

**ASSEMBLY, No. 5040**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED JANUARY 10, 2023

**Sponsored by:**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblyman ROY FREIMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**Co-Sponsored by:**

**Assemblyman Tully**

**SYNOPSIS**

The "New Jersey Town Center Microgrid Pilot Program Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/26/2023)**

1 AN ACT concerning the provision of electric supply to critical  
2 facilities through microgrids.

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

6  
7 1. This act shall be known and may be cited as the "New Jersey  
8 Town Center Microgrid Pilot Program Act."

9  
10 2. As used in this act:

11 "Board" means the New Jersey Board of Public Utilities or any  
12 successor agency.

13 "Critical facilities" means buildings and facilities that are  
14 essential for the delivery of vital services or protection of a  
15 community.

16 "Department" means the New Jersey Department of  
17 Environmental Protection.

18 "Developer" means an entity that enters into an agreement with a  
19 pilot agency for the design, financing, construction, and operation,  
20 or any combination thereof, of a supply of electrical power pursuant  
21 to this act.

22 "Distributed energy resource" or "DER" means one or more  
23 electric power generation, management, or storage technologies,  
24 excluding diesel fuel technologies, located in a pilot agency, that is  
25 capable of providing the standard energy needs of a building or  
26 structure, or group of buildings or structures, if the normal source of  
27 electricity is disrupted due to a power outage.

28 "Division" means the Division of Local Government Services in  
29 the Department of Community Affairs.

30 "Electrical distribution company" means a public utility, as that  
31 term is defined in R.S.48:2-13, holding a franchise from the Board  
32 of Public Utilities to provide electric distribution service, and  
33 whose electrical distribution service territory includes the pilot  
34 agency.

35 "Microgrid" means a group of interconnected electrical supply  
36 loads and distributed energy resources within clearly defined  
37 electrical boundaries that acts as a single controllable entity with  
38 respect to the grid. A microgrid can connect and disconnect from  
39 the grid to enable it to operate in both grid-connected or island-  
40 mode.

41 "Microgrid tariff" means a tariff approved by the board for the  
42 purpose of facilitating the development and operation of a TCDER  
43 Microgrid, and which tariff may provide waivers of law and rules,  
44 and impose conditions which the board determines to be necessary  
45 and appropriate to facilitate the development and operation of a  
46 TCDER Microgrid. A microgrid tariff shall not be construed as  
47 establishing a precedent with regard to any other tariff subject to  
48 board approval.

1 "Offtaker" means a party purchasing energy and related products  
2 that are produced and delivered from a TCDER Microgrid.

3 "Pilot agency" means a municipal, county, or State government  
4 entity that participated in the Board of Public Utilities' TCDER  
5 Microgrid Feasibility Study Program and was informed by the  
6 board to have met the feasibility study program requirements.

7 "Power purchase agreement" means a contract, between a pilot  
8 agency and a developer, for the supply of electrical power from a  
9 distributed energy resource to critical facilities through a TCDER  
10 Microgrid, which contract may reference a project agreement for  
11 the development of a distributed energy resource.

12 "Project" means a TCDER Microgrid being developed by a pilot  
13 agency pursuant to this act.

14 "Project agreement" means a contract, between a pilot agency  
15 and a developer, setting forth terms and conditions related to: the  
16 scope and location of the project, ownership rights, rights-of-way  
17 access, land leases, insurance and bonding, fees and taxes,  
18 operation, financing, and related issues not included in the terms  
19 and conditions of the power purchase agreement. A project  
20 agreement may address the terms of a proposed microgrid tariff and  
21 may be conditioned on approval of the tariff. A project agreement  
22 shall not relax or modify any applicable requirement for approval  
23 under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1  
24 et seq.).

25 "Town Center Distributed Energy Resources Microgrid" or  
26 "TCDER Microgrid" means critical facilities within the municipal  
27 boundary of a pilot agency that are connected as a microgrid to one  
28 or more distributed energy resources.

29

30 3. a. Pursuant to the provisions of this act, and notwithstanding  
31 the provisions of any other law, rule, or regulation to the contrary,  
32 for the purpose of developing a Town Center Distributed Energy  
33 Resources Microgrid to supply electrical power for critical  
34 facilities, a pilot agency may enter into a project agreement and a  
35 power purchase agreement with a developer.

36 b. A pilot agency and a developer may enter into a power  
37 purchase agreement under this act for a term not to exceed 20 years,  
38 subject to the review and approval of the Division of Local  
39 Government Services and the Board of Public Utilities.

40 (1) The Division of Local Government Services shall have the  
41 duty and power to review and approve financial matters and risks  
42 presented by a power purchase agreement.

43 (2) The Board of Public Utilities shall have the duty and power  
44 to:

45 (a) review and approve electrical supply and distribution matters  
46 of a power purchase agreement;

47 (b) provide guidance concerning offtaker rates and fees that are  
48 necessary for a proposed power purchase agreement; and

1 (c) adopt a microgrid tariff affecting an electrical distribution  
2 company in order to facilitate the development of a project.

3 c. The board and the division shall each establish application  
4 forms and processes for approvals under this act, however, the  
5 board and the division may establish a joint application form and  
6 process for approvals.

7 d. (1) The division shall assist a pilot agency in developing a  
8 private agency's developer procurement process or request for  
9 proposals to ensure that the process or proposals reflects the  
10 necessary knowledge, experience, financial capacity, and expertise  
11 to develop, construct, and operate an energy supply facility in New  
12 Jersey.

13 (2) The board shall assist a pilot agency in evaluating provisions  
14 of a proposed power purchase agreement and tariff, including but  
15 not limited to, assistance in matters of energy pricing, maintenance,  
16 termination of the agreement, removal of infrastructure, assignment  
17 of contract, cybersecurity, liability insurance, electrical system  
18 connection and interfaces, and system upgrades.

19 e. A pilot agency may submit to the division a request for a  
20 waiver of specific provisions of law that are within the division's  
21 jurisdiction. The division may grant a request for a waiver and may  
22 adopt alternative provisions upon a finding of public need for the  
23 project and general consistency with the applicable provisions of  
24 law if the division determines that enforcing the requirements  
25 sought to be waived are not necessary to protect the overall public  
26 interest and may compromise the viability of the proposed project.

27 f. The board and the division may each take actions not  
28 specifically authorized by this act that the board or division deems  
29 reasonable, prudent, and necessary to accomplish the purposes of  
30 this act if those actions are consistent with the purposes of this act  
31 and address issues not specifically covered by this act. For the  
32 purpose of this subsection, the purposes of this act are to encourage  
33 energy efficiency, reliability, resiliency, sound technical  
34 development and operation, while ensuring the fiscal integrity of  
35 each pilot agency and developer with regard to a power purchase  
36 agreement and project agreement.

37  
38 4. Notwithstanding the provisions of the "Local Public  
39 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and of rules  
40 and regulations promulgated thereunder to the contrary, a pilot  
41 agency may solicit proposals for the development of a TCDER  
42 Microgrid project, and enter into a project agreement and a power  
43 purchase agreement in the following manner:

44 a. A pilot agency shall publish notice of the availability of  
45 request for proposal documentation at least 30 days prior to the date  
46 established for the submission of proposals in at least one  
47 newspaper of general circulation in the jurisdiction or service area  
48 of the pilot agency to be served under the terms of the proposed

1 agreements and by posting notice on the website of the pilot  
2 agency. A pilot agency shall promptly provide request for proposal  
3 documentation to any known prospective developers upon  
4 publication and to any others upon request. The request for  
5 proposals shall also be posted on the pilot agency's Internet website  
6 on a page normally used for advertisement of bids.

7 b. A prospective developer may submit a proposal, which shall  
8 include all the information required by the request for proposals. A  
9 pilot agency may disqualify a prospective developer's proposal  
10 from consideration if the prospective developer does not comply  
11 with a requirement set forth in the request for proposals. A pilot  
12 agency may hold an informational meeting to discuss a proposed  
13 project and answer questions so long as the meeting is open to all  
14 prospective developers. A pilot agency may host an Internet  
15 website to answer questions submitted by prospective developers.

16 c. A pilot agency shall conduct a preliminary review of the  
17 proposals received from prospective developers to determine which  
18 proposals meet the minimum qualifications and standards. The  
19 review of proposals shall be conducted in a manner that avoids  
20 disclosure of the contents of a proposal to prospective developers  
21 that submitted competing proposals. A pilot agency may conduct  
22 discussions with a prospective developer that submitted a qualified  
23 proposal for the purpose of clarifying information submitted in the  
24 proposal. After completing a preliminary review of the proposals  
25 submitted by prospective developers, a pilot agency may revise its  
26 request for proposal documentation if the pilot agency  
27 simultaneously provides notice of the revision to each prospective  
28 developer that submitted a proposal and provides a uniform and  
29 reasonable period of time within which a prospective developer that  
30 submitted a proposal may submit a revised proposal to the pilot  
31 agency.

32 d. (1) A pilot agency shall appoint the agency's purchasing  
33 agent, legal counsel, engineer, administrator, or other qualified  
34 person, to evaluate submitted proposals in accordance with the  
35 methodology set forth in the request for proposals. The governing  
36 body may create a committee to assist the evaluating appointee in  
37 the effort. After completing the evaluation of submitted proposals,  
38 the person appointed to evaluate proposals shall prepare a report  
39 explaining the evaluations and making recommendations, which  
40 may include recommending the award of a contract or contracts to a  
41 prospective developer. The report shall list each prospective  
42 developer and shall summarize each submitted proposal. The report  
43 shall rank prospective developers in order of preference, and may  
44 recommend the selection of a developer. If the report recommends  
45 the selection of a developer, the report shall clearly state the reasons  
46 for recommending selection of the prospective developer over other  
47 prospective developers.

1       (2) The pilot agency shall make the report available to the  
2 public, and to each prospective developer that submitted a proposal,  
3 at least 48 hours prior to announcing selection of a prospective  
4 developer and entering into negotiations with the selected  
5 prospective developer.

6       (3) After receipt and review of the report, and at least 48 hours  
7 after making the report available to the public and each prospective  
8 developer, the governing body of a pilot agency may, by resolution,  
9 select a prospective developer and authorize the pilot agency to  
10 enter into negotiations for a power purchase agreement with the  
11 selected prospective developer. If the governing body selects a  
12 prospective developer other than the highest ranked developer, the  
13 governing body shall include an explanation for doing so in the  
14 resolution.

15       (4) The governing body of a pilot agency may reject all  
16 proposals for any of the reasons set forth in section 21 of P.L.1999,  
17 c.440 (C.40A:11-13.2).

18       e. (1) A pilot agency shall negotiate a preliminary project  
19 agreement and a preliminary power purchase agreement with the  
20 selected prospective developer.

21       (2) If a pilot agency is unable to negotiate satisfactory  
22 preliminary agreements with the selected prospective developer, the  
23 pilot agency may, by resolution, abandon negotiations with that  
24 prospective developer and select the next-highest-ranked  
25 prospective developer. The pilot agency shall notify each  
26 prospective developer that submitted a proposal of the selection of  
27 the next-highest-ranked prospective developer at least 48 hours  
28 prior to commencing negotiations with the next-highest-ranked  
29 prospective developer.

30       (3) A pilot agency, the selected prospective developer, and the  
31 applicable electrical distribution company shall consult on issues  
32 relevant to the development and operation of a proposed project,  
33 and shall negotiate the provisions of a proposed microgrid tariff for  
34 the purpose of enabling a proposed project to operate in a manner  
35 consistent with sound distribution grid engineering, safety  
36 requirements, economics, and cross-subsidy standards. An  
37 electrical distribution company shall not unreasonably withhold its  
38 agreement to a proposed microgrid tariff and shall negotiate in good  
39 faith with the pilot agency and the selected prospective developer in  
40 order to facilitate the proposed project. The terms and conditions of  
41 the proposed microgrid tariff shall be contingent upon approval by  
42 the board.

