

S.1143 (Skoufis)

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| BILL S.1143 (Skoufis) |
| SUBJECT Claw-back of Excelsior Jobs Program benefits |
| DATE April 14, 2023 |
| OPPOSE |

We strongly oppose this legislation that provides that, if any entity receiving Excelsior Jobs Program benefits is found to have violated an worker protection or environmental laws or regulations, it shall “surrender of all previous state subsidies issued to such business entity,” stating further that this clawback provisions is “pending a full audit by the state comptroller.”

At best, this is a ‘blunt’ enforcement mechanism that would apply unfair penalties in response to minor violations. It also ignores existing civil penalty mechanisms. As result, it would leave program participants in a constant state of uncertainly, lest a

minor violation result in the claw-back of already-received economic development benefits.

Specific concerns include:

- As written, this bill would impose significant financial penalties on a business for ANY violation of environmental laws or “worker protection” provisions found in the state or federal labor laws, or elsewhere, regardless of how minor or significant. Such violations are already addressed in the civil enforcement provisions in the state Environmental Conservation and Labor Laws. As example, the Department of Environmental Conservation has multiple policies, including its Record of Compliance Policy and its Civil Penalty Policy, which, respectively, assess the fitness of entities to hold environmental permits and evaluate the gravity of alleged violations for the purpose of imposing measured civil penalties. Given existing civil enforcement mechanisms, we see no need to apply this severe of an enforcement response across the board with no criteria to assess the impact of alleged violations.
- The intended role of the State Comptroller in assessing compliance with environmental and labor laws set forth in this legislation is unclear. The Office of State Comptroller has no particular expertise in either area of law, nor does it have any expertise or resources to assess or arbitrate alleged violations of law, or develop or evaluate proposed enforcement measures. Therefore, it is very unclear what role or value the proposed “full audit” by the state comptroller would have, or what it would be expected to do with the results of such audit.
- We are also concerned that while this language would be added to Article 17 of the Economic Development Law, the bill language refers to “all previous state subsidies issued to such business entity,” (emphasis added), not just benefits awarded under the Excelsior program
- Finally, it should be noted that the Excelsior Jobs Program statute already has compliance-based eligibility criteria. Section 354.2 of the Economic Development Law requires that, as part any entity’s application for benefits, it must – among other things - certify, under penalty of perjury, that it is in “substantial compliance with all environmental, worker protection, and local, state, and federal tax laws,” and §356 further allows the ESD commissioner to “remove any participant from the program for failing to meet any of the requirements set forth” in §354.2.

Therefore, the state can already suspend benefits for entities with substantial labor, environmental or tax law violations. While this provision does not apply to benefits already received, any expansion of this mechanism to claw back past-received benefits would have to be based on significant violations that undermined the basis on which benefits were awarded.

In summary, this legislation would impose unfair, inappropriate and unwarranted financial penalties on businesses receiving incentives for job creation and capital investment projects in New York State. The state already has civil penalty and benefit eligibility mechanisms to respond to instances of significant violations. For these reasons, The Business Council opposes approval of S. 1143.

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