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# A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that a number of today's  
2 international free trade agreements contain policy obligations  
3 and restrictions that would take precedence over state and local  
4 government provisions relating to state purchasing laws and  
5 preferences. These trade agreements may undermine state and  
6 local laws relating to requirements that a product contain a  
7 certain minimum amount of recycled material. They may also  
8 undermine state laws that would discourage the off-shoring of  
9 jobs or encourage the purchase of locally-produced goods and  
10 services.

11           However, because the expenditure of state tax dollars is an  
12 intrinsic function of state government, the federal government  
13 has refrained from unilaterally binding states to the  
14 procurement provisions in international trade agreements.  
15 Instead, the United States Trade Representative has sent  
16 correspondences to the governors of all states asking that the  
17 governors voluntarily bind their states to comply with  
18 procurement rules to be included in various new international



1 trade agreements now being negotiated. The legislature is  
2 informed that, in this manner, Hawaii governors have bound the  
3 State to procurement provisions contained in the World Trade  
4 Organization, the United States-Chile Free Trade Agreement, the  
5 United States-Singapore Free Trade Agreement, the Moroccan Free  
6 Trade Agreement, and the United States-Australia Free Trade  
7 Agreement. The provisions contained in these agreements may  
8 undermine provisions of the State's public procurement code and  
9 other state preference and set-aside policies intended to  
10 promote and protect various sectors of and groups within our  
11 local economy. However, questions relating to the State's  
12 public procurement code or decisions relating to state  
13 preference and set-aside policies are within the legislative  
14 domain and should require legislative action.

15 The purpose of this Act is to prohibit the binding of the  
16 State to government procurement rules contained in an  
17 international trade agreement without legislative action.

18 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
19 amended by adding a new section to be appropriately designated  
20 and to read as follows:



1           "§103D-    International procurement rules, legislative

2 action.   (a) Except as provided in subsection (b), no state  
3 official, including the governor, may:

4           (1) Bind the State to the government procurement rules of  
5           an international trade agreement; or

6           (2) Give consent to the United States government to bind  
7           the State to the government procurement rules of an  
8           international trade agreement.

9           (b) A state official, including the governor, may bind the  
10 State or give consent to the United States government to bind  
11 the State to the government procurement rules of an  
12 international trade agreement only if the legislature, by law,  
13 explicitly authorizes the governor to bind the State or give  
14 consent to the United States government to bind the State to the  
15 government procurement rules of a specific international trade  
16 agreement.

17           (c) As used in this section, "international trade  
18 agreement" means a trade agreement between the United States  
19 government and a foreign nation to which the State, at the  
20 request of the United States government, is a covered procuring  
21 entity; but the term does not include a trade agreement between



1 the State and a foreign nation to which the United States  
2 government is not a party.

3 (d) The State shall not be bound by the government  
4 procurement rules of any international trade agreement for which  
5 a state official, including the governor, has given consent for  
6 the State to be bound to on or before the effective date of this  
7 Act. Before any cancellation of any procurement contract, an  
8 impact study shall be prepared."

9 SECTION 3. Within ten days of the effective date of this  
10 Act, the governor shall inform the United States Trade  
11 Representative that the State is revoking forthwith any consent  
12 that the governor or any state official had given prior to the  
13 effective date of this Act to bind the State to the government  
14 procurement rules of any international trade agreement.

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Hawaii Public Procurement Code; International Trade Agreements

**Description:**

Prohibits state officials from binding the State to government procurement rules of an international trade agreement without legislative action. (HB31 HD1)

