

ASSEMBLY COMMITTEE SUBSTITUTE
for
ASSEMBLY BILL NOS. 4803 and 4811
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return the Assembly Committee Substitute for Assembly Bill Nos. 4803 and 4811 (First Reprint) with my recommendations for reconsideration.

This bill requires the New Jersey Office of Emergency Management ("OEM") to establish a process to approve personal protective equipment ("PPE") for use during public health emergencies and allows companies that are not otherwise in the business of creating PPE to do so upon approval by the OEM. The bill also requires the State to create two PPE stockpiles of which, to the extent feasible, 50 percent would be made in New Jersey and at least 66 percent would be made in the United States. During public health emergencies, the PPE would be made available to the State, its political subdivisions, and non-profit schools, and the remainder would be made available for purchase by private entities at market price, except that non-profits would be allowed to pay 75 percent of market price or cost price. The bill creates a liability exemption for anyone using this PPE if used for approved purposes.

I applaud the sponsors' efforts toward addressing a critically important aspect of any disaster response plan. The Coronavirus pandemic has been one of the most difficult challenges faced by our State and our country in recent memory. The hardships it caused were felt across every sector of our economy and its impact extended into nearly every facet of life. Yet, against the enormity of the disruption in our marketplace, the strain on our State resources, and the emotional, mental, and physical toll on every individual, our State demonstrated resilience in the face of adversity, and our public employees pulled together to help meet the needs of our residents. At the beginning of the pandemic, my Administration announced a partnership with the New Jersey Manufacturing Extension Program to produce face coverings and gowns. We also partnered with the Legislature to provide tax incentives to support businesses in

this State, including those manufacturing PPE, and required in that legislation that preference in PPE contracts be given to bidders with a principal place of business in New Jersey. The New Jersey Economic Development Authority ("EDA") created a program to help small businesses gain access to the PPE they needed and coordinated with other State agencies to locate New Jersey-based companies that could manufacture PPE here in this State. The EDA also created an online registry through which businesses could indicate whether they produced PPE. At each turn, our public servants adapted to answer the call, and I could not be prouder to have worked alongside such extraordinary individuals.

This bill, although laudable in its aim, creates certain complexities that could serve as barriers to its effective implementation, including, for example, (1) identifying sufficient space to warehouse the appropriate level of PPE, the inventory of which would also have to be spread among several locations in order to minimize the risk of loss from unforeseen circumstances such as fire or other natural disasters; (2) hiring and training the staff required to store, inspect, rotate, and dispose of PPE; and (3) the sizeable cost, including for transportation, warehousing, staffing, and disposal, among other areas, which may not be able to be offset through federal reimbursement at the time of the creation of the stockpile. In circumstances where there would be a federal offset, there are additional questions surrounding our use of the PPE and whether federal restrictions would prohibit the sale of the PPE in the ways contemplated by the bill. Moreover, the strict sourcing requirements present their own challenges, and would be potentially infeasible, especially in the midst of a public health emergency. Finally, the uncertainty surrounding whether the genesis of a future public health emergency would be an airborne virus whose spread could be contained by PPE presents questions concerning whether a large stockpile is an efficient use of our State dollars.

Given the aforementioned concerns, I am returning this bill with my suggestions for a more workable approach to ensure sufficient PPE in the event it is again in high demand in a subsequent public health

emergency, which would require the Office of Homeland Security and Preparedness to execute a contract enabling any State agency to exercise a right of first refusal to purchase PPE during a public health emergency. Moreover, my recommendations align the New Jersey-based preference in this bill with the preference already required in P.L.2020, c.156, the New Jersey Economic Recovery Act of 2020, for the procurement of PPE.

Therefore, I herewith return the Assembly Committee Substitute for Assembly Bill Nos. 4803 and 4811 (First Reprint) and recommend that it be amended as follows:

- Page 2, Title, Lines 1-2: Delete "approval process for personal protective equipment and State stockpiles" and insert "purchase"
- Page 2, Title, Line 3: Delete "P.L.1974, c.80 (C.34:1B-1 et seq.)" and insert "P.L.2005, c.222 (C.26:13-1 et seq.)"
- Page 2, Section 1, Line 8: Delete "a."
- Page 2, Section 1, Line 8: Delete "Emergency Management" and insert "Homeland Security and Preparedness"
- Page 2, Section 1, Line 9: Delete "Economic Development Authority" and insert "Office of Emergency Management"
- Page 2, Section 1, Line 10: Delete "establish a process to evaluate," and insert "solicit bids for one or more contracts for use by any State agency granting the agency the right of first refusal to purchase personal protective equipment during a public health emergency declared pursuant to P.L.2005, c.222 (C.26:13-1 et seq.). A State agency electing to utilize such contract shall provide all information requested by the New Jersey Office of Homeland Security and Preparedness and the Department of Health."
- Page 2, Section 1, Lines 11-14: Delete in their entirety
- Page 2, Section 1, Line 15: Delete "produce and supply personal protective equipment."
- Page 2, Section 1, Line 16: Delete "help the New Jersey Office" and insert "develop a strategy to increase awareness concerning the contract among companies whose principal place of businesses is in this State."

The Division of Purchase and Property shall provide all support requested by the Office of Homeland Security and Preparedness."

Page 2, Section 1, Lines 17-18:

Delete in their entirety

Page 2, Section 1, Line 19:

Delete "unresolved safety or health citations" and insert "A State agency shall not be prohibited from establishing a new contract pursuant to this section, notwithstanding any existing contract for such items"

Page 2, Section 1, Line 20:

Delete "Emergency Management" and insert "Homeland Security and Preparedness"

Page 2, Section 1, Lines 21:

Delete "evaluating," and insert "awarding such contract, in accordance with section 91 of P.L.2020, c.156 (C.52-34-27)."

Page 2, Section 1, Lines 22-40:

Delete in their entirety

Page 2, Section 1, Line 41:

Delete "d."

Page 2, Section 1, Line 41:

Delete "Emergency Management" and insert "Homeland Security and Preparedness"

Page 2, Section 1, Lines 42-43:

Delete "the New Jersey Economic Development Authority and" and insert "and using any equipment specifications provided by"

Page 2, Section 1, Line 46:

Delete "shall" and insert "may"

Page 3, Section 2, Line 5:

Delete "a. Six months following the end of the public health"

Page 3, Section 2, Lines 6-47:

Delete in their entirety

Page 4, Section 2, Lines 1-16:

Delete in their entirety

Page 4, Section 2, Line 17:

Delete "shall" and insert "Except to the extent inconsistent with any provision of State or federal law, personal protective equipment held by any State agency that is deemed to be held in surplus may"

Page 4, Section 2, Line 17:

After "sale" insert "or grant"

Page 4, Section 2, Line 24:

After "feasible" insert "and not inconsistent with any provision of State or federal law"

Page 4, Section 2, Line 24:

Delete "in the stockpiles"

Page 4, Section 2, Line 25:

Delete "expire" and insert "expires"

Page 4, Section 2, Line 25:

After "or" insert "may be"

Page 4, Section 2, Lines 27-44:

Delete in their entirety

Page 4, Section 4, Line 46:

Delete "4." and insert "3."

Page 4, Section 4, Line 46:

Delete "immediately" and insert
"on the first day of the sixth
month next following enactment"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor