



## Testimony of the New Jersey State AFL-CIO Before the Assembly Outsourcing & Off-Shoring Commission September 14, 2007

Dear Members of the Assembly Outsourcing & Off-Shoring Commission:

The New Jersey State AFL-CIO thanks you for the opportunity to testify and is proud that the Assembly has formed this Commission and that New Jersey has passed legislation to begin to address the outsourcing problem. In particular, we are proud that New Jersey passed S-494 in 2005. This bill, championed by Senator Shirley Turner requires that state funded service contracts be performed in the United States. This law illustrates that state legislatures clearly have the right to regulate certain trade issues that best serve the interest of their constituents. Although trade policy is largely governed at the federal level, there are many actions that State Legislators can take in order to minimize the adverse effects of outsourcing on New Jersey jobs.

The New Jersey State AFL-CIO makes the following three recommendations:

### Recommendation #1: Pass Disclosure Legislation

In order to properly address any problem, you first need to know if it is widespread and what its effects have been. The outsourcing debate is hampered by the lack of objective data to reinforce policy recommendations to either allow the continued unrestricted use of outsourcing or to restrict outsourcing to protect American jobs.

For this reason, as with any policy debate, we believe the first step to addressing the issue of outsourcing is acquiring reliable research on its net effect on jobs in New Jersey. Currently, neither government nor the private sector collects this information or discloses it to the public. Because the estimates of net job loss vary widely depending on who you listen to, New Jersey should be proactive in requiring corporations to submit this type of information.

For this reason, the first recommendation of the New Jersey State AFL-CIO is to pass legislation similar to A-932 which was signed into law last year. A-932 is known as the "Employer Based Health Insurance Disclosure Act," and requires the Commissioner of the Department of Health to prepare an annual report disclosing which employers in the state have a significant number of employees (or their dependants) receiving publicly funded health insurance through either the Family Care program, Medicaid or charity care. The same concept should be drafted into legislation to require disclosure for private sector corporations that outsource jobs and include penalties for the failure to disclose this information. State government should then disclose this information to the public annually.

In essence, this bill simply seeks to measure the impact of outsourcing on the American job market and would give policy makers, such as yourselves, the data you need to accurately address the problem. Public sector disclosure bills have been signed into law or implemented via Executive Order in several states, including Colorado, Illinois, Washington, Minnesota, Missouri and North Carolina.

Recommendation #2: Pass the Jobs, Trade and Democracy Act

The second recommendation of the AFL-CIO is to enact the Jobs, Trade and Democracy Act, a copy of which is attached.

Although certain state laws on trade may be considered to run afoul of the U.S commerce clause, States still enjoy broad authority over procurement policy, and the courts give states the rights to grant procurement preferences when acting as a “market participant,” or purchasing goods and services from private contractors.

This bill embraces this concept by establishing the role of state legislatures in setting trade policy for the state and helps workers and businesses that have been impacted by trade. Specifically, the bill:

1. Requires the consent of the state legislature to bind the state to international trade agreements and establishes a Legislative “Point of Contact” to serve as a liaison with the Governor’s Office and the Federal Government on trade policy.
2. The bill also establishes an Office of Trade Enforcement to monitor trade negotiations and disputes and to analyze the impact of proposed trade agreements on the state.

The bill, or portions of it, have been passed in Colorado, Hawaii, Indiana, Maine and Utah.

Recommendation #3:

Our final recommendation is in regard to bills currently on Governor Corzine’s desk, which address issues included in the outsourcing debate.

We respectfully ask Governor Corzine to sign into law A-1044 sponsored by Assemblyman Van Drew, which seeks to extend the current WARN Act notification period from 60 days to 90 days, as well as increase certain penalties for non-compliance. The federal WARN Act is currently riddled with loopholes and is considered toothless by most worker advocates. The WARN Act requires significant reform in order to adequately accomplish the mission it was originally intended to address. A-1044 would take the first step towards accomplishing this at the state level. Other necessary WARN Act reforms are included in recent articles on the subject and are attached to my testimony.

If jobs are outsourced to a foreign country, this bill would give these workers a 90 day notice in order to pursue a new job or job training. When looking at this in the big picture, this concept is very insignificant, yet there has been significant resistance to even this minor reform.

