SENATE BILL NO. 853
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 853 (First Reprint) with my recommendations for reconsideration.

This bill, designated as the "New Jersey Buy American Act," would require, subject to certain exceptions set forth in the bill, that all surface highway or bridge contracts over $1 million include a provision requiring the use of American-made structural iron and structural steel. Specifically, for structural iron or structural steel products, the bill requires that all manufacturing take place in the United States, from the initial melting stage through the application of coatings. The legislation would apply to contracts that are solicited after the effective date of the bill.

I applaud the sponsors of this legislation for exploring ways to ensure that the State is investing its taxpayer dollars in American businesses, including small businesses. Supporting American companies is particularly important as we emerge from the hardships wrought by the Coronavirus disease 2019 (COVID-19) pandemic. Using domestic goods and materials spurs the creation of well-paid, union jobs and increases investments in the manufacturing industry and workforce, which will aid our efforts to build a stronger and fairer economy.

This bill reaffirms our longstanding commitment to American suppliers, as current law already requires that materials used in public works be domestically sourced, whenever practical. The bill would build on the State's existing preference for domestic materials by setting forth a clear standard for State contracting agencies to follow when considering the source of materials used for surface highway or bridge contracts. The State has a unique

ability to support America's workers and manufacturers by leveraging its procurement authority, and our preference for domestic materials should be clearly delineated in order to ensure that it is implemented consistently and effectively.

I wholly agree that the State, its workers, and its businesses would benefit from a clearer standard governing the circumstances under which domestic materials must be used. However, I am concerned that some of the bill's requirements could inadvertently jeopardize federal funding for bridge and highway projects and cause the State to incur additional costs for those projects. The current practice of the New Jersey Department of Transportation ("DOT") is to align its procurement processes to federal law in order to preserve its ability to secure maximum federal funding for bridge and highway projects. When a particular project is initially conceived, there is sometimes uncertainty about the ultimate source of funding for the project, which is why DOT typically conforms its procurement processes to federal law. Consequently, I am recommending minor changes to the bill to ensure that DOT has maximum flexibility to secure federal funding for bridge and highway projects and obviate the need for DOT to run separate procurement processes for federal- and State-funded projects, which would create inefficiencies and run counter to the public interest.

Specifically, I am recommending that the bill's $1 million threshold be removed, as there is currently no monetary threshold for triggering the Buy American requirement under current State or federal law. In addition to allowing DOT to align its procurement process with federal law, the removal of the $1 million threshold will subject a greater number of projects to the Buy American requirement. The revisions I am recommending will also ensure that miscellaneous components of a project, such as nuts and bolts and iron and steel that are components of other items, will be

subject to the Buy American requirement. Additionally, to ensure compliance with the bill's requirements and to better align this bill with federal law, I am recommending that the bill permit a State contracting agency to require contractors to certify that the iron or steel product used in a surface road or bridge is made in the United States.

Therefore, I herewith return Senate Bill No. 853 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 3, Line 32:	Delete "over $1 million in value and"
Page 2, Section 3, Line 36:	After "bridge," insert "including miscellaneous components, as determined pursuant to regulations adopted by the State contracting agency, such as nuts and bolts and iron and steel that is a component of other items such as reinforced steel within precast concrete items,"
Page 2, Section 3, Lines 38-39:	Delete ", its territories, or possessions"
Page 3, Section 4, Line 21:	After "of the" insert "overall construction project"
Page 3, Section 4, Line 21:	Delete "an unreasonable amount" and insert "more than 25 percent"
Page 3, Section 5, Line 40:	Delete "Nothing in P.L. ,"
Page 3, Section 5, Lines 41-46:	Delete in their entirety.
Page 4, Section 6, Line 1:	Delete "Any" and insert "Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, any"
Page 4, Section 6, Line 3:	Delete "establish" and insert "adopt, immediately upon filing with the Office of Administrative Law,"

Page 4, Section 6, Lines 3-4: Delete ", pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),"

Page 4, Section 6, Line 6: After "bill)" insert ", which regulations shall be effective for a period not to exceed 365 days from the date of filing. The rules and regulations shall thereafter be amended, adopted, or readopted in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.)"

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor