

**Session Laws of Hawaii
Passed By The
Twenty-Fourth State Legislature
Special Session
2007**

ACT 1

H.B. NO. 30

A Bill for an Act Relating to International Trade Agreements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a number of today's international free trade agreements contain policy obligations and restrictions that would take precedence over state and local government provisions relating to state purchasing laws and preferences. These trade agreements may undermine state and local laws relating to requirements that a product contain a certain minimum amount of recycled material. They may also undermine state laws that would discourage the off-shoring of jobs or encourage the purchase of locally-produced goods and services.

However, because the expenditure of state tax dollars is an intrinsic function of state government, the federal government has refrained from unilaterally binding states to the procurement provisions in international trade agreements. Instead, the United States Trade Representative has sent out correspondences to all the states' governors asking that the governors voluntarily bind their states to procurement rules to be included in various new international trade agreements now being negotiated. The legislature is informed that Hawaii governors, in this manner, have bound the State to procurement provisions contained in the World Trade Organization, the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, the Moroccan Free Trade Agreement, and the United States-Australia Free Trade Agreement. The provisions contained in these agreements may undermine provisions of the State's public procurement code and other state preference and set-aside policies established to promote and protect various sectors and groups of our local economy. However, questions relating to the State's public procurement code or decisions relating to state preference and set-aside policies are within the legislative domain and should require legislative action.

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

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

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

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

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

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

“CHAPTER INTERNATIONAL TRADE AGREEMENTS

§ -1 Definitions. As used in this chapter:

“International trade agreement” means a trade agreement or memorandum of agreement between the United States government and a foreign nation, whether bilateral, multilateral, global, or regional, to which the State, at the request of the United States government, is a covered procuring entity; provided the term shall not include a trade agreement or memoranda of agreement:

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

“Procurement” means any provision of chapter 103D.

§ -2 International procurement rules, legislative action. (a) Any international trade agreement entered into by the President of the United States that contains provisions relating in any manner to procurement by the states shall not be valid as to those procurement provisions as it applies to this State, unless the legislature by a simple majority vote on a concurrent resolution approves of those procurement provisions. The legislature shall consider, among other things, the effect of an international trade agreement upon procurement preferences and upon the possibility of foreign governments ceasing to do business with the State.

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

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

§ -4 Prior agreements before Act. Any international trade agreement entered into by the President of the United States, which contains provisions relating

in any manner to procurement by the states to which the governor has agreed prior to the effective date of this Act, shall remain valid.”

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

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

(Vetoed by Governor and veto overridden by Legislature on July 10, 2007.)