

SENATE BILL NO. 1967
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1967 (First Reprint) with my recommendations for reconsideration.

Senate Bill No. 1967 (First Reprint) provides, from July 1, 2019 forward, weekly supplemental benefits to any public safety worker who suffers a work-related total disability after December 31, 1979, and to the surviving dependents of any public safety worker who dies because of a workplace injury after December 31, 1979. Current law requires the State to provide weekly supplemental benefits for death and permanent total disability from the Second Injury Fund ("SIF"), but only for cases of injury or death occurring before January 1, 1980. This bill extends the weekly supplemental benefits paid from the SIF to claims by public safety workers originating after December 31, 1979.

The legislative history accompanying this bill indicates that it was initially introduced more than a decade ago. As originally conceived, the bill would have provided weekly supplemental benefits to any worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and to the surviving dependents of any worker who died from a workplace injury after December 31, 1979. In October 2018, the Legislature narrowed the bill's application to specify that only public safety workers and their dependents are eligible for the weekly supplemental benefits provided under the bill.

I commend the bill's sponsors for seeking to ensure that the compensation benefits provided to our public safety workers are commensurate with the annual cost of living. Our first responders who are severely injured on the job and the survivors of those who

make the ultimate sacrifice should receive fair and appropriate financial compensation.

While the bill's objectives are laudable, I am advised by counsel that, due to arcane federal funding rules that would likely be triggered by the passage of certain provisions of this bill, many of the bill's intended beneficiaries could find themselves worse off financially should I sign the bill in its current form. This is due to the somewhat complicated interplay between New Jersey's workers' compensation laws and the Federal Social Security Act. Federal law prohibits a permanently disabled individual under retirement age from receiving combined workers' compensation and social security disability income ("SSDI") benefits of more than 80 percent of the individual's wages prior to becoming totally disabled. Because New Jersey is considered a "reverse offset" state under the Federal Social Security Act, an individual's workers' compensation benefit - and not his or her SSDI benefit - will be reduced when necessary to preclude a combined payment in excess of the 80 percent limit. In practice, the reverse offset helps to protect the continued viability of New Jersey's workers' compensation system by allowing the State to offset some portion of its workers' compensation liability with federal dollars. New Jersey is one of just a handful of states that enjoy this reverse offset status. In the majority of states, the offset works in the other direction: SSDI benefits are reduced by the amount an injured worker is receiving in state workers' compensation benefits.

Unfortunately, the federal government does not recognize new reverse offset plans or expansions of prior plans put into effect after February 18, 1981. Because of this, enactment of the proposed changes to disability benefits contemplated in this bill

could jeopardize New Jersey's reverse offset status with respect to disability benefits. This concern is particularly relevant given the Trump Administration's general hostility toward the reverse offset. In the last three budgets proposed by President Trump, his administration has called for an elimination of the reverse offset laws for the few remaining states that benefit from them.

If New Jersey were to lose its reverse offset status, the fiscal repercussions on the affected State funds could significantly harm the disabled workers and their families who rely upon these benefits. The loss of federal funding could lead to the insolvency of several State funds used to benefit not just disabled workers, but also the dependents of those who lose their lives in workplace accidents. As an example, consider the effect of the reverse offset on the SIF. Currently, approximately \$59.5 million of payable benefits comes from the SIF. Of this, the State share is about \$34.7 million; the remainder comes from federal funding. Thus, due to the reverse offset, the State is not responsible for having to pay nearly \$25 million, or approximately forty percent of the otherwise payable benefits. Without the additional federal funding made available through the reverse offset, it would be nearly impossible for the SIF to meet the needs of injured and deceased workers and their families, including the public safety workers who are the intended beneficiaries of this bill.

Apart from jeopardizing New Jersey's reverse offset status, there are also practical considerations that limit the bill's impact on disabled workers. According to the Fiscal Estimate prepared for this bill by the Office of Legislative Services, due to the "interwoven offset rules set forth in current law[,] . . .

the bill will not raise the combined amount of benefits . . . for some targeted workers and only after many years for others." Under federal and State law, workers' compensation disability benefits are capped and are reduced by the amount of the accidental disability pension received by a public safety worker who experiences a workplace injury. This means that any increase in workers' compensation attributable to the bill would accrue only to the minority of disabled beneficiaries who have not already reached the cap. In most instances, the bill would have no impact on the compensation provided to a disabled beneficiary. Instead, the bill would simply shift some of the cost of providing the disability benefits from the State's accidental disability pension and onto the SIF, which is funded through a surcharge on workers' compensation insurance policyholders. In other words, the bill would shift onto the State's private sector employers the obligation to subsidize the State's pension funds without actually increasing the compensation of disabled public safety workers.

