

JAN 25 2006

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

10 However, because the expenditure of state tax funds is a
11 function of state government, the federal government has
12 refrained from unilaterally binding states to the procurement
13 provisions in international trade agreements. Instead, the
14 United States Trade Representative has requested that all the
15 States' governors voluntary bind their states to comply with
16 procurement rules to be included in various new international
17 trade agreements now being negotiated.



1 The legislature finds that Hawaii governors have bound the
2 State to procurement provisions contained in the World Trade
3 Organization, the United States-Chile Free Trade Agreement, the
4 United States-Singapore Free Trade Agreement, the Moroccan Free
5 Trade Agreement, and the United States-Australia Free Trade
6 Agreement.

7 These agreements may again undermine the State's public
8 procurement code and other state preference and set-aside
9 policies established to promote and protect various sectors and
10 groups of our local economy. However, questions relating to the
11 State's public procurement code or decisions relating to state
12 preference and set-aside policies are within the legislative
13 domain and should require legislative action.

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

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

20 "§103D- International procurement rules, legislative
21 action. (a) Except as provided in subsection (b), no state
22 official, including the governor, may:



1 (1) Bind the State to the government procurement rules of
2 an international trade agreement or to any of its
3 provisions, annexes, or side letters in part, or to
4 any attached or subsequently attached side letter or
5 addenda; 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 or to any of its
9 provisions, annexes, or side letters in part, or to
10 any attached or subsequently attached side letter or
11 addenda.

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

19 (c) As used in this section, "international trade
20 agreement" means a trade agreement between the United States
21 government and a foreign country or countries, either in a
22 bilateral, multilateral, regional or global forum, including



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1 agreements under the Agreement on Government Procurement and
 2 General Agreement on Trade in Services under the General
 3 Agreement on Tariffs and Trade of the World Trade Organization,
 4 to which the State, at the request of the United States
 5 government, is a covered procuring entity; but the term does not
 6 include a trade agreement between the State and a foreign
 7 country to which the United States government is not a party."

8 SECTION 3. New statutory material is underscored.

9 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.

