

1268

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

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Introduced by M. of A. COLTON, JOHN, ABBATE, DESTITO, DelMONTE, HOYT, CAHILL, JAFFEE, SPANO, TOWNSEND, PERRY, SCHIMEL, SCHROEDER, ALESSI, KELLNER, MAISEL, CHRISTENSEN, ROBINSON, WRIGHT, PHEFFER, FINCH, WALKER, McDONOUGH -- Multi-Sponsored by -- M. of A. ALFANO, BOYLAND, CALHOUN, CAMARA, DIAZ, GABRYSZAK, GIGLIO, GORDON, HIKIND, HOOPER, KOON, LIFTON, MARKEY, McENENY, MILLER, MILLMAN, QUINN, REILLY, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the "jobs and trade act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "jobs and trade act".

3     S 2. The labor law is amended by adding a new article 21 to read as  
4     follows:

5                                     ARTICLE 21

6                                     JOBS AND TRADE ACT

7     SECTION 750. LEGISLATIVE INTENT.

8             751. ROLE OF THE LEGISLATURE IN TRADE POLICY.

9             752. LABOR AND TRADE ENFORCEMENT TASK FORCE.

10     S 750. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY DETERMINES AND  
11     DECLARES THAT:

12     1. STATES HAVE TRADITIONALLY ENJOYED A LARGE DEGREE OF AUTONOMY TO SET  
13     THEIR OWN PROCUREMENT AND EMPLOYMENT POLICIES UNDER THE U.S. SYSTEM OF  
14     FEDERALISM.

15     2. RECENT INTERNATIONAL TRADE AGREEMENTS THREATEN TO ERODE THIS TRADI-  
16     TIONAL STATE AUTONOMY BY REQUIRING STATE GOVERNMENTS TO ACCORD FOREIGN  
17     SUPPLIERS OF GOODS AND SERVICES TREATMENT NO LESS FAVORABLE THAN THAT  
18     AFFORDED TO IN-STATE SUPPLIERS. IN ADDITION, THE AGREEMENTS STIPULATE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 THAT STATE CONTRACT SPECIFICATIONS MUST NOT BURDEN TRADE ANY MORE THAN  
2 NECESSARY, AND LIMIT SUPPLIER QUALIFICATIONS TO QUALIFICATIONS THAT ARE  
3 "ESSENTIAL" TO THE PERFORMANCE OF THE CONTRACT.

4 3. STATE LEGISLATORS HAVE AN IMPORTANT ROLE TO PLAY IN PRESERVING  
5 STATE AUTHORITY OVER PROCUREMENT POLICY. THESE CRITICAL DECISIONS SHOULD  
6 BE MADE ONLY WITH THE INVOLVEMENT OF THE LEGISLATURE, AND ONLY AFTER THE  
7 PUBLIC HAS BEEN ADEQUATELY INFORMED AND HAS OPENLY DEBATED THE ISSUES  
8 INVOLVED.

9 4. IT IS CRITICAL FOR CITIZENS, STATE AGENCIES, THE LEGISLATURE, AND  
10 OTHER ELECTED OFFICIALS IN THE STATE TO HAVE ACCESS TO INFORMATION ABOUT  
11 HOW TRADE IMPACTS STATE LEGISLATIVE AUTHORITY, THE STATE'S ECONOMY, AND  
12 EXISTING STATE LAWS IN ORDER TO PARTICIPATE IN AN INFORMED DEBATE ABOUT  
13 INTERNATIONAL TRADE ISSUES.

14 5. IT IS THE SENSE OF THIS LEGISLATURE THAT THE CONGRESS OF THE UNITED  
15 STATES SHOULD PASS LEGISLATION INSTRUCTING THE UNITED STATES TRADE  
16 REPRESENTATIVE (USTR) TO FULLY AND FORMALLY CONSULT INDIVIDUAL STATE  
17 LEGISLATURES REGARDING PROCUREMENT, SERVICES, INVESTMENT, OR ANY OTHER  
18 TRADE AGREEMENT RULES THAT IMPACT STATE LAWS OR AUTHORITY BEFORE NEGOTI-  
19 ATIONS BEGIN AND AS THEY DEVELOP, AND TO SEEK CONSENT FROM STATE LEGIS-  
20 LATURES IN ADDITION TO GOVERNORS PRIOR TO BINDING STATES TO CONFORM  
21 THEIR LAWS TO THE TERMS OF INTERNATIONAL COMMERCIAL AGREEMENTS. SUCH  
22 LEGISLATION IS NECESSARY TO ENSURE THE PRIOR INFORMED CONSENT OF THE  
23 STATE WITH REGARD TO FUTURE INTERNATIONAL TRADE AND INVESTMENT AGREE-  
24 MENTS.

25 S 751. ROLE OF THE LEGISLATURE IN TRADE POLICY. 1. IT SHALL BE THE  
26 POLICY OF THE STATE THAT APPROVAL FOR THE STATE TO BE BOUND BY ANY TRADE  
27 AGREEMENT REQUIRES THE CONSENT OF THE LEGISLATURE.

28 2. THE FOLLOWING ACTIONS ARE REQUIRED BEFORE THE STATE SHALL CONSENT  
29 TO THE TERMS OF A TRADE AGREEMENT:

30 A. WHEN A REQUEST HAS BEEN RECEIVED, THE GOVERNOR, THE TEMPORARY PRES-  
31 IDENT OF THE SENATE OR THE SPEAKER OF THE ASSEMBLY MAY SUBMIT TO THE  
32 LEGISLATURE, ON A DAY ON WHICH BOTH HOUSES ARE IN SESSION, A COPY OF THE  
33 FINAL LEGAL TEXT OF THE AGREEMENT, TOGETHER WITH:

34 I. A REPORT BY THE LABOR AND TRADE ENFORCEMENT TASK FORCE WHICH SHALL  
35 INCLUDE AN ANALYSIS OF HOW THE AGREEMENT OF THE STATE TO THE SPECIFIC  
36 PROVISIONS OF THE AGREEMENT SHALL CHANGE OR AFFECT EXISTING STATE LAW;

37 II. A STATEMENT OF ANY ADMINISTRATIVE ACTION PROPOSED TO IMPLEMENT  
38 THESE TRADE AGREEMENT PROVISIONS IN THE STATE; AND

39 III. A DRAFT OF LEGISLATION AUTHORIZING THE STATE TO SIGN ON TO THE  
40 SPECIFIC LISTED PROVISIONS OF THE AGREEMENT IN QUESTION.

41 B. A PUBLIC HEARING TO BE CONDUCTED BY THE CHAIRPERSONS OF THE SENATE  
42 AND ASSEMBLY LABOR COMMITTEES, WITH ADEQUATE PUBLIC NOTICE, SHALL OCCUR  
43 BEFORE THE LEGISLATURE VOTES ON THE LEGISLATION; AND

44 C. THE LEGISLATION AUTHORIZING THE STATE TO SIGN ON TO SPECIFIC LISTED  
45 PROVISIONS OF AN AGREEMENT IS ENACTED INTO LAW.

46 3. THE ATTORNEY GENERAL SHALL NOTIFY THE USTR OF THE POLICIES ESTAB-  
47 LISHED IN THIS ARTICLE IN WRITING NO LATER THAN DECEMBER THIRTY-FIRST  
48 AND SHALL PROVIDE COPIES OF SUCH NOTICE TO THE TEMPORARY PRESIDENT OF  
49 THE SENATE, SPEAKER OF THE ASSEMBLY, THE GOVERNOR AND THE STATE'S  
50 CONGRESSIONAL DELEGATION.

51 S 752. LABOR AND TRADE ENFORCEMENT TASK FORCE. 1. THERE SHALL BE  
52 WITHIN THE DEPARTMENT THE LABOR AND TRADE ENFORCEMENT TASK FORCE.

53 2. THE LABOR AND TRADE ENFORCEMENT TASK FORCE IS DIRECTED TO:

54 A. MONITOR TRADE NEGOTIATIONS AND DISPUTES IMPACTING THE STATE ECONO-  
55 MY;

1 B. ANALYZE PENDING TRADE AGREEMENTS THE STATE IS CONSIDERING SIGNING  
2 AND PROVIDE THE ANALYSIS TO THE GOVERNOR, THE LEGISLATURE AND THE  
3 PUBLIC;

4 C. PROVIDE TECHNICAL ASSISTANCE TO WORKERS AND FIRMS IMPACTED BY  
5 UNFAIR TRADE PRACTICES;

6 D. PROVIDE A TRADE IMPACT REPORT TO THE GOVERNOR, THE TEMPORARY PRESI-  
7 DENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE PUBLIC NO LATER  
8 THAN MARCH THIRTY-FIRST, TWO THOUSAND TEN AND ANNUALLY THEREAFTER;

9 E. PROVIDE ADDITIONAL RESEARCH AND ANALYSIS AS REQUESTED BY THE GOVER-  
10 NOR AND THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE  
11 ASSEMBLY;

12 F. SERVE AS THE STATE'S OFFICIAL LIAISONS WITH THE FEDERAL GOVERNMENT  
13 AND AS THE LEGISLATURE'S LIAISONS WITH THE GOVERNOR ON TRADE-RELATED  
14 MATTERS;

15 G. SERVE AS THE DESIGNATED RECIPIENTS OF FEDERAL REQUESTS FOR CONSENT  
16 OR CONSULTATION REGARDING INVESTMENT, PROCUREMENT, SERVICES OR OTHER  
17 PROVISIONS OF INTERNATIONAL TRADE AGREEMENTS WHICH IMPINGE ON STATE LAW  
18 OR REGULATORY AUTHORITY RESERVED TO THE STATE;

19 H. TRANSMIT INFORMATION REGARDING FEDERAL REQUESTS FOR CONSENT TO THE  
20 OFFICE OF THE GOVERNOR, THE ATTORNEY GENERAL AND THE CHAIRPERSONS OF THE  
21 SENATE AND ASSEMBLY LABOR COMMITTEES;

22 I. ISSUE A FORMAL REQUEST TO OTHER APPROPRIATE STATE AGENCIES TO  
23 PROVIDE ANALYSIS OF ALL PROPOSED TRADE AGREEMENTS' IMPACT ON LEGISLATIVE  
24 AUTHORITY AND THE ECONOMY OF THE STATE;

25 J. INFORM ALL MEMBERS OF THE LEGISLATURE ON A REGULAR BASIS ABOUT  
26 ONGOING TRADE NEGOTIATIONS AND DISPUTE SETTLEMENT PROCEEDINGS WITH  
27 IMPLICATIONS FOR THE STATE MORE GENERALLY;

28 K. COMMUNICATE THE INTERESTS AND CONCERNS OF THE LEGISLATURE TO THE  
29 USTR REGARDING ONGOING AND PROPOSED TRADE NEGOTIATIONS; AND

30 L. NOTIFY THE USTR OF THE OUTCOME OF ANY LEGISLATIVE ACTION.

31 3. EACH ANNUAL TRADE IMPACT REPORT REQUIRED BY THIS SECTION SHALL  
32 INCLUDE:

33 A. AN AUDIT OF THE AMOUNT OF PUBLIC CONTRACT WORK BEING PERFORMED  
34 OVERSEAS;

35 B. AN AUDIT OF GOVERNMENT GOODS BEING PROCURED FROM OVERSEAS;

36 C. A STUDY OF TRADE'S IMPACTS ON STATE AND LOCAL EMPLOYMENT LEVELS,  
37 TAX REVENUES AND RETRAINING AND ADJUSTMENT COSTS;

38 D. AN ANALYSIS OF THE CONSTRAINTS TRADE RULES PLACE ON STATE REGULATO-  
39 RY AUTHORITY, INCLUDING BUT NOT LIMITED TO THE STATE'S ABILITY TO  
40 PRESERVE THE ENVIRONMENT, PROTECT PUBLIC HEALTH AND SAFETY, AND PROVIDE  
41 HIGH-QUALITY PUBLIC SERVICES; AND

42 E. FINDINGS AND RECOMMENDATIONS OF SPECIFIC ACTIONS THE STATE SHOULD  
43 TAKE IN RESPONSE TO THE IMPACTS OF TRADE ON THE STATE IDENTIFIED IN THIS  
44 SECTION.

45 4. SUCH ACTIONS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

46 A. REVOCATION OF THE STATE'S CONSENT TO BE BOUND BY THE PROCUREMENT  
47 RULES OF INTERNATIONAL TRADE AGREEMENTS;

48 B. PROHIBITION OF OFFSHORE PERFORMANCE OF STATE CONTRACT WORK AND  
49 PREFERENCES FOR DOMESTIC CONTENT IN STATE PURCHASING;

50 C. STATE SUPPORT FOR CASES BROUGHT UNDER FEDERAL TRADE LAWS BY RESI-  
51 DENTS OF THE STATE;

52 D. STATE ADVOCACY FOR REFORM OF TRADE AGREEMENTS AND TRADE LAWS AT THE  
53 FEDERAL LEVEL; AND

54 E. IMPLEMENTATION OF A HIGH-ROAD GROWTH STRATEGY FORMULATED WITH BUSI-  
55 NESS, LABOR AND COMMUNITY PARTICIPATION.

56 5. SUCH A STRATEGY MAY INCLUDE, BUT NOT BE LIMITED TO:

1 A. MORE EFFECTIVE EARLY WARNING AND LAYOFF AVERSION MEASURES;  
2 B. INCREASED ASSISTANCE AND ADJUSTMENT PROGRAMS FOR DISPLACED WORKERS  
3 AND TRADE-IMPACTED COMMUNITIES;  
4 C. STRONGER STANDARDS AND ACCOUNTABILITY FOR RECIPIENTS OF STATE  
5 SUBSIDIES AND INCENTIVES;  
6 D. INVESTMENTS IN WORKFORCE TRAINING AND DEVELOPMENT;  
7 E. INVESTMENTS IN TECHNOLOGY AND INFRASTRUCTURE; AND  
8 F. INCREASED ACCESS TO CAPITAL FOR LOCAL PRODUCERS.  
9 6. WITHIN THIRTY DAYS OF RECEIPT OF THE ANNUAL TRADE IMPACT REPORT:  
10 A. THE GOVERNOR SHALL REVIEW THE REPORT AND ISSUE A PUBLIC STATEMENT  
11 EXPLAINING WHICH OF THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION THE  
12 GOVERNOR WILL ACT UPON IN THE NEXT THIRTY DAYS, WHETHER THROUGH EXECU-  
13 TIVE ACTION OR PROPOSED LEGISLATION; AND  
14 B. THE LEGISLATURE SHALL REVIEW THE REPORT, HOLD PUBLIC HEARINGS ON  
15 THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION AND INTRODUCE LEGIS-  
16 LATION TO ENACT THOSE RECOMMENDATIONS ACCEPTED BY THE LEGISLATURE.  
17 7. A. THE LABOR AND TRADE ENFORCEMENT TASK FORCE SHALL CONSIST OF  
18 FIFTEEN MEMBERS, ACTING BY A MAJORITY THEREOF, AND COMPOSED OF THE  
19 FOLLOWING: THE COMMISSIONER OF LABOR, FOUR MEMBERS APPOINTED BY THE  
20 GOVERNOR; THREE MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDA-  
21 TION OF THE TEMPORARY PRESIDENT OF THE SENATE; THREE MEMBERS APPOINTED  
22 BY THE GOVERNOR UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY;  
23 TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE NEW  
24 YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZA-  
25 TIONS; AND TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION  
26 OF THE BUSINESS COUNCIL.  
27 B. THE TASK FORCE SHALL:  
28 I. ASSESS THE LEGAL AND ECONOMIC IMPACTS OF TRADE AGREEMENTS;  
29 II. PROVIDE INPUT ON THE ANNUAL TRADE IMPACT REPORT;  
30 III. HOLD PUBLIC HEARINGS ON THE IMPACT OF TRADE ON THE STATE AND  
31 COMMUNITIES, AS WELL AS THE IMPACT OF THE ANNUAL TRADE IMPACT REPORT ON  
32 THE STATE; AND  
33 IV. MAKE POLICY RECOMMENDATIONS TO THE GOVERNOR, LEGISLATURE, THE  
34 STATE'S CONGRESSIONAL DELEGATION AND U.S. TRADE NEGOTIATORS.  
35 C. THE TASK FORCE SHALL CONVENE QUARTERLY.  
36 D. THE TASK FORCE SHALL APPOINT A CHAIRPERSON FROM AMONG ITS MEMBERS.  
37 E. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR  
38 THEIR SERVICE BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES  
39 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.  
40 S 3. This act shall take effect on the one hundred twentieth day after  
41 it shall have become a law; provided, however, that effective immediate-  
42 ly, the addition, amendment and/or repeal of any rule or regulation  
43 necessary for the implementation of this act on its effective date is  
44 authorized and directed to be made and completed on or before such  
45 effective date.