



Labor and Workforce Development Transition Policy Group

PREPARED FOR GOVERNOR-ELECT JON S. CORZINE

Final Report

January 10, 2006

LABOR & WORKFORCE DEVELOPMENT POLICY GROUP TRANSITION REPORT

EXECUTIVE SUMMARY

The Labor & Workforce Development Policy Group recommends that the Governor-Elect consider the following recommendations:

Mandate UI Trust Fund solvency. In order to ensure that the UI fund remains solvent, not only must the Corzine Administration refrain from future Trust Fund diversions, but reforms must be undertaken to restore the integrity of the fund including an increase in employer and employee contributions. Federal guidelines suggest that the UI Trust Fund should maintain a balance equivalent to 12 months of benefits to ensure solvency, yet the State's Trust Fund currently has less than 4 months of reserves.

Increase UI Trust Fund revenue via legislative reforms. Amend "non-charging" provisions to increase UI Trust Fund revenue; Reform independent contractor rules to increase UI Trust Fund revenue; Review eligibility rules for workers discharged for misconduct to reduce UI benefit payouts).

Create a Commission on Charity Care and the Uninsured. The Corzine Administration should establish a commission that includes representatives of business, labor, and the medical community to address the problem of the uninsured, and specifically the need for a guaranteed funding source for charity care.

Expand employment & economic growth programs and improve accessibility & accountability. Support the creation of the Governor's Office of Economic Growth; Establish a Center for Occupational Employment Information (COEI) in the Department of LWD via legislative action (The COEI is the successor organization to the State Occupational Information Coordinating Committee); Develop and implement performance standards for training and employment programs (Performance standards, benchmarking, and evaluations *must* be performed on every employment and training program. NJ); Commitment to the literacy labs and other technology-based programs at the One-Stops, and continued commitment to the Online Learning Program.

Incorporate cross cultural approaches to ensure that both employers and workers are fully integrated to the State plan. New Jersey's rapidly changing demographics compels an overall economic and workforce development strategy that specifically incorporates such an approach.

Phase-out diversions from the Workforce Development Partnership Program (WDP). The WDP funds were diverted from LWD to Human Services to support the State's welfare program. In 2005, over \$35M was diverted, and in FY06, over \$45M was diverted.

Fully implement the mandated consolidation of “ToWork” case management functions from the Department of Human Services to the Department of LWD. The purpose of the consolidation was to strengthen New Jersey’s workforce system to be responsive to employers needs by preparing its citizens for the workforce challenges of the 21st century essential to New Jersey’s economic prosperity is to have pipeline of talented, skilled workers.

Reevaluate existing law regarding the State classification of an independent contractor. Companies that misclassify full-time workers as independent contractors avoid paying the obligation of payroll taxes and mandated benefits, including unemployment insurance, to the tune of an estimated hundreds-of-millions of dollars.

Review civil and criminal penalties associated with Wage and Hour violations. The Division of Criminal Justice has continued to refuse to prosecute employers violating Wage and Hour Laws unless the statutorily provided Disorderly Persons Offenses can be converted to felonies. With the exception of the Prevailing Wage Act, all Wage and Hour Laws are limited to Disorderly Persons Offenses.

Increase the number of field investigators in order to increase the number of field and job-site inspections. This would result in a greater number of complaints received, enforcement penalties, enforcement fees, number of employees helped, and number of back wages collected.

RECOMMENDATIONS

MANDATE UI TRUST FUND SOLVENCY

The UI Trust Fund has seen a total of \$4,671,900,000 in collections redirected to the State's charity care fund that would have been deposited into the unemployment insurance trust fund. These diversions have taken place every year since 1993. The fund has a current cash balance of approximately \$970 million and is projected to hit a low point of approximately \$480 million in April 2006. The UI trust fund cannot support any additional diversions for charity care. Even without a further diversion being included in the FY 2007 budget, current projections indicate that an automatic increase in the UI tax rates paid by employers will occur on July 1, 2007. It is important that the fund be allowed to replenish itself and that no further diversions be allowed for charity care.

In the spring of 2006, the UI trust fund balance is projected to come very close to the threshold that would trigger a shift in the tax schedule from Column A to B (schedule attached). If the fund balance of the UI trust fund were to fall below \$955 million as of March 31, 2006, it would trigger an increase in employer taxes, which would be estimated to cost employers an additional \$300-400 million in contributions in the tax year from July 1, 2006 to June 30, 2007. As of now, it is estimated that the fund balance will be approximately \$1.05 billion on March 31, 2006, thereby very narrowly avoiding triggering a column shift this year (any change in economic conditions could tip the balance). In any case, however, according to current projections, the trust fund is very likely to fall below the equivalent trigger on March 31, 2007 – thus requiring a shift to Column B of the UI tax schedule. Furthermore, it is likely that if a new diversion of even a few million dollars were to be included in the FY 2007 budget, the fund balance would drop below the trigger for a shift to Column C in July 2007 (which entails another \$300 million increase in employer contributions above Column B's tax rates).

