

November 8, 2021

SENATE BILL NO. 3093
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 3093 (First Reprint) without my approval.

This bill directs the Governor, in consultation with the Department of Health ("DOH") Commissioner (the "Commissioner"), to develop and implement a mitigation plan to allow businesses to operate during a pandemic. The bill requires the Governor to develop this plan by using empirical data, over a seven-day rolling average, to establish three categories of risk that will be organized by the following colors: (1) Red, which indicates that there is an active outbreak and is the highest level of risk; (2) Yellow, which indicates that the risk of an outbreak is moderate; and (3) Green, which indicates that the risk of an outbreak is low. Once these categories and their corresponding thresholds are established, the Governor would be required to assign one of the categories to each of the State's 21 counties and 565 municipalities and then restrict business activity within a county based on that category.

As Coronavirus disease 2019 ("COVID-19") continued to spread across New Jersey, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act ("Disaster Control Act") and the Emergency Health Powers Act ("EHPA"), to protect the public health, safety, and welfare against the emergency created by COVID-19. Significantly, the Disaster Control Act and EHPA in no way prevent the Governor, in consultation with the Commissioner of DOH, from instituting a county-based or municipal-based mitigation plan.

The distinctive characteristic of a communicable disease is that people spread the disease to one another through contact with contaminated surfaces, bodily fluids, blood products, or through

the air. COVID-19 is a highly contagious disease that can be transmitted from one individual to another in a matter of minutes or seconds, and thus rapidly spread across the New York region in March 2020, affecting every part of New Jersey. In order to address the public health crisis, I took decisive action to implement broad-based restrictions that successfully slowed the spread of the virus. By the summer of 2020, New Jersey had gone from having some of the highest case numbers in the nation to some of the lowest.

As we gradually began to reopen our economy, my Administration was faced with a choice of moving together as one State or having different municipalities or counties reopen at different paces. It is true that a number of other states pursued county-level or municipal-level approaches to business restrictions. However, New Jersey's unique population characteristics made such an approach substantially more problematic here. New Jersey is the most densely populated state in the nation and the fourth-smallest state by area. Unlike either New York or Pennsylvania, most of our 21 counties and 565 municipalities are a reasonable drive away from each other, and the vast majority of New Jerseyans routinely cross county lines for work and recreation.

After extensive consultation with public health experts, my Administration decided that COVID-19 business restrictions that varied by municipality or county would be counterproductive in a state like New Jersey. Quite simply, the idea of a restaurant being closed or limited to a certain percentage of capacity that differed from restrictions on restaurants a short drive away did not make sense. In fact, such a situation could serve to concentrate individuals in areas with looser restrictions, defeating the whole objective of social distancing. Instead of pursuing such a course, my Administration primarily allowed for

county and municipal variation when it came to areas such as public schooling where individuals are largely restricted to their own jurisdiction.

To be clear, there may be disease outbreaks where a county-based or municipality-based approach could make sense in New Jersey. For example, a virus less transmissible than COVID-19 may result in highly localized outbreaks, with only certain counties or municipalities having significant case numbers. Fortunately, the Disaster Control Act and EHPA already provide sufficient authority to establish and implement a localized response if a situation like this arises.

I believe that any future Governor and DOH Commissioner presiding over a future pandemic must have the flexibility to determine whether a county-based or municipal-based response is appropriate, based on the circumstances at hand. The State should not be required to take a localized approach to business restrictions if the facts on the ground weigh against it, as I believe they did during this pandemic.

Accordingly, I herewith return Senate Bill No. 3093 (First Reprint) without my approval.

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:

/s/ Parimal Garg
Chief Counsel to the Governor