

March 18, 2019

**SENATE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 2129
(First Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Committee Substitute for Senate Bill No. 2129 (First Reprint) with my recommendations for reconsideration.

We all agree that high energy costs can impose heavy burdens on families in need across New Jersey. A financial crisis can happen to anyone, regardless of age, income or family situation. Facing competition between urgent priorities and basic necessities, families too often are forced to confront dangerous tradeoffs between food, medicine, heat, keeping the lights on and other daily needs. These challenges often affect low- as well as moderate-income residents' ability to make full and timely utility payments. Energy assistance programs supported by the State can be invaluable resources to help manage unaffordable utility costs.

The "Payment Assistance for Gas & Electric" ("PAGE") program is one such resource, providing important energy assistance to moderate-income residents who struggle to pay utility bills because of a temporary financial crisis such as job loss, underemployment or illness. To qualify for PAGE benefits, eligible residents provide documentation of overdue payments for natural gas or electric service and show a history of making good faith payments on the accounts for which they are seeking assistance. Consistent with current law, the Board of Public Utilities ("BPU" or "Board") awards funding to qualified non-profit organizations to administer the PAGE program through a public application and evaluation process. A competitive process promotes accountability and allows the Board to carefully consider applications by multiple

organizations, ultimately selecting an organization that is demonstrated to be the most qualified to administer the PAGE program and bring the most value to families in need.

This bill would amend current law, which affords discretionary authority to the BPU to select the organization it determines to be the most qualified entity to administer the PAGE program, to instead require that the BPU award PAGE funding and administrative responsibility to an organization that satisfies a new set of criteria as set forth in the bill. Those very specific criteria seem to exclude many, if not most, non-profit entities that possibly could compete to administer the PAGE program, including the organization already awarded a contract by the BPU to administer that program through June 2021.

In 2012, following an audit by the Office of the State Comptroller that questioned financial controls, spending and other practices by the non-profit organization that had been administering the PAGE program throughout the audit period, the BPU appropriately initiated the public bidding and evaluation process mentioned above. See generally Report of the Office of State Comptroller dated December 11, 2012 (citing deficiencies and making recommendations). The Board repeated its fair and open process as recently as 2018, publishing a Notice of Grant Availability, receiving proposals, establishing an independent Evaluation Committee and performing a detailed review of each proposal received. Technical scores were calculated based on the results of an independent reading and analysis of each applicant's submission based on a 400-point scoring system across six categories as established by the Evaluation Committee. Of the applications received, the ultimate winner of the Evaluation

Committee's recommendation scored highest in all six categories and obtained a total score over 100 points higher than its nearest competitor.

Thereafter, by Board Order dated June 22, 2018, the BPU formally accepted the Evaluation Committee's recommendation, directed all utilities to work with the winning applicant to implement the PAGE program, and authorized the President of the BPU to enter into the necessary "contract or grant agreement" with the winner to implement the PAGE program for State Fiscal Years 2019, 2020, and 2021. See Board Order Authorizing Grant Award in "The Matter of the Energy Assistance Grant as Authorized by N.J.S.A. 48:2-29.39 - Payment Assistance for Gas and Electric Program," Docket No. EG18020148; see also PAGE Grant Agreement, Section I (defining "work period" under the Agreement as extending from the date of contract execution - June 2018 - until the conclusion of State Fiscal Year 2021, with an additional 120 days to close out the grant); Section XVI (governing termination, expiration and suspension of the Grant Agreement).

The legislative history accompanying this bill seems to confirm a strong legislative intent and desire to reverse the BPU's Order, contract award and Grant Agreement entered into with the winning non-profit organization presently administering the PAGE program. For example, according to the Legislative Fiscal Estimate accompanying this bill, the Office of Legislative Services ("OLS") has determined that this bill would "reallocate" 75 percent of the Unclaimed Utility Deposits Trust Fund deposits, "approximately \$1.5 million to \$4.5 million per year, from a non-profit selected by the State Treasurer, to a non-profit organization that meets certain specific criteria" enumerated in the bill. Similarly, the

OLS staff has determined that the bill also would "reallocate \$25 million from dedicated SBC-funded BPU accounts to the same non-profit organization for the administration of a utility bill assistance grant program." In this regard, the OLS has assumed that "absent this bill, the Unclaimed Utility Deposits Trust Fund deposits would have been used for the same purposes but possibly through a different non-profit entity," and that the \$25 million would be spent on the purposes of each Societal Benefits Charge-funded account "either in FY 2020 or in a subsequent fiscal year." Finally, the bill specifies that the provisions of its first section would take effect immediately upon enactment, but would remain inoperative for 60 days following the date of enactment, while its second section would take effect on July 1, 2019.

