

STATE OF NEW YORK

3263

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and  
when printed to be committed to the Committee on Corporations,  
Authorities  
and Commissions

AN ACT to amend the waterfront commission act, in relation to  
empowering  
the waterfront commission to accept applications in the  
longshoremen's  
register

The People of the State of New York, represented in Senate and  
Assem-  
bly, do enact as follows:

1 Section 1. Section 5-p of chapter 882 of the laws of 1953,  
constitut-  
2 ing the waterfront commission act, as amended by chapter 431 of the  
laws  
3 of 1999, is amended to read as follows:  
4 § 5-p. [~~Suspension or acceptance of applications for inclusion~~  
~~in~~  
5 ~~longshoremen's~~] Longshoremen's register[~~;~~~~exceptions~~]. [~~1.~~] The  
commis-  
6 sion shall [~~suspend the acceptance of~~] accept applications for  
inclusion  
7 in the longshoremen's register [~~for a period of sixty days after~~  
~~the~~  
8 ~~effective date of this act. Upon the termination of such sixty day~~  
~~peri-~~  
9 ~~od the commission shall thereafter have the power to make~~  
~~determinations~~  
10 ~~to suspend the acceptance of application for inclusion in~~  
~~the~~  
11 ~~longshoremen's register for such periods of time as the commission~~  
~~may~~

12 ~~from time to time establish and, after any such period of~~  
suspension,  
13 ~~the commission shall have the power to make determinations to~~  
accept  
14 ~~applications for such period of time as the commission may establish~~  
or  
15 ~~in such number as the commission may determine, or both. Such~~  
~~determi-~~  
16 ~~nations to suspend or accept applications shall be made by the~~  
~~commis-~~  
17 ~~sion~~]: (a) [~~on its own initiative or (b)~~] upon the joint  
recommendation  
18 in writing of stevedores and other employers of longshoremen in the  
port  
19 of New York district, acting through their representative for  
the  
20 [~~purpose~~] purposes of collective bargaining with a labor  
organization  
21 representing such longshoremen in such district, and such labor  
organ-  
22 ization; or [~~(c)~~] (b) upon the petition in writing of a stevedore  
or  
23 [~~another~~] other employer of longshoremen in the port of New  
York  
24 district which does not have a representative for the [~~purpose~~]  
purposes  
25 of collective bargaining with a labor organization representing  
such

EXPLANATION--Matter in italics (underscored) is new; matter in  
brackets

[-] is old law to be omitted.

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S. 3263

2

1 longshoremen. [~~The commission shall have the power to accept or~~  
~~reject~~  
2 ~~such joint recommendation or petition.~~  
3 ~~All joint recommendations or petitions filed for the acceptance~~  
of  
4 ~~applications with the commission for inclusion in the~~  
~~longshoremen's~~  
5 ~~register shall include:~~  
6 ~~(a) the number of employees requested;~~  
7 ~~(b) the category or categories of employees requested;~~  
8 ~~(c) a detailed statement setting forth the reasons for said~~  
joint  
9 ~~recommendation or petition;~~  
10 ~~(d) in cases where a joint recommendation is made under this~~  
~~section,~~  
11 ~~the collective bargaining representative of stevedores and other~~  
~~employ-~~  
12 ~~ers of longshoremen in the port of New York district and the~~  
~~labor~~  
13 ~~organization representing such longshoremen shall provide the~~  
~~allocation~~

14 ~~of the number of persons to be sponsored by each employer of~~  
~~longshore-~~  
15 ~~men in the port of New York district; and~~  
16 ~~(e) any other information requested by the commission.~~  
17 ~~2. In administering the provisions of this section, the~~  
~~commission~~  
18 ~~shall observe the following standards:~~  
19 ~~(a) To encourage as far as practicable the regularization of~~  
~~the~~  
20 ~~employment of longshoremen;~~  
21 ~~(b) To bring the number of eligible longshoremen into balance with~~  
~~the~~  
22 ~~demand for longshoremen's services within the port of New York~~  
~~district~~  
23 ~~without reducing the number of eligible longshoremen below that~~  
~~neces-~~  
24 ~~sary to meet the requirements of longshoremen in the port of New~~  
~~York~~  
25 ~~district;~~  
26 ~~(c) To encourage the mobility and full utilization of the~~  
~~existing~~  
27 ~~work force of longshoremen;~~  
28 ~~(d) To protect the job security of the existing work force of~~  
~~long-~~  
29 ~~shoremen by considering the wages and employment benefits of~~  
~~prospective~~  
30 ~~registrants;~~  
31 ~~(e) To eliminate oppressive and evil hiring practices injurious~~  
~~to~~  
32 ~~waterfront labor and waterborne commerce in the port of New~~  
~~York~~  
33 ~~district, including, but not limited to, those oppressive and~~  
~~evil~~  
34 ~~hiring practices that may result from either a surplus or shortage~~  
~~of~~  
35 ~~waterfront labor;~~  
36 ~~(f) To consider the effect of technological change and automation~~  
~~and~~  
37 ~~such other economic data and facts as are relevant to a proper~~  
~~determi-~~  
38 ~~nation;~~  
39 ~~(g) To protect the public interest of the port of New York~~  
~~district.~~  
40 ~~In observing the foregoing standards and before determining to~~  
~~suspend~~  
41 ~~or accept applications for inclusion in the longshoremen's~~  
~~register,~~  
42 ~~the commission shall consult with and consider the views of,~~  
~~including~~  
43 ~~any statistical data or other factual information concerning the size~~  
~~of~~  
44 ~~the longshoremen's register submitted by, carriers of freight by~~  
~~water,~~  
45 ~~stevedores, waterfront terminal owners and operators, any labor~~  
~~organ-~~  
46 ~~ization representing employees registered by the commission, and~~  
~~any~~

47 ~~other person whose interests may be affected by the size of~~  
the  
48 ~~longshoremen's register.~~  
49 ~~Any joint recommendation or petition granted hereunder shall~~  
be  
50 ~~subject to such terms and conditions as the commission may prescribe.~~  
51 ~~3. Any determination by the commission pursuant to this section~~  
to  
52 ~~suspend or accept applications for inclusion in the~~  
longshoremen's  
53 ~~register shall be made upon a record, shall not become effective~~  
until  
54 ~~five days after notice thereof to the collective bargaining~~  
representa-  
55 ~~tative of stevedores and other employers of longshoremen in the port~~  
of  
56 ~~New York district and to the labor organization representing such~~  
long-

S. 3263

3

1 ~~shoremen and/or the petitioning stevedore or other employer of~~  
long-  
2 ~~shoremen in the port of New York district and shall be subject to~~  
judi-  
3 ~~cial review for being arbitrary, capricious, and an abuse of~~  
discretion  
4 ~~in a proceeding jointly instituted by such representative and such~~  
labor  
5 ~~organization and/or by the petitioning stevedore or other employer~~  
of  
6 ~~longshoremen in the port of New York district. Such judicial~~  
review  
7 ~~proceeding may be instituted in either state in the manner provided~~  
by  
8 ~~the law of such state for review of the final decision or action~~  
of  
9 ~~administrative agencies of such state, provided, however, that~~  
such  
10 ~~proceeding shall be decided directly by the appellate division as~~  
the  
11 ~~court of first instance (to which the proceeding shall be transferred~~  
by  
12 ~~order of transfer by the supreme court in the state of New York or~~  
in  
13 ~~the state of New Jersey by notice of appeal from the~~  
commission's  
14 ~~determination) and provided further that notwithstanding any~~  
other  
15 ~~provision of law in either state no court shall have power to stay~~  
the  
16 ~~commission's determination prior to final judicial decision for~~  
more  
17 ~~than fifteen days. In the event that the court enters a final~~  
order  
18 ~~setting aside the determination by the commission to accept~~  
applications

19 ~~for inclusion in the longshoremen's register, the registration of~~  
any  
20 ~~longshoremen included in the longshoremen's register as a result of~~  
such  
21 ~~determination by the commission shall be cancelled.~~  
22 ~~This section shall apply, notwithstanding any other provision of~~  
this  
23 ~~act, provided however, such section shall not in any way limit~~  
or  
24 ~~restrict the provisions of section five of article nine of this~~  
act  
25 ~~empowering the commission to register longshoremen on a temporary~~  
basis  
26 ~~to meet special or emergency needs or the provisions of section four~~  
of  
27 ~~article nine of this act relating to the immediate reinstatement~~  
of  
28 ~~persons removed from the longshoremen's register pursuant to~~  
article  
29 ~~nine of this act. Nothing in this section shall be construed to~~  
modify,  
30 ~~limit or restrict in any way any of the rights protected by~~  
article  
31 ~~fifteen of this act.~~  
32 ~~4. Upon the granting of any joint recommendation or petition~~  
under  
33 ~~this section for the acceptance of applications for inclusion in~~  
the  
34 ~~longshoremen's register, the commission shall accept applications~~  
upon  
35 ~~written sponsorship from the prospective employer of longshoremen.~~  
The  
36 ~~sponsoring employer shall furnish the commission with the name,~~  
address  
37 ~~and such other identifying or category information as the commission~~  
may  
38 ~~prescribe for any person so sponsored. The sponsoring employer~~  
shall  
39 ~~certify that the selection of the persons so sponsored was made~~  
in a  
40 ~~fair and non discriminatory basis in accordance with the requirements~~  
of  
41 ~~the laws of the United States and the states of New York and New~~  
Jersey  
42 ~~dealing with equal employment opportunities.~~  
43 ~~Notwithstanding any of the foregoing, where the commission~~  
determines  
44 ~~to accept applications for inclusion in the longshoremen's register~~  
on  
45 ~~its own initiative, such acceptance shall be accomplished in such~~  
manner  
46 ~~deemed appropriate by the commission.~~  
47 ~~5. Notwithstanding any other provision of this act, the commission~~  
may  
48 ~~include in the longshoremen's register under such terms and~~  
conditions  
49 ~~as the commission may prescribe:~~

50 ~~(a) a person issued registration on a temporary basis to meet~~  
special  
51 ~~or emergency needs who is still so registered by the commission;~~  
52 ~~(b) a person defined as a longshoreman in subdivision six of~~  
section  
53 ~~five-a of this act who is employed by a stevedore defined in~~  
paragraph  
54 ~~(b) or (c) of subdivision one of said section five-a and whose~~  
employ-  
55 ~~ment is not subject to the guaranteed annual income provisions of~~  
any  
56 ~~collective bargaining agreement relating to longshoremen;~~

S. 3263

4

1 ~~(c) no more than twenty persons issued registration limited to~~  
acting  
2 ~~as scalemen pursuant to the provisions of chapter 953 of the laws~~  
of  
3 ~~1969 and chapter 64 of the laws of 1982 who are still so registered~~  
by  
4 ~~the commission and who are no longer employed as scalemen on the~~  
effec-  
5 ~~tive date of this subdivision;~~

6 ~~(d) a person issued registration on a temporary basis as a checker~~  
to  
7 ~~meet special or emergency needs who applied for such registration~~  
prior  
8 ~~to January 15, 1986 and who is still so registered by the commission;~~

9 ~~(e) a person issued registration on a temporary basis as a checker~~  
to  
10 ~~meet special or emergency needs in accordance with a waterfront~~  
commis-  
11 ~~sion resolution of September 4, 1996 and who is still so registered~~  
by  
12 ~~the commission;~~

13 ~~(f) a person issued registration on a temporary basis as a~~  
container  
14 ~~equipment operator to meet special or emergency needs in accordance~~  
with  
15 ~~a waterfront commission resolution of September 4, 1996 and who is~~  
still  
16 ~~so registered by the commission; and~~

17 ~~(g) a person issued registration on a temporary basis as a~~  
longshore-  
18 ~~man to meet special or emergency needs in accordance with a~~  
waterfront  
19 ~~commission resolution of September 4, 1996 and who is still so~~  
regis-  
20 ~~tered by the commission.~~

21 ~~6. The commission may include in the longshoremen's register,~~  
under  
22 ~~such terms and conditions as the commission may prescribe,~~  
persons  
23 ~~issued registration on a temporary basis as a longshoreman or a~~  
checker  
24 ~~to meet special or emergency needs and who are still so registered~~  
by

25 ~~the commission upon the enactment of this amendment.]~~

26 Stevedores and other employers of longshoremen in the port of New  
York  
27 district shall furnish the commission with the names and addresses  
of  
28 the persons selected for inclusion in the longshoremen register.

29 § 2. If any part or provision of this act or the application  
thereof  
30 to any person or circumstances be adjudged invalid by any court  
of  
31 competent jurisdiction, such judgment shall be confined in its  
operation  
32 to the part, provision or application directly involved in the  
contro-  
33 versy in which such judgment shall have been rendered and shall  
not  
34 affect or impair the validity of the remainder of this act or the  
appli-  
35 cation thereof to other persons or circumstances and the two  
states  
36 hereby declare that they would have entered into this act or the  
remain-  
37 der thereof had the invalidity of such provisions or application  
thereof  
38 been apparent.

39 § 3. This act constitutes an agreement between the states of New  
York  
40 and New Jersey, supplementary to the waterfront commission compact  
and  
41 amendatory thereof, and shall be liberally construed to effectuate  
the  
42 purposes of that compact and the powers vested in the waterfront  
commis-  
43 sion hereby shall be construed to be in aid of and supplemental to  
and  
44 not in limitation of or in derogation of any of the powers  
heretofore  
45 conferred upon or delegated to the waterfront commission.

46 § 4. This act shall take effect upon the enactment into law by  
the  
47 state of New Jersey of legislation having an identical effect with  
this  
48 act, but if the state of New Jersey shall have already enacted  
such  
49 legislation, this act shall take effect immediately; and provided  
that  
50 the waterfront commission shall notify the legislative bill  
drafting  
51 commission upon the occurrence of the enactment of the  
legislation  
52 provided for in section one of this act in order that the commission  
may  
53 maintain an accurate and timely effective data base of the official  
text  
54 of laws of the state of New York in furtherance of effectuating  
the

55 provisions of section 44 of the legislative law and section 70-b of  
the  
56 public officers law.