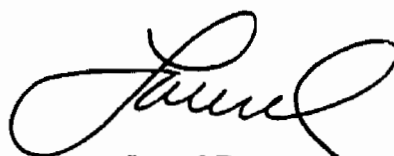
The second bill currently on the Governor's desk is S-1213, sponsored by Senator Turner. This bill seeks to achieve disclosure of job development requirements for certain government subsidies. Simply stated, this bill is about accountability in government, accountability for corporations to meet promised job creation goals, and embraces good government reforms that the public wants, and we respectfully urge Governor Corzine to sign this legislation.

In closing, there is much states can do on the issue of trade and we respectfully urge the legislature to take action on this issue. We respectfully recommend that this Commission examine the proposals described and include them in your report of recommendations to the State Assembly. Thank you and we look forward to continue working with the Commission.



Charles Wowkanech  
President

Sincerely,



Laurel Brennan  
Secretary/Treasurer

CW:LB:jmn

Attachments (2)

c: Governor Corzine  
Sen. Shirley Turner  
Commissioner Socolow  
Ed McBride, Governor's Council Office

OPEIU:153

# Model Jobs, Trade and Democracy Act

## Background

### States Have Broad Authority Over Procurement Policy

States traditionally have enjoyed a large degree of autonomy to set their own procurement policies under the U.S. system of federalism. Like the federal government, many states have procurement policies that leverage tax dollars to create local jobs, promote decent wages and working conditions, preserve the environment and assist minorities, veterans and people with disabilities.

Procurement preferences for local or domestic production, for instance, are nearly universal among the states. State laws creating an advantage for in-state providers would normally run afoul of the commerce clause of the U.S. Constitution, but the courts permit such preferences when the state is acting as a “market participant”—for example, when the state is purchasing goods and services from private contractors.

### Trade Agreements Limit State Procurement Authority

Recent international trade agreements threaten to erode this traditional state autonomy by imposing new rules on states that: 1) prohibit preferences for domestic or in-state suppliers; and 2) limit the type of social, labor and environmental conditions states can apply to public contracts.

Such rules constraining state procurement authority are included in a number of trade agreements: the Agreement on Government Procurement at the World Trade Organization, bilateral agreements with Chile and Australia and proposed free trade agreements with dozens more countries that currently are being negotiated or awaiting congressional approval.

*State adherence to these agreements is purely voluntary, and traditionally states have gained no specific benefits in return for agreeing to be bound.* If a state does agree to be bound by a trade agreement and then violates the agreement’s rules, the United States can be subject to a complaint and dispute resolution under the agreement.

### Reasserting State Legislative Authority

Governors—not state legislatures—have decided to bind their states to the terms of various international trade agreements after the U.S. Trade Representative (USTR) asked them to send in letters of consent. These critical decisions should only be made with the involvement of state legislatures, and only after the public has been adequately informed and has openly debated the issues involved. States should not give away their power to reward companies that play by the rules by paying workers a living wage and following standards that protect worker and human rights, or to avoid doing business with companies that ship U.S. jobs offshore, often to countries with sweatshops and substantial labor and human rights violations.

While many governors have signed on to such agreements in the past, the number of sign-ons has dropped with each agreement as state legislatures and governors have begun to learn more about the content of these agreements. It is also possible for a state to revoke its consent to an existing agreement. While such revocation may require the U.S. government to negotiate compensation for trading partners, it would not have direct legal or financial consequences for the state itself.

## State Actions on Trade Issues

- **Governors in six states** (IA, ME, MN, MO, OR, PA) **withdrew consent from CAFTA.** The governors of Montana and Wisconsin sent letters to USTR indicating they do not want to bind their states to future trade agreements.
- **Colorado** enacted a law in 2007 that will establish an International Trade Office to assess the impact of trade agreements on Colorado and inform the General Assembly about ongoing trade negotiations and the potential impact on Colorado's economy and laws.
- **Hawaii:** Over the governor's veto, the Hawaii legislature enacted a law during the 2007 legislative session requiring the legislature to vote on whether to bind the state to an international trade agreement.
- **Indiana:** The Republican-controlled Indiana State Senate passed Concurrent Resolution N. 16, a state resolution calling on Congress to place a moratorium on any new free trade agreements. It urges Congress "to investigate and review" all free trade agreements signed so far by the United States. It also calls on Congress to review U.S. participation in international trade organizations, stating, "free trade agreements and policies of the United States with other nations have severely affected United States manufacturing industries and the workers the industries employ," and noting that Indiana lost 102,000 manufacturing jobs between January 2000 and January 2004. The coalition included Democrats in northern Indiana, Republicans in southern Indiana, labor and the American Manufacturing Trade Action Coalition.
- **Maine:** In 2004, the Maine legislature passed a bill creating a Citizens' Trade Policy Commission to investigate and hold hearings on the impact of trade. After receiving a request from USTR to sign on to the trade agreements being negotiated with Panama and Andean countries, the state would use the six to 12 intervening months to consult with the Citizen's Trade Policy Commission and other "interests in Maine before formulating our response."
- **New Hampshire:** In 2007, the legislature passed a resolution urging:
  - The USTR to provide the state with the chance to give input on trade agreements that impact state and local governments and to exempt New Hampshire from the General Agreement on Trade in Services until given explicit authority to do so by the state legislature;

- The governor to inform the USTR that the legislature retains the authority to regulate business affairs with the state; and
  - Congress and USTR to preserve the traditional powers of state and local governments.

In addition, the New Hampshire legislature passed a bill establishing a Citizens' Trade Policy Commission to evaluate the impact of existing and proposed international trade agreements on the ability of the state and local governments to pass laws regarding public health and safety, environmental protection, labor standards, state and local procurement and the provision of public services. The commission includes representatives from business, farm, labor and nonprofit communities.

- **Pennsylvania:** Gov. Ed Rendell announced a comprehensive manufacturing strategy in December 2004 to protect Pennsylvania jobs and businesses from unfair trade practices and to help manufacturers grow their businesses and create good jobs. Major items in the governor's strategy include:
  - The formation of the Office of Trade Policy, designed to assist Pennsylvania manufacturers in identifying unfair trade practices and help in bringing challenges to the U.S. Trade Representative in Washington, D.C., and through the World Trade Organization.
  - The governor also appointed the state's first Manufacturing Ombudsman to assist businesses with questions about business finance, workforce training programs, permits and other regulatory issues.
  - Both the Office of Trade Policy and the Manufacturing Ombudsman will coordinate new and existing assistance programs and networks including Economic Stimulus Package, Citizens Job Bank and the Industrial Resource Centers throughout the state to implement the Manufacturing Innovation strategy.
- **Rhode Island:** The legislature passed the law in its 2007 session that would require that any state official, including the governor, obtain legislative approval in order to bind the state to any international trade agreements. The bill was vetoed by Gov. Don Carcieri.
- **Utah:** In early March 2005, the Utah legislature passed H.J.R. 15, which urges the USTR to maintain the regulatory authority of the states and to consult with representatives of state and local governments and industry regarding trade issues. The legislature also passed S.R. 1 and H.R. 9, which urged Congress to oppose entering into the Free Trade Area of the Americas agreement. The coalition that worked on these resolutions included the Utah State AFL-CIO and other labor organizations.

**For more information:**

**Naomi Walker, Director**  
**Office of State Government Affairs, AFL-CIO**  
**202-637-5093 or [nwalker@aflcio.org](mailto:nwalker@aflcio.org)**

**Trish Welte, State and Local Policy Researcher**  
**Office of State Government Affairs, AFL-CIO**  
**202-637-3917 or [twelte@aflcio.org](mailto:twelte@aflcio.org)**

## **Model Jobs, Trade and Democracy Act**

### **Purpose**

The model bill ensures that state citizens and the state legislators they elect have access to information on the impact of international trade policy on the state economy; it also clearly establishes the role of the state legislature in setting trade policy for the state and helps workers and businesses that have been impacted by trade. The model bill:

- Requires the consent of the state legislature to bind the state to international trade agreements, and establishes State Legislative Points of Contact to serve as official liaisons with the governor's office and the federal government on trade policy.
- Establishes an Office of Trade Enforcement to:
  - Monitor trade negotiations and disputes;
  - Analyze the potential impact of proposed international trade agreements on the state;
  - Assess impact of trade on state economy and make trade policy recommendations;
  - Assist local workers, firms and communities on trade matters.
- Requires the Office of Trade Enforcement to provide for annual reports to the governor and legislature on the impacts of trade on the state, and requires the Governor and Legislature to respond to policy recommendations for handling trade's impacts on the state.
- Establishes a Citizens' Commission on Globalization appointed by the governor and legislature to assess legal and economic impacts of trade agreements, hold hearings and make recommendations to the governor, legislature, congressional delegation and U.S trade negotiators.

