

October 29, 2020

SENATE BILL NO. 2913

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2913 with my recommendations for reconsideration.

Senate Bill No. 2913 would permit a State agency to completely or partially terminate a contract or agreement concerning a marine terminal or its attendant real property under certain circumstances. Specifically, the bill would allow a State agency, without penalty or liability, to terminate a contract or agreement concerning the use, control, or access of marine terminals or real property for convenience when the impairment to the contract is reasonable and necessary to serve an important public purpose. As used in the bill, "State agency" means any of the principal departments in the Executive Branch of the State Government; any division, board, bureau, office, commission, or other instrumentality within or created by such department; any interstate agency to which New Jersey is a party; and any independent State authority, commission, instrumentality, or agency.

Marine terminals are of critical importance to the State for a host of reasons that implicate not only trade and commerce considerations but also national security and emergency preparedness interests. In rare instances, a State agency that enters into a marine terminal contract may be faced with a situation in which the termination of that contract is necessary in order to advance a compelling public interest that is at stake. This bill would provide needed flexibility to State agencies to terminate contracts in those extraordinary circumstances when it is in the public's interest to do so, including but not limited to when: (1) the State agency no longer needs the supplies or services covered by the contract; (2) the contractor refuses to accept a modification of the contract; (3) questions have arisen regarding the propriety of the award or

continued performance of the contract; (4) the contractor ceases to be eligible for the contract awarded; (5) the business relationship between the State agency and the contractor has deteriorated; or (6) the State agency has decided to restructure its contractual arrangements or perform work in-house.

While I support giving New Jersey agencies that contract with marine terminals the ability to terminate or renegotiate agreements in those limited circumstances when the interests of the public warrant that action, I am concerned about the bill's application to interstate agencies. In order to have full force and effect, laws affecting interstate agencies must be negotiated between and among member states and approved by the legislatures of all participating states. In this case, the bill's provisions have not been negotiated and agreed to by those states that have entered into interstate agreements with New Jersey. Because New Jersey may not unilaterally impose policy on our partner states, I am recommending modest revisions to remove reference to interstate agencies from the bill.

Therefore, I herewith return Senate Bill No. 2913 and recommend that it be amended as follows:

Page 3, Section 2, Lines 2-3:

Delete "to the extent consistent with law, any interstate agency to which New Jersey is a party;"

Page 3, Section 2, Line 4:

After "agency." insert "State agency shall not include an interstate agency."

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor