

SENATE BILL NO. 3868
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 3868 (First Reprint) without my approval.

Senate Bill No. 3868 (First Reprint) amends section 3 of P.L.1979, c.121, which regulates the establishment and use of fees collected by municipality officials who enforce the Uniform Construction Code ("UCC"), known as "enforcing agencies." Under current law, each municipality's governing body "by ordinance ... shall set enforcing agency fees for plan review, construction permit, certificate of occupancy, demolition permit, moving of building permit, elevator permit and sign permit." With a very limited exception, "such fees shall not exceed the annual costs for the operation of the enforcing agency."

As prescribed by regulations promulgated by the Department of Community Affairs ("DCA") and further explained in guidance issued by DCA's Division of Local Government Services ("DLGS") and Division of Codes and Standards, "annual costs" consist only of direct and "indirect and overhead" expenses. Except in rare circumstances, indirect and overhead expenses may not exceed 12 percent of all other costs of the agency. In years where fee revenues are insufficient to fund code enforcement, municipalities may draw from their general fund to make up the difference. With approval from DLGS, municipalities can establish a "dedication by rider" for construction code enforcement fees so that excess funds are directed into trust to offset code enforcement costs in future years.

Senate Bill No. 3868 (First Reprint) would make two changes to existing law. First, in circumstances where enforcing agency fees collected from affordable housing projects or from projects

in areas in need of redevelopment cause the enforcing agency's total amount of collected fees for the year to exceed at least 112 percent of the agency's operating expenses, the bill would generally require that any excess fees lapse into the municipality's current fund balance. This requirement would apply whenever the enforcing agency's fees had not increased by more than two percent in either the prior or current fiscal year and when the enforcing agency is otherwise fully compliant with the State Uniform Construction Code Act, P.L.1975, c.217. Second, in years where either the enforcing agency's fee revenue does not cover its operating costs, or where the municipality has not appropriated enough money to operate the enforcing agency, the bill would require the shortfall to be satisfied from the municipality's general fund or current fund balance.

I commend the Legislature's efforts to provide municipalities with the ability to redirect funds in years where large projects may lead to a surplus of enforcing agency fee revenue, or where a lack of development in a given year leads to a shortfall. However, I am concerned that signing the bill would lead to unintended consequences that would harm both municipal governments and their residents.

The purpose of the current law's requirement that construction code enforcement fee revenues be used only to cover enforcing agency expenses is twofold: it ensures that enforcing agencies have sufficient funds to operate and invest in improvements, while also protecting property owners and developers from exorbitant fees. Allowing surpluses — even if only surpluses caused by certain kinds of projects — to be used for purposes other than enforcing the UCC may incentivize municipalities to raise fees incrementally over time in order to use construction code

enforcement fees as a supplemental revenue source. Such a result would impose an unfair burden on taxpaying homeowners seeking to perform home improvements.

The bill's provision requiring excess fee revenue to lapse into a municipality's current fund balance appears intended to allow municipalities to take advantage of situations where large-scale development projects lead to non-recurring excess revenues. But these projects often take years, resulting in sustained periods of increased operating costs that necessitate increased revenues from fees. Moreover, the law already accommodates circumstances where revenues exceed direct operating expenses by authorizing reinvestment in enforcing agencies that enables them to modernize and serve residents more efficiently, and by permitting DLGS to authorize a dedication by rider in years where a municipality may be experiencing less development activity.

I am also concerned about the consequences of requiring municipalities to cover any enforcing agency shortfalls out of their general funds or current fund balances. Under DCA regulations, municipalities may already supplement code enforcement shortfalls with general fund money. Converting the current permissive rule into a mandatory one deprives municipalities, as well as DLGS, with the flexibility necessary to make complex financial decisions, particularly in situations when a municipality is in financial distress and multiple competing priorities need additional funding.

Because current law and regulation already provide several mechanisms for municipalities to respond to fluctuating revenues received by enforcing agencies, I am not persuaded that further revisions to the process are necessary at this time.

Accordingly, I herewith return Senate Bill No. 3868
(First Reprint) without my approval.

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:

/s/ Parimal Garg
Chief Counsel to the Governor