### **Terms for Model Bill**

**I. This Act may be cited as the "Jobs, Trade and Democracy Act."**

### **II. Findings**

The Legislative Assembly finds that:

- A. States have traditionally enjoyed a large degree of autonomy to set their own procurement policies under the U.S. system of federalism.
- B. 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.

- C. The governor—not the state legislature—chose to bind [state] to the terms of various international trade agreements upon the request of the U.S. Trade Representative (USTR).
- D. 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 state legislatures, and only after the public has been adequately informed and has openly debated the issues involved.
- E. It is critical for citizens, state agencies, the state 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.

### III. Role of the State Legislature in Trade Policy

- A. It shall be the policy of the State of [state] that approval for the state to be bound by any trade agreement requires the consent of the state legislature.
- B. State Legislative Points of Contact: Two State Legislative Points of Contact (SLPCs) will be appointed at the beginning of each legislative session; one by the [majority and minority leaders] in the Senate, and one by the [majority and minority leaders] of the [House/Assembly]. The legislature declares that the purposes of the SLPCs are to:
  - 1) Serve as the state's official liaisons with the federal government and as the legislature's liaisons with the governor on trade-related matters;
  - 2) 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 states;
  - 3) 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;
  - 4) Issue a formal request to Office of Trade Enforcement and other appropriate state agencies to provide analysis of all proposed trade agreements' impact on state legislative authority and the economy of the state;
  - 5) 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;
  - 6) Communicate the interests and concerns of the legislature to the USTR regarding ongoing and proposed trade negotiations; and
  - 7) Notify the USTR of the outcome of any legislative action.
- C. The following actions are required before the State of [state] shall consent to the terms of a trade agreement:
  - 1) When a request has been received, the governor, majority or minority leader

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—

- a) A report by the Office of Trade Enforcement which shall include an analysis of how the agreement of the State of [state] to the specific provisions of the agreement will change or affect existing state law;
  - b) A statement of any administrative action proposed to implement these trade agreement provisions in the State of [state]; and
  - c) A draft of legislation authorizing the state to sign on to the specific listed provisions of the agreement in question.
- 2) A public hearing—with adequate public notice—shall occur before the legislature votes on the bill; and
  - 3) The bill authorizing the State of [state] to sign on to specific listed provisions of an agreement is enacted into law.

D. Sense of the Legislature: 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 of [state] with regard to future international trade and investment agreements.

E. Notice to USTR: The state Attorney General shall notify the USTR of the policies set forth in section (d) in writing no later than [ date], and shall provide copies of such notice to the president of the Senate, speaker of the House of Representatives, the governor and State of [state]’s congressional delegation.

#### **IV. Office of Trade Enforcement and Citizen’s Commission on Globalization**

A. The state shall establish an Office of Trade Enforcement and a Citizen’s Commission on Globalization.

B. The Office of Trade Enforcement is directed to:

- 1) Monitor trade negotiations and disputes impacting the state economy;
- 2) Analyze pending trade agreements the state is considering signing and provide the analysis to the governor, the legislature, the Citizen’s Commission and the public;
- 3) Provide technical assistance to workers and firms impacted by unfair trade practices;
- 4) Provide a Trade Impact Report to the governor, the legislature, the Citizen’s Commission and the public no later than [date] and annually thereafter;

- 5) Provide additional research and analysis as requested by the governor, the legislature and the Citizen's Commission.
- C. Each annual Trade Impact Report required under section (b)(4) above shall include:
- 1) An audit of the amount of public contract work being performed overseas;
  - 2) An audit of government goods being procured from overseas;
  - 3) A study of trade's impacts on state and local employment levels, tax revenues and retraining and adjustment costs;
  - 4) 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
  - 5) Findings and recommendations of specific actions the state should take in response to the impacts of trade on the state identified above. 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. Such a strategy may include, but not be limited to:
      - (i) More effective early warning and layoff aversion measures;
      - (ii) Increased assistance and adjustment programs for displaced workers and trade-impacted communities;
      - (iii) Stronger standards and accountability for recipients of state subsidies and incentives;
      - (iv) Investments in workforce training and development;
      - (v) Investments in technology and infrastructure; and
      - (vi) Increased access to capital for local producers.
- D. Within 30 days of receipt of the annual Trade Impact Report:
- 1) The governor shall review the report and issue a public statement explaining which of the report's recommendations for specific action under section (c)(5) the governor will act upon in the next 30 days, whether through executive action or proposed legislation.
  - 2) The legislature [or specific committee] shall review the report, hold public hearings on the report's recommendations for specific action under section (c)(5), and introduce legislation to enact those recommendations accepted by the legislature [or committee].

- E. A Citizens' Commission on Globalization shall be appointed by the [governor and/or legislature].
- 1) The following stakeholders shall be equally represented on the commission: employers, labor organizations, community organizations and government.
  - 2) The commission shall:
    - a) Assess the legal and economic impacts of trade agreements;
    - b) Provide input on the annual Trade Impact Report;
    - c) 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
    - d) Make policy recommendations to the governor, state legislature, state congressional delegation and U.S trade negotiators.

**For more information:**

**Naomi Walker, Director**

**Office of State Government Affairs, AFL-CIO  
202-637-5093 or [nwalker@aficio.org](mailto:nwalker@aficio.org)**

**Trish Welte, State and Local Policy Researcher**

**Office of State Government Affairs, AFL-CIO  
202-637-3917 or [twelte@aficio.org](mailto:twelte@aficio.org)**

Winner of Pulitzer Prize for Tiger Force

toledoblade.com TOLEDO, OHIO

Humidit  
more v

NEWS

MARKETplace

LEISURE

READER SERVICES

ADVERTIS

advertisement

9,000,000 Children In America have no health care coverage. What could be worse?

Keyword search

Home » Latest News » Other »

QwikNav

Other

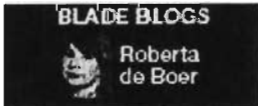
classifieds

Archive search

Article Tools: Forum Print Email Index Help RSS

Last 30 days search

Search



Latest News

- » Accidents/Vehicular
» Courts
» Police
» K-12 Education
» Environment
» Fires
» Other
» Politics/Elections
» Religion
» Transportation
» Weather
» Obituaries - News
» Minority Issues
» Library/Museum
» Zoo
» City of Toledo
» Regional News
» Suburban News
» Michigan News
» Higher Education
» Ohio News
» War on Terrorism
» Medical/Health
» Science/Tech
» Lucas County
» Odd News
Opinion
Sports

Article published Tuesday, July 17, 2007
WARN ACT

Senator Brown pushes to reform plant-closing law; Clinton, Obama sign on Greater notice period, penalties sought

By JAMES DREW
BLADE STAFF WRITER

WASHINGTON - U.S. Sen. Sherrod Brown of Ohio introduced a bill last night to reform a 19-year-old federal law designed to give notice to workers losing their jobs.

Mr. Brown took action a day after a Blade investigation found the law is so full of loopholes and flaws that employers repeatedly skirt it with little or no penalty.

The Worker Adjustment Retraining and Notification Act, or WARN, requires many employers to notify workers 60 days before they close a plant or lay off dozens of employees.

Aides to two Democratic presidential candidates - Sens. Hillary Clinton of New York and Barack Obama of Illinois - said they planned to sign on as co-sponsors of the bill.

