S T A T E O F N E W Y O R K

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:

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

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

ARTICLE 21

JOBS AND TRADE ACT

SECTION 750. LEGISLATIVE INTENT.

751. ROLE OF THE LEGISLATURE IN TRADE POLICY.

752. LABOR AND TRADE ENFORCEMENT TASK FORCE.

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

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

2. RECENT INTERNATIONAL TRADE AGREEMENTS THREATEN TO ERODE THIS TRADITIONAL STATE AUTONOMY BY REQUIRING STATE GOVERNMENTS TO ACCORD FOREIGN SUPPLIERS OF GOODS AND SERVICES TREATMENT NO LESS FAVORABLE THAN THAT AFFORDED TO IN-STATE SUPPLIERS. IN ADDITION, THE AGREEMENTS STIPULATE THAT STATE CONTRACT SPECIFICATIONS MUST NOT BURDEN TRADE ANY MORE THAN NECESSARY, AND LIMIT SUPPLIER QUALIFICATIONS TO QUALIFICATIONS THAT ARE "ESSENTIAL" TO THE PERFORMANCE OF THE CONTRACT.

3. STATE LEGISLATORS HAVE AN IMPORTANT ROLE TO PLAY IN PRESERVING STATE AUTHORITY OVER PROCUREMENT POLICY. THESE CRITICAL DECISIONS SHOULD 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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PUBLIC HAS BEEN ADEQUATELY INFORMED AND HAS OPENLY DEBATED THE ISSUES INVOLVED.

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

5. IT IS THE SENSE OF THIS LEGISLATURE THAT THE CONGRESS OF THE UNITED STATES SHOULD PASS LEGISLATION INSTRUCTING THE UNITED STATES TRADE REPRESENTATIVE (USTR) TO FULLY AND FORMALLY CONSULT INDIVIDUAL STATE LEGISLATURES REGARDING PROCUREMENT, SERVICES, INVESTMENT, OR ANY OTHER TRADE AGREEMENT RULES THAT IMPACT STATE LAWS OR AUTHORITY BEFORE NEGOTIATIONS BEGIN AND AS THEY DEVELOP, AND TO SEEK CONSENT FROM STATE LEGISLATURES IN ADDITION TO GOVERNORS PRIOR TO BINDING STATES TO CONFORM THEIR LAWS TO THE TERMS OF INTERNATIONAL COMMERCIAL AGREEMENTS. SUCH LEGISLATION IS NECESSARY TO ENSURE THE PRIOR INFORMED CONSENT OF THE STATE WITH REGARD TO FUTURE INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS.

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

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

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

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

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

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

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

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

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

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

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

A. MONITOR TRADE NEGOTIATIONS AND DISPUTES IMPACTING THE STATE ECONOMY;

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

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

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

E. PROVIDE ADDITIONAL RESEARCH AND ANALYSIS AS REQUESTED BY THE GOVERNOR AND THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. STATE SUPPORT FOR CASES BROUGHT UNDER FEDERAL TRADE LAWS BY RESIDENTS OF THE STATE;

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

E. IMPLEMENTATION OF A HIGH-ROAD GROWTH STRATEGY FORMULATED WITH BUSINESS, LABOR AND COMMUNITY PARTICIPATION.

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

A. MORE EFFECTIVE EARLY WARNING AND LAYOFF AVERSION MEASURES;

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

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

D. INVESTMENTS IN WORKFORCE TRAINING AND DEVELOPMENT;
E. INVESTMENTS IN TECHNOLOGY AND INFRASTRUCTURE; AND
F. INCREASED ACCESS TO CAPITAL FOR LOCAL PRODUCERS.
6. WITHIN THIRTY DAYS OF RECEIPT OF THE ANNUAL TRADE IMPACT REPORT:
A. THE GOVERNOR SHALL REVIEW THE REPORT AND ISSUE A PUBLIC STATEMENT EXPLAINING WHICH OF THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION THE GOVERNOR WILL ACT UPON IN THE NEXT THIRTY DAYS, WHETHER THROUGH EXECUTIVE ACTION OR PROPOSED LEGISLATION; AND
B. THE LEGISLATURE SHALL REVIEW THE REPORT, HOLD PUBLIC HEARINGS ON THE REPORT'S RECOMMENDATIONS FOR SPECIFIC ACTION AND INTRODUCE LEGISLATION TO ENACT THOSE RECOMMENDATIONS ACCEPTED BY THE LEGISLATURE.
7. A. THE LABOR AND TRADE ENFORCEMENT TASK FORCE SHALL CONSIST OF FIFTEEN MEMBERS, ACTING BY A MAJORITY THEREOF, AND COMPOSED OF THE FOLLOWING: THE COMMISSIONER OF LABOR, FOUR MEMBERS APPOINTED BY THE GOVERNOR; THREE MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE; THREE MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY; TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS; AND TWO MEMBERS APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE BUSINESS COUNCIL.
B. THE TASK FORCE SHALL:
I. ASSESS THE LEGAL AND ECONOMIC IMPACTS OF TRADE AGREEMENTS;
II. PROVIDE INPUT ON THE ANNUAL TRADE IMPACT REPORT;
III. HOLD PUBLIC HEARINGS ON THE IMPACT OF TRADE ON THE STATE AND COMMUNITIES, AS WELL AS THE IMPACT OF THE ANNUAL TRADE IMPACT REPORT ON THE STATE; AND
IV. MAKE POLICY RECOMMENDATIONS TO THE GOVERNOR, LEGISLATURE, THE STATE'S CONGRESSIONAL DELEGATION AND U.S. TRADE NEGOTIATORS.
C. THE TASK FORCE SHALL CONVENE QUARTERLY.
D. THE TASK FORCE SHALL APPOINT A CHAIRPERSON FROM AMONG ITS MEMBERS.
E. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICE BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.
S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.