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October 13, 2011

Dear Members of the Senate Budget Committee:

Re: S-3080 (Greenstein / Gordon / Madden): Creates the "Back to Work NJ Program"

The New Jersey State AFL-CIO joins the sponsors in their desire to assist the growing ranks of the unemployed to find work. The basic premise of this bill is to help transition the unemployed back to work, and that of course is a good thing. However, in order for this program to be a success, the legislation must contain strong oversight and monitoring of employers enrolled in the program to ensure trainees are not being taken advantage of. Due to abuse of the program in the past in Georgia, the program has been dubbed by the national AFL-CIO as the "work for free" law. Although the New Jersey bill does include some language seeking to achieve oversight, we respectfully urge the sponsor to consider strengthening the bill to include penalties against employers that abuse the program.

We are happy that the bill before you today has improved when compared to the version that passed earlier this year (S-2496). Specifically, Section 7 of S-3080 disqualifies employers that abuse the program from future participation in the program. Unfortunately, it does not include language that would fine employers that abuse the program. This language was included in S-2585, which passed this committee earlier this year, and we recommend that S-3080 be amended to include this language, as well as language that specifies how the amount of the fine would be determined.

There is a precedent for including this type of abuse disincentive in other worker training programs. The Workforce Development Partnership fund has a schedule of fines, detailed in 34:15D-19, which are not to exceed \$1,000 for a single offense and shall be established by the Commissioner or the Department of Labor and Workforce Development, for attempting to defraud the program, among other actions.

This language is extremely important, because as currently written, an employer found guilty of taking advantage of trainees simply would no longer be able to participate in the program. The bill needs to include a stronger disincentive against employer abuse.

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Finally, as we know, the creation of this program is being debated at the federal level, as a component of the American Jobs Act – but there is a significant difference between it and what is being implemented at the state level, including in New Jersey. It should be noted that, while the USDOL had previously interpreted these types of programs as training, not work, and therefore not subject to the federal minimum wage, the USDOL has now placed this interpretation in limbo or established a “grey area” by supporting language in the AJA that requires workers enrolled in the program to be paid the minimum wage, and are no longer considered “trainees.” Therefore, if this program is passed at the federal level, the bill before you today in its current form may be found to be in violation of Fair Labor Standards Act, because it does not pay the minimum wage to program enrollees.

Thank you for the opportunity to testify.

Sincerely,



Charles Wowkanech
President



Laurel Brennan
Secretary-Treasurer

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