



[Third Reprint]  
**ASSEMBLY, No. 262**

---

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED JANUARY 29, 1998

**Sponsored by:**

**Assemblywoman CAROL J. MURPHY**

**District 26 (Essex, Morris and Passaic)**

**Assemblyman RICHARD H. BAGGER**

**District 22 (Middlesex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblyman Garrett**

**SYNOPSIS**

Exempts certain sales by municipal electric utilities from sales tax and corporation business tax.

**CURRENT VERSION OF TEXT**

As amended on September 14, 1998 by the General Assembly pursuant to the Governor's recommendations.

**(Sponsorship Updated As Of: 6/30/1998)**

1 remain subject to rules and regulations of the Federal Housing  
2 Authority and the Commissioner of the Federal Housing Authority  
3 holds membership certificates in the corporations and the corporate  
4 property is encumbered by a mortgage deed or deed of trust insured  
5 under the National Housing Act (48 Stat.1246) as amended by  
6 subsequent Acts of Congress. In order to be exempted under this  
7 subsection, corporations shall annually file a report on or before  
8 August 15 with the commissioner, in the form required by the  
9 commissioner, to claim such exemption, and shall pay a filing fee of  
10 \$25.00;

11 (h) Corporations not for profit organized under any law of this  
12 State where the primary purpose thereof is to provide for its  
13 shareholders or members housing in a retirement community as the  
14 same is defined under the provisions of the "Retirement Community  
15 Full Disclosure Act." P.L.1969, c.215 (C.45:22A-1 et seq.);

16 (i) Corporations which are licensed as insurance companies under  
17 the laws of another state, including corporations which are surplus  
18 lines insurers declared eligible by the Commissioner of Banking and  
19 Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to  
20 insure risks within this State; and

21 (j) <sup>3</sup>(1)<sup>3</sup> Municipal electric corporations <sup>3</sup>[or utilities]<sup>3</sup> that <sup>3</sup>[are]  
22 were<sup>3</sup> in existence as of January 1, 1995 [and were exempt from tax  
23 under the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)]  
24 <sup>3</sup>provided that all of their income is from sales, exchanges or deliveries  
25 of electricity derived from customers using electricity within their  
26 municipal boundaries; and (2) Municipal electric utilities that were in  
27 existence as of January 1, 1995 provided that all of their income is  
28 from sales, exchanges or deliveries of electricity derived from  
29 customers using electricity within their franchise area existing as of  
30 January 1, 1995. If a municipal electric corporation derives income  
31 from sales, exchanges or deliveries of electricity from customers using  
32 the electricity outside its municipal boundaries, such municipal electric  
33 corporation shall be subject to the tax imposed by this act on all  
34 income. If a municipal electric utility derives income from sales,  
35 exchanges or deliveries of electricity from customers using electricity  
36 outside its franchise area existing as of January 1, 1995, such  
37 municipal electric utility shall be subject to the tax imposed by the act  
38 on all income<sup>3</sup>.

39 (cf: P.L.1997, c.162, s.1)

40

41 2. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
42 as follows:

43 4. For the purposes of this act, unless the context requires a  
44 different meaning:

45 (a) "Commissioner" shall mean the Director of the Division of  
46 Taxation of the State Department of the Treasury.

1 aforesaid, carried on the books of the corporation, in accordance with  
2 sound accounting principles, and such determination shall be used as  
3 net worth for the purpose of this act.

4 (e) <sup>1</sup>["Indebtedness owing directly or indirectly" shall include,  
5 without limitation thereto, all indebtedness owing to any stockholder  
6 or shareholder and to members of his immediate family where a  
7 stockholder and members of his immediate family together or in the  
8 aggregate own 10% or more of the aggregate outstanding shares of  
9 the taxpayer's capital stock of all classes.] (Deleted by amendment,  
10 P.L. . . . )<sup>1</sup>

11 (f) "Investment company" shall mean any corporation whose  
12 business during the period covered by its report consisted, to the  
13 extent of at least 90% thereof of holding, investing and reinvesting in  
14 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
15 other securities for its own account, but this shall not include any  
16 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
17 other securities, regularly engaged in buying the same and selling the  
18 same to customers; or (2) had less than 90% of its average gross  
19 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
20 mortgages, notes, patents, patent rights or other securities or  
21 consisting of cash on deposit during the period covered by its report;  
22 or (3) is a banking corporation or a financial business corporation as  
23 defined in the Corporation Business Tax Act.

24 (g) "Regulated investment company" shall mean any corporation  
25 which for a period covered by its report, is registered and regulated  
26 under the Investment Company Act of 1940 (54 Stat. 789), as  
27 amended.

28 (h) "Taxpayer" shall mean any corporation required to report or to  
29 pay taxes, interest or penalties under this act.

30 (i) "Fiscal year" shall mean an accounting period ending on any day  
31 other than the last day of December on the basis of which the taxpayer  
32 is required to report for federal income tax purposes.

33 (j) Except as herein provided, "privilege period" shall mean the  
34 calendar or fiscal accounting period for which a tax is payable under  
35 this act.

36 (k) "Entire net income" shall mean total net income from all  
37 sources, whether within or without the United States, and shall include  
38 the gain derived from the employment of capital or labor, or from both  
39 combined, as well as profit gained through a sale or conversion of  
40 capital assets. For the purpose of this act, the amount of a taxpayer's  
41 entire net income shall be deemed prima facie to be equal in amount to  
42 the taxable income, before net operating loss deduction and special  
43 deductions, which the taxpayer is required to report to the United  
44 States Treasury Department for the purpose of computing its federal  
45 income tax; provided, however, that in the determination of such entire  
46 net income,

1 1984, which the taxpayer claimed as a deduction in computing federal  
2 income tax pursuant to a qualified lease agreement under paragraph  
3 (8) of that section.

4 The director shall promulgate rules and regulations necessary to  
5 carry out the provisions of this section, which rules shall provide,  
6 among others, the manner in which the remaining life of property shall  
7 be reported.

8 (G) (i) The amount of any civil, civil administrative, or criminal  
9 penalty or fine, including a penalty or fine under an administrative  
10 consent order, assessed and collected for a violation of a State or  
11 federal environmental law, an administrative consent order, or an  
12 environmental ordinance or resolution of a local governmental entity,  
13 and any interest earned on the penalty or fine, and any economic  
14 benefits having accrued to the violator as a result of a violation, which  
15 benefits are assessed and recovered in a civil, civil administrative, or  
16 criminal action, or pursuant to an administrative consent order. The  
17 provisions of this paragraph shall not apply to a penalty or fine  
18 assessed or collected for a violation of a State or federal  
19 environmental law, or local environmental ordinance or resolution, if  
20 the penalty or fine was for a violation that resulted from fire, riot,  
21 sabotage, flood, storm event, natural cause, or other act of God  
22 beyond the reasonable control of the violator, or caused by an act or  
23 omission of a person who was outside the reasonable control of the  
24 violator.

25 (ii) The amount of treble damages paid to the Department of  
26 Environmental Protection pursuant to subsection a. of section 7 of  
27 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
28 department in removing, or arranging for the removal of, an  
29 unauthorized discharge upon failure of the discharger to comply with  
30 a directive from the department to remove, or arrange for the removal  
31 of, the discharge.

32 (H) The amount of any sales and use tax paid by a utility vendor  
33 pursuant to section 71 of P.L.1997, c.162.

34 (3) The commissioner may, whenever necessary to properly reflect  
35 the entire net income of any taxpayer, determine the year or period in  
36 which any item of income or deduction shall be included, without  
37 being limited to the method of accounting employed by the taxpayer.

38 (4) There shall be allowed as a deduction from entire net income  
39 of a banking corporation, to the extent not deductible in determining  
40 federal taxable income, the eligible net income of an international  
41 banking facility determined as follows:

42 (A) The eligible net income of an international banking facility shall  
43 be the amount remaining after subtracting from the eligible gross  
44 income the applicable expenses;

45 (B) Eligible gross income shall be the gross income derived by an  
46 international banking facility, which shall include, but not be limited to,

1 (D) Change in ownership. Where there is a change in 50% or more  
2 of the ownership of a corporation because of redemption or sale of  
3 stock and the corporation changes the trade or business giving rise to  
4 the loss, no net operating loss sustained before the changes may be  
5 carried over to be deducted from income earned after such changes.  
6 In addition where the facts support the premise that the corporation  
7 was acquired under any circumstances for the primary purpose of the  
8 use of its net operating loss carryover, the director may disallow the  
9 carryover.

10 (7) The entire net income of gas, electric and gas and electric  
11 public utilities [and municipal electric corporations] that were subject  
12 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to  
13 1998, shall be adjusted by substituting the New Jersey depreciation  
14 allowance for federal tax depreciation with respect to assets placed in  
15 service prior to January 1, 1998. For gas, electric, and gas and electric  
16 public utilities [, and municipal electric corporations] that were  
17 subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior  
18 to 1998, the New Jersey depreciation allowance shall be computed as  
19 follows: All depreciable assets placed in service prior to January 1,  
20 1998 shall be considered a single asset account. The New Jersey tax  
21 basis of this depreciable asset account shall be an amount equal to the  
22 carryover adjusted basis for federal income tax purposes on December  
23 31, 1997 of all depreciable assets in service on December 31, 1997,  
24 increased by the excess, of the "net carrying value," defined to be  
25 adjusted book basis of all assets and liabilities, excluding deferred  
26 income taxes, recorded on the public utility's books of account on  
27 December 31, 1997, over the carryover adjusted basis for federal  
28 income tax purposes on December 31, 1997 of all assets and liabilities  
29 owned by the gas, electric, or gas and electric public utility [or  
30 municipal electric corporation] as of December 31, 1997. "Books of  
31 account" for gas, gas and electric, and electric public utilities [and  
32 municipal electric corporations] means the uniform system of accounts  
33 as promulgated by the Federal Energy Regulatory Commission and  
34 adopted by the Board of Public Utilities. The following adjustments  
35 to entire net income shall be made pursuant to this section:

36 (A) Depreciation for property placed in service prior to January 1,  
37 1998 shall be adjusted as follows:

38 (i) Depreciation for federal income tax purposes shall be  
39 disallowed in full.

40 (ii) A deduction shall be allowed for the New Jersey depreciation  
41 allowance. The New Jersey depreciation allowance shall be computed  
42 for the single asset account described above based on the New Jersey  
43 tax basis as adjusted above as if all assets in the single asset account  
44 were first placed in service on January 1, 1998. Depreciation shall be  
45 computed using the straight line method over a thirty-year life. A full  
46 year's depreciation shall be allowed in the initial tax year. No half-year

1 financing businesses, as well as any other enterprise employing  
2 moneyed capital coming into competition with the business of national  
3 banks; provided that the holding of bonds, notes, or other evidences  
4 of indebtedness by individual persons not employed or engaged in the  
5 banking or investment business and representing merely personal  
6 investments not made in competition with the business of national  
7 banks, shall not be deemed financial business. Nor shall "financial  
8 business" include national banks, production credit associations  
9 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
10 of 1971, Pub.L. 92-181 (12 U.S.C.s.2091 et seq.), stock and mutual  
11 insurance companies duly authorized to transact business in this State,  
12 security brokers or dealers or investment companies or bankers not  
13 employing moneyed capital coming into competition with the business  
14 of national banks, real estate investment trusts, or any of the following  
15 entities organized under the laws of this State: credit unions, savings  
16 banks, savings and loan and building and loan associations,  
17 pawnbrokers, and State banks and trust companies.

18 (n) "International banking facility" shall mean a set of asset and  
19 liability accounts segregated on the books and records of a depository  
20 institution, United States branch or agency of a foreign bank, or an  
21 Edge or Agreement Corporation that includes only international  
22 banking facility time deposits and international banking facility  
23 extensions of credit as such terms are defined in section 204.8(a)(2)  
24 and section 204.8(a)(3) of Regulation D of the board of governors of  
25 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
26 1981. In the event that the United States enacts a law, or the board  
27 of governors of the Federal Reserve System adopts a regulation which  
28 amends the present definition of international banking facility or of  
29 such facilities' time deposits or extensions of credit, the Commissioner  
30 of Banking and Insurance shall forthwith adopt regulations defining  
31 such terms in the same manner as such terms are set forth in the laws  
32 of the United States or the regulations of the board of governors of the  
33 Federal Reserve System. The regulations of the Commissioner of  
34 Banking and Insurance shall thereafter provide the applicable  
35 definitions.

