

SENATE CONCURRENT RESOLUTION No. 57

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senators DiFRANCESCO and CARDINALE

- 1 A CONCURRENT RESOLUTION requesting that the Supreme Court of the
2 State of New Jersey certify an appeal in General Motors Corp. v. City of
3 Linden for hearing before it on its own motion, and ensure that a judgement
4 is rendered with due speed.
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- 6 WHEREAS, The Legislature has found and does find that New Jersey's
7 manufacturing sector is an important source of relatively high-paying
8 employment for a large portion of the work force and is an essential
9 foundation for the rest of the economy, serving as a larger multiplier of jobs
10 in the economy than any other sector; and
- 11 WHEREAS, New Jersey is in competition with other states as a location for
12 industrial and manufacturing facilities, and the New Jersey Legislature has
13 acted to create a fiscal climate attractive to industry through a policy of
14 excluding business personal property from taxation; and
- 15 WHEREAS, The key to the fair implementation of this policy has been the
16 balancing of the preservation of the municipal real property tax base with
17 the exclusion of business personal property from local taxation; and
- 18 WHEREAS, The most recent attempt of the Legislature to strike this balance,
19 the "Business Retention Act," P.L.1992, c.24, involved an extensive
20 process of testimony before committees, discussion among various
21 municipal and business groups, and the participation of the Legislative and
22 Executive branches; and
- 23 WHEREAS, The Tax Court, in the case of General Motors Corp. v. City of
24 Linden, has found that a critical provision of the "Business Retention Act,"
25 subsection b. of R.S.54:4-1, is in violation of the New Jersey Constitution;
26 and
- 27 WHEREAS, Until this issue is ultimately determined by the Supreme Court of
28 the State of New Jersey an uncertainty as to the taxable status of business
29 personal property, such as machinery and equipment, will have a negative
30 impact on development of New Jersey's manufacturing sector; and
- 31 WHEREAS, The Legislature, local governments and the business community
32 are in need of guidance as to whether the Tax Court's holding in this
33 decision is correct and as to how they may proceed as the potential for
34 further legislation is contemplated; and
- 35 WHEREAS, It is feared that, without speedy, clear and final resolution of

1 General Motors Corp. v. City of Linden, New Jersey's chances for
2 increased business development and retention could be adversely affected;
3 and

4 **WHEREAS**, The Supreme Court of the State of New Jersey has the sole
5 authority to govern the administration of the courts of the State and their
6 practice and procedures; now, therefore,

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8 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
9 Assembly concurring):

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11 1. That the Supreme Court of the State of New Jersey is respectfully
12 requested to exercise its authority under Rule 2:12-1 of the Rules Governing
13 the Courts of the State of New Jersey and immediately certify on its own
14 motion the case in General Motors Corp. v. City of Linden for appeal before
15 it and to take all appropriate steps to ensure that arguments are heard and
16 judgements are rendered with due speed in the appeals relating to the decision
17 in the case of General Motors Corp. v. City of Linden.

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19 2. That duly authenticated copies of this concurrent resolution, signed by
20 the President of the Senate and the Speaker of the General Assembly, be
21 transmitted to the Chief Justice and the Associate Justices of the Supreme
22 Court of the State of New Jersey.

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STATEMENT

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27 This Senate Concurrent Resolution respectfully requests the Supreme
28 Court of the State of New Jersey to exercise its authority under Rule 2:12-1
29 of the Rules Governing the Courts of the State of New Jersey and immediately
30 certify, on its own motion, the case in General Motors Corp. v. City of
31 Linden for appeal before it and take all appropriate steps to ensure that
32 appeals are heard and judgements are rendered with due speed in the appeals
33 relating to the decision in the case of General Motors Corp. v. City of
34 Linden.

35 Since 1966, New Jersey has excluded most business personal property,
36 like inventory, business equipment and business production machinery, from
37 local assessment and taxation. This has been a part of the State's economic
38 development effort to encourage the location of industrial and manufacturing
39 facilities in New Jersey, and has in part been a response to similar exclusions
40 in Pennsylvania and New York, among other states.

41 The key to the fair implementation of this policy has been the balancing of
42 a reasonable municipal real property tax base against the exclusion of
43 business personal property from that tax base. This has led to a series of court

1 decisions and legislative initiatives and responses concerning what business
2 property is sufficiently incorporated into land and buildings to be locally
3 taxable as real property. The dividing line has moved back and forth on this
4 issue.

5 A series of Tax Court decisions in the early 1980's, based on the New
6 Jersey Supreme Court's 1979 decision as to the proper rule for drawing the
7 line, was believed by some to exclude petroleum storage tanks and refineries,
8 which had been taxable locally as real property and the Legislature enacted
9 laws clarifying that rule to continue the taxation of petroleum storage tanks and
10 refineries locally while also continuing the exclusion of all other business
11 personal property from taxation. When this rule was interpreted and applied
12 in the early 1990's, however, some felt that too much property was included
13 in the local taxation base. The Legislature responded, after intense discussion
14 among Legislative committees, representatives of local governments,
15 municipal and business groups, and representatives of the Executive branch,
16 by enacting the "Business Retention Act," P.L.1992, c.24, to further refine the
17 definitions of what is and is not taxable by local governments.

18 A recent opinion of the New Jersey Tax Court in General Motors Corp.
19 v. City of Linden has, however, found that the critical provision of the
20 "Business Retention Act" is contrary to the New Jersey Constitution's
21 "Uniformity Clause." Quick resolution of the case will assist the Legislature in
22 understanding what statutory changes it can make, if the Tax Court's decision
23 is upheld, without offending the provisions of the State Constitution as it
24 considers the potential for further statutory action.

25 To this end, the resolution requests the Supreme Court of the State of
26 New Jersey, which has sole jurisdiction over the courts of the State, to
27 exercise its authority under Rule 2:12-1 of the Rules Governing the Courts of
28 the State of New Jersey and immediately certify, on its own motion, the case
29 in General Motors Corp. v. City of Linden for appeal before it and take all
30 appropriate steps to ensure that appeals are heard and judgements are
31 rendered with due speed in the appeals relating to the decision in the case of
32 General Motors Corp. v. City of Linden.

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37 Requests the State Supreme Court to certify an appeal in General Motors
38 Corp. v. City of Linden for hearing before it on its own motion and ensure a
39 speedy judgement.