In addition to the negative economic consequences of tax schedule shifts, further declines in the balance of the UI trust fund would cause effects that are still worse. Should the trust fund reserve ratio fall below the trigger for Column E, New Jersey law requires the imposition of a separate solvency "surtax" of 10% in addition to the higher tax rates mandated by Column E. Furthermore, if the UI trust fund is depleted to the point that UI benefits cannot be paid, New Jersey could be forced to borrow from the federal UI trust fund. Under federal law, such loans must be repaid with interest and the interest must be paid through yet another, separate dedicated tax on employers. It is imperative to restore the financial integrity of the UI trust fund.

Stop UI Trust Fund Diversions:

The Corzine Administration must make a commitment to **stop the past practice of redirecting UI payroll tax contributions away from the UI trust fund to charity care** (or elsewhere). This could be in the form of a constitutional amendment or another type of policy directive. The Administration should further establish policies for the minimum acceptable solvency level of the UI trust fund and a structure for public accountability. One existing forum

for highlighting this issue is the Employment Security Council, which should be consulted soon after the Administration takes office.

The practice of redirecting revenue from the UI Trust Fund must not continue. The UI trust fund should be forward funded, in order to allow its balances to recover and reach the level of solvency required to pay future benefits. **New Jersey should adopt federal solvency guidelines as official state policy**: the state UI trust fund should maintain sufficient balances to pay UI benefits for 12 months, at a payout rate equivalent to the average expenditure levels during the highest three recent recessions (a solvency measure known as the “average high cost multiple”). As of June 30, 2005, New Jersey’s UI Trust Fund was not yet adequately replenished to cope with a future economic downturn. According to this measure of solvency, New Jersey’s UI Trust Fund balance is sufficient only to finance the payment of four months of benefit payments at the typical payout level during a recession. The solvency measure should require an average high cost multiple = 1.0, so that the trust fund maintains a balance sufficient to pay out 12 months of benefits at the average historic high payout rate.

Phase-in effective triggers for employer contributions and an increase in the employee contribution rate to boost the solvency of the UI Trust Fund:

Most state Unemployment Insurance benefits are financed entirely from employer taxes. New Jersey is an exception because it is one of only three states in the nation that levies a tax on employees as well as employers. Furthermore, New Jersey is the only state in the nation that redirects revenue away from the UI Trust Fund to be spent on purposes other than employee benefits or workforce development, and New Jersey is the only state that allows such money to be spent on charity care.

An employer’s experience with unemployment claims by its former workers is one determinant of the tax rate. Another is the tax rate schedule in effect based on the overall solvency of the UI trust fund (attached). In most states, the balance of the unemployment fund dictates the applicable schedule each year. In some states, including New Jersey, a drop in the fund level may trigger additional solvency taxes, as well as a higher rate schedule.

In recent years, New Jersey has made legislative adjustments to the schedule (to prevent a shift to higher taxes;) and has also lowered the amount employees contribute to the fund; as a result, the triggers in today’s UI tax schedule do not effectively stabilize the UI trust fund’s balance and the fund is dangerously close to insolvency. New Jersey employer UI taxes were reduced five times during the last nine years by legislation that lowered the minimum UI trust fund reserve ratios (or “triggers”) necessary to prevent a shift to a higher UI tax rate for employers. In 1996, the triggers were lowered so that employers were taxed under Column B instead of Column C of the UI tax schedule during FY 1998. A 1997 law further reduced the trigger to enable employers to pay the lowest possible UI tax rates, under Column A, during FY 1999. If neither law had been enacted, employers would have paid UI taxes in those years under Column C, and the UI trust fund would have received additional employer contributions of \$250 million in FY 1998 and more than \$450 million in FY 1999. In 2002, 2003, and 2004, three more laws further reduced the minimum reserve ratio required to remain in Column A. As a result, the trigger for a shift from Column A to Column B of the UI tax schedule is now far too low. The

minimum reserve ratio for taxes to remain in Column A was 10% from 1986 to 1997; it was then successively lowered to 6% in 1997, to 4.5% in 1998, to 3.5% in 2002, to 2.5% in 2003, and to the current level of 1.4% in 2004. To illustrate the inadequacy of this trigger for the lowest schedule of employer tax rates, consider that if historical reserve ratio triggers were in effect with today's trust fund balances, employers would be required to make UI contributions at the rates specified in Column E of the tax schedule, rather than Column A.

To put this in perspective, relative to reduced contributions by employers due to remaining in Column A rather than Column B, during "diversion years" 2002, 2003 and 2004, employers saved between \$300 - \$400 million per year. During these years, the triggers were lowered further than necessary to account for the lost revenue due to diversions, and therefore employers received a "true" reduction in contributions, because they were receiving a benefit beyond what was required to make up for the diverted funds.

The trigger in the UI tax schedule that is required to shift from Column A to Column B must not be lowered any further than its already insufficient level of 1.4%. Furthermore, to ensure the solvency of the trust fund, these legislative changes to the triggers, as well as decreases in the employee rates, should be reviewed further. Assuming that current predictions are correct and there is an upcoming tax shift, a phase-in for an increase in the triggers or increased employee rates should not begin until after the shift has occurred and the increased employer tax levels have been taken into account.

In regard to employee contributions to the UI Fund, starting in 1997, worker rates were reduced twice as part of "diversion" legislation that included one of the many "trigger changes" preventing employer contribution rates from shifting columns on the tax table. The total employee rate was 0.625% in 1995; it was lowered to 0.525% in 1997 and again to its current rate of 0.425% in 1998. In summary, employee contribution rates have been reduced as part of the diversion process, similar to employer contributions, but not by the same magnitude.

In order to help establish to a solvent Trust Fund, employees as well as employers must make increased contributions. Therefore, the employee contribution rate should be "phased in" over three years back to the 1995 level of 0.625 percent. This 2/10 of 1% increase would bring the annual employee contribution up from the current \$109.65 (for any worker earning over \$25,800 in 2006) to \$161.25 in 2006 dollars, for an increase of \$51.60, or \$17.20 a year. After being full phased in, this would add approximately \$150 - \$200 million annually to the fund. Assuming that current predictions are correct and there is an upcoming tax shift, the phase-in should not begin until after the shift has occurred and the increased employer tax levels have been taken into account.

INCREASE UI TRUST FUND REVENUE VIA LEGISLATIVE REFORMS

Amend "non-charging" provisions to increase UI Trust Fund revenue:

Chapter 255, P.L. 1997, which took effect for UI claims dated January 4, 1998, and later, allows employers to apply for relief of charges to their UI experience rating account resulting

from UI benefits paid to a claimant whose separation from employment ended in any way which would have disqualified the claimant if the claimant had applied for benefits at the time when that employment ended. Thus, non-separating employer can be relieved of experience rating charges when their former employees receive UI benefits based on subsequent employment. This provision does not apply to non-profit or governmental employers who elect reimbursable status. Prior to the enactment of this amendment, when a claimant met the criteria to overcome a disqualification and was found otherwise eligible for UI benefits, all of the individual's base year employers were charged for a portion of the benefits the individual received, including non-separating employers. While the eligibility of the claimant is not changed by this provision, the non-separating employer's account is not charged for the benefits received by the claimant for periods that occur subsequent to the disqualifying separation. As a result, the cost of benefits for claimants who become eligible by overcoming a disqualification is "socialized" across the entire UI trust fund. More than \$180 million in benefit charges are "non-charged" each year at the request of qualifying employers and the cost of these benefits are thus borne by the entire UI trust fund.

To ensure effective charging and recapture of these benefit costs for the trust fund, New Jersey's law should be amended to provide that, **in cases of applications for relief of charges, the separating employer must be charged for the full amount of benefits paid to the claimant.** Such a provision could generate tens of millions of dollars in additional revenue for the trust fund, by charging these benefits to a specific employer's experience rating account, and causing an increase in some employers' tax rates.

Reform independent contractor rules to increase UI Trust Fund revenue:

The subcommittee supports efforts to reform and tighten the classification of independent contractors to ensure that the classification is not being misused. Correctly classifying more workers who should be classified as employees rather than as independent contractors will lead to (a number of benefits, including) more money coming into the UI trust fund in payroll taxes.

Review eligibility rules for workers discharged for misconduct to reduce UI benefit payouts:

Benefit cuts for workers who lose their jobs through no fault of their own should not be part of a solution to restore the solvency of the UI Trust Fund. An alternative way to modestly reduce benefit payouts would be to review eligibility rules for workers who are determined to be disqualified for UI benefits, and thus reducing these claimants' opportunity to re-assert their claims and subsequently collect benefits. For instance, the New Jersey Unemployment Compensation Law at N.J.S.A. 43:21-5 provides for the disqualification from benefits of claimants who are discharged for misconduct, and New Jersey's law provides lenient re-qualifying provisions for overcoming a disqualification for misconduct in comparison to many other states. An individual who is disqualified for misconduct (e.g., "terminated for cause") in New Jersey must merely wait for six weeks before re-opening his claim for UI benefits (without being required to work in subsequent employment). New Jersey's UI law could be put more on a par with many other states if it treated a discharge for misconduct as an indefinite disqualification, rather than only imposing a waiting period. **New Jersey's law should be**

reviewed to indefinitely disqualify a claimant from receiving UI if the reason for separation from work was due to misconduct, until he earns wages in a minimum number of weeks of subsequent employment and then loses that subsequent employment through no fault of his own.

New Jersey's current law provides an indefinite disqualification for voluntary quits, and only about 1.5% of claimants who are disqualified for voluntarily leaving work are successful in claiming benefits through a re-qualifying separation from a subsequent employer. As a result of this historical pattern, it can be expected that, likewise, very few workers who are disqualified for misconduct would be able to meet the "toll-out" threshold to re-qualify for benefits. Instituting a re-qualifying "toll-out" requirement for misconduct could reduce UI benefit payouts by up to \$100 million per year.)

CREATE A COMMISSION ON CHARITY CARE AND THE UNINSURED

While there must be consensus that employer contributions should no longer be diverted to charity care at the expense of the UI trust fund, we must also recognize that New Jersey citizens need access to health insurance. The Corzine Administration should establish a commission that includes representatives of business, labor, and the medical community to **address the problem of the uninsured, and specifically the need for a guaranteed funding source for charity care.** This commission should be charged with finding solutions, including both proposals to reduce state spending on charity care and to develop new sources of revenue for this priority. The commission must be established as soon as possible – in January – and be charged with proposing a plan by April 2006.

EXPAND EMPLOYMENT & ECONOMIC GROWTH PROGRAMS AND IMPROVE ACCESSIBILITY & ACCOUNTABILITY

Support the creation of the Governor's Office of Economic Growth:

The Labor and Workforce Development Group supports establishing the Governor's Office of Economic Growth, which will provide an overall policy direction and house the business research, advisory and coordinating functions related to economic development.

Establish a Center for Occupational Employment Information (COEI) in the Department of LWD via legislative action:

Section 12 of Senate Bill 2826 authorizes the COEI in conjunction with the SETC to select industries in which the demand for skilled workers exceeded supply, and create state-level industry task forces consisting of key stakeholders to analyze labor supply and demand and develop strategies to rectify shortages of supply. Chart 'C' of the NJEDA plan for the creation of a Governor's Office of Economic Growth depicts the reporting structure of the new OEG. It is suggested that the Chart 'C' be revised to include the COEI, either under the Deputy Chief of Research Policy or Deputy Chief of Workforce Development and Training. S-2826 was referred to the Senate labor Committee on December 1, 2005.

Develop and implement performance standards for training and employment programs:

Statute 34:15C authorizes the SETC to “Establish performance standards for training and employment programs...” The Statute goes on to authorize the SETC to conduct “Evaluations of the organizational structures, functions and activities of governmental agencies performing advisory functions or activities in relation to employment and training program or services, including advisory functions and activities performed in connection with vocational education, adult education, apprenticeship, vocational rehabilitation and human services programs.” This statute gives the SETC broad authority in evaluations, implementing performance standards, and benchmarking. In Senate Bill 2826 (see Item # 1), the same authorization is basically repeated.

Performance standards, benchmarking, and evaluations are critical to measuring the success of the implementation of strategic planning. In many programs, the strategic planning has been ad hoc. One example is the Youth Transition to Work Program. This program has faced many challenges since the consolidation. Another example is that the LWD (and SETC) have no input into the selection of WIB Directors. This has, and may lead, to gross incompetence and mismanagement of a WIB. It goes without saying, that since the WIB sets local workforce policy, critical sectors of the State may be underserved.

Commitment to the literacy labs and other technology-based programs at the One-Stops, and continued commitment to the Online Learning Program:

The Online Learning Program provides participants with a computer, printer, and internet access at home, access to hundreds of courses, and a job coach and access to the resources of the One-Stop. It has proven to be cost effective, and has successfully improved the skills and raised the wages of single working mothers employed in low wage jobs. The program provides flexibility in time and space. Participants can do the training program at a time and in a place that is convenient for them.

Expansion of this successful program, now available to workers (men and women) currently employed in low wage jobs in 11 WIB areas in New Jersey to other population groups.

- (a) Expand the program to meet the needs of residents of rural areas who lack proximity to traditional training programs.
- (b) Develop programs for disabled residents who have difficulty accessing transportation or attending traditional training programs.
- (c) Implement a diploma recovery program to enable young people within a few credits of graduation who no longer wish to attend school to complete their high school education via the Internet and receive a diploma from the high school they had attended. This would increase the state's high school graduation rate and provide these students with a diploma rather than a GED.
- (d) Provide training via the Internet to factory workers facing announced plant closings during the last months that the plant is open, thus facilitating the movement of these workers from their current job to a new job by enabling them to attain new skills while still employed at their old jobs.

(e) Develop agency-specific training programs to increase the skills of entry-level state employees and enable them to move up the agency's career ladder.

Provide a full-time workforce development specialist at each WIB to oversee all technology-based programs, develop new initiatives, and develop collaborations and partnerships with employers.

INCORPORATE CROSS CULTURAL APPROACHES TO ENSURE THAT BOTH EMPLOYERS AND EMPLOYEES ARE FULLY INTEGRATED INTO THE STATE PLAN

New Jersey's rapidly changing demographics compels an overall economic and workforce development strategy that specifically incorporates cross cultural approaches to ensure that both employers and workers are fully integrated to the State plan. In addition to hiring bilingual staff to serve the severely underserved needs of the Hispanic community, the NJLWD must incorporate cross cultural concerns when developing/implementing state, regional or local programmatic initiatives to ensure effective use of all of New Jersey's talent.

The State of NJ should also urge the federal government to enact legislation that creates a path for legalization for all undocumented workers and creates an orderly process by which immigrant workers come to the US and New Jersey to work and contribute to our economic growth.

PHASE-OUT DIVERSIONS FROM THE WORKFORCE DEVELOPMENT PARTNERSHIP PROGRAM (WDP)

The Workforce Development Partnership Program is imperative to providing employment and training services to qualified displaced, disadvantaged; and employed workers by means of training grants or customized training services. In addition, it facilitates the provision of education and training to youth by means of the Youth Transition to Work Partnership.

If the new organizational structure of the OEG is to be successful, workforce development of these skilled and educated workers, and hence economic development, must be re-emphasized through proper funding of the WDP. These skilled and educated workforce are the very workers that make up the pipeline for the targeted high growth industries.

In addition, our military men and women returning to New Jersey from the Iraq War are mainly Reservists and Air National Guardsmen. Most left full-time positions of employment. It is expected that a high percentage of these active duty personnel will not re-enlist. During the campaign, Governor Elect Corzine stressed the use of the WDP Program to aid in moving these veterans back into the workforce. These veterans, highly skilled, and many with post-secondary education, are primed for the pipeline in a targeted high growth industry such as Homeland Security. After our veterans start returning (as early as 2006), this issue will become more critical. Therefore, the recommendation is made to include the Adjutant General (Commissioner), Deputy Commissioner, or Deputy Adjutant General of NJ Dept of Veterans Affairs in the Advisory Cabinet.

FULLY IMPLEMENT THE MANDATED CONSOLIDATION OF “TO WORK” CASE MANAGEMENT FUNCTIONS FROM THE DEPARTMENT OF HUMAN SERVICES TO THE DEPARTMENT OF LWD

The LWD underwent a major transformation effective July 1, 2004, with the consolidation of most “To Work” programs being transferred from DHS and DOE to LWD. The Legislation sponsored by Senator Wayne Bryant memorializing the terms of the consolidation was enacted in statutory law, P.L.2004, Chapter 39. The purpose of the consolidation was to strengthen NJ workforce system to be responsive to employer needs by preparing its citizens for the workforce challenges of the 21st century.

A Memorandum of Understanding was executed by LWD and DHS detailing the services to be provided by each agency and the funding to be transferred to support these functions. Legislation memorializing the terms of the consolidation was enacted. DHS has since July 1, 2004, refused to forward funding for “To Work” case managers as required by the MOU and the legislation thereby seriously jeopardizing future federal funding to NJ.

According to federal law, 50% of the welfare caseload must be in a work activity or the State is subject to loss of funding. Therefore, it would make sense to devote 50% of the case management funding to “To Work” case management. However, due to concerns raised by DHS that more of their clients need social services, this approach was not instituted. Rather, it was agreed that the Departments would work with the local areas to define the appropriate split in funding for case management. Unfortunately, the case management funding remains unresolved.

A recent report prepared by Rutgers School of Business and Management- Camden on the consolidation entitled, “Formation Evaluation of the One-Stop Consolidation of Workforce Development Programs in Camden and Hudson Counties” indicates that there are delays in scheduling welfare clients into activities. Additional resources would provide the necessary resources to address this delay. Overall the evaluation showed extremely positive results. The welfare clients are mostly satisfied with the services they are receiving from One-Stop Career Centers with positive responses averaging in the high eighties.

The recommendation is that a Deputy Chief of Staff within the Governor’ Office convene a meeting of the Commissioners of each department immediately after January 17, 2006, to resolve the dispute.

REEVALUATE EXISTING LAW REGARDING THE STATE CLASSIFICATION OF AN INDEPENDENT CONTRACTOR

The misclassification of employees as “independent contractors” is a serious problem in the construction and other industries. Employers label workers on their payrolls as independent contractors in order to avoid legally mandated tax obligations and workers compensation insurance premiums. It is a method of lowering labor costs, but it is also illegal, constituting tax and insurance fraud.

Misclassification is an important public policy issue with broad implications. Employers that play by the rules are put at a competitive disadvantage with companies that misclassify. Employees are unable to access basic worker protections, such as unemployment insurance, social security benefits, overtime payments, and workplace injury benefits. Charity Care and insurance companies are deprived of premiums requiring legitimate employers to bear those costs. But above all, law-abiding citizens are over-taxed as they are forced to make up for unscrupulous companies that evade social responsibilities.

The practice of improperly classifying workers as alleged independent contractors as opposed to their real status of employee has many serious negative repercussions to our economy. Employers that willfully misclassify such workers realize an unfair competitive advantage over employers who properly identify their workers as employees, pay wages properly, carry Workers Compensation, pay required taxes and pay attention to the safety and health of their employees. Workers improperly identified as independent contractors receiving 1099 forms rarely show on the radar screen. Much worse, are the greater number of workers “day laborers” not identified on payroll records or as independent contractors at all. Entities that avail themselves of workers misclassified or not reported at all, reap the advantage of cheap and illegal labor. These entities must be held jointly and severally responsible along with the contractor labor providers, subcontractors, and crew leaders that provide this labor (see draft legislation A-2889 (October 12, 2000) see appendix 3).

Employers who pay their workers “under the table” or intentionally misclassify them as independent contractors, often do not purchase Workers’ Compensation coverage, do not pay overtime pay, do not contribute to the State Unemployment Fund, do not contribute to the State Temporary Disability Insurance Fund, and do not deduct taxes.

What New Jersey should do now is enforce its laws and collect the moneys that are owed to its funds and to its insurance companies. By New Jersey enforcing its laws and coordinating the collection of funds it will level the playing field so that honest employers who pay into the Unemployment Insurance Fund, who pay into the Disability Insurance Fund, who pay into the Treasury for State withholding taxes, who pay Workers’ Compensation (a good hub for central collections) insurance premiums, and pay health insurance for their employees, will now be able to compete with the employers who flout the law. Few new laws are needed. What is needed is leadership – leadership that commands that the Department of Labor and Workforce Development, the Department of Treasury and the Attorney General of New Jersey enforce existing criminal and civil laws and enforce those laws aggressively. Governor Corzine should order that the laws be enforced and that the Department of Labor and Workforce Development, Department of Treasury and the Attorney General act both alone and in concert to enforce these decades-old laws. Also assign a Deputy Governor or a Policy and Planning Commissioner to ensure the cooperation and completion of these tasks. The taxpaying citizens of New Jersey deserve no less.

REVIEW CIVIL AND CRIMINAL PENALTIES ASSOCIATED WITH WAGE AND HOUR VIOLATIONS

The Division of Wage and Hour Compliance handles approximately 10,000 investigations each year with violations cited against approximately 7,000 employers. Approximately 95% of all of these cases are resolved with the employers through voluntary compliance, informal settlement conferences, or formal administrative actions through the Office of Administrative Law. The Division of Wage and Hour Compliance's Wage Payment Law enables the Division to pierce the corporate veil and hold responsible corporate officers personally liable for unpaid wages. However, when employers refuse to come into compliance, or even fail to negotiate in good faith, and where there is no question of law, the Attorney General's Office should monitor these cases closely to determine whether to prosecute criminally.

The Division of Criminal Justice has failed to assist in the prosecution of employers violating Wage and Hour laws because, in part, the violations associated with most all of these laws are merely disorderly persons offenses. The Division of Criminal Justice has indicated that its limited resources must be directed to indictable offenses and/or high-profile cases. (With the exception of the Prevailing Wage Act and the Child Labor Laws' knowing and willful provision, all other Wage and Hour laws are limited to disorderly persons offenses). Past experience has shown that bringing responsible corporate officers before the courts with a likelihood of criminal penalties results in plea bargaining providing for payment of back wages and penalties.

INCREASE THE NUMBER OF FIELD INVESTIGATORS IN ORDER TO INCREASE THE NUMBER OF FIELD AND JOB-SITE INSPECTIONS

The Division of Wage and Hour Compliance responds to approximately 12,000 complaints each year. Current field staff, therefore, has little opportunity to initiate routine and/or targeted inspections. The Division is, nevertheless, called upon by worker advocacy groups, sister agencies, and special projects to address problems in various industries. To take just a couple of examples, the tremendous growth in New Jersey's Television and Motion Picture Industry has placed significant strains on the Division's ability to ensure that Child Labor Laws are adhered to while at the same time being timely responsive to production company needs; also, the U.S. Department of Labor has, for all intents and purposes, abdicated its role to ensure that seasonal and migrant farm workers enjoy several protections of their working conditions. The Division of Wage and Hour Compliance must fill this gap.

The Division should also be working more closely and more routinely with State Tax Agencies to bring to bear all necessary enforcement actions to ensure that workers are identified on payroll records, are paid properly, and payroll taxes are remitted.

The Division currently has six Field Representative vacancies. Filling these positions and adding bi-lingual representatives would not only enhance the Division's ability to address special emphasis projects, but will add to revenues through administrative fees and penalties through the identification of violations (see Appendix 5 and 6).

Report respectfully submitted by:

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Ida Castro	Former NJ Personnel Commissioner
Dr. Larry Nespoli	New Jersey Council of County Colleges, President
Randy Jones	The Brunswick Group, Vice President
Robert Stack	Community Options, President & CEO
Al Koeppe	Newark Alliance; EDA, Chairman
Craig Livingston	Attorney; NJ Advisory Council of Safety & Health, Co-Chair
David McCann	SEIU, State Council, Director
Joe Sellers	Sheet Metal Workers International Association, State Pres.
Zenon Christodoulou	Greek-Amer. Cham. of Comm.; Creative Color Lithographers
Melanie Willoughby	NJBIA, Senior Vice President - Government Affairs
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Dr. Thomas Bistocchi	Union County Vocational Technical Schools, Superintendent
Babs Casbar	Siperstein Fords Paint Corp., Owner
Zilay Wahidy	DCD Capital, Founder and Managing Director
Charles Thomas	Ret. Exec. Dir. Cum. Co. Off. of Employment & Training
Roger Jacobs	Jacobs, Rosenberg, LLC, Managing Partner
Patrick Brennan	IUPAT, DC 711, President
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APPENDIX

- 1. UI Trust Fund 2005 Tax Table**
- 2. UI Trust Fund Triggers**
- 3. Assembly Bill 2889 (2000) Synopsis and Statement**
- 4. New Massachusetts Independent Contractor Law Synopsis**
- 5. Division of Wage and Hour Compliance: Estimated Cost of Hiring New Field Representatives (January 3, 2006)**
- 6. Division of Wage and Hour Compliance: 2005 Calendar Year Revenue Report**

UI TRUST FUND 2005 TAX TABLE

N.J.S.A. 43:21-7(c)(5)(E)(vi): With respect to experience rating years beginning on or after July 1, 2004, the new employer rate or the unemployment experience rate of an employer under this section shall be the rate which appears in the column headed by the Unemployment Trust Fund Ratio as of the applicable calculation date and on the line with the Employer Reserve Ratio, as defined in paragraph of 4 of this subsection (R.S.43:21-7 (c)(4)), as set forth in the following table:

EXPERIENCE RATING TAX TABLE

Employer Reserve Ratio ²	Fund Reserve Ratio ¹				
	1.40% and Over A	1.00% to 1.39% B	0.75% to 0.99% C	0.50% to 0.74% D	0.49% and Under E
Positive Reserve Ratio:					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
Deficit Reserve Ratio:					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4
-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7
-25.00% to -29.99%	3.7	4.8	5.6	6.3	6.8
-30.00% to -34.99%	3.8	4.8	5.7	6.3	6.9
-35.00% and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

¹Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

²Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

UI TRUST FUND TRIGGERS

The trust fund reserve ratio thresholds which trigger various tax columns were most recently modified as follows:

In recent years, as revenues to the UI Trust Fund and Healthcare Subsidy Fund were modified through legislation, the corresponding thresholds for the columns in the Tax Table were legislatively adjusted at the same time, so as to prevent a shift to a higher schedule in the next tax column. In the below example, the UI Trust Fund Reserve Ratio was most recently modified from “2.50% and over” to “1.40% and over” effective July 1, 2004 through June 30, 2006. This is only the latest in a series of reductions in these thresholds.

	A	B	C	D	E	E+10%
July 1, 2003 through June 30, 2004	2.50% and over	2.00% to 2.49%	1.50% to 1.99%	1.00% to 1.49%	0.99% to below	0.99% and below
	A	B	C	D	E	E+10%
Effective July 1, 2004 through June 30, 2006	1.40% and over	1.00% to 1.39%	0.75% to 0.99%	0.50% to 0.74%	0.49% and below	0.49% and below

ASSEMBLY, No. 2889
STATE OF NEW JERSEY

209th LEGISLATURE
INTRODUCED OCTOBER 12, 2000

Sponsored by:

Assemblyman GEORGE F. GEIST

District 4 (Camden and Gloucester)

Assemblyman GARY L. GUEAR, SR.

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblywoman Buono

SYNOPSIS

Regulates temporary help service firms as employment agencies; enforces collection of unemployment insurance taxes and other payroll assessments.

STATEMENT

This bill provides for more comprehensive regulation of temporary help service firms by regulating them as employment agencies, as was the case before 1998.

The bill requires that if a crew leader, temporary help service firm or other employment agency providing workers to a business takes any responsibility for the collection of unemployment or disability insurance, workers' compensation, gross income or other State or federal taxes, payments or contributions with respect to those workers, then the leader, firm or agency and the business are jointly and severally liable for proper withholding and payment of the taxes, payments and contributions, and the bill requires that the leader, firm or agency and the business have a written contract detailing the responsibility of the leader, firm or agency and the business regarding the taxes, payments and contributions. The bill gives the Attorney General

or, in the case of crew leaders, the Commissioner of Labor, authority to require the posting of bonds by such leaders, firms and agencies to ensure the payment of the taxes, payments and contributions.

Finally, the bill increases penalties on any employer failing to pay required unemployment insurance taxes, and provides the Department of Labor with a number of new remedies to enforce payment, including issuing certificates of debt and writs of execution and requesting the Attorney General to take actions in other states.

DIVISION OF WAGE AND HOUR COMPLIANCE
Estimated Cost of Hiring New Field Representatives
January 3, 2006

Salary Effective 12/24/2005	Field Rep.	Sr. Field Rep.	Pr. Clerk Typist*	District Supervisor*
<u>Lowest</u> Base Salary	\$38,541.10	\$44,107.25	\$28,294.31	\$50,549.32
Fringe Benefits (.3275 of salary)	\$12,622.21	\$14,445.12	\$9,266.39	\$16,554.90
NPS (.25 of salary)	\$9,635.28	\$11,026.81	\$7,073.58	\$12,637.33
Total Salary	\$60,798.59	\$69,579.19	\$44,634.27	\$79,741.55
<u>Highest</u> Base Salary	\$52,655.00	\$60,457.00	\$38,293.00	\$69,484.00
Fringe Benefits (.3275 of salary)	\$17,244.51	\$19,799.67	\$12,540.96	\$22,756.01
NPS (.25 of salary)	\$13,163.75	\$15,114.25	\$3,135.24	\$5,689.00
Total Salary	\$83,063.26	\$95,370.92	\$53,969.20	\$97,929.01

Salary Effective 12/23/2006	Field Rep.	Sr. Field Rep.	Pr. Clerk Typist*	District Supervisor*
<u>Lowest</u> Base Salary	\$40,334.00	\$46,159.00	\$29,610.00	\$52,901.00
Fringe Benefits (.3275 of salary)	\$13,209.39	\$15,117.07	\$9,697.28	\$17,325.08
NPS (.25 of salary)	\$10,083.50	\$11,539.75	\$7,402.50	\$13,225.25
Total Salary	\$63,626.89	\$72,815.82	\$46,709.78	\$83,451.33
<u>Highest</u> Base Salary	\$56,951.00	\$65,409.00	\$41,382.00	\$75,194.00
Fringe Benefits (.3275 of salary)	\$18,651.45	\$21,421.45	\$13,552.61	\$24,626.04
NPS (.25 of salary)	\$14,237.75	\$16,352.25	\$10,345.50	\$18,798.50
Total Salary	\$89,840.20	\$103,182.70	\$65,280.11	\$118,618.54

*For every five field representatives hired, the minimum of one district supervisor and principal clerk typist will be required to provide supervision and administrative support.

DIVISION OF WAGE AND HOUR COMPLIANCE
2005 Calendar Year - Revenue Report
1-01-2005 through 12-31-2005

<u>Wages Collected</u>	<u>YTD Total</u>	<u>Field Rep*</u>	<u>Average Collected per Field Rep</u>
Prevailing Wage	\$2,371,168.37	20	\$118,558.42
Wage and Hour **	\$5,955,754.51	33	\$180,477.41
Total	\$8,326,922.88	53	\$157,111.75

<u>Fees Collected</u>	<u>YTD Total</u>	<u>Field Rep*</u>	<u>Average Collected per Field Rep</u>
Prevailing Wage	\$342,771.11	20	\$17,138.56
Wage and Hour **	\$1,566,370.15	33	\$47,465.76
Total	\$1,909,141.26	53	\$36,021.53

<u>Penalties Collected</u>	<u>YTD Total</u>	<u>Field Rep*</u>	<u>Average Collected per Field Rep</u>
Prevailing Wage	\$1,226,010.33	20	\$61,300.52
Wage and Hour **	\$2,500,240.71	33	\$75,764.87
Total	\$3,726,251.04	53	\$70,306.62

<u>Grand Totals/Wages, Fees, Penalties</u>	<u>YTD Total</u>	<u>Field Rep*</u>	<u>Average Collected per Field Rep</u>
Prevailing Wage	\$3,939,949.81	20	\$196,997.49
Wage and Hour **	\$10,022,365.37	33	\$303,708.04
Grand Total	\$13,962,315.18	53	\$263,439.91

* The total number of field representatives includes field representatives and senior field representatives who work in the field and in central office.

This does not include the two field representatives that are on leaves of absences or the six vacant field representative positions.

** W&H Wages Collected include \$1,973,178.92 in wages from Nestle Waters North America.

W&H Fees include a \$721,865 payment from Pepsi in April 2005 and a \$400,000 payment from Nestle in October 2005 for a total of \$1,121,865.

W&H Penalties include a \$611,468 payment from Pepsi in April 2005.

New Massachusetts Independent Contractor Law Synopsis

On July 19, 2004, a change in the Massachusetts definition of "independent contractor" was enacted. This law change is part of "An Act Further Regulating Public Construction in the Commonwealth" that was signed by Governor Romney on that date.

The law sets forth the *presumption* that a *worker is an employee* unless each of the following factors are present:

1. the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
2. the service is performed outside the usual course of business of the employer; and,
3. the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

With respect to individuals and partnerships, carrying worker's compensation insurance is no longer a factor.

Even though the new legislation is part of a bill that addresses problems relating to public works projects, it also applies to the private sector. Civil and criminal penalties for violations can be brought against the business entity, corporate officer and management who are responsible for affected workers.

The Office of the Attorney General can easily obtain information to determine construction companies that may be in violation of this law. As of 1/1/2004, the Massachusetts "New Hire Reporting" requirements were extended to the reporting of "newly-hired independent contractors". The reporting is required:

- If an independent contractor is re-hired under a new contract, send a report within 14 days of the independent contractor's first day under the new contract.
- If there has been a lapse in pay of thirty calendar days or more, send a report within 14 days of the individual's first day back to work.

The Office of the Attorney General issued an advisory stating that they feel worker misclassification is a serious violation of state law. In order to protect those that have previously been at a disadvantage, the AG states that they will aggressively enforce this issue.