

STAND. COM. REP. NO.

2988

Honolulu, Hawaii

MAR 21 2006

RE: H.B. No. 2199
H.D. 2
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Transportation and Government Operations and Energy, Environment, and International Affairs, to which was referred H.B. No. 2199, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO INTERNATIONAL TRADE AGREEMENT,"

beg leave to report as follows:

The purpose of this measure is to require the enactment of legislation to approve of an international trade agreement relating to procurement.

Your Committees received testimony in support of this measure from ILWU Local 142, Hawaii Government Employees Association, and the Hawaii State AFL-CIO. Comments were received from the Forum on Democracy & Trade.

International trade agreements negotiated by the federal government commonly contain rules that prohibit covered procurement entities from enacting legislation pertaining to procurement preferences, including preferences for domestic goods, services, or workers. Sub-national governments, such as state governments of the United States, may consent to be included in these government procurement restrictions contained in international trade agreements.

Governor Lingle purportedly committed Hawaii to be covered by recent pending agreements, including the Central American Free



Trade Agreement which contains procurement provisions prohibiting covered entities from giving any preference to locally established suppliers or requiring that work be performed by workers in the United States. This provision would effectively repeal part X of chapter 103D, Hawaii Revised Statutes, establishing procurement preferences. These preferences are enacted to foster and promote economic development of certain businesses and products deemed vital to Hawaii.

Your Committees find that the consent to bind Hawaii to procurement rules contained in international trade agreements is a legislative function rather than an executive function. The Governor cannot nullify existing statutes by executive fiat or preempt the legislature from enacting statutes to establish procurement preferences or other procurement matters. Government procurement is inherently, intrinsically, and exclusively a subject matter for legislation inasmuch as the expenditure of public moneys are involved. The comprehensiveness of chapter 103D, relating to the Hawaii Public Procurement Code, evidences a legislative intent to occupy the field and to supersede other laws.

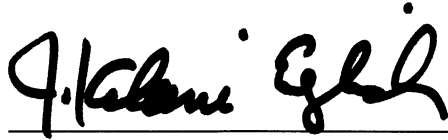
Your Committees have amended this measure by:

- (1) Creating a new chapter entitled "International Trade Agreements";
- (2) Revising the language for cogency and succinctness;
- (3) Requiring the submission to the Legislature for approval prior international trade agreements containing restrictions on procurement; and
- (4) Changing the effective date to upon approval.

As affirmed by the records of votes of the members of your Committees on Transportation and Government Operations and Energy, Environment, and International Affairs that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2199, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2199, H.D. 2, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.



Respectfully submitted on
behalf of the members of the
Committees on Transportation
and Government Operations and
Energy, Environment, and
International Affairs,



J. KALANI ENGLISH, Chair



LORRAINE R. INOUE, Chair