43       (a) If the pilot agency, the selected prospective developer, and  
44 the applicable electrical distribution company agree to the  
45 provisions of a proposed microgrid tariff, the electrical distribution  
46 company shall submit the proposed microgrid tariff to the board for  
47 the board's approval.

1 (b) If the pilot agency, the selected prospective developer, and  
2 the applicable electrical distribution company cannot agree on all  
3 necessary provisions of a proposed microgrid tariff, the electrical  
4 distribution company shall provide the pilot agency and the selected  
5 prospective developer a written statement setting forth each issue  
6 necessary to be addressed in the tariff, indicating whether the  
7 parties have agreed on each issue, and explaining the electrical  
8 distribution company's recommendations on each issue of  
9 disagreement. In this instance, the application for review and  
10 approval of the proposed agreement, submitted pursuant to  
11 subsection h. of this section, shall include the pilot agency's  
12 recommendations and the selected prospective developer's  
13 recommendations on each issue of disagreement together with the  
14 electrical distribution company's written statement on the proposed  
15 microgrid tariff. As part of its action on the application, the board  
16 shall consider the submitted recommendations on each issue of  
17 disagreement and make a determination to resolve each issue.

18 (4) After satisfactory completion of negotiations with a  
19 prospective developer, a pilot agency shall set forth in a written  
20 document a summary of the terms and conditions of the proposed  
21 agreements and shall, upon request, make this document available  
22 to the public along with the proposed agreements.

23 f. Prior to entering into a project agreement and a power  
24 purchase agreement with a prospective developer, a pilot agency  
25 shall conduct a public hearing on the proposed agreements. The  
26 pilot agency shall provide at least 14 days' prior notice of the public  
27 hearing by publication in at least one newspaper of general  
28 circulation in the jurisdiction or service area of the pilot agency to  
29 be served under the terms of the proposed agreement and by posting  
30 notice of the public hearing on the website of the pilot agency. The  
31 publication shall include notice of the date, time and place of the  
32 public hearing, and provide notice of the place and times, or  
33 Internet website at which, a member of the public may review the  
34 proposed agreements.

35 g. A pilot agency shall produce a verbatim record of the public  
36 hearing. The pilot agency shall prepare a written hearing report,  
37 which shall include a copy of the proposed agreements, a copy of  
38 the statement setting forth the pilot agency's reasons for selecting  
39 the proposal, the verbatim record of the public hearing, written  
40 statements submitted by interested parties, and a statement prepared  
41 by the pilot agency summarizing the major issues raised at the  
42 public hearing and the pilot agency's specific responses to those  
43 issues. The pilot agency shall make copies of the hearing report  
44 available to interested parties upon their request.

45 h. (1) Upon at least 10 days' prior written notice provided after  
46 the close of a public hearing on a proposed project agreement and a  
47 proposed power purchase agreement, a pilot agency shall submit:

1 (a) an application for review of the proposed project agreement  
2 and for review and approval of the proposed power purchase  
3 agreement to the division;

4 (b) an application for review of the proposed project agreement  
5 and for review and approval of the proposed power purchase  
6 agreement and proposed microgrid tariff to the board; and

7 (c) a copy of each application to the Department of  
8 Environmental Protection for the department's review and  
9 comment.

10 (2) A pilot agency shall submit initial applications within three  
11 years of the effective date of this act.

12 i. (1) The division, the board, and the department shall  
13 coordinate their reviews, insofar as practicable, and may engage in  
14 discussions with each other and the pilot agency to address any  
15 concerns. The department shall provide any written comments to  
16 the division, the board, and the pilot agency, for their consideration,  
17 no later than 45 days after the department's receipt of an  
18 application, or within 10 days of being notified by the division or  
19 board of their intent to act on the application.

