

SENATE BILL NO. 3505

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 3505 without my approval.

This bill would require the New Jersey Department of Labor and Workforce Development ("NJDOLE" or "Department") to assign more than 100 full-time Unemployment Compensation ("UC") claims handlers to offices of the Legislature for the purpose of supporting individual legislators and legislative staff in the performance of what the bill refers to as "their constituent service duties." More specifically, the bill would require the Department to ensure that "at least one" NJDOLE claims handler is assigned to serve "each legislative district and partisan office" for the duration of the Coronavirus disease 2019 ("COVID-19") related emergency, and for six months thereafter.

Additionally, the bill would require the NJDOLE to "make available" to legislative staff both "view-only access" to the federal-state UC claims system database and training about "confidentiality and information security rules." The bill further provides for an appropriation of \$1.8 million from the General Fund to pay for employee salaries, training, "technology infrastructure upgrades," and other federally non-reimbursable costs and penalties that would be triggered by implementation of the bill's provisions.

The UC program is constructed as a joint federal-state partnership to provide temporary, partial wage replacement to involuntarily unemployed workers. New Jersey's UC program was heavily tested during the early part of the COVID-19 pandemic, along with the UC programs of other states and territories nationwide, but the NJDOLE's administrative operations improved to meet the unprecedented crisis and, since the inception of the pandemic, the NJDOLE has successfully distributed over \$35 billion dollars in vital benefits to hard-working New Jerseyans who depend, along with their families, on the UC program.

Like many federal-state "partnerships," the UC program is not a truly equal one when it comes to the rules, regulations, and administrative requirements under which it must operate. Rather, strict compliance by New Jersey with all federal laws and guidance, including rules specifically governing access to UC records, claimant confidentiality, UC staffing, and work assignments, is mandatory. The United States Department of Labor ("USDOL") strictly administers the UC program and directly oversees the NJDOL, which is recognized by the federal government as the sole New Jersey entity responsible for compliance with UC laws. In the event that the USDOL determines any individual state's UC statutes or policies fail to fully conform and comply with federal laws and guidance, federal payments for administrative costs, including salaries of state UC claims agents, are immediately placed at risk of forfeiture. Additional consequences of nonconformity or noncompliance with federal UC requirements include loss of the ability of New Jersey employers to claim a credit for State unemployment contributions against the federal unemployment tax. Unsurprisingly, in light of the stringent regulatory structure of the UC program, the USDOL has issued a warning letter to the Department identifying several ways in which this bill would, if enacted, violate federal UC rules.

First, the USDOL has raised separation of powers issues, noting that "because employees of legislative districts and partisan offices are not part of the executive branch of state government, they cannot be considered public officials" who have "responsibility administering or enforcing" the UC laws. Under federal law, only "executive branch" employees whose activities are "necessary for the proper administration of New Jersey's UC program" and who comply with federal regulations governing merit staffing, employee supervision, maintenance of claimant confidentiality, and proper use of federal Title III administrative grant funds, among others, are permitted. Simply stated, the USDOL does not recognize individuals outside of

the executive branch, no matter how well-intentioned, including legislators and legislative staff, as administrators or enforcers of the UC laws.

Accordingly, because of the stark inconsistencies between this bill and federal UC law, the USDOL has issued written notice to the NJDOL reminding the Department of the likelihood of sanctions in the event that federal funds are utilized to support any unapproved allocations of staff and resources. In this case, such sanctions would create significant unbudgeted costs to the State, as well as tax-related consequences for New Jersey businesses. I am advised by the Office of Management and Budget that the cost to the State associated with USDOL disallowance of the salaries of claims agents assigned to legislative offices pursuant to this bill would likely exceed \$10 million annually. The additional unbudgeted costs of technological upgrades and legislative staff training are difficult to quantify, but it is clear that the \$1.8 million appropriation included in this bill would not be enough to cover the bill's costs.

Accordingly, I herewith return Senate Bill No. 3505 without my approval.

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Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor