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

1242

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. COLTON, SCHROEDER, HOYT, GABRYSZAK -- Multi-Sponsored by -- M. of A. GIGLIO, J. MILLER, PEOPLES-STOKES, SPANO -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the economic development law, in relation to enacting the "jobs, trade and democracy 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, trade and democracy act".

S 2. The economic development law is amended by adding a new article 10-A to read as follows:

ARTICLE 10-A

JOBS, TRADE AND DEMOCRACY ACT

SECTION 226. LEGISLATIVE INTENT.

227. ROLE OF THE LEGISLATURE IN TRADE POLICY.

228. OFFICE OF TRADE ENFORCEMENT AND CITIZEN'S COMMISSION ON GLOBALIZATION.

S 226. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY DETERMINES AND DECLARES THAT:

1. STATES HAVE TRADITIONALLY ENJOYED A LARGE DEGREE OF AUTONOMY TO SET THEIR OWN PROCUREMENT 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 THOSE THAT ARE "ESSENTIAL" TO THE PERFORMANCE OF THE CONTRACT.

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

LBD04821-01-1

3. THE GOVERNOR, NOT THE STATE LEGISLATURE, CHOSE TO BIND THE STATE TO THE TERMS OF VARIOUS INTERNATIONAL TRADE AGREEMENTS UPON THE REQUEST OF THE UNITED STATES TRADE REPRESENTATIVE (USTR).

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

5. 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.

6. IT IS THE SENSE OF THIS LEGISLATURE THAT THE CONGRESS OF THE UNITED STATES SHOULD PASS LEGISLATION INSTRUCTING THE 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 227. 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. TWO LEGISLATIVE POINTS OF CONTACT (LPCS) WILL BE APPOINTED AT THE BEGINNING OF EACH LEGISLATIVE SESSION; ONE BY THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE, AND ONE BY THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY. THE LEGISLATURE DECLARES THAT THE PURPOSES OF THE LPCS ARE TO:

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

B. 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;

C. TRANSMIT INFORMATION REGARDING FEDERAL REQUESTS FOR CONSENT TO THE OFFICE OF THE GOVERNOR, THE ATTORNEY GENERAL, ALL APPROPRIATE LEGISLATIVE COMMITTEES, AND THE OFFICE OF TRADE ENFORCEMENT ESTABLISHED BY SECTION TWO HUNDRED TWENTY-EIGHT OF THIS ARTICLE;

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

E. 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;

F. COMMUNICATE THE INTERESTS AND CONCERNS OF THE LEGISLATURE TO THE UNITED STATES TRADE REPRESENTATIVE (USTR) REGARDING ONGOING AND PROPOSED TRADE NEGOTIATIONS; AND

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

3. 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 AND MINORITY LEADER OF THE SENATE, THE SPEAKER AND THE MINORITY LEADER OF THE ASSEMBLY, OR RANKING MEMBER OF THE APPROPRIATE COMMITTEE OF JURISDICTION 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 OFFICE OF TRADE ENFORCEMENT WHICH SHALL INCLUDE AN ANALYSIS OF HOW THE AGREEMENT OF THE STATE TO THE SPECIFIC PROVISIONS OF THE AGREEMENT WILL 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, WITH ADEQUATE PUBLIC NOTICE, SHALL OCCUR BEFORE THE LEGISLATURE VOTES ON THE BILL; AND

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

4. THE ATTORNEY GENERAL SHALL NOTIFY THE USTR OF THE POLICIES SET FORTH 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 228. OFFICE OF TRADE ENFORCEMENT AND CITIZEN'S COMMISSION ON GLOBALIZATION. 1. THE STATE SHALL ESTABLISH AN OFFICE OF TRADE ENFORCEMENT AND A CITIZEN'S COMMISSION ON GLOBALIZATION.

2. THE OFFICE OF TRADE ENFORCEMENT 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, THE CITIZEN'S COMMISSION ON GLOBALIZATION 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 LEGISLATURE, THE CITIZEN'S COMMISSION ON GLOBALIZATION AND THE PUBLIC NO LATER THAN DECEMBER THIRTY-FIRST AND ANNUALLY THEREAFTER.

E. PROVIDE ADDITIONAL RESEARCH AND ANALYSIS AS REQUESTED BY THE GOVERNOR, THE LEGISLATURE, AND THE CITIZEN'S COMMISSION ON GLOBALIZATION.

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 ABOVE.

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.

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 CITIZEN'S COMMISSION ON GLOBALIZATION SHALL BE APPOINTED BY THE GOVERNOR.

A. THE FOLLOWING STAKEHOLDERS SHALL BE EQUALLY REPRESENTED ON THE COMMISSION: EMPLOYERS, LABOR ORGANIZATIONS, COMMUNITY ORGANIZATIONS AND GOVERNMENT.

B. THE COMMISSION 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 IMPACTS OF TRADE ON THE STATE AND COMMUNITIES, AS WELL AS THE ANNUAL TRADE IMPACT REPORT IMPACTS OF TRADE ON THE STATE; AND

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

S 3. This act shall take effect immediately.