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Outsourcing Attacks Not Over

In fact, they seem to be increasing.

By Stuart Anderson

Many companies assumed that the assault in state legislatures on international trade and offshore "outsourcing" would end with the November 2004 election. However, the first weeks of 2005 have showed that assumption to be mistaken.

The number of state bills to restrict outsourcing rose from just 4 in 2003, to more than 200 in 2004, an increase rarely seen on any issue. Only 5 of these bills became law in 2004 and none were far-reaching. Republican governors in California, Massachusetts, and Maryland also vetoed anti-outsourcing bills, though outgoing New Jersey Gov. Jim McGreevey issued a highly restrictive executive order to prevent state work from being performed offshore.

So what has happened in 2005? If the assumption was true that this issue had "no legs" and was merely a one-year blip caused by the political season, then one would expect the number of bills on the topic to gravitate back down to 5 or 6 for the entire course of 2005. That has not been the case.

The data show that more anti-outsourcing bills — and in more states (23) — have been introduced through February 1, 2005, then through February 1, 2004. In other words, state lawmakers haven't missed a beat. Today, there are active bills to restrict outsourcing in Arizona, Colorado, Connecticut, Florida, Georgia, Hawaii, Indiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Nebraska, North Dakota, Ohio, Pennsylvania, Texas, Virginia, and Washington.

The reasons for the continued impulse to impose restrictions on offshore outsourcing are understandable, though misguided. First, legislators have received press attention, even national media exposure, for proposing anti-outsourcing measures. Therefore, it is a typical human reaction to continue in the face of positive attention, even if prior legislative efforts failed. Second, the economic factors that created anxiety about "jobs moving offshore" — global competition, increased productivity, and new job creation distributed unevenly across sectors — have not changed in the past six months.

Most state bills to restrict outsourcing fall into two categories: restrictions on state contract work being done offshore and measures to limit the use of offshore call centers. (Restrictions include requiring operators to switch calls back to the U.S. by request.) Far from being positive measures to create jobs, such proposed actions quite possibly violate the U.S. Constitution, risk trade retaliation, and increase budget costs.

On the most practical level, limiting competition for state contract work increases procurement costs. This happened in New Jersey in 2003. Criticism erupted when a subcontractor for a call center contract for state unemployment services used workers in India. In response, the state government re-worked the contract to place more individuals in New Jersey. As a result, New Jersey taxpayers paid, on top of the original contract costs, an additional $900,000 for 12 jobs. “Saving” 1,400 such jobs in the future would cost the state an extra $100 million.

Many of these bills would also likely be found unconstitutional. A legal analysis for the National Foundation for American Policy performed by Shannon Klinger and Lynn Sykes, attorneys with Alston & Bird, concluded that such state contact bans “are legally suspect . . . since courts would likely find that such measures improperly intrude on the federal foreign affairs power and violate the U.S. Constitution’s Foreign Commerce Clause.” Simply put, states are not allowed to make their own trade or foreign policies, which is essentially what the state of New Jersey did when Gov. McGreevey issued his executive order in September 2004.

These constitutional concerns are of particular importance when state actions not only violate America’s international trade obligations but also make it more likely that foreign countries will retaliate. The United States, along with more than 30 other nations, has signed the Government Procurement Agreement, which prohibits state and federal procurement policies from discriminating on the basis of where work would be performed.

Concerns about outsourcing overseas as a source of job loss have been overstated in the media. A recent government report from the Bureau of Labor Statistics indicates that in only 2 percent of recent layoffs of 50 or more people was offshore outsourcing even a factor.

There is a right way and a wrong way to expand economic opportunity in individual states around the country. The wrong approach is to implement measures that would restrict trade, invite retaliation, or violate the U.S. Constitution. The right way is for legislators to adopt positive measures to create jobs, including lowering the tax, regulatory, and litigation burden on employers.

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