

JAN 19 2007

A BILL FOR AN ACT

RELATING TO INTERNATIONAL TRADE AGREEMENT.

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 comply with



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

16 The legislature finds that the governor vetoed H.B. No.
17 2199, C.D. 1, 2006, relating to international trade agreements.

18 The basis of the veto concerns were the:

- 19 (1) Timely response to the federal government deadlines to
20 consent to an international trade agreement;
- 21 (2) Why the legislature heretofore did not seek to bind
22 previous governors of Hawaii; and



1 States government, is a covered procuring entity; provided the
2 term shall not include a trade agreement or memoranda of
3 agreement:

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

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

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

11 **§ -2 International procurement rules, legislative**

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



1 (b) When the federal government notifies the State of an
2 impending international trade agreement and seeks the State's
3 approval when the legislature is not in session, the governor
4 shall notify the president of the senate and the speaker of the
5 house of representatives for consideration of approval of the
6 procurement provisions by the members of each house by
7 requesting a special session as provided in article III, section
8 10, of the Hawaii state constitution.

9 **§ -3 Federal law; conferral of authority.** This chapter
10 is not intended to preclude state officials from entering into
11 international trade agreements when federal law confers the
12 authority on state officials to do so, subject to section -2.

13 **§ -4 Prior agreements before Act.** Any international
14 trade agreement entered into by the President of the United
15 States, which contains provisions relating in any manner to
16 procurement by the states, and to which the governor has
17 signaled agreement to those procurement provisions prior to the
18 effective date of this Act shall remain valid."

19 SECTION 3. The revisor of statutes shall remain cognizant
20 of the obligations of the State specified in international trade
21 agreements to which the State is a consenting party and annotate



1 the appropriate statutes in regards to these obligations, as
2 deemed necessary.

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

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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.