20 (2) Within 60 days of receipt of an application, the board and  
21 the division shall each approve, disapprove, or conditionally  
22 approve, the application. The board and the division shall  
23 disapprove an application unless it was initially submitted for  
24 review within three years of the effective date of this act. If the  
25 board or division does not approve, disapprove, or conditionally  
26 approve an application within 60 days of receipt, the application  
27 shall be deemed approved, unless the public agency agrees to an  
28 extension of the period or the application was not submitted within  
29 three years of the effective date of this act.

30 (3) If the board or division conditionally approves an  
31 application, the board or division shall provide the pilot agency  
32 suggested changes or language for a required revision to the  
33 proposed agreement or tariff, in writing, inclusion of which would  
34 enable the board or division to approve the proposed agreement or  
35 tariff.

36 (a) If the board or division determines that the required revision  
37 is substantial, the pilot agency shall hold a public hearing on the  
38 revision. A substantial revision shall be a change that materially  
39 changes the terms and conditions of the proposed agreement or  
40 tariff. A pilot agency shall submit a proposed revision to the board,  
41 the division, and the department at least 15 days prior to the date of  
42 the public hearing.

43 (b) If the board or division determines that the required revision  
44 is not substantial, the pilot agency shall submit the proposed  
45 revision to the board and the division for approval and to the  
46 department for review. The board and the division, at their next  
47 public meetings held at least 15 days after submission of a proposed  
48 revision, shall either: approve the proposed revision, if it is found to



1 be consistent with the conditions set forth in the conditional  
2 approval; or disapprove the proposed revision with a written  
3 explanation as to why the revision is not consistent with the  
4 conditions set forth in the conditional approval.

5 (4) In its review of an application, the board shall apply the  
6 following criteria in determining whether to approve a proposed  
7 power purchase agreement and microgrid tariff:

8 (a) The prospective developer has the financial capacity and  
9 technical and administrative experience to ensure continuity of  
10 service over the term of the agreement and tariff and that the  
11 standards and requirements contained in the application documents  
12 concerning the financial, technical and administrative capacity of  
13 the prospective developer are necessary and sufficient to protect the  
14 public interest.

15 (b) The terms of the proposed power purchase agreement and  
16 microgrid tariff are not unreasonable. In determining whether the  
17 terms of the proposed agreement and tariff are not unreasonable, the  
18 board shall review the fees and charges to be charged or assessed  
19 under the proposed agreement and tariff to determine that they are  
20 reasonable to the pilot agency, taking into consideration all the  
21 obligations to be undertaken by the prospective developer and all  
22 the benefits to be obtained by the pilot agency. In making this  
23 determination, the board shall not use the traditional rate-based rate  
24 of return methodology, pursuant to the provisions of Title 48 of the  
25 Revised Statutes.

26 (c) The franchise customers of a public utility are protected  
27 from the risks of the proposed power purchase agreement and are  
28 not subsidizing the agreement. If a prospective developer is not a  
29 public utility, the board shall ensure that the terms of the proposed  
30 power purchase agreement address the risks the agreement imposes  
31 on all offtakers, and that users of electricity who are not part of the  
32 TC DER microgrid are not subsidizing the agreement through  
33 increased charges, rates, or fees.

34 (d) If a prospective developer is not an electrical distribution  
35 company, the prospective developer shall not be subject to laws,  
36 rules, and regulations applicable to regulated public utilities, except  
37 for the terms and conditions set forth in the applicable microgrid  
38 tariff.

39 (e) A microgrid tariff may include, but shall not be limited to,  
40 the following:

41 (i) provisions enabling a developer to cross electric public  
42 utility rights of way and construct distribution wires and facilities.

43 (ii) provisions enabling an electric public utility to recover costs  
44 of switches and related costs of integrating microgrid generated  
45 energy into their system.

46 (iii) provisions addressing the assessment of standby, access,  
47 and social benefit, market transition fees, rates, or charges.

1 (iv) provisions allowing an electric public utility to own and  
2 maintain distribution wiring, switches, and other facilities that  
3 connect to or touch their system.

4 (v) provisions ensuring that the cost of the added distribution  
5 infrastructure is passed on to the customers of the TCDER  
6 Microgrid over the life of that infrastructure.

7 (vi) provisions that supersede other statutes and regulations,  
8 upon the board's determination that it is necessary, appropriate, and  
9 in the public interest to do so, in order to facilitate the success of  
10 the proposed project and power purchase agreement.

11 (5) In its review of an application, the division shall apply the  
12 following criteria in determining whether to approve a proposed  
13 power purchase agreement:

14 (a) The terms of the proposed power purchase agreement do not  
15 materially impair the ability of the pilot agency to punctually pay  
16 principal and interest due on its outstanding indebtedness and to  
17 supply other essential public improvements and services.

18 (b) The power purchase agreement contains satisfactory  
19 provisions addressing:

20 (i) The allocation of the risks of operating and maintaining the  
21 microgrid.

22 (ii) The allocation of the financial risks of the power purchase  
23 agreement.

24 (iii) The defaulting and termination of the agreement.

25 (iv) The requirements for the provision of a performance bond  
26 by the developer, if so required by the pilot agency.

27 The division shall also review and specifically approve any  
28 agreement provision pursuant to which a pilot agency may execute  
29 a financing instrument for the purposes set forth in the agreement.  
30 A bond authorization or other obligation that pledges the full faith  
31 and credit of a pilot agency shall be subject to the approval of the  
32 Local Finance Board.

33 (6) The board and the division shall assess, and the pilot agency  
34 shall pay, a fee equal to the cost incurred by the board or division  
35 for an analysis of an application by an independent person who has  
36 expertise in the area of electric supply services if during the review  
37 of an application the board or division determine that such an  
38 analysis is required and a person with the required expertise is not  
39 readily available from within any executive department of the State  
40 government.

41 (7) If the pilot agency and the developer require amendments to  
42 a power purchase agreement after approval of an application by the  
43 board and division, the pilot agency shall submit proposed  
44 amendments to the board and division for approval and to the  
45 department for review. At the next public meeting of the board and  
46 of the division convened at least 20 days after receipt of proposed  
47 amendments, the board and the division shall determine whether the  
48 proposed amendments are substantial. If the amendments are

1 substantial in nature, as determined by either the board or the  
2 division, the pilot agency shall conduct a hearing on the proposed  
3 revision. Within 45 days of the receipt of proposed amendments  
4 that are not determined to be substantial, or within 60 days of the  
5 receipt of an application for approval of proposed amendments that  
6 are determined to be substantial, the board and division shall  
7 approve or conditionally approve the amendments in accordance  
8 with the applicable procedures established for approval of an  
9 original agreement.

10 (8) Any requirement of this section that requires notice in  
11 writing to prospective developers may be provided by email in lieu  
12 of physical mail.

13  
14 5. a. Subject to the provisions of a microgrid tariff approved  
15 by the board pursuant to this act, and with the approval of the pilot  
16 agency, a developer chosen to supply energy under a power  
17 purchase agreement may sell and distribute energy to other critical  
18 facilities that are located within the municipal boundary of the pilot  
19 agency.

20 b. Pursuant to the "Uniform Shared Services and Consolidation  
21 Act," sections 1 through 35 of P.L.2007, c.63 (C.40A:65-1 through  
22 C.40A:65-35), a pilot agency may enter into a shared service  
23 agreement with a local unit or units for the resale of electrical  
24 power purchased under a power purchase agreement.

25 c. A pilot agency may enter into agreements with State or  
26 federal entities and not-for profit health care organizations for the  
27 resale of electrical power purchased under a power purchase  
28 agreement.

29  
30 6. The board, in consultation with the division and the  
31 department, shall prepare and submit, not later than four years after  
32 the effective date of this act, to the Governor and, pursuant to  
33 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a  
34 report describing the implementation of the "New Jersey Town  
35 Center Microgrid Pilot Program Act."

36  
37 7. This act shall take effect immediately.

38  
39  
40 STATEMENT

41  
42 This bill would establish the "New Jersey Town Center  
43 Microgrid Pilot Program Act," for the purpose of facilitating  
44 implementation of a program currently before the New Jersey Board  
45 of Public Utilities (BPU). The BPU initiated the Town Center  
46 Distributed Energy Resources (TCDER) Microgrid program after  
47 Superstorm Sandy in order to help New Jersey become more energy  
48 resilient, particularly with respect to critical facilities. A TCDER

1 Microgrid is a cluster of critical facilities within a municipal  
2 boundary, which facilities may operate as shelter for the public  
3 during and after an emergency event or provide services that are  
4 essential to function during and after an emergency situation. A  
5 microgrid connects critical facilities with distributed energy  
6 resources, which can operate when the main electric grid suffers a  
7 power outage.

8 During 2018, the BPUs “Phase I” TCDER Microgrid Feasibility  
9 Study Incentive Program funded thirteen Feasibility Studies. During  
10 2019, BPU informed twelve Feasibility Study applicants that their  
11 studies met program requirements and that they were eligible to  
12 apply for the “Phase II” TCDER Microgrid incentive program (one  
13 Feasibility Study applicant withdrew from the program). The BPU  
14 limited eligibility to apply for the Phase II TCDER Microgrid  
15 Incentive Program to those applicants who met the Feasibility Study  
16 program requirements.

17 The Phase II TCDER Microgrid Incentive Program provides  
18 funding, on a competitive basis, for the design of a TCDER  
19 Microgrid, in order to help move projects towards the development  
20 and construction phase. Phase II TCDER Microgrid Incentive  
21 Program guidelines require applicants to certify that projects are  
22 legally permissible, i.e., that they conform to existing law, code,  
23 and standing Board Orders. This bill establishes a framework to  
24 enable program participants that are unable to move their projects  
25 forward due to legal or statutory impediments to do so consistent  
26 with this process. Those program participants, defined as “pilot  
27 agencies” in the bill, are Atlantic City, Camden County and its  
28 utilities authority, Galloway Township, Highland Park Borough,  
29 Hoboken City, Hudson County, Middletown Township, Montclair  
30 Township, Neptune Township, Paterson City, Trenton City  
31 (together with the State Department of Treasury), and Woodbridge  
32 Township.

33 Under the bill, a pilot agency may enter into a project agreement,  
34 concerning the development of a TCDER Microgrid, and a power  
35 purchase agreement, concerning the procurement of electrical  
36 power supply for critical facilities. A pilot agency and a developer  
37 may enter into a power purchase agreement, for a term not to  
38 exceed 20 years, subject to the review and approval of the Division  
39 of Local Government Services (DLGS) and the BPU. The DLGS  
40 would have power to review and approve financial matters and risks  
41 associated with a proposed power purchase agreement. The BPU  
42 would have power to: review and approve electrical supply and  
43 distribution matters for a proposed power purchase agreement;  
44 provide guidance concerning offtaker rates and fees that are  
45 necessary for a proposed power purchase agreement; and adopt  
46 specifically authorized microgrid tariffs affecting the electrical  
47 distribution company in order to facilitate the development of a  
48 TCDER Microgrid project.

1 The bill sets forth a procurement process, outside of the "Local  
2 Public Contracts Law," for a pilot agency to solicit a developer,  
3 with whom it would enter into a project agreement and a power  
4 purchase agreement. After completing a request for proposals  
5 process, the bill authorizes a pilot agency to select a prospective  
6 developer, by resolution, and to enter into negotiations for a power  
7 purchase agreement with the selected developer.