In light of the unintended consequences the State and its beneficiaries would face from the loss of the State's reverse offset status and the fact that many disabled public safety workers would not actually see an increase in their total compensation from the supplemental benefits provided by this bill, I am recommending amendments that will limit the supplemental benefit payments to the dependents of public safety workers killed in the line of duty. Unlike disability benefits, death benefits are not governed by the federal statutory provisions governing the reverse offset. As a result, expanding survivor benefits does not provide an avenue for the federal government to revoke the State's reverse offset status. Additionally, the recipients of death benefits stand to realize an immediate and substantial benefit from this

bill, unlike recipients of disability benefits who would not due to the pension offset required under current law.

Because I believe that we can accomplish a primary goal of this bill in assisting the survivors of public safety workers without jeopardizing the financial solvency of some of the State's most important funds, I herewith return Senate Bill No. 1967 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 1:</u>	After "compensation" insert "death"
<u>Page 2, Section 1, Line 7:</u>	Delete "with the fiscal year 2020, commencing July 1,"
<u>Page 2, Section 1, Line 8:</u>	Delete "2019" and insert "on January 1, 2020"
<u>Page 2, Section 1, Line 8:</u>	After "and" insert "in"
<u>Page 2, Section 1, Line 8:</u>	Delete "a person who is"
<u>Page 2, Section 1, Line 9:</u>	Delete "a public safety worker, or"
<u>Page 2, Section 1, Line 9:</u>	Delete "the" and insert "a"
<u>Page 2, Section 1, Line 11:</u>	Delete "subsection (b) of R.S.34:15-12,"
<u>Page 2, Section 1, Line 11:</u>	After "R.S.34:15-13" delete ","
<u>Page 2, Section 1, Line 12:</u>	Delete "or R.S.34:15-95"
<u>Page 2, Section 1, Line 12:</u>	Delete "disability or"
<u>Page 2, Section 1, Line 17:</u>	Delete "person" and insert "dependent"
<u>Page 2, Section 1, Line 20:</u>	Delete "person" and insert "dependent"
<u>Page 2, Section 1, Line 25:</u>	Delete "2019" and insert "2020"
<u>Page 2, Section 1, Line 34:</u>	After "weekly" insert "death"
<u>Page 2, Section 1, Line 37:</u>	After "compensation" insert "death benefit"
<u>Page 2, Section 1, Line 37:</u>	Delete "person's" and insert "dependent's"
<u>Page 2, Section 1, Line 38:</u>	Delete "compensation" and insert "weekly death benefits"
<u>Page 2, Section 1, Line 38:</u>	After "workers' compensation" insert "death benefit"
<u>Page 2, Section 1, Line 39:</u>	Delete "injury or"

<u>Page 3, Section 1, Line 1:</u>	Delete "The actual amount of the supplemental benefits paid"
<u>Page 3, Section 1, Lines 2-10:</u>	Delete in their entirety
<u>Page 3, Section 1, Line 11:</u>	Delete "(2)"
<u>Page 3, Section 1, Line 12:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 12:</u>	Delete ", in cases not subject"
<u>Page 3, Section 1, Line 13:</u>	Delete "to the provisions of paragraph (1) of this subsection,"
<u>Page 3, Section 1, Line 14:</u>	Delete "individual's" and insert "dependent's"
<u>Page 3, Section 1, Line 15:</u>	Delete "(except"
<u>Page 3, Section 1, Line 16:</u>	Delete "for" and insert ", excluding any"
<u>Page 3, Section 1, Line 16:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 17:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 18:</u>	Delete "act)," and insert "act, or"
<u>Page 3, Section 1, Line 18:</u>	Delete ", or the employer's share of disability"
<u>Page 3, Section 1, Line 19:</u>	Delete "pension payments received from or on account of an employer"
<u>Page 3, Section 1, Line 20:</u>	Delete "(3)" and insert "(2)"
<u>Page 3, Section 1, Line 23:</u>	Delete "(4)" and insert "(3)"
<u>Page 3, Section 1, Line 23:</u>	Delete "an individual" and insert "a dependent"
<u>Page 3, Section 1, Line 25:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 32:</u>	After "compensation" insert "death benefits"
<u>Page 3, Section 1, Line 32:</u>	Delete "an individual" and insert "a dependent"
<u>Page 3, Section 1, Line 35:</u>	Delete "individual" and insert "dependent"
<u>Page 2, Section 2, Line 49:</u>	After "2." insert "In making the determination of the aggregate annual surcharge for the Second Injury Fund to be levied pursuant to paragraph (4) of subsection c. of R.S.34:15-94 for calendar year

2020, the Commissioner of Labor and Workforce Development shall include the anticipated additional amounts, including administrative costs, required for the payment of supplemental benefits which shall begin on January 1, 2020 pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill). 3."

Respectfully,

/s/ Philip D. Murphy

Governor

[seal]

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor