

September 19, 1997

ASSEMBLY BILL NO. 969
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 969 (First Reprint) with my recommendations for reconsideration.

A. Summary of the Bill

This bill establishes procedures with which the Departments of Human Services (DHS), Corrections (DOC) and Military and Veterans' Affairs (DMAVA) must comply prior to implementing a decision to close or privatize a facility, or to temporarily remove all persons or patients residing in certain State facilities, except in the case of an emergency condition. The bill requires the affected departments to hold a minimum of three public hearings, at least 30 days apart, regarding the proposed action, compile a report of the testimony received at the hearings, and commission an independent report analyzing the impact of the proposed closing, reduction or privatization after the public hearings have been completed. These requirements are retroactive to January 1, 1995.

B. Recommended Action

While the intent of this legislation -- to provide a public forum and adequate notice to those individuals who will be affected by a facility closure or privatization initiative -- is salutary, the bill imposes rigid and unduly burdensome requirements which fail to effectively advance the bill's primary purposes. Indeed, this Administration has continually sought to achieve these goals by providing notice and a meaningful opportunity for public comment prior to the closing or privatization of any State facility through an informal hearing process. I do acknowledge, however, that there is merit to providing a mandatory and uniform process to ensure

consistency and accountability with regard to certain departmental actions. The proper approach will afford the public notice and an opportunity for comment, without frustrating the prerogative of the Executive Branch to respond to exigencies and to effectively and efficiently administer and operate the facilities under its control.

I believe that an appropriate balance is achieved by requiring DHS, DOC and DMAVA to conduct at least one regional or centrally located public hearing prior to implementing a decision to privatize or close a facility. For a facility closure, the hearing must be held a minimum of 45 days in advance of the actual closure. This hearing requirement will be triggered by the publication by the affected department of a Notice of Intent to close a facility; the hearing must occur within 15 days of publication. With regard to privatization initiatives, the hearing shall be conducted at least 30 days prior to issuance of a Request for Proposal. This notice and hearing requirement would apply to any privatization action or facility closure under the auspices of the designated departments which would result in the aggregate elimination of 100 or more non-vacant, full-time positions at the existing facility or facilities affected by the decision, except in the case of an emergency condition. This threshold balances the sound public policy supporting hearings in cases of large-scale closures with the recognition that such a requirement would be superfluous and potentially obstructionist if applied to all institutional reconfigurations. This approach preserves the ability of the departments to respond to emergency circumstances not contemplated by this bill and provides the Executive Branch with flexibility to continue to explore efforts to streamline, consolidate and improve existing State facility services and functions. Also, by eliminating references to a reduction in the number of patients or residents at a facility and creating one uniform standard, it will

obviate any potential difficulties or administrative burdens associated with having to define and track "capacity" at certain facilities.

Additionally, in order to avoid potentially duplicative and costly reporting requirements, I recommend that for those efforts requiring a public hearing, the departments be required to prepare a single report setting forth a fiscal impact analysis, policy rationale and summary of the testimony received at the public hearing held pursuant to this bill. This report shall be submitted to the chairmen of the Joint Budget Oversight Committee within 5 days of the issuance of a Notice of Intent to Award for privatization initiatives, or within 30 days following the last scheduled public hearing for a facility closure.

I further recommend that the retroactivity provision of the bill be deleted; the requirements set forth in the bill shall not apply to any facility where a department has already made a decision to close a facility or privatize any service, function or unit of a facility. I have been advised that the retroactivity provision would reach certain privatization actions for which contracts have been previously awarded and implemented, negating any possible benefit which could be derived from additional hearings or reports.

Therefore, I herewith return Assembly Bill No. 969 (First Reprint) and recommend that it be amended as follows:

Page 1, Section 2, Lines 14-21: After "a." delete in their entirety and insert "Except in the case of an emergency condition, the commissioner shall not implement a decision to close an existing facility or to privatize any services, functions or units of an existing facility, if the commissioner finds that the decision shall result in the abolition of 100 or more non-vacant, full-time positions in the career service at the existing facility or facilities

affected by the decision, unless the commissioner has complied with the procedures set forth in this section."

- Page 1, Section 2, Lines 22-23: After "b." delete in their entirety
- Page 1, Section 2, Line 24: Delete "functions or units of the facility, he" and insert "Pursuant to subsection a. of this section, the commissioner"; delete "three" and insert "one"; after "public" insert "hearing"
- Page 1, Section 2, Line 25: Delete in its entirety
- Page 1, Section 2, Line 26: Delete "State, at least one of"; delete "county" and insert "region"
- Page 1, Section 2, Line 27: After "located," insert "or a central location designated by the commissioner if more than one facility is affected by the decision,"
- Page 1, Section 2, Line 28: Delete ", reduction"; after "privatization." insert "The hearing shall be conducted at least 45 days in advance of a facility closure, or at least 30 days prior to the issuance of a Request for Proposal."; delete "At least" and insert "For a facility closure, the public hearing shall be held within 15 days of publication of a Notice of Intent to close a facility by the commissioner in accordance with subsection c. of this section."
- Page 1, Section 2, Lines 29-31: Delete in their entirety
- Page 2, Section 2, Lines 1-2: Delete in their entirety
- Page 2, Section 2, Line 3: Delete "before the date of each hearing."
- Page 2, Section 2, Lines 6-7: Delete in their entirety
- Page 2, Section 2, Lines 8-18: After "c." delete in their entirety and insert "The Notice of Intent to close a facility pursuant to subsection b. of this section shall be mailed, telephoned, telegraphed or hand delivered to at least two newspapers for publication, at least one of which shall be within the geographic

boundaries of the county where the facility is located. Failure to comply with the requirements of this subsection shall not invalidate or delay any facility closure."

Page 2, Section 2, Lines 19-25:

After "d." delete in their entirety and insert "The commissioner shall prepare a report setting forth a fiscal impact analysis, policy rationale and summary of the testimony received at any hearing held pursuant to this section. This report shall be submitted to the chairmen of the Joint Budget Oversight Committee within five days of the issuance of a Notice of Intent to Award or within 30 days following the last scheduled public hearing for a facility closure."

Page 2, Section 4, Lines 33-40:

After "a." delete in their entirety and insert "Except in the case of an emergency condition, the commissioner shall not implement a decision to close an existing facility or to privatize any services, functions or units of an existing facility, if the commissioner finds that the decision shall result in the abolition of 100 or more non-vacant, full-time positions in the career service at the existing facility or facilities affected by the decision, unless the commissioner has complied with the procedures set forth in this section."

Page 2, Section 4, Lines 41-42:

After "b." delete in their entirety

Page 2, Section 4, Line 43:

Delete "units of the facility, he" and insert "Pursuant to subsection a. of this section, the commissioner"; delete "three" and insert "one"; delete "hearings, one" and insert "hearing"

Page 2, Section 4, Line 44:

Delete in its entirety

Page 2, Section 4, Line 45:

Delete "one of"; delete "county" and insert "region"; after "located," insert "or a central location designated by the commissioner if more than

one facility is affected by the decision,"

Page 3, Section 4, Line 1:

Delete ", reduction"; after "privatization." insert "The hearing shall be conducted at least 45 days in advance of a facility closure, or at least 30 days prior to the issuance of a Request for Proposal."; delete "At least 30 days shall be" and insert "For a facility closure, the public hearing shall be held within 15 days of publication of a Notice of Intent to close a facility by the commissioner in accordance with subsection c. of this section."

Page 3, Section 4, Lines 2-6:

Delete in their entirety

Page 3, Section 4, Lines 9-11:

After "testimony." delete in their entirety

Page 3, Section 4, Lines 12-21:

After "c." delete in their entirety and insert "The Notice of Intent to close a facility pursuant to subsection b. of this section shall be mailed, telephoned, telegraphed or hand delivered to at least two newspapers for publication, at least one of which shall be within the geographic boundaries of the county where the facility is located. Failure to comply with the requirements of this subsection shall not invalidate or delay any facility closure."

Insert new subsection:

"d. The commissioner shall prepare a report setting forth a fiscal impact analysis, policy rationale and summary of the testimony received at any hearing held pursuant to this section. This report shall be submitted to the chairmen of the Joint Budget Oversight Committee within five days of the issuance of a Notice of Intent to Award or within 30 days following the last scheduled public hearing for a facility closure."

Page 3, Section 6, Lines 30-37:

After "a." delete in their entirety and insert "Except in the case of an emergency condition, the Adjutant General

shall not implement a decision to close an existing facility or to privatize any services, functions or units of an existing facility, if the Adjutant General finds that the decision shall result in the abolition of 100 or more non-vacant, full-time positions in the career service at the existing facility or facilities affected by the decision, unless the Adjutant General has complied with the procedures set forth in this section."

- Page 3, Section 6, Lines 38-39: After "b." delete in their entirety
- Page 3, Section 6, Line 40: Delete "functions or units of the facility, he" and insert "Pursuant to subsection a. of this section, the Adjutant General"; delete "three" and insert "one"; after "public" insert "hearing"
- Page 3, Section 6, Line 41: Delete in its entirety
- Page 3, Section 6, Line 42: Delete "State, at least one of"; delete "county" and insert "region"
- Page 3, Section 6, Line 43: After "located," insert "or a central location designated by the Adjutant General if more than one facility is affected by the decision,"
- Page 3, Section 6, Line 44: Delete ", reduction"; after "privatization." insert "The hearing shall be conducted at least 45 days in advance of a facility closure, or at least 30 days prior to the issuance of a Request for Proposal."; delete "At least" and insert "For a facility closure, the public hearing shall be held within 15 days of publication of a Notice of Intent to close a facility by the Adjutant General in accordance with subsection c. of this section."
- Page 3, Section 6, Lines 45-46: Delete in their entirety
- Page 4, Section 6, Lines 1-3: Delete in their entirety
- Page 4, Section 6, Line 4: Delete "before the date of each hearing."
- Page 4, Section 6, Lines 7-8: Delete in their entirety

Page 4, Section 6, Lines 9-18:

After "c." delete in their entirety and insert "The Notice of Intent to close a facility pursuant to subsection b. of this section shall be mailed, telephoned, telegraphed or hand delivered to at least two newspapers for publication, at least one of which shall be within the geographic boundaries of the county where the facility is located. Failure to comply with the requirements of this subsection shall not invalidate or delay any facility closure."

Insert new subsection:

"d. The Adjutant General shall prepare a report setting forth a fiscal impact analysis, policy rationale and summary of the testimony received at any hearing held pursuant to this section. This report shall be submitted to the chairmen of the Joint Budget Oversight Committee within five days of the issuance of a Notice of Intent to Award or within 30 days following the last scheduled public hearing for a facility closure."

Page 4, Section 7, Lines 20-21:

Delete "and be retroactive to January 1, 1995"

Respectfully,

/s/ Christine Todd Whitman

Governor

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor