**ASSEMBLY BILL NO. 2472**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am herewith returning Assembly Bill No. 2472 with my recommendations for reconsideration.

This bill would revise the crime of bribery in official and political matters to add a definition of "public servant" subject to its terms. The bill's definition references the definition of public servant commonly used in Chapters 27 to 30 of the Criminal Code, (that is, any officer or employee of government and any other person in the performance of a governmental function), as well as any person who is a candidate for public office and any person who is elected to, but has not yet assumed, public office. The bill clarifies that its provisions would not apply to any campaign speech, advertisement, or other campaign activity used to generate lawful campaign contributions.

A recent Appellate Division decision made clear that New Jersey's law criminalizing bribery in official and political matters applies to candidates for political office who accept unlawful benefits in consideration for acts they agree to perform if they win election. Two trial-level courts – one state, one federal – had previously concluded that the bribery law does not generally apply to bribes directed to or accepted by unelected candidates for public office. However, as the Appellate Division noted, that conclusion would essentially be declaring "open season" on bribery for candidates for office. The Appellate Division thus reversed the lower court decision and rejected the contention that bribery law requires the present ability to perform the corrupt act at the time the bribe is accepted in order to impose criminal liability.

The Appellate Division further rejected the logic underlying the decisions of the trial courts that interpreted a provision of the law known as the "no-defense provision", which states that in any prosecution under the political bribery law, it is no defense that the target of a bribe "was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason," to apply only to the person offering the bribe rather than the individual to whom the bribe was directed. The Appellate Division concluded that the state trial court and the federal court were both wrong to think this provision only applies to a bribe-giver and not to the recipient of a bribe. The Appellate Division commented that "we decline the invitation to interpret the statute to reach the nonsensical conclusion . . . that the Legislature intended to create a subset of candidates who are entitled to accept bribes with impunity."

I understand that this bill, introduced before the Appellate Division rendered its decision, may have been intended to remove any doubt as to the proper reach of the bribery law by stating dispositively that it applies to candidates for public office. Although the Appellate Division decision resolves this question, a petition for certification is now pending before the Supreme Court of New Jersey. While I am confident that New Jersey's highest court will ultimately affirm the Appellate Division's well-reasoned ruling, that does not mean that we should forgo the present opportunity to strengthen the bribery law, to even more definitively foreclose the possibility of an incorrect interpretation.

The correct policy is manifestly clear – it should be a crime for any person to directly or indirectly offer, confer, or agree to confer an unlawful bribe, as well as for any person to solicit, accept, or agree to accept an unlawful bribe, regardless of whether the person whose influence was sought or who sought to be

influenced was qualified or had the capacity, ability or jurisdiction to commit the corrupt act at the time of the bribe or agreement. The bill seeks to ensure that result but, unfortunately, incorporates new language that is susceptible to interpretations that could frustrate that intent. I am concerned that the statute as amended by this bill would allow those who offer, solicit or accept bribes for corrupt acts to find loopholes to evade criminal liability, which would then result in future legal arguments and judicial decisions. In order to avoid this litigation, salutary amendments are needed to better achieve the clear intent of the legislation.

Accordingly, I am recommending that the bill be amended to explicitly state that it is not an element of the crime of bribery in official and political matters that a person whose influence was sought or who sought to be influenced was, at the time of the prohibited act or thereafter, a public servant, party official, or voter, or had assumed the office or position or commenced such employment, or had jurisdiction to exercise official discretion or perform an official duty. I also recommend amending the law to expressly provide that it is not an element of the offense that the person whose influence was sought or who sought to be influenced was qualified or had the capacity, ability, or jurisdiction to act in the desired way. I further propose amendments to bolster the bill's language clarifying the scope and applicability of the "no-defense" provision.

I look forward to signing this bill into law following adoption of my recommended revisions.

Therefore, I herewith return Assembly Bill No. 2472 and recommend that it be amended as follows:

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| Page 2, Section 1, Line 9: | Delete "he" and insert "the person" |
| Page 2, Section 1, Lines 26-32: | Delete in their entirety and insert "'Prohibited act' means a direct or indirect offer, conferral or agreement to confer upon another, solicitation, or acceptance or agreement to accept from another a benefit as consideration for any of the actions set forth in subsection a., b., c., or d. of this section.<br><br>It shall not be an element of this offense that a person whose influence was sought or who sought to be influenced was, at the time of the prohibited act or thereafter, a public servant, party official, or voter, or had assumed the office or position or commenced such employment, or had jurisdiction to exercise official discretion or perform an official duty, nor shall it be an element of this offense that the person whose influence was sought or who sought to be influenced was qualified or had the capacity, ability or jurisdiction to act in the desired way." |
| Page 2, Section 1, Line 33: | After "person" insert "who performed a prohibited act or a person to" |
| Page 2, Section 1, Line 34: | Delete "the actor sought to offer, confer, or agreed to confer a benefit" and insert "a prohibited act was directed" |
| Page 2, Section 1, Lines 35-36: | Delete in their entirety |
| Page 2, Section 1, Line 37: | Delete "specifically on behalf of an individual benefit provider" |
| Page 2, Section 1, Line 37: | After "not" insert "able or" |
| Page 2, Section 1, Line 38: | After "way" insert "for any reason" |
| Page 2, Section 1, Line 38: | Delete "whether" and insert "including but not limited to," |

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| Page 2, Section 1, Line 38: | Delete “he” and insert “the person was not a public servant, party official, or voter at the time of the prohibited act,” |
| Page 2, Section 1, Line 39: | After “assumed” insert “the” |
| Page 2, Section 1, Line 39: | After “office” insert “or position or commenced employment” |
| Page 2, Section 1, Line 39: | Delete “, or for any other reason” and insert “to exercise an official duty” |
| Page 2, Section 1, Line 40: | Delete “an actor” and insert “a person” |
| Page 2, Section 1, Line 42: | Delete “he” and insert “the person” |

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor