiguous to the user's property and is the property upon which is  
16 located a co-generation facility or self-generation unit that  
17 generated the electricity; <sup>1</sup>**[and]**<sup>1</sup>

18 (2) Natural gas and utility service that is used for co-generation  
19 at any site **[at which a co-generation facility was in operation on or**  
20 **before March 10, 1997, or for which an application for an operating**  
21 **permit or a construction permit and a certificate of operation in**  
22 **order to comply with air quality standards under P.L.1954, c.212**  
23 **(C.26:2C-1 et seq.) has been filed with the Department of**  
24 **Environmental Protection on or before March 10, 1997, to produce**  
25 **electricity for use on that site]**<sup>1</sup>**.]** at which a co-generation facility  
26 was in operation on or before March 10, 1997, or for which an  
27 application for an operating permit or a construction permit and a  
28 certificate of operation in order to comply with air quality standards  
29 under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the  
30 Department of Environmental Protection on or before March 10,  
31 1997, to produce electricity for use on that site; and

32 (3) Natural gas and utility service that is used for co-generation  
33 at a co-generation facility that is constructed after January 1, 2010.

34 c. Notwithstanding any provisions of this section to the contrary,  
35 any co-generation facility that was in operation prior to January 1,  
36 2010 and was subject to the tax imposed under the "Sales and Use  
37 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) for the purchase and  
38 use of natural gas and utility service for co-generation purposes  
39 shall continue to be subject to, and responsible for payment of, such  
40 tax after the effective date of P.L. , c. (C. ) (pending before  
41 the Legislature as this bill).<sup>1</sup>

42 (cf: P.L.1999, c.23, s.62)

43  
44 <sup>1</sup>4. (New section) In order to avoid duplication of existing  
45 public utility electric distribution infrastructure, and to maximize  
46 economic efficiency and electrical safety, delivery of electric power  
47 from an on-site generation facility to an off-site end use thermal

1 energy services customer as defined in section 3 of P.L.1999, c.23  
2 (C.48:3-51), shall utilize the existing locally franchised public  
3 utility electric distribution infrastructure. The New Jersey electric  
4 public utility having franchise rights to provide electric delivery  
5 services within the municipality shall provide electric delivery  
6 services at the standard prevailing tariff rate that is normally  
7 applicable to the individual off-site end use thermal energy services  
8 customer.<sup>1</sup>  
9  
10 <sup>1</sup>[4.] 5.<sup>1</sup> This act shall take effect immediately.

# ASSEMBLY, No. 3339

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 23, 2008

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Concerns on-site generation facilities.

**CURRENT VERSION OF TEXT**

As introduced.



A3339 CHIVUKULA

2

1 AN ACT concerning on-site generation facilities, amending and  
2 supplementing P.L.1999, c.23, and amending P.L.1997, c.162.

3

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

6

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

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or  
11 another assignee assigns, sells or transfers, other than as security,  
12 all or a portion of its right to or interest in bondable transition  
13 property. Except as specifically provided in **[this act]** P.L.1999,  
14 c.23 (C.48:3-49 et al.), an assignee shall not be subject to the public  
15 utility requirements of Title 48 or any rules or regulations adopted  
16 pursuant thereto;

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

24 "Basic generation service" means electric generation service that  
25 is provided, pursuant to section 9 of **[this act]** P.L.1999, c.23  
26 (C.48:3-57), to any customer that has not chosen an alternative  
27 electric power supplier, whether or not the customer has received  
28 offers as to competitive supply options, including, but not limited  
29 to, any customer that cannot obtain such service from an electric  
30 power supplier for any reason, including non-payment for services.  
31 Basic generation service is not a competitive service and shall be  
32 fully regulated by the board;

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

**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.

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

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

11 "Bondable stranded costs" means any stranded costs or basic  
12 generation service transition costs of an electric public utility  
13 approved by the board for recovery pursuant to the provisions of  
14 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), together with, as  
15 approved by the board: (1) the cost of retiring existing debt or  
16 equity capital of the electric public utility, including accrued  
17 interest, premium and other fees, costs and charges relating thereto,  
18 with the proceeds of the financing of bondable transition property;  
19 (2) if requested by an electric public utility in its application for a  
20 bondable stranded costs rate order, federal, State and local tax  
21 liabilities associated with stranded costs recovery or basic  
22 generation service transition cost recovery or the transfer or  
23 financing of such property or both, including taxes, whose recovery  
24 period is modified by the effect of a stranded costs recovery order, a  
25 bondable stranded costs rate order or both; and (3) the costs  
26 incurred to issue, service or refinance transition bonds, including  
27 interest, acquisition or redemption premium, and other financing  
28 costs, whether paid upon issuance or over the life of the transition  
29 bonds, including, but not limited to, credit enhancements, service  
30 charges, overcollateralization, interest rate cap, swap or collar, yield  
31 maintenance, maturity guarantee or other hedging agreements,  
32 equity investments, operating costs and other related fees, costs and  
33 charges, or to assign, sell or otherwise transfer bondable transition  
34 property;

35 "Bondable stranded costs rate order" means one or more  
36 irrevocable written orders issued by the board pursuant to **[this act]**  
37 P.L.1999, c.23 (C.48:3-49 et al.) which determines the amount of  
38 bondable stranded costs and the initial amount of transition bond  
39 charges authorized to be imposed to recover such bondable stranded  
40 costs, including the costs to be financed from the proceeds of the  
41 transition bonds, as well as on-going costs associated with servicing  
42 and credit enhancing the transition bonds, and provides the electric  
43 public utility specific authority to issue or cause to be issued,  
44 directly or indirectly, transition bonds through a financing entity  
45 and related matters as provided in **[this act]** P.L.1999, c.23, which  
46 order shall become effective immediately upon the written consent  
47 of the related electric public utility to such order as provided in  
48 **[this act]** P.L.1999, c.23;

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1 "Bondable transition property" means the property consisting of  
2 the irrevocable right to charge, collect and receive, and be paid  
3 from collections of, transition bond charges in the amount necessary  
4 to provide for the full recovery of bondable stranded costs which  
5 are determined to be recoverable in a bondable stranded costs rate  
6 order, all rights of the related electric public utility under such  
7 bondable stranded costs rate order including, without limitation, all  
8 rights to obtain periodic adjustments of the related transition bond  
9 charges pursuant to subsection b. of section 15 of **[this act]**  
10 P.L.1999, c.23 (C.48:3-64), and all revenues, collections, payments,  
11 money and proceeds arising under, or with respect to, all of the  
12 foregoing;

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

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

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

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

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

43 "Competitive service" means any service offered by an electric  
44 public utility or a gas public utility that the board determines to be  
45 competitive pursuant to section 8 or section 10 of **[this act]**  
46 P.L.1999, c.23 (C.48:3-56 or C.48:3-58) or that is not regulated by  
47 the board;

1 "Comprehensive resource analysis" means an analysis including,  
2 but not limited to, an assessment of existing market barriers to the  
3 implementation of energy efficiency and renewable technologies  
4 that are not or cannot be delivered to customers through a  
5 competitive marketplace;

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

10 "Customer account service" means metering, billing, or such  
11 other administrative activity associated with maintaining a customer  
12 account;

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

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

24 "Electric power generator" means an entity that proposes to  
25 construct, own, lease or operate, or currently owns, leases or  
26 operates, an electric power production facility that will sell or does  
27 sell at least 90 percent of its output, either directly or through a  
28 marketer, to a customer or customers located at sites that are not on  
29 or contiguous to the site on which the facility will be located or is  
30 located. The designation of an entity as an electric power generator  
31 for the purposes of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) shall  
32 not, in and of itself, affect the entity's status as an exempt wholesale  
33 generator under the Public Utility Holding Company Act of 1935,  
34 15 U.S.C. s.79 et seq.;

35 "Electric power supplier" means a person or entity that is duly  
36 licensed pursuant to the provisions of **[this act]** P.L.1999, c.23  
37 (C.48:3-49 et al.) to offer and to assume the contractual and legal  
38 responsibility to provide electric generation service to retail  
39 customers, and includes load serving entities, marketers and brokers  
40 that offer or provide electric generation service to retail customers.  
41 The term excludes an electric public utility that provides electric  
42 generation service only as a basic generation service pursuant to  
43 section 9 of **[this act]** P.L.1999, c.23 (C.48:3-57);

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

47 "Electric related service" means a service that is directly related  
48 to the consumption of electricity by an end user, including, but not



1 limited to, the installation of demand side management measures at  
2 the end user's premises, the maintenance, repair or replacement of  
3 appliances, lighting, motors or other energy-consuming devices at  
4 the end user's premises, and the provision of energy consumption  
5 measurement and billing services;

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

10 "Energy agent" means a person that is duly registered pursuant to  
11 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), that  
12 arranges the sale of retail electricity or electric related services or  
13 retail gas supply or gas related services between government  
14 aggregators or private aggregators and electric power suppliers or  
15 gas suppliers, but does not take title to the electric or gas sold;

16 "Energy consumer" means a business or residential consumer of  
17 electric generation service or gas supply service located within the  
18 territorial jurisdiction of a government aggregator;

19 "Financing entity" means an electric public utility, a special  
20 purpose entity, or any other assignee of bondable transition  
21 property, which issues transition bonds. Except as specifically  
22 provided in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), a financing  
23 entity which is not itself an electric public utility shall not be  
24 subject to the public utility requirements of Title 48 or any rules or  
25 regulations adopted pursuant thereto;

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

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

35 "Gas supplier" means a person that is duly licensed pursuant to  
36 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) to offer  
37 and assume the contractual and legal obligation to provide gas  
38 supply service to retail customers, and includes, but is not limited  
39 to, marketers and brokers. A non-public utility affiliate of a public  
40 utility holding company may be a gas supplier, but a gas public  
41 utility or any subsidiary of a gas utility is not a gas supplier. In the  
42 event that a gas public utility is not part of a holding company legal  
43 structure, a related competitive business segment of that gas public  
44 utility may be a gas supplier, provided that related competitive  
45 business segment is structurally separated from the gas public  
46 utility, and provided that the interactions between the gas public  
47 utility and the related competitive business segment are subject to

1 the affiliate relations standards adopted by the board pursuant to  
2 subsection k. of section 10 of **[this act]** P.L.1999, c.23 (C.48:3-58);

3 "Gas supply service" means the provision to customers of the  
4 retail commodity of gas, but does not include any regulated  
5 distribution service;

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

18 "Government energy aggregation program" means a program and  
19 procedure pursuant to which a government aggregator enters into a  
20 written contract for the provision of electric generation service or  
21 gas supply service on behalf of business or residential customers  
22 within its territorial jurisdiction;

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

26 "Market transition charge" means a charge imposed pursuant to  
27 section 13 of **[this act]** P.L.1999, c.23 (C.48:3-61) by an electric  
28 public utility, at a level determined by the board, on the electric  
29 public utility customers for a limited duration transition period to  
30 recover stranded costs created as a result of the introduction of  
31 electric power supply competition pursuant to the provisions of  
32 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

33 "Marketer" means a duly licensed electric power supplier that  
34 takes title to electric energy and capacity, transmission and other  
35 services from electric power generators and other wholesale  
36 suppliers and then assumes contractual and legal obligation to  
37 provide electric generation service, and may include transmission  
38 and other services, to an end-use retail customer or customers, or a  
39 duly licensed gas supplier that takes title to gas and then assumes  
40 the contractual and legal obligation to provide gas supply service to  
41 an end-use customer or customers;

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

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

46 "On-site generation facility" means a generation facility, and  
47 equipment and services appurtenant to electric sales by such facility  
48 to the end use customer located on the property or on property

1 contiguous to the property on which the end user is located. An on-  
2 site generation facility shall not be considered a public utility. The  
3 property of the end use customer and the property on which the on-  
4 site generation facility is located shall be considered contiguous if  
5 they are geographically located next to each other, but may be  
6 otherwise separated by an easement, public thoroughfare,  
7 transportation or utility-owned right-of-way, or if the end use  
8 customer is purchasing thermal energy services produced by the on-  
9 site generation facility, for use for heating, air conditioning, or both,  
10 regardless of any intervening property, public thoroughfare, or  
11 transportation or utility-owned right-of-way.

12 "Person" means an individual, partnership, corporation,  
13 association, trust, limited liability company, governmental entity or  
14 other legal entity;

15 "Private aggregator" means a non-government aggregator that is  
16 a duly-organized business or non-profit organization authorized to  
17 do business in this State that enters into a contract with a duly  
18 licensed electric power supplier for the purchase of electric energy  
19 and capacity, or with a duly licensed gas supplier for the purchase  
20 of gas supply service, on behalf of multiple end-use customers by  
21 combining the loads of those customers;

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

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

46 "Related competitive business segment of an electric public  
47 utility or gas public utility" means any business venture of an  
48 electric public utility or gas public utility including, but not limited

1 to, functionally separate business units, joint ventures, and  
2 partnerships, that offers to provide or provides competitive services;

3 "Related competitive business segment of a public utility holding  
4 company" means any business venture of a public utility holding  
5 company, including, but not limited to, functionally separate  
6 business units, joint ventures, and partnerships and subsidiaries, that  
7 offers to provide or provides competitive services, but does not  
8 include any related competitive business segments of an electric  
9 public utility or gas public utility;

10 "Resource recovery facility" means a solid waste facility  
11 constructed and operated for the incineration of solid waste for  
12 energy production and the recovery of metals and other materials  
13 for reuse;

14 "Restructuring related costs" means reasonably incurred costs  
15 directly related to the restructuring of the electric power industry,  
16 including the closure, sale, functional separation and divestiture of  
17 generation and other competitive utility assets by a public utility, or  
18 the provision of competitive services as such costs are determined  
19 by the board, and which are not stranded costs as defined in [this  
20 act] P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be  
21 limited to, investments in management information systems, and  
22 which shall include expenses related to employees affected by  
23 restructuring which result in efficiencies and which result in  
24 benefits to ratepayers, such as training or retraining at the level  
25 equivalent to one year's training at a vocational or technical school  
26 or county community college, the provision of severance pay of two  
27 weeks of base pay for each year of full-time employment, and a  
28 maximum of 24 months' continued health care coverage. Except as  
29 to expenses related to employees affected by restructuring,  
30 "restructuring related costs" shall not include going forward costs;

31 "Retail choice" means the ability of retail customers to shop for  
32 electric generation or gas supply service from electric power or gas  
33 suppliers, or opt to receive basic generation service or basic gas  
34 service, and the ability of an electric power or gas supplier to offer  
35 electric generation service or gas supply service to retail customers,  
36 consistent with the provisions of [this act] P.L.1999, c.23 (C.48:3-  
37 49 et al.);

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

42 "Social program" means a program implemented with board  
43 approval to provide assistance to a group of disadvantaged  
44 customers, to provide protection to consumers, or to accomplish a  
45 particular societal goal, and includes, but is not limited to, the  
46 winter moratorium program, utility practices concerning "bad debt"  
47 customers, low income assistance, deferred payment plans,  
48 weatherization programs, and late payment and deposit policies, but

1 does not include any demand side management program or any  
2 environmental requirements or controls;

3 "Societal benefits charge" means a charge imposed by an electric  
4 public utility, at a level determined by the board, pursuant to, and in  
5 accordance with, section 12 of **[this act]** P.L.1999, c.23 (C.48:3-  
6 60);

7 "Stranded cost" means the amount by which the net cost of an  
8 electric public utility's electric generating assets or electric power  
9 purchase commitments, as determined by the board consistent with  
10 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.),  
11 exceeds the market value of those assets or contractual  
12 commitments in a competitive supply marketplace and the costs of  
13 buydowns or buyouts of power purchase contracts;

14 "Stranded costs recovery order" means each order issued by the  
15 board in accordance with subsection c. of section 13 of **[this act]**  
16 P.L.1999, c.23 (C.48:3-61) which sets forth the amount of stranded  
17 costs, if any, the board has determined an electric public utility is  
18 eligible to recover and collect in accordance with the standards set  
19 forth in section 13 of P.L.1999, c.23 and the recovery mechanisms  
20 therefore;

21 "Transition bond charge" means a charge, expressed as an  
22 amount per kilowatt hour, that is authorized by and imposed on  
23 electric public utility ratepayers pursuant to a bondable stranded  
24 costs rate order, as modified at any time pursuant to the provisions  
25 of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

26 "Transition bonds" means bonds, notes, certificates of  
27 participation or beneficial interest or other evidences of  
28 indebtedness or ownership issued pursuant to an indenture, contract  
29 or other agreement of an electric public utility or a financing entity,  
30 the proceeds of which are used, directly or indirectly, to recover,  
31 finance or refinance bondable stranded costs and which are, directly  
32 or indirectly, secured by or payable from bondable transition  
33 property. References in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.)  
34 to principal, interest, and acquisition or redemption premium with  
35 respect to transition bonds which are issued in the form of  
36 certificates of participation or beneficial interest or other evidences  
37 of ownership shall refer to the comparable payments on such  
38 securities;

39 "Transition period" means the period from August 1, 1999  
40 through July 31, 2003;

41 "Transmission and distribution system" means, with respect to an  
42 electric public utility, any facility or equipment that is used for the  
43 transmission, distribution or delivery of electricity to the customers  
44 of the electric public utility including, but not limited to, the land,  
45 structures, meters, lines, switches and all other appurtenances  
46 thereof and thereto, owned or controlled by the electric public  
47 utility within this State; and

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

3 "Universal service" means any service approved by the board  
4 with the purpose of assisting low-income residential customers in  
5 obtaining or retaining electric generation or delivery service.  
6 (cf: P.L.2002, c.84, s.1)

7

8 2. (New section) a. Whenever an on-site generation facility  
9 produces power that is not consumed by the on-site customer, and  
10 that power is delivered to an off-site end use customer in this State,  
11 all of the charges listed in paragraphs (1) through (3) of this  
12 subsection shall be levied on the sale or delivery of such power to  
13 the off-site customer:

14 (1) the societal benefits charge or its equivalent, imposed  
15 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

16 (2) the market transition charge or its equivalent, imposed  
17 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

18 (3) the transition bond charge or its equivalent, imposed  
19 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

20 b. Except as provided in subsection c. of this section, upon a  
21 determination by the board that the power generated by an on-site  
22 generation facility that was installed subsequent to the starting date  
23 of retail competition as provided in subsection a. of section 5 of  
24 P.L.1999, c.23 (C.48:3-53) has, in the aggregate, displaced  
25 customer purchases from an electric public utility by an amount  
26 such that the kilowatt hours distributed by the electric public utility  
27 have been reduced to an amount equal to 92.5 percent of the  
28 kilowatt hours distributed by the electric public utility in calendar  
29 year 1999, the board shall impose the charges listed in paragraphs  
30 (1) through (3) of this subsection on the on-site customer of the on-  
31 site generation facilities:

32 (1) the societal benefits charge or its equivalent, imposed  
33 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

34 (2) the market transition charge or its equivalent, imposed  
35 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

36 (3) the transition bond charge or its equivalent, imposed  
37 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

38 None of the charges listed in paragraphs (1) through (3) of this  
39 subsection shall be levied on the sale or delivery of power to the on-  
40 site customer by an on-site generation facility that occurred prior to  
41 the date of the board's determination with regard to the facility  
42 serving that customer pursuant to this subsection.

43 c. A societal benefits charge, market transition charge, and  
44 transition bond charge, or their equivalent, shall not be imposed on  
45 the sale or delivery of power to an on-site customer that is derived  
46 from the on-site generation facility serving that customer if:

47 (1) the on-site customer or its agent installed the on-site  
48 generation facility, or expanded such a facility, prior to the effective

1 date of P.L.1999, c.23 (C.48:3-49 et al.), for the continued on-site  
2 power consumption by the same on-site customer and such power  
3 consumption by that on-site customer occurs after the effective date  
4 of P.L.1999, c.23 (C.48:3-49 et al.); or

5 (2) the on-site customer or its agent has made, on or before the  
6 effective date of P.L.1999, c.23 (C.48:3-49 et al.), substantial  
7 financial and contractual commitments in planning and  
8 development, including any expansion of such a facility and having  
9 applied for any appropriate air permit from the Department of  
10 Environmental Protection, for the continued provision of on-site  
11 power consumption by the same on-site customer that occurs after  
12 the effective date of P.L.1999, c.23 (C.48:3-49 et al.).

13

14 3. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to  
15 read as follows:

16 26. a. Receipts from the sale, exchange, delivery or use of  
17 electricity are exempt from the tax imposed under the Sales and Use  
18 Tax Act if the electricity:

19 (1) (a) Is sold by a municipal electric corporation in existence as  
20 of December 31, 1995 and used within its municipal boundaries  
21 except if the customer is located within a franchise area served by  
22 an electric public utility other than the municipal electric  
23 corporation. If a municipal electric corporation makes sales of  
24 electricity used outside of its municipal boundaries or within a  
25 franchise area served by an electric public utility other than the  
26 municipal electric corporation, then receipts from those sales of  
27 electricity by the municipal electric corporation shall be subject to  
28 tax under P.L.1966, c.30; or

29 (b) Is sold by a municipal electric utility in existence as of  
30 December 31, 1995, and used within its municipal boundaries.  
31 However, a municipal electric utility's receipts from the sale,  
32 exchange, delivery or use of electricity used by customers outside  
33 of its municipal boundaries and within its franchise area existing as  
34 of December 31, 1995 shall be subject to tax. If a municipal  
35 electric utility makes sales of electricity used outside of its  
36 franchise area existing as of December 31, 1995, then receipts from  
37 those sales of electricity by the municipal electric utility shall be  
38 subject to tax under P.L.1966, c.30;

39 (2) Was generated by a facility located on the user's property or  
40 property purchased or leased from the user by the person owning  
41 the generation facility and such property is contiguous to the user's  
42 property, and the electricity was consumed by the one on-site end  
43 user on the user's property, and was not transported to the user over  
44 wires that cross a property line or public thoroughfare unless the  
45 property line or public thoroughfare merely bifurcated the user's or  
46 generation facility owner's otherwise contiguous property or the  
47 electricity was consumed by an affiliated user on the same site, or  
48 by a non-affiliated user on the same site with an electric distribution

1 system which is integrated and interconnected with the user on or  
2 before March 10, 1997; the director may promulgate rules and  
3 regulations and issue guidance with respect to all issues related to  
4 affiliated users; or

5 (3) Is sold for resale.

6 For the purpose of electric sales by an on-site generation facility  
7 pursuant to this subsection, an end use customer's property shall be  
8 considered contiguous to the property on which the on-site  
9 generation facility serving that customer is located if the customer  
10 is purchasing thermal energy services produced by the facility, for  
11 use for heating, air conditioning, or both, regardless of any  
12 intervening property, public thoroughfare, transportation, or utility-  
13 owned right-of-way. The State Treasurer shall monitor monies  
14 deposited into the Energy Tax Receipts Property Tax Relief Fund  
15 on an annual basis and may report the results of the State  
16 Treasurer's analysis on the fund to the Governor and the  
17 Legislature, along with any recommendations on the exemptions in  
18 this subsection.

19 b. Receipts from the purchase or use of the following are exempt  
20 from the tax imposed under the Sales and Use Tax Act:

21 (1) Natural gas or utility service that is used to generate  
22 electricity that is sold for resale or to an end user other than the end  
23 user upon whose property is located a co-generation facility or self-  
24 generation unit that generated the electricity or upon the property  
25 purchased or leased from the end user by the person owning the co-  
26 generation facility or self-generation unit if such property is  
27 contiguous to the user's property and is the property upon which is  
28 located a co-generation facility or self-generation unit that  
29 generated the electricity; and

30 (2) Natural gas and utility service that is used for co-generation  
31 at any site [at which a co-generation facility was in operation on or  
32 before March 10, 1997, or for which an application for an operating  
33 permit or a construction permit and a certificate of operation in  
34 order to comply with air quality standards under P.L.1954, c.212  
35 (C.26:2C-1 et seq.) has been filed with the Department of  
36 Environmental Protection on or before March 10, 1997, to produce  
37 electricity for use on that site].

38 (cf: P.L.1999, c.23, s.62)

39

40 4. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill revises the definition of "on-site generation facility"  
46 under section 3 of P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA") to  
47 provide that if an end use customer is purchasing thermal energy  
48 services produced by an on-site generation facility, for the purpose



1 of heating, air conditioning, or both, the end use customer's  
2 property shall be considered contiguous to the property on which  
3 the on-site generation facility serving that customer is located,  
4 regardless of any intervening property public thoroughfare,  
5 transportation, or utility owned right-of-way.

6 Under current law, an end use customer's property is considered  
7 contiguous to the property on which the on-site generation facility  
8 is located only if the two properties are geographically located next  
9 to each other, except that the two properties may be separated by an  
10 easement, public thoroughfare, transportation, or utility-owned  
11 right-of-way.

12 The bill also provides that if power produced by an on-site  
13 generation facility is not consumed by the on-site customer, and  
14 that power is delivered to an off-site end use customer in this State,  
15 the sale or delivery of such power to the off-site customer shall be  
16 subject to various charges mandated by EDECA including the  
17 societal benefits charge, the market transition charge, and the  
18 transition bond charge.

19 The bill further provides that if the Board of Public Utilities (the  
20 "board") determines that the kilowatt hours distributed by an  
21 electric public utility have been reduced to an amount equal to 92.5  
22 percent of the kilowatt hours distributed by the electric public  
23 utility in calendar year 1999, as a result of the aggregate customer  
24 purchases of power generated by on-site generation facilities  
25 installed subsequent to the starting date of retail competition as  
26 provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53),  
27 then the board shall impose the societal benefits charge, the market  
28 transition charge, and the transition bond charge on the on-site  
29 customer, unless the power consumed by the on-site customer is  
30 derived from on-site generation facilities which the on-site  
31 customer installed, or for which the on-site customer entered into  
32 substantial commitments, prior to the effective date of EDECA.

33 Under current law, the power purchased by an on-site customer  
34 from an on-site generation facility is not subject under EDECA to  
35 the societal benefits charge, the market transition charge, and the  
36 transition bond charge.

37 The bill also clarifies the meaning of "contiguous property" for  
38 the purposes of section 26 of the Sales and Use Tax Act, P.L.1997,  
39 c.162 (C.54:32B-8.46) by providing that an end use customer's  
40 property and the property on which an on-site generation facility is  
41 located shall be considered contiguous if the end use customer is  
42 purchasing thermal energy services produced by the facility, for the  
43 customer's heating or air conditioning purposes, regardless of any  
44 intervening property, public thoroughfare, transportation, or utility-  
45 owned right-of-way.

46 Finally, the bill removes certain limitations on the exemption of  
47 natural gas and utility service that is used for co-generation at any  
48 site from the tax imposed under the Sales and Use Tax Act.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 3339 and 3439**

**STATE OF NEW JERSEY**

DATED: DECEMBER 8, 2008

The Assembly Telecommunications and Utilities Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3339 and 3439.

As reported, this substitute revises the definition of "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA") to provide that if an end use customer is purchasing thermal energy services produced by an on-site generation facility, for the purpose of heating, air conditioning, or both, the end use customer's property shall be considered contiguous to the property on which the on-site generation facility serving that customer is located, regardless of any intervening property public thoroughfare, transportation, or utility owned right-of-way.

Under current law, an end use customer's property is considered contiguous to the property on which the on-site generation facility is located only if the two properties are geographically located next to each other, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way.

The substitute also provides that if power produced by an on-site generation facility is not consumed by the on-site customer, and that power is delivered to an off-site end use customer in this State, the sale or delivery of such power to the off-site customer shall be subject to various charges mandated by EDECA including the societal benefits charge, the market transition charge, and the transition bond charge.

The substitute further provides that if the Board of Public Utilities (the "board") determines that the kilowatt hours distributed by an electric public utility have been reduced to an amount equal to 92.5 percent of the kilowatt hours distributed by the electric public utility in calendar year 1999, as a result of the aggregate customer purchases of power generated by on-site generation facilities installed subsequent to the starting date of retail competition as provided in EDECA, then the board shall impose the societal benefits charge, the market transition charge, and the transition bond charge on the on-site customer, unless the power consumed by the on-site customer is derived from on-site

generation facilities which the on-site customer installed, or for which the on-site customer entered into substantial commitments, prior to the effective date of EDECA.

Under current law, the power purchased by an on-site customer from an on-site generation facility is not subject under EDECA to the societal benefits charge, the market transition charge, and the transition bond charge.

The substitute also clarifies the meaning of "contiguous property" for the purposes of section 26 of P.L.1997, c.162 (C.54:32B-8.46) by providing that an end use customer's property and the property on which an on-site generation facility is located shall be considered contiguous if the end use customer is purchasing thermal energy services produced by the facility, for the customer's heating or air conditioning purposes, regardless of any intervening property, public thoroughfare, transportation, or utility-owned right-of-way.

Finally, the substitute removes certain limitations on the exemption of natural gas and utility service that is used for co-generation at any site from the tax imposed under the "Sales and Use Tax Act."

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 3339 and 3439**

**STATE OF NEW JERSEY**

DATED: DECEMBER 3, 2009

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3339 and 3439 (ACS).

The substitute revises the definition of "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA") to provide that if an end use customer is purchasing thermal energy services produced by an on-site generation facility, for the purpose of heating, air conditioning, or both, the end use customer's property shall be considered contiguous to the property on which the on-site generation facility serving that customer is located, regardless of any intervening property public thoroughfare, transportation, or utility owned right-of-way.

To avoid duplication of required electrical infrastructure and to maximize economic efficiency and electrical safety, the substitute requires that delivery of electric power from an on-site generation facility to an end use customer's property that is separated from the facility utilize existing locally franchised public utility electric distribution infrastructure. The substitute requires that the New Jersey electric public utility having franchise rights within the geographical area involved provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual end use thermal customer.

Under current law, an end use customer's property is considered contiguous to the property on which the on-site generation facility is located only if the two properties are geographically located next to each other, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way.

The substitute also provides that if power produced by an on-site generation facility is not consumed by the on-site customer, and that power is delivered to an off-site end use customer in this State, the sale or delivery of such power to the off-site customer shall be subject to

various charges mandated by EDECA including the societal benefits charge, the market transition charge, and the transition bond charge.

The substitute further provides that if the Board of Public Utilities (the "board") determines that the kilowatt hours distributed by an electric public utility have been reduced to an amount equal to 92.5 percent of the kilowatt hours distributed by the electric public utility in calendar year 1999, as a result of the aggregate customer purchases of power generated by on-site generation facilities installed subsequent to the starting date of retail competition as provided in EDECA, then the board shall impose the societal benefits charge, the market transition charge, and the transition bond charge on the on-site customer, unless the power consumed by the on-site customer is derived from on-site generation facilities which the on-site customer installed, or for which the on-site customer entered into substantial commitments, prior to the effective date of EDECA.

Under current law, the power purchased by an on-site customer from an on-site generation facility is not subject under EDECA to the societal benefits charge, the market transition charge, and the transition bond charge.

The substitute also clarifies the meaning of "contiguous property" for the purposes of section 26 of P.L.1997, c.162 (C.54:32B-8.46) (a New Jersey sales and use tax exemption for certain electricity) by providing that an end use customer's property and the property on which an on-site generation facility is located shall be considered contiguous if the end use customer is purchasing thermal energy services produced by the facility, for the customer's heating or air conditioning purposes, regardless of any intervening property, public thoroughfare, transportation, or utility-owned right-of-way.

Finally, the substitute removes certain limitations on the exemption of natural gas and utility service that is used for co-generation at any site from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

**FISCAL IMPACT:**

According to recent information informally provided by the Board of Public Utilities, the State may experience no or minimal loss of sales and use tax revenue from the passage of this substitute.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3339 and 3439**

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Senate Budget and Appropriations Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 339 and 3439 (ACS), with committee amendments.

*Expanding the class of “on-site generation facilities.”* As amended, this bill allows a generation facility to serve a broader geographical customer base and still be considered an "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA"). Under current law, the facility must be located on the property, or on property contiguous to the property, on which the end user is located, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way. Under the bill, if an end use customer is purchasing thermal energy services produced by a generation facility for use in heating or cooling, or both, the facility shall be considered an on-site generation facility with respect to that customer, regardless of the whether multiple easements, public thoroughfares, or transportation or utility owned rights-of-way lie between the property on which the facility is located and that on which the user is located.

The bill also (i) incorporates a definition of “co-generation,” (ii) clarifies that a co-generation facility” is the same as a “combined heat and power facility,” (iii) revises the definition of “combined heat and power facility” to include equipment and services connected to sales of electric or thermal energy, or both, to end use customers, whether or not those customers are located on the site of the generation facility or on property contiguous to the facility’s property, and (iv) specifies that a combined heat and power facility or co-generation facility shall not be considered a public utility.

*Clarifying applicability of “line charges” to off-site thermal energy services customers.* The bill clarifies that the sale or delivery of power produced by an on-site generation facility and delivered to an

off-site end use thermal energy services customer, like the sale or delivery of such power to other off-site customers, shall be subject to the transitional energy facilities assessment (“TEFA”) and to various charges mandated by EDECA including the societal benefits charge, the market transition charge, and the transition bond charge. (Under current law, the power purchased by an *on-site* customer from an on-site generation facility is not subject to the TEFA, the societal benefits charge, the market transition charge, and the transition bond charge.)

*Extending the sales tax exemption for sales of energy by co-generation facilities.* The bill also extends the existing New Jersey sales and use tax exemption for sales of electricity generated by a facility located on certain property contiguous to the user’s property to any end use customer purchasing thermal energy services produced by the facility for the customer’s heating or cooling purposes, regardless of any intervening property, public thoroughfare, or transportation or utility-owned right-of-way. The bill also extends the existing sales and use tax exemption for sales or use of natural gas and utility service that is used for co-generation to cover natural gas and utility service used for co-generation at a co-generation facility constructed after January 1, 2010.

*Use of existing distribution network for delivery of co-generation electric power to thermal energy services customers.* Finally, the bill provides that, in order to avoid duplication of required electrical infrastructure and to maximize economic efficiency and electrical safety, the delivery of electric power from an on-site generation facility to an end use thermal energy services customer shall utilize the existing locally franchised public utility electric distribution infrastructure. The bill also requires that the New Jersey electric public utility having franchise rights within the municipality within which the facility is located shall provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual end use thermal energy services customer.

The provisions of this bill, as amended, are identical to those of Senate Bill No. 2557 (1R), as amended and reported this day by the committee.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) incorporate the revision of the definition of “combined heat and power facility”; (2) add a definition of “off-site end use thermal energy services customer”; (3) clarify the language broadening the authorized customer base of an “on-site generation facility”; (4) incorporate the clarification of TEFA and “line charge” applicability to thermal energy services customers into an existing section of EDECA and delete proposed new language that substantially duplicates the text of that existing section; (5) limit the sales and use tax exemption applicable to natural gas and utility service for co-generation to facilities (a) in operation (or for which

operating permits were on file) as of March 10, 1997, or (b) constructed after January 1, 2010; and (6) establish the requirement that existing utility infrastructure be used to deliver co-generation power to end use thermal energy services customers as a separate provision of law, rather than as part of the definition of “on-site generation facility.”

**FISCAL IMPACT:**

According to recent information informally provided by the Board of Public Utilities, the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.



**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, Nos. 3339 and 3439**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: OCTOBER 16, 2009

**SUMMARY**

**Synopsis:** Concerns on-site generation facilities.

**Type of Impact:** No or minimal revenue loss to the General Fund.

**Agencies Affected:** Department of the Treasury

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Minimal	Minimal	Minimal

- The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the Board of Public Utilities (BPU), the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.
- All existing cogeneration plants, except for some extremely small cogeneration plants, are exempt from the State sales and use tax.

**BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill Nos. 3339 and 3439 of 2008 redefines “on-site generation facility” to allow sales of electric power to any end-use customer who purchases thermal energy services produced by the facility, regardless of the customer’s location. Its implementation could result in lowering one of the barriers to greater development of combined heat and power plants or cogeneration facilities, which are currently restricted to selling electric power to customers located on property that is on, or physically adjacent to, the property on which the cogeneration facility is located.

This bill expands the number of cogeneration facility customers who may be entitled to an exemption from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), by extending the exemption for sales of electricity from cogeneration facilities to end-

users who purchase thermal energy services for use on a non-contiguous property. In addition, the bill exempts from the sales and use tax, purchases of natural gas and utility service by any cogeneration facility, removing the current restriction that limits eligibility for such exemption to a facility in operation on or before March 10, 1997, or for which certain site applications had been filed with the Department of Environmental Protection on or before March 10, 1997.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the BPU, the State may experience no or minimal loss of revenue from the passage of this bill. Originally, the BPU estimated that there would be a \$500,000 annual revenue loss to the State. Subsequently, the BPU obtained updated information and data that led to a revision of this estimate. Since the original estimate was made, the BPU was able to verify that all existing cogeneration plants, except for some extremely small plants, are exempt from the State sales and use tax. Therefore, the BPU concluded there are no cogeneration plants that would be subject to paying the sales and use tax for on-site generation, and there would be no loss of current tax revenue.

In addition, the BPU acknowledges that the bill includes a micro-grid or expanded definition of on-site generation. Facilities engaged in the newly recognized form of energy generation would be primarily located in urban areas mostly within the 37 municipalities identified as urban enterprise zones (UEZ) that already have exemptions from the sales and use tax. For new on-site generation, both within and outside of the UEZ's, the State's existing deregulation law, the Electric Discount Energy Conservation Act, holds the on-site generation exempt from the sales and use tax for electricity produced and used within the on-site definition. This means that the proposed bill would introduce no new tax revenue implications for on-site generation. Since the larger micro-grid type plants take up to three years to develop, the BPU cannot accurately estimate if there will be any future tax erosion or loss that would occur under the expanded definition in the bill with on-site versus micro-grid developments.

In October of 2007, the BPU reported that of the 3,394 megawatts of cogeneration supplied energy in New Jersey, 286 megawatts have been installed since the imposition of the State sales and use tax on such generated energy as of March 10, 1997. Recently, the BPU was able to verify that all 286 megawatts are exempt from the sales and use tax as a result of facility shutdown, export, or due to other exemptions. According to the 2008 New Jersey Energy Master Plan, no significant new cogeneration facilities have been built in New Jersey since 1999.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Joseph A. Hroncich  
Associate Fiscal Analyst*

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

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, Nos. 3339 and 3439**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: DECEMBER 9, 2009

**SUMMARY**

**Synopsis:** Concerns on-site generation facilities.

**Type of Impact:** No or minimal revenue loss to the General Fund.

**Agencies Affected:** Department of the Treasury

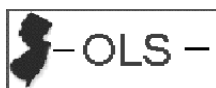
**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	Minimal	Minimal	Minimal

- The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the Board of Public Utilities (BPU), the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.
- The bill requires the delivery of electric power from an on-site generation facility to a customer’s property to use the existing public utility electric distribution infrastructure.
- All existing cogeneration plants, except for some extremely small cogeneration plants, are exempt from the State sales and use tax.

**BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill Nos. 3339/3439 (ACS) of 2008 redefines “on-site generation facility” to include facilities selling electric power to any end-use customer who purchases thermal energy services produced by the facility, regardless of the customer’s



location. Its implementation could result in lowering one of the barriers to greater development of combined heat and power plants or cogeneration facilities, which are currently restricted to selling electric power to customers located on property that is on, or physically adjacent to, the property on which the cogeneration facility is located.

To avoid duplication of required electrical infrastructure and to maximize economic efficiency and electrical safety, the bill requires the delivery of electric power from an on-site generation facility to an end use customer's property that is not geographically located next to the facility to utilize the existing locally franchised public utility electric distribution infrastructure. The New Jersey electric public utility having franchise rights within the geographical area involved is to provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual end use thermal customer.

This bill expands the number of cogeneration facility customers who may be entitled to an exemption from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), by extending the exemption for sales of electricity from cogeneration facilities to end-users who purchase thermal energy services for use on a non-contiguous property. In addition, the bill exempts from the sales and use tax, purchases of natural gas and utility service by any cogeneration facility, removing the current restriction that limits eligibility for such exemption to a facility in operation on or before March 10, 1997, or for which certain site applications had been filed with the Department of Environmental Protection on or before March 10, 1997.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the BPU, the State may experience no or minimal loss of revenue from the passage of this bill. Originally, the BPU estimated that there would be a \$500,000 annual revenue loss to the State. Subsequently, the BPU obtained updated information and data that led to a revision of this estimate. Since the original estimate was made, the BPU was able to verify that all existing cogeneration plants, except for some extremely small plants, are exempt from the State sales and use tax. Therefore, the BPU concluded there are no cogeneration plants that would be subject to paying the sales and use tax for on-site generation, and there would be no loss of current tax revenue.

In addition, the BPU acknowledges that the bill includes a micro-grid or expanded definition of on-site generation. Facilities engaged in the newly recognized form of energy generation would be primarily located in urban areas mostly within the 37 municipalities identified as urban enterprise zones (UEZ) that already have certain exemptions from the sales and use tax. For new on-site generation, both within and outside of the UEZ's, the State's existing deregulation law, the Electric Discount and Energy Competition Act, holds the on-site generation exempt from the sales and use tax for electricity produced and used within the on-site definition. This means that the proposed bill would introduce no new tax revenue implications for on-site generation. Since the larger micro-grid type plants take up to three years to develop, the BPU cannot accurately estimate if there will be any future tax erosion or loss that would occur under the expanded definition in the bill with on-site versus micro-grid developments.

In October of 2007, the BPU reported that of the 3,394 megawatts of cogeneration supplied energy in New Jersey, 286 megawatts have been installed since the imposition of the State sales and use tax on such generated energy as of March 10, 1997. Recently, the BPU was able to verify that all 286 megawatts are exempt from the sales and use tax as a result of facility shutdown, export, or due to other exemptions. According to the 2008 New Jersey Energy Master Plan, no significant new cogeneration facilities have been built in New Jersey since 1999.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Joseph A. Hroncich  
Associate Fiscal Analyst*

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

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, Nos. 3339 and 3439**

**STATE OF NEW JERSEY  
214th LEGISLATURE**

DATED: JANUARY 12, 2010

## SUMMARY

**Synopsis:** Concerns on-site generation facilities.

**Type of Impact:** No or minimal revenue loss to the General Fund.

**Agencies Affected:** Department of the Treasury

### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	No or Minimal Loss	No or Minimal Loss	No or Minimal Loss

- The Office of Legislative Services is unable to quantify the fiscal impact that this legislation will have on the State. However, according to recent information informally provided by the Board of Public Utilities (BPU), the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.
- The bill requires the delivery of electric power from an on-site generation facility to a customer's property to use the existing public utility electric distribution infrastructure.
- All existing cogeneration plants, except for some extremely small cogeneration plants, are exempt from the State sales and use tax.

**BILL DESCRIPTION**

*Expanding the class of “on-site generation facilities.”* The first reprint of Assembly Committee Substitute for Assembly Committee Substitute for Assembly Bill Nos. 3339 and 3439 of 2008 allows a generation facility to serve a broader geographical customer base and still be considered an "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA"). Under current law, the facility must be located on the property, or on property contiguous to the property, on which the end user is located, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way. Under the bill, if an end use customer is purchasing thermal energy services produced by a generation facility for use in heating or cooling, or both, the facility shall be considered an on-site generation facility with respect to that customer, regardless of whether multiple easements, public thoroughfares, or transportation or utility owned rights-of-way lie between the property on which the facility is located and that on which the user is located.

*Clarifying applicability of “line charges” to off-site thermal energy services customers.* The bill clarifies that the sale or delivery of power produced by an on-site generation facility and delivered to an off-site end use thermal energy services customer, like the sale or delivery of such power to other off-site customers, shall be subject to the transitional energy facilities assessment (“TEFA”) and to various charges mandated by EDECA including the societal benefits charge, the market transition charge, and the transition bond charge. (Under current law, the power purchased by an *on-site* customer from an on-site generation facility is not subject to TEFA, the societal benefits charge, the market transition charge, or the transition bond charge.)

*Extending the sales tax exemption for sales of energy by co-generation facilities.* The bill also extends the existing New Jersey sales and use tax exemption for sales of electricity generated by a facility located on certain property contiguous to the user’s property to any end use customer purchasing thermal energy services produced by the facility for the customer’s heating or cooling purposes, regardless of any intervening property, public thoroughfare, or transportation or utility-owned right-of-way. The bill also extends the existing sales and use tax exemption for sales or use of natural gas and utility service that is used for co-generation to cover natural gas and utility service used for co-generation at a co-generation facility constructed after January 1, 2010.

*Use of existing distribution network for delivery of co-generation electric power to thermal energy services customers.* Finally, the bill provides that the delivery of electric power from an on-site generation facility to an end use thermal energy services customer shall utilize the existing locally franchised public utility electric distribution infrastructure and also requires that the local electric public utility shall provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual end use thermal energy services customer.

**FISCAL ANALYSIS*****EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the BPU,



the State may experience no or minimal loss of revenue from the passage of this legislation. The BPU was able to verify that all existing cogeneration plants, except for some extremely small plants, are exempt from the State sales and use tax. Therefore, the BPU concluded there are no cogeneration plants that would be subject to paying the sales and use tax for on-site generation, and there would be no loss of current tax revenue.

With respect to new co-generation facilities, no information is available upon which to base a projection of whether any such facilities may be constructed after the enactment of this legislation, or the energy output of any such facility.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Donald S. Margeson  
Section Chief*

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

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

# ASSEMBLY, No. 3439

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 13, 2008

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Provides sales and use tax exemption for natural gas and utility service purchased or used by certain co-generation facilities in production of electricity and steam or other useful forms of energy.

**CURRENT VERSION OF TEXT**

As introduced.



A3439 CHIVUKULA

2

1 AN ACT providing a sales and use tax exemption for the purchase or  
2 use of natural gas and utility service used for co-generation at  
3 certain co-generation facilities, amending P.L.1997, c.162.

4

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

7

8 1. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to  
9 read as follows:

10 26. a. Receipts from the sale, exchange, delivery or use of  
11 electricity are exempt from the tax imposed under the **[Sales and**  
12 **Use Tax Act]** “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-  
13 1 et seq.) if the electricity:

14 (1) (a) Is sold by a municipal electric corporation in existence as  
15 of December 31, 1995 and used within its municipal boundaries  
16 except if the customer is located within a franchise area served by  
17 an electric public utility other than the municipal electric  
18 corporation. If a municipal electric corporation makes sales of  
19 electricity used outside of its municipal boundaries or within a  
20 franchise area served by an electric public utility other than the  
21 municipal electric corporation, then receipts from those sales of  
22 electricity by the municipal electric corporation shall be subject to  
23 tax under P.L.1966, c.30; or

24 (b) Is sold by a municipal electric utility in existence as of  
25 December 31, 1995, and used within its municipal boundaries.  
26 However, a municipal electric utility's receipts from the sale,  
27 exchange, delivery or use of electricity used by customers outside  
28 of its municipal boundaries and within its franchise area existing as  
29 of December 31, 1995 shall be subject to tax. If a municipal  
30 electric utility makes sales of electricity used outside of its  
31 franchise area existing as of December 31, 1995, then receipts from  
32 those sales of electricity by the municipal electric utility shall be  
33 subject to tax under P.L.1966, c.30;

34 (2) Was generated by a facility located on the user's property or  
35 property purchased or leased from the user by the person owning  
36 the generation facility and such property is contiguous to the user's  
37 property, and the electricity was consumed by the one on-site end  
38 user on the user's property, and was not transported to the user over  
39 wires that cross a property line or public thoroughfare unless the  
40 property line or public thoroughfare merely bifurcated the user's or  
41 generation facility owner's otherwise contiguous property or the  
42 electricity was consumed by an affiliated user on the same site, or  
43 by a non-affiliated user on the same site with an electric distribution  
44 system which is integrated and interconnected with the user on or  
45 before March 10, 1997; the director may promulgate rules 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 regulations and issue guidance with respect to all issues related to  
2 affiliated users; or

3 (3) Is sold for resale.

4 The State Treasurer shall monitor monies deposited into the  
5 Energy Tax Receipts Property Tax Relief Fund on an annual basis  
6 and may report the results of the State Treasurer's analysis on the  
7 fund to the Governor and the Legislature, along with any  
8 recommendations on the exemptions in this subsection.

9 b. Receipts from the purchase or use of the following are  
10 exempt from the tax imposed under the **[Sales and Use Tax Act]**  
11 “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.):

12 (1) Natural gas or utility service that is used to generate  
13 electricity that is sold for resale or to an end user other than the end  
14 user upon whose property is located a co-generation facility or self-  
15 generation unit that generated the electricity or upon the property  
16 purchased or leased from the end user by the person owning the co-  
17 generation facility or self-generation unit if such property is  
18 contiguous to the user's property and is the property upon which is  
19 located a co-generation facility or self-generation unit that  
20 generated the electricity; **[and]**

21 (2) **[Natural gas and utility service that is used for co-generation**  
22 **at any site at which a co-generation facility was in operation on or**  
23 **before March 10, 1997, or for which an application for an operating**  
24 **permit or a construction permit and a certificate of operation in**  
25 **order to comply with air quality standards under P.L.1954, c.212**  
26 **(C.26:2C-1 et seq.) has been filed with the Department of**  
27 **Environmental Protection on or before March 10, 1997, to produce**  
28 **electricity for use on that site]** (Deleted by amendment, P.L. \_\_\_\_\_,  
29 c. ) (pending before the Legislature as this bill); and

30 (3) Natural gas and utility service used for co-generation at a site  
31 at which a co-generation facility is in operation. For purposes of  
32 this paragraph, “co-generation” means the sequential production of  
33 electricity and steam or other forms of useful energy used for  
34 industrial or commercial heating and cooling purposes.

35 (cf: P.L.1999, c.23, s.62)

36  
37 2. This act shall take effect immediately and remain inoperative  
38 until the first day of the second month next following the date of  
39 enactment.

40

41

42

STATEMENT

43

44 This bill provides a sales and use tax exemption for natural gas  
45 and utility service purchased or used by certain co-generation  
46 facilities in the production of electricity and steam or other forms of  
47 useful energy used for industrial or commercial heating and cooling  
48 purposes.

1 Under the provisions of the bill, the current exemption for  
2 natural gas and utility service used for co-generation at a co-  
3 generation facility in operation on or before March 10, 1997 is  
4 extended to include purchases of natural gas and utility service by  
5 co-generation facilities that became operational on or after March  
6 11, 1997. Regardless of when a co-generation facility became  
7 operational, purchases of natural gas and utility service are exempt  
8 from taxation under the parameters of this bill.

9 Under current law, purchases of natural gas and utility service  
10 used in conjunction with co-generation at co-generation facilities  
11 throughout the State are subject to taxation, unless the purchase is  
12 used for co-generation at a facility which was in operation or in the  
13 process of becoming operational when sales and use tax was first  
14 imposed on retail sales of natural gas and electricity. As stipulated  
15 by P.L.1997, c.162, purchases of natural gas and utility service are  
16 only exempt if the purchase is used by co-generation facilities in  
17 operation, or which filed an application for an operating permit or a  
18 construction permit and a certificate of operation with the New  
19 Jersey Department of Environmental Protection, on or before March  
20 10, 1997.

21 In extending the exemption, this bill eliminates the disparity  
22 between co-generation facilities that became operational on or  
23 before March 10, 1997 and those facilities that came on-line after  
24 that date. Moreover, the changes provided by the bill are intended  
25 to encourage the development of new on-site co-generation  
26 facilities throughout the State. Tax breaks for purchases of natural  
27 gas and utility service by co-generational facilities that became  
28 operational on or after March 11, 1997 would remove a long-  
29 standing disincentive for the development of new co-generation  
30 power plants and help reduce a portion of the overall cost  
31 associated with the purchase of fuel.

**SENATE, No. 2557**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 9, 2009

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Union)**

**Senator STEVEN V. OROHO**

**District 24 (Sussex, Hunterdon and Morris)**

**SYNOPSIS**

Concerns on-site generation facilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/10/2009)**

1 AN ACT concerning on-site generation facilities, amending and  
2 supplementing P.L.1999, c.23, and amending P.L.1997, c.162.

3

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

6

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

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or  
11 another assignee assigns, sells or transfers, other than as security,  
12 all or a portion of its right to or interest in bondable transition  
13 property. Except as specifically provided in **[this act]** P.L.1999,  
14 c.23 (C.48:3-49 et al.), an assignee shall not be subject to the public  
15 utility requirements of Title 48 or any rules or regulations adopted  
16 pursuant thereto;

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

24 "Basic generation service" means electric generation service that  
25 is provided, pursuant to section 9 of **[this act]** P.L.1999, c.23  
26 (C.48:3-57), to any customer that has not chosen an alternative  
27 electric power supplier, whether or not the customer has received  
28 offers as to competitive supply options, including, but not limited  
29 to, any customer that cannot obtain such service from an electric  
30 power supplier for any reason, including non-payment for services.  
31 Basic generation service is not a competitive service and shall be  
32 fully regulated by the board;

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

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

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

11 "Bondable stranded costs" means any stranded costs or basic  
12 generation service transition costs of an electric public utility  
13 approved by the board for recovery pursuant to the provisions of  
14 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), together with, as  
15 approved by the board: (1) the cost of retiring existing debt or  
16 equity capital of the electric public utility, including accrued  
17 interest, premium and other fees, costs and charges relating thereto,  
18 with the proceeds of the financing of bondable transition property;  
19 (2) if requested by an electric public utility in its application for a  
20 bondable stranded costs rate order, federal, State and local tax  
21 liabilities associated with stranded costs recovery or basic  
22 generation service transition cost recovery or the transfer or  
23 financing of such property or both, including taxes, whose recovery  
24 period is modified by the effect of a stranded costs recovery order, a  
25 bondable stranded costs rate order or both; and (3) the costs  
26 incurred to issue, service or refinance transition bonds, including  
27 interest, acquisition or redemption premium, and other financing  
28 costs, whether paid upon issuance or over the life of the transition  
29 bonds, including, but not limited to, credit enhancements, service  
30 charges, overcollateralization, interest rate cap, swap or collar, yield  
31 maintenance, maturity guarantee or other hedging agreements,  
32 equity investments, operating costs and other related fees, costs and  
33 charges, or to assign, sell or otherwise transfer bondable transition  
34 property;

35 "Bondable stranded costs rate order" means one or more  
36 irrevocable written orders issued by the board pursuant to **[this act]**  
37 P.L.1999, c.23 (C.48:3-49 et al.) which determines the amount of  
38 bondable stranded costs and the initial amount of transition bond  
39 charges authorized to be imposed to recover such bondable stranded  
40 costs, including the costs to be financed from the proceeds of the  
41 transition bonds, as well as on-going costs associated with servicing  
42 and credit enhancing the transition bonds, and provides the electric  
43 public utility specific authority to issue or cause to be issued,  
44 directly or indirectly, transition bonds through a financing entity  
45 and related matters as provided in **[this act]** P.L.1999, c.23, which  
46 order shall become effective immediately upon the written consent  
47 of the related electric public utility to such order as provided in  
48 **[this act]** P.L.1999, c.23;



1 "Bondable transition property" means the property consisting of  
2 the irrevocable right to charge, collect and receive, and be paid  
3 from collections of, transition bond charges in the amount necessary  
4 to provide for the full recovery of bondable stranded costs which  
5 are determined to be recoverable in a bondable stranded costs rate  
6 order, all rights of the related electric public utility under such  
7 bondable stranded costs rate order including, without limitation, all  
8 rights to obtain periodic adjustments of the related transition bond  
9 charges pursuant to subsection b. of section 15 of **[this act]**  
10 P.L.1999, c.23 (C.48:3-64), and all revenues, collections, payments,  
11 money and proceeds arising under, or with respect to, all of the  
12 foregoing;

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

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

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

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

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

43 "Competitive service" means any service offered by an electric  
44 public utility or a gas public utility that the board determines to be  
45 competitive pursuant to section 8 or section 10 of **[this act]**  
46 P.L.1999, c.23 (C.48:3-56 or C.48:3-58) or that is not regulated by  
47 the board;

1 "Comprehensive resource analysis" means an analysis including,  
2 but not limited to, an assessment of existing market barriers to the  
3 implementation of energy efficiency and renewable technologies  
4 that are not or cannot be delivered to customers through a  
5 competitive marketplace;

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

10 "Customer account service" means metering, billing, or such  
11 other administrative activity associated with maintaining a customer  
12 account;

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

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

24 "Electric power generator" means an entity that proposes to  
25 construct, own, lease or operate, or currently owns, leases or  
26 operates, an electric power production facility that will sell or does  
27 sell at least 90 percent of its output, either directly or through a  
28 marketer, to a customer or customers located at sites that are not on  
29 or contiguous to the site on which the facility will be located or is  
30 located. The designation of an entity as an electric power generator  
31 for the purposes of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) shall  
32 not, in and of itself, affect the entity's status as an exempt wholesale  
33 generator under the Public Utility Holding Company Act of 1935,  
34 15 U.S.C. s.79 et seq.;

35 "Electric power supplier" means a person or entity that is duly  
36 licensed pursuant to the provisions of **[this act]** P.L.1999, c.23  
37 (C.48:3-49 et al.) to offer and to assume the contractual and legal  
38 responsibility to provide electric generation service to retail  
39 customers, and includes load serving entities, marketers and brokers  
40 that offer or provide electric generation service to retail customers.  
41 The term excludes an electric public utility that provides electric  
42 generation service only as a basic generation service pursuant to  
43 section 9 of **[this act]** P.L.1999, c.23 (C.48:3-57);

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

47 "Electric related service" means a service that is directly related  
48 to the consumption of electricity by an end user, including, but not

1 limited to, the installation of demand side management measures at  
2 the end user's premises, the maintenance, repair or replacement of  
3 appliances, lighting, motors or other energy-consuming devices at  
4 the end user's premises, and the provision of energy consumption  
5 measurement and billing services;

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

10 "Energy agent" means a person that is duly registered pursuant to  
11 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), that  
12 arranges the sale of retail electricity or electric related services or  
13 retail gas supply or gas related services between government  
14 aggregators or private aggregators and electric power suppliers or  
15 gas suppliers, but does not take title to the electric or gas sold;

16 "Energy consumer" means a business or residential consumer of  
17 electric generation service or gas supply service located within the  
18 territorial jurisdiction of a government aggregator;

19 "Financing entity" means an electric public utility, a special  
20 purpose entity, or any other assignee of bondable transition  
21 property, which issues transition bonds. Except as specifically  
22 provided in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), a financing  
23 entity which is not itself an electric public utility shall not be  
24 subject to the public utility requirements of Title 48 or any rules or  
25 regulations adopted pursuant thereto;

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

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

35 "Gas supplier" means a person that is duly licensed pursuant to  
36 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) to offer  
37 and assume the contractual and legal obligation to provide gas  
38 supply service to retail customers, and includes, but is not limited  
39 to, marketers and brokers. A non-public utility affiliate of a public  
40 utility holding company may be a gas supplier, but a gas public  
41 utility or any subsidiary of a gas utility is not a gas supplier. In the  
42 event that a gas public utility is not part of a holding company legal  
43 structure, a related competitive business segment of that gas public  
44 utility may be a gas supplier, provided that related competitive  
45 business segment is structurally separated from the gas public  
46 utility, and provided that the interactions between the gas public  
47 utility and the related competitive business segment are subject to

1 the affiliate relations standards adopted by the board pursuant to  
2 subsection k. of section 10 of **[this act]** P.L.1999, c.23 (C.48:3-58);

3 "Gas supply service" means the provision to customers of the  
4 retail commodity of gas, but does not include any regulated  
5 distribution service;

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

18 "Government energy aggregation program" means a program and  
19 procedure pursuant to which a government aggregator enters into a  
20 written contract for the provision of electric generation service or  
21 gas supply service on behalf of business or residential customers  
22 within its territorial jurisdiction;

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

26 "Market transition charge" means a charge imposed pursuant to  
27 section 13 of **[this act]** P.L.1999, c.23 (C.48:3-61) by an electric  
28 public utility, at a level determined by the board, on the electric  
29 public utility customers for a limited duration transition period to  
30 recover stranded costs created as a result of the introduction of  
31 electric power supply competition pursuant to the provisions of  
32 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

33 "Marketer" means a duly licensed electric power supplier that  
34 takes title to electric energy and capacity, transmission and other  
35 services from electric power generators and other wholesale  
36 suppliers and then assumes contractual and legal obligation to  
37 provide electric generation service, and may include transmission  
38 and other services, to an end-use retail customer or customers, or a  
39 duly licensed gas supplier that takes title to gas and then assumes  
40 the contractual and legal obligation to provide gas supply service to  
41 an end-use customer or customers;

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

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

46 "On-site generation facility" means a generation facility, and  
47 equipment and services appurtenant to electric sales by such facility  
48 to the end use customer located on the property or on property

1 contiguous to the property on which the end user is located. An on-  
2 site generation facility shall not be considered a public utility. The  
3 property of the end use customer and the property on which the on-  
4 site generation facility is located shall be considered contiguous if  
5 they are geographically located next to each other, but may be  
6 otherwise separated by an easement, public thoroughfare,  
7 transportation or utility-owned right-of-way, or if the end use  
8 customer is purchasing thermal energy services produced by the on-  
9 site generation facility, for use for heating, air conditioning, or both,  
10 regardless of any intervening property, public thoroughfare, or  
11 transportation or utility-owned right-of-way.

12 "Person" means an individual, partnership, corporation,  
13 association, trust, limited liability company, governmental entity or  
14 other legal entity;

15 "Private aggregator" means a non-government aggregator that is  
16 a duly-organized business or non-profit organization authorized to  
17 do business in this State that enters into a contract with a duly  
18 licensed electric power supplier for the purchase of electric energy  
19 and capacity, or with a duly licensed gas supplier for the purchase  
20 of gas supply service, on behalf of multiple end-use customers by  
21 combining the loads of those customers;

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

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

46 "Related competitive business segment of an electric public  
47 utility or gas public utility" means any business venture of an  
48 electric public utility or gas public utility including, but not limited

1 to, functionally separate business units, joint ventures, and  
2 partnerships, that offers to provide or provides competitive services;

3 "Related competitive business segment of a public utility holding  
4 company" means any business venture of a public utility holding  
5 company, including, but not limited to, functionally separate  
6 business units, joint ventures, and partnerships and subsidiaries, that  
7 offers to provide or provides competitive services, but does not  
8 include any related competitive business segments of an electric  
9 public utility or gas public utility;

10 "Resource recovery facility" means a solid waste facility  
11 constructed and operated for the incineration of solid waste for  
12 energy production and the recovery of metals and other materials  
13 for reuse;

14 "Restructuring related costs" means reasonably incurred costs  
15 directly related to the restructuring of the electric power industry,  
16 including the closure, sale, functional separation and divestiture of  
17 generation and other competitive utility assets by a public utility, or  
18 the provision of competitive services as such costs are determined  
19 by the board, and which are not stranded costs as defined in [this  
20 act] P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be  
21 limited to, investments in management information systems, and  
22 which shall include expenses related to employees affected by  
23 restructuring which result in efficiencies and which result in  
24 benefits to ratepayers, such as training or retraining at the level  
25 equivalent to one year's training at a vocational or technical school  
26 or county community college, the provision of severance pay of two  
27 weeks of base pay for each year of full-time employment, and a  
28 maximum of 24 months' continued health care coverage. Except as  
29 to expenses related to employees affected by restructuring,  
30 "restructuring related costs" shall not include going forward costs;

31 "Retail choice" means the ability of retail customers to shop for  
32 electric generation or gas supply service from electric power or gas  
33 suppliers, or opt to receive basic generation service or basic gas  
34 service, and the ability of an electric power or gas supplier to offer  
35 electric generation service or gas supply service to retail customers,  
36 consistent with the provisions of [this act] P.L.1999, c.23 (C.48:3-  
37 49 et al.);

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

42 "Social program" means a program implemented with board  
43 approval to provide assistance to a group of disadvantaged  
44 customers, to provide protection to consumers, or to accomplish a  
45 particular societal goal, and includes, but is not limited to, the  
46 winter moratorium program, utility practices concerning "bad debt"  
47 customers, low income assistance, deferred payment plans,  
48 weatherization programs, and late payment and deposit policies, but

1 does not include any demand side management program or any  
2 environmental requirements or controls;

3 "Societal benefits charge" means a charge imposed by an electric  
4 public utility, at a level determined by the board, pursuant to, and in  
5 accordance with, section 12 of **[this act]** P.L.1999, c.23 (C.48:3-  
6 60);

7 "Stranded cost" means the amount by which the net cost of an  
8 electric public utility's electric generating assets or electric power  
9 purchase commitments, as determined by the board consistent with  
10 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.),  
11 exceeds the market value of those assets or contractual  
12 commitments in a competitive supply marketplace and the costs of  
13 buydowns or buyouts of power purchase contracts;

14 "Stranded costs recovery order" means each order issued by the  
15 board in accordance with subsection c. of section 13 of **[this act]**  
16 P.L.1999, c.23 (C.48:3-61) which sets forth the amount of stranded  
17 costs, if any, the board has determined an electric public utility is  
18 eligible to recover and collect in accordance with the standards set  
19 forth in section 13 of P.L.1999, c.23 and the recovery mechanisms  
20 therefore;

21 "Transition bond charge" means a charge, expressed as an  
22 amount per kilowatt hour, that is authorized by and imposed on  
23 electric public utility ratepayers pursuant to a bondable stranded  
24 costs rate order, as modified at any time pursuant to the provisions  
25 of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

26 "Transition bonds" means bonds, notes, certificates of  
27 participation or beneficial interest or other evidences of  
28 indebtedness or ownership issued pursuant to an indenture, contract  
29 or other agreement of an electric public utility or a financing entity,  
30 the proceeds of which are used, directly or indirectly, to recover,  
31 finance or refinance bondable stranded costs and which are, directly  
32 or indirectly, secured by or payable from bondable transition  
33 property. References in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.)  
34 to principal, interest, and acquisition or redemption premium with  
35 respect to transition bonds which are issued in the form of  
36 certificates of participation or beneficial interest or other evidences  
37 of ownership shall refer to the comparable payments on such  
38 securities;

39 "Transition period" means the period from August 1, 1999  
40 through July 31, 2003;

41 "Transmission and distribution system" means, with respect to an  
42 electric public utility, any facility or equipment that is used for the  
43 transmission, distribution or delivery of electricity to the customers  
44 of the electric public utility including, but not limited to, the land,  
45 structures, meters, lines, switches and all other appurtenances  
46 thereof and thereto, owned or controlled by the electric public  
47 utility within this State; and

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

3 "Universal service" means any service approved by the board  
4 with the purpose of assisting low-income residential customers in  
5 obtaining or retaining electric generation or delivery service.  
6 (cf: P.L.2002, c.84, s.1)

7  
8 2. (New section) a. Whenever an on-site generation facility  
9 produces power that is not consumed by the on-site customer, and  
10 that power is delivered to an off-site end use customer in this State,  
11 all of the charges listed in paragraphs (1) through (3) of this  
12 subsection shall be levied on the sale or delivery of such power to  
13 the off-site customer:

14 (1) the societal benefits charge or its equivalent, imposed  
15 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

16 (2) the market transition charge or its equivalent, imposed  
17 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

18 (3) the transition bond charge or its equivalent, imposed  
19 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

20 b. Except as provided in subsection c. of this section, upon a  
21 determination by the board that the power generated by an on-site  
22 generation facility that was installed subsequent to the starting date  
23 of retail competition as provided in subsection a. of section 5 of  
24 P.L.1999, c.23 (C.48:3-53) has, in the aggregate, displaced  
25 customer purchases from an electric public utility by an amount  
26 such that the kilowatt hours distributed by the electric public utility  
27 have been reduced to an amount equal to 92.5 percent of the  
28 kilowatt hours distributed by the electric public utility in calendar  
29 year 1999, the board shall impose the charges listed in paragraphs  
30 (1) through (3) of this subsection on the on-site customer of the on-  
31 site generation facilities:

32 (1) the societal benefits charge or its equivalent, imposed  
33 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

34 (2) the market transition charge or its equivalent, imposed  
35 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

36 (3) the transition bond charge or its equivalent, imposed  
37 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

38 None of the charges listed in paragraphs (1) through (3) of this  
39 subsection shall be levied on the sale or delivery of power to the on-  
40 site customer by an on-site generation facility that occurred prior to  
41 the date of the board's determination with regard to the facility  
42 serving that customer pursuant to this subsection.

43 c. A societal benefits charge, market transition charge, and  
44 transition bond charge, or their equivalent, shall not be imposed on  
45 the sale or delivery of power to an on-site customer that is derived  
46 from the on-site generation facility serving that customer if:

47 (1) the on-site customer or its agent installed the on-site  
48 generation facility, or expanded such a facility, prior to the effective



1 date of P.L.1999, c.23 (C.48:3-49 et al.), for the continued on-site  
2 power consumption by the same on-site customer and such power  
3 consumption by that on-site customer occurs after the effective date  
4 of P.L.1999, c.23 (C.48:3-49 et al.); or

5 (2) the on-site customer or its agent has made, on or before the  
6 effective date of P.L.1999, c.23 (C.48:3-49 et al.), substantial  
7 financial and contractual commitments in planning and  
8 development, including any expansion of such a facility and having  
9 applied for any appropriate air permit from the Department of  
10 Environmental Protection, for the continued provision of on-site  
11 power consumption by the same on-site customer that occurs after  
12 the effective date of P.L.1999, c.23 (C.48:3-49 et al.).

13

14 3. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to  
15 read as follows:

16 26. a. Receipts from the sale, exchange, delivery or use of  
17 electricity are exempt from the tax imposed under the Sales and Use  
18 Tax Act if the electricity:

19 (1) (a) Is sold by a municipal electric corporation in existence as  
20 of December 31, 1995 and used within its municipal boundaries  
21 except if the customer is located within a franchise area served by  
22 an electric public utility other than the municipal electric  
23 corporation. If a municipal electric corporation makes sales of  
24 electricity used outside of its municipal boundaries or within a  
25 franchise area served by an electric public utility other than the  
26 municipal electric corporation, then receipts from those sales of  
27 electricity by the municipal electric corporation shall be subject to  
28 tax under P.L.1966, c.30; or

29 (b) Is sold by a municipal electric utility in existence as of  
30 December 31, 1995, and used within its municipal boundaries.  
31 However, a municipal electric utility's receipts from the sale,  
32 exchange, delivery or use of electricity used by customers outside  
33 of its municipal boundaries and within its franchise area existing as  
34 of December 31, 1995 shall be subject to tax. If a municipal  
35 electric utility makes sales of electricity used outside of its  
36 franchise area existing as of December 31, 1995, then receipts from  
37 those sales of electricity by the municipal electric utility shall be  
38 subject to tax under P.L.1966, c.30;

39 (2) Was generated by a facility located on the user's property or  
40 property purchased or leased from the user by the person owning  
41 the generation facility and such property is contiguous to the user's  
42 property, and the electricity was consumed by the one on-site end  
43 user on the user's property, and was not transported to the user over  
44 wires that cross a property line or public thoroughfare unless the  
45 property line or public thoroughfare merely bifurcated the user's or  
46 generation facility owner's otherwise contiguous property or the  
47 electricity was consumed by an affiliated user on the same site, or  
48 by a non-affiliated user on the same site with an electric distribution

1 system which is integrated and interconnected with the user on or  
2 before March 10, 1997; the director may promulgate rules and  
3 regulations and issue guidance with respect to all issues related to  
4 affiliated users; or

5 (3) Is sold for resale.

6 For the purpose of electric sales by an on-site generation facility  
7 pursuant to this subsection, an end use customer's property shall be  
8 considered contiguous to the property on which the on-site  
9 generation facility serving that customer is located if the customer  
10 is purchasing thermal energy services produced by the facility, for  
11 use for heating, air conditioning, or both, regardless of any  
12 intervening property, public thoroughfare, transportation, or utility-  
13 owned right-of-way. The State Treasurer shall monitor monies  
14 deposited into the Energy Tax Receipts Property Tax Relief Fund  
15 on an annual basis and may report the results of the State  
16 Treasurer's analysis on the fund to the Governor and the  
17 Legislature, along with any recommendations on the exemptions in  
18 this subsection.

19 b. Receipts from the purchase or use of the following are exempt  
20 from the tax imposed under the Sales and Use Tax Act:

21 (1) Natural gas or utility service that is used to generate  
22 electricity that is sold for resale or to an end user other than the end  
23 user upon whose property is located a co-generation facility or self-  
24 generation unit that generated the electricity or upon the property  
25 purchased or leased from the end user by the person owning the co-  
26 generation facility or self-generation unit if such property is  
27 contiguous to the user's property and is the property upon which is  
28 located a co-generation facility or self-generation unit that  
29 generated the electricity; and

30 (2) Natural gas and utility service that is used for co-generation  
31 at any site [at which a co-generation facility was in operation on or  
32 before March 10, 1997, or for which an application for an operating  
33 permit or a construction permit and a certificate of operation in  
34 order to comply with air quality standards under P.L.1954, c.212  
35 (C.26:2C-1 et seq.) has been filed with the Department of  
36 Environmental Protection on or before March 10, 1997, to produce  
37 electricity for use on that site].

38 (cf: P.L.1999, c.23, s.62)

39

40 4. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill revises the definition of "on-site generation facility"  
46 under section 3 of P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA") to  
47 provide that if an end use customer is purchasing thermal energy  
48 services produced by an on-site generation facility, for the purpose

1 of heating, air conditioning, or both, the end use customer's  
2 property shall be considered contiguous to the property on which  
3 the on-site generation facility serving that customer is located,  
4 regardless of any intervening property public thoroughfare,  
5 transportation, or utility owned right-of-way.

6 Under current law, an end use customer's property is considered  
7 contiguous to the property on which the on-site generation facility  
8 is located only if the two properties are geographically located next  
9 to each other, except that the two properties may be separated by an  
10 easement, public thoroughfare, transportation, or utility-owned  
11 right-of-way.

12 The bill also provides that if power produced by an on-site  
13 generation facility is not consumed by the on-site customer, and  
14 that power is delivered to an off-site end use customer in this State,  
15 the sale or delivery of such power to the off-site customer shall be  
16 subject to various charges mandated by EDECA including the  
17 societal benefits charge, the market transition charge, and the  
18 transition bond charge.

19 The bill further provides that if the Board of Public Utilities (the  
20 "board") determines that the kilowatt hours distributed by an  
21 electric public utility have been reduced to an amount equal to 92.5  
22 percent of the kilowatt hours distributed by the electric public  
23 utility in calendar year 1999, as a result of the aggregate customer  
24 purchases of power generated by on-site generation facilities  
25 installed subsequent to the starting date of retail competition as  
26 provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53),  
27 then the board shall impose the societal benefits charge, the market  
28 transition charge, and the transition bond charge on the on-site  
29 customer, unless the power consumed by the on-site customer is  
30 derived from on-site generation facilities which the on-site  
31 customer installed, or for which the on-site customer entered into  
32 substantial commitments, prior to the effective date of EDECA.

33 Under current law, the power purchased by an on-site customer  
34 from an on-site generation facility is not subject under EDECA to  
35 the societal benefits charge, the market transition charge, and the  
36 transition bond charge.

37 The bill also clarifies the meaning of "contiguous property" for  
38 the purposes of section 26 of the Sales and Use Tax Act, P.L.1997,  
39 c.162 (C.54:32B-8.46) by providing that an end use customer's  
40 property and the property on which an on-site generation facility is  
41 located shall be considered contiguous if the end use customer is  
42 purchasing thermal energy services produced by the facility, for the  
43 customer's heating or air conditioning purposes, regardless of any  
44 intervening property, public thoroughfare, transportation, or utility-  
45 owned right-of-way.

46 Finally, the bill removes certain limitations on the exemption of  
47 natural gas and utility service that is used for co-generation at any  
48 site from the tax imposed under the Sales and Use Tax Act.

# SENATE ECONOMIC GROWTH COMMITTEE

## STATEMENT TO

### **SENATE, No. 2557**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2009

The Senate Economic Growth Committee reports favorably Senate Bill, No. 2557 with committee amendments.

As amended, this bill revises the definition of "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA") to provide that if an end use customer is purchasing thermal energy services produced by an on-site generation facility, for the purpose of heating, air conditioning, or both, the end use customer's property shall be considered contiguous to the property on which the on-site generation facility serving that customer is located, regardless of any intervening property public thoroughfare, transportation, or utility owned right-of-way.

Under current law, an end use customer's property is considered contiguous to the property on which the on-site generation facility is located only if the two properties are geographically located next to each other, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way.

The amended bill also provides that if power produced by an on-site generation facility is not consumed by the on-site customer, and that power is delivered to an off-site end use customer in this State, the sale or delivery of such power to the off-site customer shall be subject to various charges mandated by EDECA including the societal benefits charge, the market transition charge, and the transition bond charge.

The amended bill further provides that if the Board of Public Utilities (the "board") determines that the kilowatt hours distributed by an electric public utility have been reduced to an amount equal to 92.5 percent of the kilowatt hours distributed by the electric public utility in calendar year 1999, as a result of the aggregate customer purchases of power generated by on-site generation facilities installed subsequent to the starting date of retail competition as provided in EDECA, then the board shall impose the societal benefits charge, the market transition charge, and the transition bond charge on the on-site customer, unless the power consumed by the on-site customer is derived from on-site generation facilities which the on-site customer installed, or for which

the on-site customer entered into substantial commitments, prior to the effective date of EDECA.

Under current law, the power purchased by an on-site customer from an on-site generation facility is not subject under EDECA to the societal benefits charge, the market transition charge, and the transition bond charge.

