

March 14, 2011

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 2144
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2144 (Second Reprint) without my approval.

This bill provides that whenever a State agency deems it necessary, the agency may directly hire in-house maintenance personnel to perform routine building and facility maintenance work under the direct supervision and at the discretion of the building owner when such work is not required to be publicly bid. The bill also establishes that such work may be performed by skilled craftsmen from area building trades who have completed an apprenticeship program approved by the U.S. Department of Labor. Lastly, the bill states that a contract for the use of skilled craftsmen for in-house maintenance work must include a provision providing that the State will contribute toward the cost of those workers' fringe benefits.

While proponents of this legislation assert that the bill will reduce the price of maintenance projects on public buildings by eliminating the costs associated with a general contractor, I am concerned that the actual impact will be increased costs to the State. In addition, this legislation also suffers from a significant lack of clarity and contains several confusing and contradictory provisions which will make implementation difficult, and may lead to costly and unnecessary litigation.

Although this Administration supports the hard-working skilled craftsmen of New Jersey's building trades and continues to pursue numerous economic development initiatives throughout the State that will create and maintain jobs for skilled workers in the building trades, I cannot support this bill because of the adverse fiscal impact it will have on the State budget. By eliminating the use of general contractors through a competitive bidding process, the State will lose an important mechanism for ensuring the most cost

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effective maintenance work on public facilities. Moreover, State agencies will lose the indemnification protection that is traditionally provided by general contractors, and will be required to take costly measures to insulate the State from liability.

It is also uncertain whether the bill can be implemented without litigation over the meaning of its terms and provisions. For example, it is not clear whether an individual chosen to perform maintenance work pursuant to the bill's provisions will be performing such work as an employee of the State, or as an independent contractor. While section 1 of the bill provides that a skilled craftsman may be directly "hired" as "in-house personnel" with "benefits" to be paid by the State, that same section also makes explicit reference to a "contract" between the craftsman and the State. This ambiguity will undoubtedly invite litigation regarding the State's responsibility to provide traditional employment related benefits and protections, such as civil service rights, temporary disability benefits and workers' compensation coverage, to such skilled craftsmen.

This internal inconsistency also raises questions about the State's liability for the acts or omissions of the worker. If such workers are deemed "employees" of the State, the State would be responsible for any loss, injury or damage resulting from the performance of the maintenance work. Likewise, the State would bear responsibility for the conduct of the maintenance worker during the period that the worker is performing the in-house maintenance work pursuant to the direct-hire process.

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Accordingly, I herewith return Assembly Bill No. 2144 (Second
Reprint) without my approval.

Respectfully,

/s/ Chris Christie
Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa
Chief Counsel to the Governor