

August 27, 2018

**ASSEMBLY BILL NO. 1053**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1053 with my recommendations for reconsideration.

This bill increases the civil and criminal penalties for trespassers and vandals of New Jersey's agricultural and horticultural lands. I commend the sponsors for bringing awareness to the unique challenges that trespass and vandalism pose to farmers and agricultural businesses and fully support policies that will better deter these activities and protect New Jersey's farmland.

While the bill's changes to the relevant criminal and civil statutes are laudable, one provision raises concerns. Specifically, the bill would establish a mechanism at criminal sentencing designed to compensate a property owner for expenses, above and beyond ordinary restitution, incurred to restore lands and property damaged by a trespasser. It should be noted that such an avenue for redress for such expenses (and civil penalties) already exists in civil court, which remedy a property owner is free to pursue independent of the criminal proceeding. In effect, this would create a right to a similar civil judicial proceeding to ascertain and award extraordinary restitution as part of the criminal prosecution. Such a change, which would represent a significant departure from current judicial practice, has the potential to burden prosecutors and delay criminal proceedings. This is particularly problematic in light of the resource demands related to complying with statutory deadlines imposed under the Criminal Justice Reform Act. Compounding this concern, expanding extraordinary restitution to criminal sentencing for the narrow subset of crimes identified in this bill treats certain crime

victims more advantageously than victims of other types of crimes, such as murder and sexual assault, that may fairly be considered equally or more serious than trespass and vandalism.

A more measured approach would modify this provision to allow the court to order the payment of such expenses if the amount is not in dispute or can be readily ascertained without an evidentiary hearing, while retaining the bill's enhanced civil and criminal penalties. My revisions accomplish the laudable objectives of this bill without creating an entirely new sentencing scheme for certain crimes that has the potential to burden the criminal court system.

Accordingly, I herewith return Assembly Bill No. 1053 and recommend that it be amended as follows:

Page 2, Section 2, Line 43: Delete "is" and insert "shall be"

Page 3, Section 2, Line 4: Delete "make a finding of" and insert "order the defendant to pay as appropriate"

Page 3, Section 2, Lines 4: Delete "and" and insert "pursuant to this subsection, unless the amount cannot be ascertained or is subject to dispute in a manner that cannot be resolved without an evidentiary hearing, in which case the amount shall be determined in an action brought pursuant to R.S.4:17-2."

Page 3, Section 2, Line 5: Delete in its entirety

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor