



GOV. MSG. NO. 1049

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB30 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB30 HD2 SD1 CD1

A BILL FOR AN ACT RELATING TO
INTERNATIONAL TRADE AGREEMENTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 30, entitled "A Bill for an Act Relating to International Trade Agreements," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 30 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 30 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 30

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 30, entitled "A Bill for an Act Relating to International Trade Agreements."

The purpose of this bill is to prohibit the Governor from agreeing to bind the State in international trade agreements that contain procurement provisions between the United States and another nation without the approval of the Legislature by a simple majority vote on a concurrent resolution. This bill requires the Governor to notify the President of the Senate and the Speaker of the House of Representatives if the federal government seeks the State's participation in an international trade agreement when the Legislature is not in session. The Legislature may then consider the approval of the agreement's procurement provisions in a special session.

This bill is objectionable because it curtails the Governor's authority by requiring legislative approval for the State to enter into international trade agreements that relate to environmental, health, safety, and procurement issues where State standards may apply. This is an area that has traditionally been recognized as within the scope of executive responsibility.

Second, this bill would hinder the ability of the State to enter into international trade agreements and respond to the federal government in a timely manner because the federal government often requests states to consent within a limited period of time. When the Legislature is not in session, the agreement could not take effect until, and if, a special session was called, which will incur additional taxpayer-funded costs to bring the legislators back into session. If the Legislature failed to convene or to enact a concurrent resolution during a special or regular session, the State of Hawaii would be precluded from participation in the Agreement.

The procurement provisions of these international trade agreements are usually reciprocal. If the Legislature cannot or does not act in time to commit the State to consent to those reciprocal agreements, there may be adverse consequences for businesses in Hawaii. The Department of Accounting and General Services believes, and I agree, that the Legislature's involvement in the review of these international agreements could result in foreign companies not conducting business in Hawaii and Hawaii companies being subject to tariff and trade barriers.

For the foregoing reasons, I am returning House Bill No. 30 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO INTERNATIONAL TRADE AGREEMENTS.

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 out
16 correspondences to all the states' governors asking that the
17 governors voluntarily bind their states to procurement rules to
18 be included in various new international trade agreements now



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

14 The legislature finds that the governor vetoed H.B. No.
15 2199, C.D. 1, 2006, relating to international trade agreements.
16 The basis of the veto concerns were:

- 17 (1) Providing a timely response within the federal
18 government deadlines for consenting to an
19 international trade agreement;
- 20 (2) Why the legislature heretofore did not seek to bind
21 previous governors of Hawaii; and



1 (3) The adverse effects on conducting business in the
2 state if the legislature is involved in approving
3 international trade agreements and does not do so in a
4 timely manner.

5 The legislature finds that previous governors did not seek
6 to bind the State to international trade agreements to the same
7 extent as the current governor, who in 2003 consented to an
8 array of pending trade agreements. Furthermore, any adverse
9 effect upon the procurement code is a consideration for the
10 legislature to resolve in approving any trade agreement.

11 The purpose of this Act is to prohibit the future binding
12 of the State to government procurement rules contained in an
13 international trade agreement without legislative action.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

17 **"CHAPTER**

18 **INTERNATIONAL TRADE AGREEMENTS**

19 **§ -1 Definitions.** As used in this chapter:

20 "International trade agreement" means a trade agreement or
21 memorandum of agreement between the United States government and



1 a foreign nation, whether bilateral, multilateral, global, or
2 regional, to which the State, at the request of the United
3 States government, is a covered procuring entity; provided the
4 term shall not include a trade agreement or memoranda of
5 agreement:

6 (1) Between the State and a foreign nation or its sub-
7 national entity to which the United States government
8 is not a party; or

9 (2) Between a county and a foreign nation or its sub-
10 national entity to which the United States government
11 is not a party.

12 "Procurement" means any provision of chapter 103D.

13 **§ -2 International procurement rules, legislative**
14 **action.** (a) Any international trade agreement entered into by
15 the President of the United States that contains provisions
16 relating in any manner to procurement by the states shall not be
17 valid as to those procurement provisions as it applies to this
18 State, unless the legislature by a simple majority vote on a
19 concurrent resolution approves of those procurement provisions.
20 The legislature shall consider, among other things, the effect
21 of an international trade agreement upon procurement preferences



1 and upon the possibility of foreign governments ceasing to do
2 business with the State.

3 (b) When the federal government notifies the State of an
4 impending international trade agreement and seeks the State's
5 approval when the legislature is not in session, the governor
6 shall notify the president of the senate and the speaker of the
7 house of representatives. The legislature may consider approval
8 of the procurement provisions during a special session convened
9 as provided in Article III, section 10, of the Hawaii state
10 constitution. The governor may not approve a trade agreement
11 without legislative approval of its procurement provisions by a
12 simple majority vote on a concurrent resolution.

13 **§ -3 Federal law; conferral of authority.** This chapter
14 is not intended to preclude state officials from entering into
15 international trade agreements when federal law confers the
16 authority on state officials to do so, subject to section -2.

17 **§ -4 Prior agreements before Act.** Any international
18 trade agreement entered into by the President of the United
19 States, which contains provisions relating in any manner to
20 procurement by the states to which the governor has agreed prior
21 to the effective date of this Act, shall remain valid."



1 SECTION 3. The governor shall notify the revisor of
2 statutes of the obligations of the State specified in
3 international trade agreements to which the State is a
4 consenting party. The revisor of statutes shall annotate the
5 Hawaii Revised Statutes with regard to these obligations, as
6 deemed necessary.

7 SECTION 4. This Act shall take effect upon its approval.



