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



1 agreements now being negotiated. The legislature is informed
2 that Hawaii governors, in this manner, have bound the State to
3 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 again undermine provisions of the State's public procurement
9 code and other state preference and set-aside policies set up to
10 promote and protect various sectors and groups of our local
11 economy. However, questions relating to the State's public
12 procurement code or decisions relating to state preference and
13 set-aside policies are within the legislative domain and should
14 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 country 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 country to which the United States
2 government is not a party."

3 SECTION 3. Any consent that a state official, including
4 the governor, has given for the State to be bound by the
5 government procurement rules of any international trade
6 agreement on or before the effective date of this Act is
7 declared invalid and the State shall not be bound by the
8 government procurement rules of any international trade
9 agreement for which a state official, including the governor,
10 has given consent for the State to be bound to on or before the
11 effective date of this Act.

12 SECTION 4. Within ten days of the effective date of this
13 Act, the governor shall inform the United States Trade
14 Representative that the State is revoking forthwith any consent
15 that the governor or any state official had given prior to the
16 effective date of this Act to bind the State to the government
17 procurement rules of any international trade agreement.

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

20 *Handwritten signatures and initials:*
Hal Mohr
Deq. 21

INTRODUCED BY:

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F. Dell
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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.