Unfortunately, the immediate and future "reallocation" of funding and administrative responsibility anticipated by the OLS in its Fiscal Estimate appear to require cancellation of an existing contract and its effective re-award to another organization. State lawmakers' ability to change laws impacting signed contracts is not limitless. Some limitations on legislative authority, for example, are set forth in Article IV, Section VII, paragraph 3 of the New Jersey Constitution, which provides: "The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." (Emphasis added). Similar limitations have existed under the United States Constitution for hundreds of years. See U.S. Const., Article I, Section 10, clause 1 ("No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit;

make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility") (emphasis added). I am advised by the Attorney General that this legislation, if enacted, would be susceptible to successful challenge under the Contracts Clause.

Additionally, this bill would provide \$25 million from the Clean Energy Fund to the same organization for the purpose of issuing temporary energy assistance grants to help individuals pay their utility bills. Such funds would be provided without requiring any open or transparent selection process, oversight or criteria, and without regard to whether the recipient is, in fact, the best-suited organization to provide this vital service to residents in need.

I remain more strongly committed than ever to helping those throughout New Jersey who are financially stressed and facing challenges, but I cannot support this bill. It is paramount that important energy assistance programs be administered by the most qualified organizations in a manner that is calculated to prevent abuse. While quite well intentioned, I am concerned that the bill's provisions reallocating State funds to an organization in the absence of any open and transparent selection process could weaken, not strengthen, our ability to ensure that limited State funding is administered fairly and disbursed in a way that maximizes the benefits of our energy assistance programs to the public at large. For these reasons, I am recommending that the BPU make available an additional \$2.5 million, to be redirected from the Societal Benefits Charge, to a nonprofit energy assistance organization to provide grants to families in need of utility

assistance, following the completion of an open and competitive bid process. My recommendations further direct the BPU to conduct a study of its utility assistance programs to evaluate the programs' effectiveness and identify ways in which these programs may be improved.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill No. 2129 (First Reprint) with my recommendations for reconsideration.

<u>Page 2, Title, Line 3:</u>	After "and" insert "supplementing chapter 30B of Title 46 of the Revised Statutes and"
<u>Page 3, Section 1, Line 5:</u>	After "organization" insert "designated by the Board of Public Utilities"
<u>Page 3, Section 1, Lines 17-34:</u>	Delete in their entirety
<u>Page 5, Section 1, Lines 1-10:</u>	Delete in their entirety
<u>Page 5, Section 2, Line 16:</u>	Delete "2018" and insert "2019"
<u>Page 5, Section 2, Line 19:</u>	Delete "\$25,000,000" and insert "\$2,500,000"
<u>Page 5, Section 2, Line 19:</u>	After "grants to" insert "be used exclusively for the payment of expenses associated with the restoration of electric or gas utility service, or to prevent the termination of electric or gas utility service provided to electric and gas utility ratepayers"
<u>Page 5, Section 2, Line 20:</u>	Delete in its entirety
<u>Page 5, Section 2, Line 22:</u>	Delete "with:" and insert "designated by the Board of Public Utilities following an open and competitive application process."
<u>Page 5, Section 2, Lines 23-47:</u>	Delete in their entirety
<u>Page 6, Line 1:</u>	Insert new section: "3. The Board of Public Utilities shall, within 18 months of the effective date of P.L. , c. (pending before the Legislature as this bill),

issue a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on the utility assistance programs funded by money from the Unclaimed Utility Deposits Trust Fund and the societal benefits charge pursuant to R.S. 46:30B-74 and section 2 of P.L. ,c. (pending before the Legislature as this bill) and provide recommendations to maximize the availability and efficiency of the programs. The report shall include, but not be limited to (1) an evaluation of the total amount of money spent by the State on the utility assistance programs; the average amount of utility assistance received per household; the total number of applicants that apply for the utility assistance programs, including the total number of eligible recipients; information on why an applicant may have been denied utility assistance funds; the average income level of utility assistance applicants; the number of applicants who are at risk of a termination of utility service or who were subject to a termination of utility service; the methods and procedures used to verify household income or hardship and eligibility; public awareness of the utility assistance programs throughout the State; outreach efforts to promote the utility assistance programs throughout the State; accessibility of locations to apply for the utility assistance programs throughout the State; best practices on administering similar utility assistance programs from other states; the processes used to verify how the funds are being used; and any other information that the Board of Public Utilities determines is relevant to the subject of this report; and (2) recommendations on how to streamline and administer the programs to be more efficient; eliminate barriers to participation in the utility assistance programs; provide alternate methods for

determining eligibility to expand access and maximize availability of the utility assistance programs to more eligible applicants; and increase outreach and awareness of the utility assistance programs."

Page 6, Section 3, Line 1:

Delete "3. Section 1 of this" and insert "4. This"

Page 6, Section 3, Line 1:

After "immediately," insert "and Section 2 shall expire upon disbursement of the total amount of funds to applicants of the utility assistance program."

Page 6, Section 3, Line 1:

Delete "but shall"

Page 6, Section 3, Lines 2-6:

Delete in their entirety

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor