

SENATE BILL NO. 3283
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 3283 (First Reprint) without my approval.

This bill would provide eight weeks of emergency unemployment benefits during the period beginning December 22, 2020, and ending February 27, 2021, or ending the calendar week in which total expenditures of emergency unemployment benefits first exceed \$350 million if the conclusion of that week occurs before February 27, 2021. The emergency unemployment benefits provided under this bill would be available to individuals who have exhausted all other unemployment benefits. The amount of the weekly emergency unemployment benefits paid to an individual would be the same as the amount the individual was paid in regular State unemployment benefits, or in pandemic unemployment assistance ("PUA") under the CARES Act, as applicable. The emergency unemployment benefits provided by the bill would be paid to claimants entirely from the New Jersey Unemployment Compensation Fund. No employer's account would be charged for emergency unemployment benefits paid to an eligible individual pursuant to the provisions of the bill.

Senate Bill No. 3283 (First Reprint) was introduced in the Senate on December 11, 2020 and passed through both houses six days later. At the time this bill was introduced and passed, individuals were entitled to twenty-six weeks of regular unemployment compensation, thirteen additional weeks of benefits through the Pandemic Emergency Unemployment Compensation ("PEUC") program established by the CARES Act, and twenty weeks of extended benefits. In addition, the CARES Act provided thirty-nine weeks of PUA benefits to individuals not eligible for regular unemployment compensation or extended benefits. Eligibility for

PUA and PEUC benefits under the CARES Act was set to expire on December 26, 2020 in New Jersey.

During the time in December 2020 when the Legislature was considering this bill, Congress was debating the enactment of another round of stimulus relief that, among other things, would have provided an extension of increased federal unemployment benefits. There was considerable uncertainty whether Congress would reach a deal and whether President Trump would sign it. As a result, many New Jerseyans were rightfully fearful that the increased federal unemployment benefits would expire, which would have imposed another crushing blow to residents and families who had already lost their jobs due to the Coronavirus disease 2019 ("COVID-19") pandemic. The Legislature's swift passage of this bill was intended to provide assurances that increased unemployment assistance would be available to New Jersey residents beyond December 26, 2020, regardless of whether Congress and the President were able to reach a deal.

On December 27, 2020, President Trump signed a new COVID-19 relief bill that extended PEUC and PUA benefits for an additional eleven weeks. Consequently, the emergency unemployment benefits during the eight-week period provided for in this bill through February 27, 2021, are now covered by extended PEUC and PUA benefits, which run through March 14, 2021. These extensions ensure that more than 500,000 New Jersey residents will continue to receive critical unemployment assistance to help them stay afloat during these challenging times. As a result, this bill, while well-intentioned, is no longer necessary.

Additionally, the PEUC and PUA extensions allow us to avoid the challenges associated with implementing Senate Bill No. 3283 (First Reprint), which could have jeopardized New Jersey's

Unemployment Compensation Fund. The bill's language indicates, and the Office of Legislative Services Fiscal Estimate confirms, that the Legislature intends for the emergency benefits provided under the bill to be paid for by the State's Unemployment Compensation Fund. Prior to passing this bill, the Legislature was informed that the United States Department of Labor ("USDOL") had advised my Administration that the State would not be permitted to utilize the Unemployment Compensation Fund for the benefits provided under this bill, or any administrative costs associated with the benefits, because the benefits created by this bill are not in conformity with federal law. The Biden Administration's USDOL recently reaffirmed this position.

The conformity issue stems from a common misunderstanding that unemployment contributions collected by the State are State funds to be expended as the State deems appropriate. This is not the case. Under federal law, specifically, the Federal Unemployment Tax Act and the Social Security Act, monies in the Unemployment Compensation Fund may only be used by the State to pay regular unemployment benefits or the State share of extended benefits. The emergency unemployment benefits that would be created by this bill do not fall into either of these two categories. Instead, the emergency unemployment benefits created by the bill would be available to individuals who fail to meet the statutory eligibility criteria for either regular unemployment benefits or extended benefits, including independent contractors and self-employed workers who have insufficient qualifying wages, and workers who require a modification or waiver of statutory job search and availability for work requirements. These expansions can only be made by Congress.

Because the bill would divert funding from the State Unemployment Compensation Fund to pay benefits to individuals who are ineligible under federal law, enactment of the bill would constitute nonconformity with federal law. The consequences of nonconformity - the loss of all administrative grants from the federal government to New Jersey to run the State's unemployment compensation system, and the loss of the ability of all New Jersey employers to claim a credit for State unemployment contributions against the federal unemployment tax - are dire for both the State and our businesses.

As previously noted, the USDOL evaluated the bill and indicated clearly and unequivocally in writing to my Administration that under federal law no monies from the New Jersey Unemployment Compensation Fund could be used to pay the emergency unemployment compensation benefits created by the bill, nor could any such monies be used for administrative costs associated with payment of the emergency unemployment compensation benefits created by the bill. Furthermore, to the extent that emergency unemployment benefits have been created in New Jersey previously, in each previous instance of State-created emergency unemployment benefits, a prerequisite for the receipt by claimants of those benefits was that each such individual meet all statutory criteria for receipt of regular unemployment compensation. None of the previous State laws created an unemployment assistance benefit for independent contractors or self-employed individuals, nor did any previous State law waive job search and availability for work requirements. If they had, there would have been a finding of non-conformity by the USDOL, like the finding with respect to the current bill.

The COVID-19 pandemic continues to have a profound impact on our State's economy and the millions of dedicated workers who make it run. During this extraordinarily difficult time, we must do all we can to ensure there is a robust safety net for the hundreds of thousands of New Jersey workers whose lives and livelihoods have been upended by the COVID-19 pandemic. I look forward to finding meaningful solutions that bring hope and certainty to New Jerseyans as we continue to navigate the challenges posed by this pandemic.

Accordingly, I herewith return Senate Bill No. 3283 (First Reprint) without my approval.

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Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor