

May 8, 2023

SENATE BILL NO. 3110
(Third Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 3110 (Third Reprint) with my recommendations for reconsideration.

Senate Bill No. 3110 (Third Reprint) requires landlords and sellers of real property to disclose to prospective tenants and buyers if a property is located in an area designated by the Federal Emergency Management Agency ("FEMA") as a Special Flood Hazard Area (known as the 100-year flood plain) or Moderate Risk Flood Hazard Area (known as the 500-year flood plain), and if the property has suffered flood damage in the past to the owner's knowledge. Sellers are also required to disclose additional facts related to the property's flood insurance and flood damage history. The Department of Community Affairs is required to develop a model rental disclosure form, while the Division of Consumer Affairs is required to revise the property condition disclosure statement to include the required questions. The Department of Environmental Protection is required to prepare information about statewide flood risks to be included in the disclosure forms, as well as a user-friendly look-up tool to identify whether a property is located in a flood plain.

I applaud the sponsors of this bill for their efforts to protect New Jersey residents from flooding. As climate change causes New Jersey to experience more frequent and more severe heavy precipitation events, my Administration has taken a multifaceted approach to increasing the resilience of the communities that bear the brunt of the damage from these storms. We have increased our investments in flood protection, including providing \$50 million in new funding in 2022 for New Jersey's nationally-recognized Blue

Acres Program that funds the buyout of homes in flood-prone areas and the conversion of the land for conservation, recreation, and flood mitigation purposes. We have also increased investment in stormwater infrastructure and hazard mitigation programs. And, we have adopted and are continuing to develop more protective land use regulations, including new green stormwater rules adopted in 2020, an update to inland flood elevations based on forward-looking climate-based rainfall projections proposed in 2022, and a suite of coastal, wetlands, flood hazard, and stormwater permitting changes that are under development for proposal later this summer.

Despite these efforts, New Jersey remains one of less than half of the states in the country that does not require any flood disclosures for real estate transactions, leaving our residents vulnerable to unknowingly putting themselves at risk of losing their homes and businesses to flooding. I therefore agree with the sponsors and the many stakeholders who have supported this bill, that disclosure requirements are both critically important and long overdue. The bill's rental disclosure requirements are particularly important because many of our developed urban areas are uniquely susceptible to flooding due to their geography and high percentage of impervious cover, and renters typically do not engage in the same level of property investigation as home buyers or have the same awareness of the availability of flood insurance policies. I particularly applaud the sponsors for creating a streamlined disclosure process that I believe will provide necessary information to prospective renters and buyers in an easy-to-understand format, without creating an undue burden on property owners who wish to rent or sell their property. My recommendations will leave all of these features of the bill intact.

However, because I strongly support the goals of this legislation, I am committed to ensuring that there are real consequences for those landlords who fail to comply with the bill's requirements and prevent New Jersey residents from making informed choices about where they live. I therefore cannot support the provision of the bill that would require a tenant to suffer damage to their personal property equal to five times the amount of their monthly rent before they could terminate a lease based on a landlord's failure to make required disclosures. I am concerned that this threshold is so high that it could effectively insulate landlords from suffering any consequence for failure to comply with the bill's requirements -- particularly in circumstances involving low-income tenants who may have less high-value personal property. I am therefore recommending amendments to provide that a tenant whose landlord fails to provide the required notifications after the effective date of the bill may terminate the lease without penalty at any time after the tenant becomes aware that the property is located in a flood plain.

I am also recommending a few technical changes to ensure the efficient implementation of the bill. First, certain language in the bill would require that the flood disclosure information be provided as a separate rider to the lease that is individually signed. While this is appropriate for residential leases, commercial leases typically include all notifications within the lease itself. Commercial leases are also typically carefully scrutinized and negotiated by the parties. To conform with existing practice, I am recommending that the requirement that the disclosure be provided in a separate rider only apply to residential leases. Second, I am recommending that the notice of the availability of federally-backed flood insurance, that is

required to be included in residential leases, state that such insurance may be available to renters, rather than stating that insurance is available to renters. I am recommending this change because the availability of such insurance depends on a municipality's decision to participate in FEMA's National Flood Insurance Program, and while nearly all New Jersey municipalities participate, there are a few that do not. Third, because the property condition disclosure statement already contains a question about the presence of wetlands on the property in very similar terms, I am recommending that question be removed from the list of questions to be added to the disclosure statement to avoid duplication. Finally, I am recommending certain changes to the rulemaking and effective date provisions of the bill to better align with the specific procedures the various departments responsible for implementing the bill will need to follow, and to ensure that each distinct portion of the bill can take effect as soon as possible.

Therefore, I herewith return Senate Bill No. 3110 (Third Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 27:</u>	After "that" insert ", in the case of a residential lease,"
<u>Page 2, Section 1, Line 32:</u>	After "develop" insert "and published on its website and in the New Jersey Register"
<u>Page 3, Section 1, Line 16:</u>	Delete "is" and insert "may be"
<u>Page 3, Section 1, Line 38:</u>	After "section" insert "by failing to disclose that the property is located in the FEMA Special or Moderate Risk Flood Hazard Area"
<u>Page 3, Section 1, Line 38:</u>	Delete "suffers a"
<u>Page 3, Section 1, Line 39:</u>	Delete in its entirety
<u>Page 3, Section 1, Line 40:</u>	Delete "result of flooding" and insert "subsequently becomes aware that the property is located in the"

FEMA Special or Moderate Risk
Flood Hazard Area"

- Page 3, Section 1, Lines 41-42: Delete "not later than the 30th day after the date the loss or damage occurred and" and insert ". If a landlord violates this section and flooding occurs that results in damage to a tenant's personal property, affects the habitability of the leased premises, or affects the tenant's access to the leased premises, the tenant"
- Page 3, Section 1, Line 44: Delete "For purposes of"
- Page 3, Section 1, Lines 45-47: Delete in their entirety
- Page 4, Section 1, Lines 1-2: Delete "exceeds five times the monthly rent on the date the flooding occurred."
- Page 4, Section 2, Line 32: After "sold." insert "The division shall revise the regulations promulgated pursuant to subsection c. of section 1 of P.L.1999, c.76 (C.56:8-19.1) with which the form of the property condition disclosure statement must comply to incorporate the requirements of this subsection, but in advance of such rulemaking the division shall make the revised form which includes the specific questions and information required by this subsection and subsection c. of this section, if applicable, available for use by publishing the revised form on the division's website. A seller of real property shall be required to use the revised form beginning on the 90th day following its publication on the division's website."
- Page 5, Section 2, Line 41: Delete "Is any or all of the property located in a designated"
- Page 5, Section 2, Line 42: Delete in its entirety
- Page 5, Section 2, Line 43: Delete "(9)"
- Page 6, Section 3, Lines 22-23: Delete "No later than 90 days after the date of the enactment of this act, the" and insert "The"
- Page 6, Section 3, Line 23: Delete "shall" and insert ", the Department of Environmental Protection, and

the Division of Consumer Affairs may"

Page 6, Section 3, Line 25:

After "seq.)," insert "such"

Page 6, Section 3, Line 25:

After "regulations" insert "as may be"

Page 6, Section 4, Line 28:

Delete "on" and insert "immediately, but section 1 of this act shall only be applicable to the signing or renewal of leases of rental property occurring on or after"

Page 6, Section 4, Line 29:

Delete "promulgation of regulations implementing the" and insert "publication of the model notice by the Department of Community Affairs pursuant to subsection b. of section 1, and section 2 of this act shall only be applicable to sales and exchanges of real property occurring on or after the 90th day next following the publication of the amended property condition disclosure statement by the Division of Consumer Affairs pursuant to subsection b. of section 2."

Page 6, Section 4, Lines 30-35:

Delete in their entirety.

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor