

3350

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed 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
19 THAT STATE CONTRACT SPECIFICATIONS MUST NOT BURDEN TRADE ANY MORE THAN
20 NECESSARY, AND LIMIT SUPPLIER QUALIFICATIONS TO QUALIFICATIONS THAT ARE
21 "ESSENTIAL" TO THE PERFORMANCE OF THE CONTRACT.

22 3. STATE LEGISLATORS HAVE AN IMPORTANT ROLE TO PLAY IN PRESERVING
23 STATE AUTHORITY OVER PROCUREMENT POLICY. THESE CRITICAL DECISIONS SHOULD
24 BE MADE ONLY WITH THE INVOLVEMENT OF THE LEGISLATURE, AND ONLY AFTER THE

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

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1 PUBLIC HAS BEEN ADEQUATELY INFORMED AND HAS OPENLY DEBATED THE ISSUES
2 INVOLVED.

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

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

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

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

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

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

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

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

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

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

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

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

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

48 A. MONITOR TRADE NEGOTIATIONS AND DISPUTES IMPACTING THE STATE ECONO-
49 MY;

50 B. ANALYZE PENDING TRADE AGREEMENTS THE STATE IS CONSIDERING SIGNING
51 AND PROVIDE THE ANALYSIS TO THE GOVERNOR, THE LEGISLATURE AND THE
52 PUBLIC;

53 C. PROVIDE TECHNICAL ASSISTANCE TO WORKERS AND FIRMS IMPACTED BY
54 UNFAIR TRADE PRACTICES;

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

4 E. PROVIDE ADDITIONAL RESEARCH AND ANALYSIS AS REQUESTED BY THE GOVER-
5 NOR AND THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE
6 ASSEMBLY;

7 F. SERVE AS THE STATE'S OFFICIAL LIAISONS WITH THE FEDERAL GOVERNMENT
8 AND AS THE LEGISLATURE'S LIAISONS WITH THE GOVERNOR ON TRADE-RELATED
9 MATTERS;

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

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

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

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

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

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

26 3. EACH ANNUAL TRADE IMPACT REPORT REQUIRED BY THIS SECTION SHALL
27 INCLUDE:

28 A. AN AUDIT OF THE AMOUNT OF PUBLIC CONTRACT WORK BEING PERFORMED
29 OVERSEAS;

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

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

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

37 E. FINDINGS AND RECOMMENDATIONS OF SPECIFIC ACTIONS THE STATE SHOULD
38 TAKE IN RESPONSE TO THE IMPACTS OF TRADE ON THE STATE IDENTIFIED IN THIS
39 SECTION.

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

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

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

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

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

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

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

52 A. MORE EFFECTIVE EARLY WARNING AND LAYOFF AVERSION MEASURES;

53 B. INCREASED ASSISTANCE AND ADJUSTMENT PROGRAMS FOR DISPLACED WORKERS
54 AND TRADE-IMPACTED COMMUNITIES;

55 C. STRONGER STANDARDS AND ACCOUNTABILITY FOR RECIPIENTS OF STATE
56 SUBSIDIES AND INCENTIVES;

1 D. INVESTMENTS IN WORKFORCE TRAINING AND DEVELOPMENT;

2 E. INVESTMENTS IN TECHNOLOGY AND INFRASTRUCTURE; AND

3 F. INCREASED ACCESS TO CAPITAL FOR LOCAL PRODUCERS.

4 6. WITHIN THIRTY DAYS OF RECEIPT OF THE ANNUAL TRADE IMPACT REPORT:

5 A. THE GOVERNOR SHALL REVIEW THE REPORT AND ISSUE A PUBLIC STATEMENT
6 EXPLAINING WHICH OF THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION THE
7 GOVERNOR WILL ACT UPON IN THE NEXT THIRTY DAYS, WHETHER THROUGH EXECU-
8 TIVE ACTION OR PROPOSED LEGISLATION; AND

9 B. THE LEGISLATURE SHALL REVIEW THE REPORT, HOLD PUBLIC HEARINGS ON
10 THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION AND INTRODUCE LEGIS-
11 LATION TO ENACT THOSE RECOMMENDATIONS ACCEPTED BY THE LEGISLATURE.

12 7. A. THE LABOR AND TRADE ENFORCEMENT TASK FORCE SHALL CONSIST OF
13 FIFTEEN MEMBERS, ACTING BY A MAJORITY THEREOF, AND COMPOSED OF THE
14 FOLLOWING: THE COMMISSIONER OF LABOR, FOUR MEMBERS APPOINTED BY THE
15 GOVERNOR; THREE MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDA-
16 TION OF THE TEMPORARY PRESIDENT OF THE SENATE; THREE MEMBERS APPOINTED
17 BY THE GOVERNOR UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY;
18 TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE NEW
19 YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZA-
20 TIONS; AND TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION
21 OF THE BUSINESS COUNCIL.

22 B. THE TASK FORCE SHALL:

23 I. ASSESS THE LEGAL AND ECONOMIC IMPACTS OF TRADE AGREEMENTS;

24 II. PROVIDE INPUT ON THE ANNUAL TRADE IMPACT REPORT;

25 III. HOLD PUBLIC HEARINGS ON THE IMPACT OF TRADE ON THE STATE AND
26 COMMUNITIES, AS WELL AS THE IMPACT OF THE ANNUAL TRADE IMPACT REPORT ON
27 THE STATE; AND

28 IV. MAKE POLICY RECOMMENDATIONS TO THE GOVERNOR, LEGISLATURE, THE
29 STATE'S CONGRESSIONAL DELEGATION AND U.S. TRADE NEGOTIATORS.

30 C. THE TASK FORCE SHALL CONVENE QUARTERLY.

31 D. THE TASK FORCE SHALL APPOINT A CHAIRPERSON FROM AMONG ITS MEMBERS.

32 E. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR
33 THEIR SERVICE BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
34 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

35 S 3. This act shall take effect on the one hundred twentieth day after
36 it shall have become a law; provided, however, that effective immediate-
37 ly, the addition, amendment and/or repeal of any rule or regulation
38 necessary for the implementation of this act on its effective date is
39 authorized and directed to be made and completed on or before such
40 effective date.