Mr. Brown's legislation would:

- Increase the notice period



DAY THREE - WARN ACT SERIES: Different workers face same problem with WARN Act

MULTIMEDIA: Map, photos, links

Zoom | Photo Reprints

- Jobs
• Homes
• For Rent
• Cars
• Notices
• Merchandise
• Service/Repair
• Garage Sales
• Recreation
• Celebrations
• Churches
• New Today
• Snip & Save
• Grocery Coupons
• Shopper's Advanta
• Shop Blade produc
• Photo Reprints
• Front Page Reprint

advertisement

- Business
- Arts/Entertainment
- Blade Blogs
- Columnists
- Neighbors
- Obituaries
- Religion
- Daily Log
- Weather
- Special Reports
- Lottery
- Today's Front Page
- Photo Gallery

**MARKETplace**  
classifieds and more

- Jobs
- Homes
- For Rent
- Cars
- Notices
- Business Opportunities
- Merchandise
- Service/Repair
- Garage Sales
- Recreation
- Celebrations
- Churches
- New Today
- Snip & Save
- Grocery Coupons
- Shopper's Advantage
- Shop Blade products
- Photo Reprints
- Front Page Reprints

**LEISURE**

- Worship Guide
- Snip & Save
- New Car Dealer Guide
- Golf Guide
- Restaurant Guide
- High School Guide
- Arts/Events Calendar
- TV Listings
- Movie Showtimes
- Horoscopes
- People2People
- Online Forums
- e.thePeople
- Mud Hens Cam
- Destinations
- Home and Garden

**READER SERVICES**

- RSS News Feeds
- Partnerships



Brown

[Zoom](#) | [Photo Reprints](#)

would receive benefits and double the amount of back pay for the 90 days. The current penalty is up to 60 days.

•Require employers to provide written notification to the Labor secretary of major layoffs and plant closings.

"Job loss does not just affect a worker, or a worker's family," said Mr. Brown, a first-term Democrat. "Job loss devastates entire communities and local economies. Under current law, fair notice has proven to be the exception, not the rule.

"This legislation will close the loopholes and provide the tools necessary for enforcement of the rules. Early warning of a layoff is no substitute for a good job, but it does provide some time for employees to find a new job and for help to be provided," Mr. Brown said in a statement.

The Blade's analysis of 226 lawsuits filed in federal court across the nation since 1989 alleging violations of the WARN Act revealed that judges threw out more than half of the cases.

In the majority of those decisions, judges cited loopholes in the law, ranging from companies that said they tried their best to give notice to employees to firms that claimed they couldn't predict bad financial times.

The newspaper found that in 108 cases, WARN Act lawsuits resulted in settlements or with the courts siding with the displaced workers.

But in dozens of those cases, workers received only pennies on the dollar of what they felt they were owed.

A veteran of the movement to provide workers with notice of plant closings and major layoffs applauded Mr. Brown's bill.

under the WARN Act from 60 days to 90 days.

•Require companies to abide by the WARN Act if 25 or more workers lose their jobs in a plant closing. The current trigger is at least 50 workers.

•Require employers to provide notice if 50 to 99 workers are laid off, and those who lose their jobs represent one-third of the full-time work force.

•Mandate notice if 100 or more workers are laid off. Currently, companies that lay off 500 or more workers must provide notice.

•Give the U.S. Department of Labor and state attorneys general authority to enforce the WARN Act.

•Increase the penalty for violating the law. Workers who did not receive a 90-day notice

Special

**20**

TOYOTA

RAV4

[DETAILS](#)

**DAILY LOG**  
[Birth Announcements](#)  
[licenses](#), [real estate](#)

**READER F**  
[Reader Topics and C](#)

**MORTGAG**  
[Mortgage Rates, Poi](#)

**OPINION**  
[Editorials](#), [Letters to](#)

About/Contact Us  
 Educational Services  
 Customer Services  
 Email Newsletter

Help/FAQ

Toledo Pros

Find a business

Find a person

Maps and directions

Set as homepage

ADVERTISER SERVICES

Classified

The Blade

toledoblade.com

Mechanical Specs

Special Sections

TOMA

Advertiser Proofs

**AP WALL S**  
 Stocks, Business Ne

"It's long overdue," said Julie Hurwitz, former executive director of the Sugar Law Center for Economic and Social Justice - a nonprofit organization in Detroit that has focused for 16 years on WARN Act enforcement.

Ms. Hurwitz said some of Mr. Brown's proposed reforms resemble the types of amendments the Sugar Law Center began advocating for as early as 1993. Sen. Howard Metzenbaum, an Ohio Democrat and the sponsor of the WARN Act, introduced a reform bill in 1994 that did not become law. "I'm glad to see that it's back on the table and that it is no longer being buried," Ms. Hurwitz said.

An aide to Mr. Brown - a member of the Senate Committee on Health, Education, Labor, and Pensions - said he is asking fellow senators to co-sponsor his bill, dubbed the "FOREWARN Act."

The three leading Democratic presidential candidates - Ms. Clinton, Mr. Obama, and former U.S. Sen. John Edwards of North Carolina - reacted to The Blade's investigation by calling for reform of the WARN Act.

The leading GOP presidential candidates have not responded to calls seeking comment. Neither have two major foes of the "plant closing" bill in the 1980s, Republican U.S. Sen. Orrin Hatch of Utah and the U.S. Chamber of Commerce.

Tom Kummerer, who in December, 2001, unexpectedly lost his job at National Machinery Co. in Tiffin after nearly 25 years of service, said Mr. Brown's legislation is a "step in the right direction."

Mr. Kummerer said the WARN Act should be amended to force companies to provide back pay and benefits to workers before a business' assets are sold.

He also said the Department of Labor and state attorneys general should be able to represent workers in WARN Act lawsuits.

"Currently, employees are really on their own," Mr. Kummerer said. "I lived through it and I know what it's like. I don't want to see any other people have to go through that."

Ms. Hurwitz said she hopes that members of Congress will support Mr. Brown's efforts to amend the WARN Act. She also credited Mr. Brown for following in the footsteps of Mr. Metzenbaum, who sponsored the original WARN Act. He did not seek re-election in 1994.

"I am hopeful that Senator Brown will pick up the mantle that was dropped in the shadow of Senator Metzenbaum and that he will take it and run full speed ahead with it in the same way that Senator Metzenbaum so vigorously fought for the rights of workers," Ms. Hurwitz said.

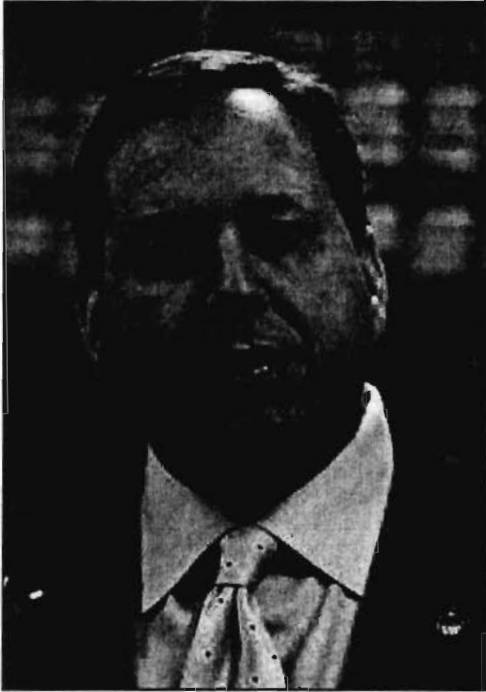
Blade staff writer Steve Eder contributed to this report.

**RECENT RELATED ARTICLES**

- [Fair warning supported by Edwards](#) | 07/18/2007
- [Numerous states try to address plant closings](#) | 07/18/2007
- [Reform overdue, WARN Act critics say; worker advocates look to eliminate flaws, loopholes in federal law](#) | 07/18/2007
- [Different workers face the same problem with the WARN Act](#) | 07/17/2007
- [30-minute notice preceded closing of Delphos plant](#) | 07/16/2007
- [National Machinery castoffs turned to Gillmor](#) | 07/16/2007
- [Sen. Brown proposes WARN Act reforms](#) | 07/16/2007

## Numerous states try to address plant closings

Ohio lacks WARN-type law, but its attorney general says he would back efforts to enact one



Dann

**By JAMES DREW and STEVE EDER  
BLADE STAFF WRITERS**

COLUMBUS - Marc Dann had a question when a client in his private legal practice asked him in 2002 to pursue a lawsuit alleging a violation of the federal plant-closing notification law.

"Does that still exist?" asked Mr. Dann, who was then a state senator from the Youngstown area and now is Ohio's attorney general. "It's such a little-used tool because it's clearly not working well for the workers."

Mr. Dann represented former workers of AJAX Magnethermic in Warren, Ohio, suing their former employer for failing to provide proper notice under the Worker Adjustment and Retraining Notification Act, or the WARN Act, before they were laid off in May, 2002.

The lawsuit ended in a settlement, but while litigating the case, Mr. Dann witnessed the shortcomings of the federal law.

Zoom | Photo Reprints

### ALSO

#### DAY 1

**READ: Without warning: Flaws, loopholes deny employees protection mandated by WARN Act**

**READ: Compromises diluted bill's original intent**

**MULTIMEDIA:** Interactive map, photo galleries, links

#### DAY 2

**READ: 30-minute notice preceded closing of Delphos plant**

**READ: National Machinery castoffs turned to Gillmor**

#### DAY 3

**READ: Different workers face the same problem with the WARN Act**

**READ: Senator Brown pushes to reform plant-closing law**

#### DAY 4

**READ: Reform overdue,**

"The idea of the WARN Act was to force companies to .•. give the workers a dignified amount of time to find another job," Mr. Dann said. "And when it fails, they don't have that opportunity to go and find another job. People end up in bankruptcy and foreclosure. These are generally people who have worked hard and played by the rules."

Recognizing the inadequacies of the WARN Act, at least nine states have passed their own versions to supplement the federal law, according to the National Conference of State Legislatures and attorneys involved in labor employment law.


But most of those state laws have provided little relief to workers, said Julie Hurwitz, the former executive director of the Maurice and Jane Sugar Law Center for Economic and Social Justice, a nonprofit organization in Detroit that has focused on enforcing the WARN Act for the last 16 years.


"The problem with the state laws is most of them were advisory and not mandatory, without any penalties," Ms. Hurwitz said.

Ohio doesn't have its own WARN Act, but Mr. Dann said he would support one to provide more protection to workers.

Most recently, lawmakers in New Jersey passed a bill designed to combat so-called "take-the-money-and-run" plant closings.

**WARN Act critics say; worker advocates look to eliminate flaws, loopholes in federal law**

 **READ: Numerous states try to address plant closings**

 **READ: Fair warning supported by Edwards**

The bill would require all companies with at least 100 employees to give a 90-day notice before a plant closing or massive layoff, an increase from the federal law, which requires a 60-day notice.

In addition, New Jersey would require WARN Act offenders to pay displaced employees one week of severance pay for each year they were employed with the company. Under the federal law, workers are entitled to up to 60 days of back pay if their employers fail to provide

proper notice.

Gov. Jon Corzine, a Democrat, is reviewing the bill, said Brendan Gilfillan, a spokesman for the governor.

"The governor believes it is important to add teeth to notification requirements, which the bill does, but he also has some concerns about extending the notice period requirements, in terms of what that might do to our competitiveness with states around us," Mr. Gilfillan said.

If Mr. Corzine signs off on New Jersey's WARN Act, the state would join states, such as California and Illinois, which have laws that are models for efforts to overhaul the federal law, workers' advocates say.

The California law, which took effect in 2003, requires employers with at least 75 employees to provide a 60-day notice if a major layoff or plant closing affects 50 or more workers.

The federal WARN Act requires that if a company lays off from 50 to 499 workers, the number must be at least one-third of the full-time work force.

California's version of the law does not include the one-third requirement, and it makes the parent company liable if a subsidiary violates the law, said Stuart J. Miller, a New York City attorney who specializes in representing workers in WARN Act lawsuits.

Under the federal law, companies can avoid liability by saying they were "actively seeking capital" and business and claiming that notice would hurt their efforts - a provision referred to as "faltering company," which critics say often is used as an excuse to skirt the law.

Under California law, a company must prove to state government that it is "faltering" by disclosing records that show it was pursuing capital and signing an affidavit verifying the contents of those records.

Illinois' version of the WARN Act, which took effect in 2005, covers employers with 75 or more full-time workers. By contrast, the federal law applies to employers with 100 or more full-time employees.

State government in Illinois also has the power to "examine the books and records of an employer" to determine if a violation has occurred. "It has provided workers with additional protections," said Michael Kleinik, manager of the conciliation and mediation division of the Illinois Department of Labor.

Contact James Drew at: [jdrew@theblade.com](mailto:jdrew@theblade.com)