8 A pilot agency that intends to enter into a project agreement and  
9 a power purchase agreement with a developer must conduct a public  
10 hearing on the proposed agreements. Within 30 days after the  
11 public hearing, the pilot agency would submit:

- 12 • an application for review of the proposed project agreement  
13 and for review and approval of the proposed power purchase  
14 agreement to the DLGS;
- 15 • an application for review of the proposed project agreement  
16 and for review and approval of the proposed power purchase  
17 agreement and proposed microgrid tariff to the BPU; and
- 18 • a copy of each application to the Department of  
19 Environmental Protection (DEP) for the department's review  
20 and comment.

21 A pilot agency must submit initial applications within three years  
22 of the effective date of this bill.

23 The bill directs BPU and DLGS to specify application forms and  
24 processes for a pilot agency to seek approvals under the bill. The  
25 DLGS would assist pilot agencies in developing procurement  
26 processes and requests for proposals. The BPU would assist pilot  
27 agencies in evaluating provisions of proposed power purchase  
28 agreements and tariffs.

29 The bill would allow a pilot agency to submit to the DLGS a  
30 request for a waiver of specific provisions of law that are within the  
31 division's jurisdiction. The division may grant a request for a  
32 waiver and may adopt alternative provisions upon a finding of  
33 public need for the project and general consistency with the  
34 applicable provisions of law, if the division determines that  
35 enforcing the requirements sought to be waived: is not necessary to  
36 protect the overall public interest and may compromise viability of  
37 the proposed TC DER microgrid project.

38 The bill would empower the BPU and the DLGS to each take  
39 actions not specifically authorized under the bill which the board or  
40 division deems reasonable, prudent, and necessary to accomplish  
41 the bill's purposes if those actions are consistent with the bill's  
42 purposes and address issues not specifically covered by the bill.  
43 For this purpose, the bill specifies that the purposes of the bill are to  
44 encourage energy efficiency, reliability, resiliency, sound technical  
45 development and operation, while ensuring fiscal integrity of each  
46 pilot agency and its power purchase or related agreements with a  
47 TC DER microgrid developer.

1       The bill directs the DLGS, the BPU, and the DEP to coordinate  
2 their reviews, insofar as practicable, and to engage in discussions  
3 with each other and the pilot agency to address any concerns.  
4 Within 60 days of receipt of an application, the board and the  
5 division must each either approve, disapprove, or conditionally  
6 approve the application. The board and the division are required to  
7 disapprove an application unless it was initially submitted for  
8 review within three years of the effective date of the bill. If the  
9 board or division does not approve, disapprove, or conditionally  
10 approve an application within 60 days of receipt, the application  
11 would be deemed approved, unless the public agency has agreed to  
12 an extension of the review period or the application was not  
13 submitted within three years of the effective date of this act.

14       If the board or division conditionally approve an application, the  
15 board or division must provide the pilot agency suggested language  
16 for a required revision to the proposed agreement or tariff, in  
17 writing, inclusion of which would enable the board or division to  
18 approve the proposed agreement or tariff. If the board or division  
19 determines that the required revision is substantial, the pilot agency  
20 must hold a public hearing on the revision. The bill provides that a  
21 substantial revision would be a change that materially changes the  
22 terms and conditions of the proposed agreement or tariff. If the  
23 board or division determines that the required revision is not  
24 substantial, the pilot agency must submit the proposed revision to  
25 the board and the division for approval and to the department for  
26 review. The board and the division would approve the proposed  
27 revision, if it is found to be consistent with the conditions set forth  
28 in the conditional approval, or disapprove the application with a  
29 written explanation as to why the revision is not consistent with the  
30 conditions set forth in the conditional approval.

31       The bill sets forth criteria that the BPU and the DLGS would  
32 apply when determining whether to approve a proposed power  
33 purchase agreement and tariff.

34       The bill directs BPU in consultation with the DLGS and the  
35 DEP, to prepare a report describing implementation of the bill, and  
36 submit the report to the Governor and to the Legislature within four  
37 years of the bill's effective date.