36 (o) "S corporation" means a corporation included in the definition  
37 of an "S corporation" pursuant to section 1361 of the federal Internal  
38 Revenue Code of 1986, 26 U.S.C.s.1361.

39 (p) "New Jersey S corporation" means a corporation that is an S  
40 corporation; which has made a valid election pursuant to section 3 of  
41 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
42 corporation continuously since the effective date of the valid election  
43 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

44 (q) "Public Utility" means "public utility" as defined in  
45 R.S.48:2-13.

46 (cf: P.L.1997, c.413, s.1)

1 in accordance with the provisions of section 53 of P.L.1997, c.162  
 2 (C.54:30A-117) and for local energy utility franchise taxes paid and  
 3 subject to the limitations of subparagraph (C) of paragraph (2) of  
 4 subsection (k) of section 4 of P.L.1945, c.162 (C. 54:10A-4).

5 f. ~~【A municipal electric corporation or utility that is required to file  
 6 a corporation business tax return that is not required to file a federal  
 7 corporation tax return shall file with the director a pro-forma federal  
 8 corporation tax return at the same time it files its corporation business  
 9 tax return. The director may promulgate rules and regulations and  
 10 issue guidance with respect to all issues related to the pro-forma  
 11 federal corporation tax return.】<sup>1</sup> 【Deleted by amendment, P.L. , c.  
 12 (now pending before the Legislature as this bill).】 A municipal electric  
 13 corporation or utility that is not exempt from the corporation business  
 14 tax pursuant to subsection j. of section 3 of P.L.1945, c.162  
 15 (C.54:10A-3), that is required to file a corporation business tax return  
 16 but that is not required to file a federal corporation tax return, shall  
 17 file with the director a pro-forma federal corporation tax return at the  
 18 same time it files its corporation business tax return. The director may  
 19 promulgate rules and regulations and issue guidance with respect to all  
 20 issues related to the pro-forma federal corporation tax return.<sup>1</sup>  
 21 (cf: P.L.1997, c.162, s.3)~~

22

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

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

28 (1) <sup>2</sup>(a) Is sold by a municipal electric corporation in existence as  
 29 of December 31, 1995 and used within its municipal boundaries except  
 30 if the customer is located within a franchise area served by an electric  
 31 public utility other than the municipal electric corporation. If a  
 32 municipal electric corporation makes sales of electricity used outside  
 33 of its municipal boundaries or within a franchise area served by an  
 34 electric public utility other than the municipal electric corporation,  
 35 then receipts from those sales of electricity by the municipal electric  
 36 corporation shall be subject to tax under P.L.1966, c.30; or

37 (b)<sup>2</sup> Is sold by a municipal electric utility in existence as of  
 38 December 31, 1995 [and exempt from the provisions of P.L.1940, c.5  
 39 (C.54:30A-49 et seq.)], <sup>2</sup>and used<sup>2</sup> within its municipal boundaries  
 40 <sup>2</sup>【except if the customer is located within a franchise area served by  
 41 an electric public utility other than the municipal electric utility】.  
 42 However, a municipal electric utility's receipts from the sale, exchange,  
 43 delivery or use of electricity used by customers outside of its municipal  
 44 boundaries and within its franchise area existing as of December 31,  
 45 1995 shall be subject to tax. If a municipal electric utility makes sales  
 46 of electricity used outside of its franchise area existing as of December



1 property purchased or leased from the user by the person owning the  
2 co-generator and such property is contiguous to the user's property,  
3 and the electricity was consumed by the one on-site end user on the  
4 user's property, and was not transported to the user over wires that  
5 cross a property line or public thoroughfare unless the property line or  
6 public thoroughfare merely bifurcated the user's or co-generator  
7 owner's otherwise contiguous property or the electricity was  
8 consumed by an affiliated user on the same site, or by a non-affiliated  
9 user on the same site with an electric distribution system which is  
10 integrated and interconnected with the user on or before March 10,  
11 1997; the director may promulgate rules and regulations and issue  
12 guidance with respect to all issues related to affiliated users; or

13 (3) Is sold for resale.

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

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

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

33 (cf: P.L.1997, c.162, s.26)

34

35 5. This act shall take effect immediately and shall be retroactive to  
36 January 1, 1998.

37

38

39

#### STATEMENT

40

41 This bill exempts all municipal electric utilities from the corporation  
42 business tax beginning in 1998 when other public utilities become  
43 subject to that tax. These municipal electric enterprises are effectively  
44 operated as units of local governments. They are operated as non-  
45 profit entities that should not be subject to the accounting, filing and  
46 net income tax payment obligations of profit-making enterprises.

**A262 MURPHY, BAGGER**

14

1       The bill also exempts all municipal electric utilities from assessing  
2 sales tax on sales of electricity within their municipal borders except  
3 if the customer is located within a franchise area served by an electric  
4 public utility other than the municipal electric utility.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 262**

**STATE OF NEW JERSEY**

DATED: JANUARY 29, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill No. 262.

Assembly Bill No. 262 exempts all municipal electric utilities from the corporation business tax beginning in 1998 when other public utilities become subject to that tax. These municipal electric enterprises are effectively operated as units of local governments. They are not operated as for-profit entities, and should not be subject to the accounting, filing and net income tax payment obligations of profit-making enterprises.

The bill also exempts all municipal electric utilities from assessing sales tax on sales of electricity within their municipal borders, except if the customer is located within a franchise area served by an electric public utility other than the municipal electric utility.

FISCAL IMPACT:

The Office of Legislative Services estimates the enactment of the sales tax exemption for the municipal electric utility affected ultimately would cost the State approximately \$200,000 per year. The public utility tax changes that become effective January 1, 1998 pursuant to P.L.1997, c.162 provide for a "transitional energy facility assessment" (TEFA) that phases out after the year 2002. All utilities formerly subject to franchise and gross receipts taxes will be required to make TEFA remittances. As TEFA is phased out, the eventual \$200,000 sales tax loss would become evident in Fiscal Year 2001 and thereafter.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 262

with committee amendments

# STATE OF NEW JERSEY

DATED: MAY 21, 1998

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 262 (1R), with committee amendments.

Assembly Bill No. 262 (1R) of 1998, as amended, would extend the current exemption from the sales and use tax for most municipal electric utilities to the municipal electric utility that is not exempt under existing law as a result of previously having been subject to the franchise and gross receipts tax. The exemption would only apply to the sale of electricity to users within the municipal boundaries of the utility. In addition, municipal electric utilities and corporations in existence on December 31, 1995 would be exempted from the corporation business tax (CBT), whether or not they were previously subject to the franchise and gross receipts tax.

These municipal electric enterprises are effectively operated as units of local governments. They are not operated as for-profit entities, and should not be subject to the accounting, filing and net income tax payment obligations of profit-making enterprises.

### COMMITTEE AMENDMENTS:

The committee amendments (1) clarify that the existing law's exemption from the sales and use tax of sales by a municipal electric corporation or municipal electric utility within the municipal boundaries is applicable only to the electricity that is used within the municipal boundaries, and (2) correct statutory citations in the text of N.J.S.A.54:10A-5.25.

### FISCAL IMPACT:

The Division of Taxation in a fiscal note to the bill notes the bill applies only to the Butler Borough Municipal Electric Corporation. Based on prior reported gross receipts of about \$13.5 million by the municipal utility, the division estimates the sales tax loss would be

STATEMENT TO

*floor  
amendment  
statements*

**ASSEMBLY, No. 262**

with Assembly Floor Amendments  
(Proposed By Assemblywoman MURPHY)

ADOPTED: FEBRUARY 19, 1998

This amendment in section 2 makes a technical amendment to conform the section of law set forth in section 2 of the bill (section 4 of P.L.1945, c.162 (C.54:10A-4) to the most recent amendments to that section of law enacted on January 19, 1998 by P.L.1997, c.413. This amendment in section 3 clarifies that the corporation business tax exemption would not apply to new municipal electric corporations or utilities that were not in existence as of January 1, 1995, if such new entities are formed.

**LEGISLATIVE FISCAL ESTIMATE**

**ASSEMBLY, No. 262**

**STATE OF NEW JERSEY**

**208th LEGISLATURE**

DATED: FEBRUARY 18, 1998

Assembly Bill No. 262 of 1998 exempts all municipal electric utilities from the corporation business tax. Also, it exempts the sale of electricity by any municipal electric utility to customers within its municipal boundaries from the sales and use tax. The bill does not exempt the sale of electricity to customers within the franchise area of another electric utility from the sales and use tax.

The Office of Legislative Services estimates the enactment of the sales tax exemption for the one municipal utility affected by this bill ultimately would cost the State approximately \$200,000 per year. The public utility tax changes that became effective January 1, 1998, pursuant to P.L.1997, c.162, provide for a "transitional energy facility assessment" (TEFA) that phases out after the year 2002. All utilities formerly subject to franchise and gross receipts taxes will be required to make TEFA remittances. As TEFA is phased out, the eventual \$200,000 sales tax loss would become evident in Fiscal Year 2001 and thereafter.

The proposed corporation business tax exemption for municipal utilities is not expected to have any fiscal impact on the State.

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

## FISCAL NOTE

[First Reprint]

### **ASSEMBLY, No. 262**

# **STATE OF NEW JERSEY**

## **208th LEGISLATURE**

DATED: JUNE 1, 1998

Assembly Bill No. 262 (1R) of 1998 would extend the current exemption from the sales and use tax for most municipal electric utilities to the municipal electric utility not exempt under existing law, because that utility was subject to the repealed franchise and gross receipts tax. The proposed exemption would apply to the sale of electricity only to customers within the municipal boundaries of the utility. In addition, the municipal utility would be exempted from the corporation business tax (CBT).

The Division of Taxation in a fiscal note to the bill notes the bill applies only to the Butler Borough Municipal Electric Corporation. Based on prior reported gross receipts of about \$13.5 million by the municipal utility, the division estimates the sales tax loss would be about \$810,000. The division, using an assumption the utility generates a profit of 5 percent from sales, estimates the State would lose about \$60,000 of CBT tax revenue at the 9 percent tax rate. However, the division acknowledges that the utility's non profit status might have the effect of eliminating its liabilities under the CBT.

The Office of Legislative Services (OLS) agrees with the division that the CBT exemption in the bill will have little or no fiscal impact, but the OLS believes that the division overestimated the impact of the sales tax exemption. In a legislative fiscal estimate to the original bill, the OLS estimated the enactment of the sales tax exemption for the Butler municipal utility ultimately would cost the State approximately \$200,000 per year. This figure was based on information provided by the Borough that only about 25 percent of the electric sales were within the boundaries of the municipality. The 75 percent of sales made outside of the municipal boundaries would not be affected by this bill. In addition, the fiscal impact would not be felt immediately. The public utility tax changes that became effective January 1, 1998, pursuant to P.L.1997, c.162, provide for a "transitional energy facility assessment" (TEFA) that phases out after the year 2002. All utilities formerly subject to franchise and gross receipts taxes will be required to make TEFA remittances. As TEFA is phased out, the eventual

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 MECs' 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 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



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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 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 act on all income."

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ John J. Farmer, Jr.

Chief Counsel to the Governor

# Office of the Governor

## NEWS RELEASE

PO BOX 004  
TRENTON, NJ 08625

CONTACT: Jayne O'Connor  
609-777-2600

RELEASE: October 28, 1998

### Gov. Christie Whitman today signed the following pieces of legislation:

**A-262**, sponsored by Assembly Member Rich Bagger (R-Middlesex/Morris/Somerset/ Union) and Carol Murphy (R-Essex/Morris/Passaic), which exempts certain sales by municipal electric utilities from sales taxes and the corporate business tax (CBT).

The bill includes changes recommended by Gov. Whitman through conditional veto. The Governor recommended an amendment to ensure equity and fairness in taxation. The bill was specifically targeted to apply to Butler Borough Municipal Corporation.

**A-747**, sponsored by Assembly Members Nicholas Asselta and John C. Gibson (R-Cape May/Atlantic/ Cumberland) and Senators Joseph Kyrillos (R-Middlesex/Monmouth) and John Mattheussen (R-Camden/Gloucester), which authorizes municipalities to establish downtown "special improvement districts" (SIDs) to enable them to continue to revitalize existing downtown areas throughout the state.

The Governor recommended that the state assist the municipalities through a revolving loan fund to allow for the continued replenishment and availability of funds for worthwhile municipal revitalization projects.

The legislation now includes a \$5 million appropriation from the General Fund for the newly-created downtown business improvement loan fund, and provides for the availability of technical assistance on improvement projects from the Department of Community Affairs.