The amended bill also clarifies the meaning of "contiguous property" for the purposes of section 26 of P.L.1997, c.162 (C.54:32B-8.46) by providing that an end use customer's property and the property on which an on-site generation facility is located shall be considered contiguous if the end use customer is purchasing thermal energy services produced by the facility, for the customer's heating or air conditioning purposes, regardless of any intervening property, public thoroughfare, transportation, or utility-owned right-of-way.

Finally, the amended bill removes certain limitations on the exemption of natural gas and utility service that is used for co-generation at any site from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), by providing a sales and use tax exemption for natural gas and utility service purchased or used by certain co-generation facilities in the production of electricity and steam or other forms of useful energy used for industrial or commercial heating and cooling purposes. Under current law, such exemption applies only to those services at sites: 1) at which co-generation facilities have been in operation on or before March 10, 1997; or 2) for which an application for an operating permit or a construction permit and a certificate of operation in order to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site.

The committee amended the bill to: 1) provide for a definition of "co-generation;" 2) expand the description within the bill's title; 3) correct a statutory reference; and 4) make a spelling and punctuation correction.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2557**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 4, 2010

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2557 (1R).

*Expanding the class of “on-site generation facilities.”* As amended, this bill allows a generation facility to serve a broader geographical customer base and still be considered an "on-site generation facility" under P.L.1999, c.23 (C.48:3-49 et al.) ("EDECA"). Under current law, the facility must be located on the property, or on property contiguous to the property, on which the end user is located, except that the two properties may be separated by an easement, public thoroughfare, transportation, or utility-owned right-of-way. Under the bill, if an end use customer is purchasing thermal energy services produced by a generation facility for use in heating or cooling, or both, the facility shall be considered an on-site generation facility with respect to that customer, regardless of the whether multiple easements, public thoroughfares, or transportation or utility owned rights-of-way lie between the property on which the facility is located and that on which the user is located.

The bill also (i) incorporates a definition of “co-generation,” (ii) clarifies that a co-generation facility” is the same as a “combined heat and power facility,” (iii) revises the definition of “combined heat and power facility” to include equipment and services connected to sales of electric or thermal energy, or both, to end use customers, whether or not those customers are located on the site of the generation facility or on property contiguous to the facility’s property, and (iv) specifies that a combined heat and power facility or co-generation facility shall not be considered a public utility.

*Clarifying applicability of “line charges” to off-site thermal energy services customers.* The bill clarifies that the sale or delivery of power produced by an on-site generation facility and delivered to an off-site end use thermal energy services customer, like the sale or delivery of such power to other off-site customers, shall be subject to the transitional energy facilities assessment (“TEFA”) and to various charges mandated by EDECA including the societal benefits charge,

the market transition charge, and the transition bond charge. (Under current law, the power purchased by an *on-site* customer from an on-site generation facility is not subject to the TEFA, the societal benefits charge, the market transition charge, and the transition bond charge.)

*Extending the sales tax exemption for sales of energy by co-generation facilities.* The bill also extends the existing New Jersey sales and use tax exemption for sales of electricity generated by a facility located on certain property contiguous to the user's property to any end use customer purchasing thermal energy services produced by the facility for the customer's heating or cooling purposes, regardless of any intervening property, public thoroughfare, or transportation or utility-owned right-of-way. The bill also extends the existing sales and use tax exemption for sales or use of natural gas and utility service that is used for co-generation to cover natural gas and utility service used for co-generation at a co-generation facility constructed after January 1, 2010.

*Use of existing distribution network for delivery of co-generation electric power to thermal energy services customers.* Finally, the bill provides that, in order to avoid duplication of required electrical infrastructure and to maximize economic efficiency and electrical safety, the delivery of electric power from an on-site generation facility to an end use thermal energy services customer shall utilize the existing locally franchised public utility electric distribution infrastructure. The bill also requires that the New Jersey electric public utility having franchise rights within the municipality within which the facility is located shall provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual end use thermal energy services customer.

The provisions of this bill, as amended, are identical to those of Assembly Bill Nos. 3339 and 3439 ACS ACS, as amended and reported this day by the committee.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) update the text of section 1 (EDECA definitions) to reflect recent statutory changes; (2) incorporate the definition of "co-generation" and the revision of the definition of "combined heat and power facility"; (3) add a definition of "off-site end use thermal energy services customer"; (4) incorporate the clarification of TEFA and "line charge" applicability to thermal energy services customers into an existing section of EDECA and delete proposed new language that substantially duplicates the text of that existing section; (5) limit the sales and use tax exemption applicable to natural gas and utility service for co-generation to facilities (a) in operation (or for which operating permits were on file) as of March 10, 1997, or (b) constructed after January 1, 2010; and (6) add the requirement that existing utility infrastructure be used to

deliver co-generation power to end use thermal energy services customers.

**FISCAL IMPACT:**

According to recent information informally provided by the Board of Public Utilities, the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.



# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 2557 STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JUNE 11, 2009

### SUMMARY

**Synopsis:** Concerns on-site generation facilities.

**Type of Impact:** Ongoing revenue loss to the General Fund.

**Agencies Affected:** Department of the Treasury

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	(\$500,000)	(\$500,000)	(\$500,000)
	Approximate	Approximate	Approximate

- The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to information informally provided by the Board of Public Utilities (BPU) and the New Jersey Division of Taxation, the State can expect a maximum revenue loss of approximately \$500,000 annually. The actual revenue loss could be substantially lower if there is an overall decline in receipts from the sale or use of electricity, natural gas, and utility service. However in future years it is possible that this amount could increase, if new cogeneration facilities are built and produce energy for sale that is not subject to the sales and use tax.

### BILL DESCRIPTION

Senate Bill No. 2557 (1R) of 2009 redefines “on-site generation facility” to allow sales of electric power to any end-use customer who purchases thermal energy services produced by the facility, regardless of the customer’s location. Its implementation could result in lowering one of the barriers to greater development of combined heat and power plants or cogeneration facilities, which are currently restricted to selling electric power to customers located on property that is on, or physically adjacent to, the property on which the cogeneration facility is located.

This bill expands the number of customers who may be entitled to an exemption from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), by providing

an exemption from the sales and use tax for sales of electricity from cogeneration facilities, to end-users who purchase thermal energy services for use on a non-contiguous property. In addition, the bill exempts from the sales and use tax, purchases of natural gas and utility service by any cogeneration facility, thereby removing the current restriction that limits eligibility for such exemption to a facility in operation on or before March 10, 1997, or for which certain site applications had been filed with the Department of Environmental Protection on or before March 10, 1997.

## **FISCAL ANALYSIS**

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

The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to information informally provided by the BPU and the New Jersey Division of Taxation, the State can expect a maximum revenue loss of approximately \$500,000 annually. The actual revenue loss could be substantially lower if there is an overall decline in receipts from the sale or use of electricity, natural gas, and utility service. In future years, it is possible that this amount could increase, if new cogeneration facilities are built and produce energy for sale that is not subject to the sales and use tax.

The numerical data included in this fiscal estimate are based on information provided by the BPU in October of 2007 and recent information from the New Jersey Division of Taxation. It is based on the number of cogeneration facilities in operation in the State at that time, and the amount of power generated by the facilities that are subject to the State sales and use tax.

In October of 2007, the BPU reported that of the 3,394 megawatts of cogeneration supplied energy in New Jersey, 286 megawatts have been installed since the imposition of the State sales and use tax on such generated energy as of March 10, 1997. Of these 286 megawatts, the BPU has been able to verify that 269 megawatts are exempt from the sales and use tax as a result of facility shutdown, export, or due to other exemptions. Only 17 megawatts of power generated by cogeneration facilities in the State are currently subject to the sales and use tax. According to the 2008 New Jersey Energy Master Plan, no significant new cogeneration facilities have been built in New Jersey since 1999.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Joseph A. Hroncich  
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 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

Corrected Copy

[First Reprint]

**SENATE, No. 2557**

## **STATE OF NEW JERSEY 213th LEGISLATURE**

DATED: NOVEMBER 2, 2009

### SUMMARY

- Synopsis:** Concerns on-site generation facilities.
- Type of Impact:** No or minimal revenue loss to the General Fund.
- Agencies Affected:** Department of the Treasury

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Minimal	Minimal	Minimal

- The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the Board of Public Utilities (BPU), the State may experience no or minimal loss of sales and use tax revenue from the passage of this bill.
- All existing cogeneration plants, except for some extremely small cogeneration plants, are exempt from the State sales and use tax.

### BILL DESCRIPTION

Senate Bill No. 2557 (1R) of 2009 redefines “on-site generation facility” to allow sales of electric power to any end-use customer who purchases thermal energy services produced by the facility, regardless of the customer’s location. Its implementation could result in lowering one of the barriers to greater development of combined heat and power plants or cogeneration facilities, which are currently restricted to selling electric power to customers located on property that is on, or physically adjacent to, the property on which the cogeneration facility is located.

This bill expands the number of cogeneration facility customers who may be entitled to an exemption from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1

et seq.), by extending the exemption for sales of electricity from cogeneration facilities to end-users who purchase thermal energy services for use on a non-contiguous property. In addition, the bill exempts from the sales and use tax, purchases of natural gas and utility service by any cogeneration facility, removing the current restriction that limits eligibility for such exemption to a facility in operation on or before March 10, 1997, or for which certain site applications had been filed with the Department of Environmental Protection on or before March 10, 1997.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The Office of Legislative Services is unable to quantify the fiscal impact this legislation will have on the State. However, according to recent information informally provided by the BPU, the State may experience no or minimal loss of revenue from the passage of this bill. Originally, the BPU estimated that there would be a \$500,000 annual revenue loss to the State. Subsequently, the BPU obtained updated information and data that led to a revision of this estimate. Since the original estimate was made, the BPU was able to verify that all existing cogeneration plants, except for some extremely small plants are exempt from the State sales and use tax. Therefore, the BPU concluded there are no cogeneration plants that would be subject to paying the sales and use tax for on-site generation, and there would be no loss of current tax revenue.

In addition, the BPU acknowledges that the bill includes a micro-grid or expanded definition of on-site generation. Facilities engaged in the newly recognized form of energy generation would be primarily located in urban areas mostly within the 37 municipalities identified as urban enterprise zones (UEZ) that already have exemptions from the sales and use tax. For new on-site generation, both within and outside of the UEZ's, the State's existing deregulation law, the Electric Discount Energy Conservation Act, holds the on-site generation exempt from the sales and use tax for electricity produced and used within the on-site definition. This means that the proposed bill would introduce no new tax revenue implications for on-site generation. Since the larger micro-grid type plants take up to three years to develop, the BPU cannot accurately estimate if there will be any future tax erosion or loss that would occur under the expanded definition in the bill with on-site versus micro-grid developments.

In October of 2007, the BPU reported that of the 3,394 megawatts of cogeneration supplied energy in New Jersey, 286 megawatts have been installed since the imposition of the State sales and use tax on such generated energy as of March 10, 1997. Recently, the BPU was able to verify that all 286 megawatts are exempt from the sales and use tax as a result of facility shutdown, export, or due to other exemptions. According to the 2008 New Jersey Energy Master Plan, no significant new cogeneration facilities have been built in New Jersey since 1999.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Joseph A. Hroncich  
Associate Fiscal Analyst*

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

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).