

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 14, 1998

ASSEMBLY BILL NO. 262
(SECOND REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 262 (Second Reprint) with my recommendations for reconsideration.

A. SUMMARY OF THE BILL

This bill would exempt a municipal electric utility from paying the corporate business tax ("CBT") for sales within its franchise area and its customers from paying sales and use tax for sales made by it within its municipal boundary. The stated purpose of the bill is to correct a perceived inequity with the Butler Borough Municipal Electric Corporation ("Butler") resulting from Gross Receipts and Franchise Tax ("GRAFT") reform. The GRAFT reform law exempted municipal electric corporations ("MECs") which were not previously subject to GRAFT from paying the CBT. Butler, however, did pay GRAFT and, therefore, is still required to pay the CBT. The GRAFT reform law also does not exempt MEC's customers from paying sales and use tax when the MEC sells electricity outside its municipal boundaries. Since Butler historically served municipalities outside its boundaries, it remained subject to the tax. This bill would remove the sales tax for sales of electricity within the municipal boundary of the Borough of Butler. Sales of electricity outside of the municipal

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boundary would still be subject to the sales and use tax. Thus, Butler's sales within the four municipalities outside the Borough of Butler would still be subject to sales tax.

B. RECOMMENDED ACTION

I share the sponsors' concerns regarding the unique position that Butler has in this State as being the only municipal electric corporation that sells electricity outside of its host municipality's border and commend them for attempting to clarify the limits of the sales and use tax exemption so that MECs are not given an unfair advantage over other utilities in the sale of electricity. Nevertheless, I believe that certain MECs may obtain an unfair advantage as the bill is written because they are not subject to the CBT if they sell electricity outside their municipal boundaries or, in the case of Butler, outside its historic franchise area. Accordingly, I recommend that the bill be amended to require Butler and other MECs to pay the CBT on all sales of electricity if they sell outside their municipal or franchise boundary, as applicable.

Therefore, I herewith return Assembly Bill No. 262 (Second Reprint) and recommend that it be amended as follows:

Page 3, Section 1, Line 20:

Insert "(1)" after "(j)," delete the phrase "or utilities," and delete the word "are" and insert the word "were" in its place.

Page 3, Section 1, Line 22:

Insert the following at the end of that line:
. provided that all of their Income is from sales, exchanges or deliveries of electricity derived from customers using electricity within their municipal boundaries; and (2) Municipal electric utilities that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges or

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deliveries of electricity derived from customers using electricity within their franchise area existing as of January 1, 1995. If a municipal electric corporation derives income from sales, exchanges or deliveries of electricity from customers using the electricity outside its municipal boundaries such municipal electric corporation shall be subject to the tax imposed by this act on all income. If a municipal electric utility derives income from sales, exchanges or deliveries of electricity from customers using electricity outside its franchise area existing as of January 1, 1995, such municipal electric utility shall be subject to the tax imposed by the art on all income.”

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ John J. Farmer, Jr.

Chief Counsel to the Governor