



GOV. MSG. NO. 1049

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB30 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB30 HD2 SD1 CD1

A BILL FOR AN ACT RELATING TO  
INTERNATIONAL TRADE AGREEMENTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 30, entitled "A Bill for an Act Relating to International Trade Agreements," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 30 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 30 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 25th  
day of June, 2007.



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LINDA LINGLE  
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 30

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 30, entitled "A Bill for an Act Relating to International Trade Agreements."

The purpose of this bill is to prohibit the Governor from agreeing to bind the State in international trade agreements that contain procurement provisions between the United States and another nation without the approval of the Legislature by a simple majority vote on a concurrent resolution. This bill requires the Governor to notify the President of the Senate and the Speaker of the House of Representatives if the federal government seeks the State's participation in an international trade agreement when the Legislature is not in session. The Legislature may then consider the approval of the agreement's procurement provisions in a special session.

This bill is objectionable because it curtails the Governor's authority by requiring legislative approval for the State to enter into international trade agreements that relate to environmental, health, safety, and procurement issues where State standards may apply. This is an area that has traditionally been recognized as within the scope of executive responsibility.

Second, this bill would hinder the ability of the State to enter into international trade agreements and respond to the federal government in a timely manner because the federal government often requests states to consent within a limited period of time. When the Legislature is not in session, the agreement could not take effect until, and if, a special session was called, which will incur additional taxpayer-funded costs to bring the legislators back into session. If the Legislature failed to convene or to enact a concurrent resolution during a special or regular session, the State of Hawaii would be precluded from participation in the Agreement.

The procurement provisions of these international trade agreements are usually reciprocal. If the Legislature cannot or does not act in time to commit the State to consent to those reciprocal agreements, there may be adverse consequences for businesses in Hawaii. The Department of Accounting and General Services believes, and I agree, that the Legislature's involvement in the review of these international agreements could result in foreign companies not conducting business in Hawaii and Hawaii companies being subject to tariff and trade barriers.

For the foregoing reasons, I am returning House Bill No. 30 without my approval.

Respectfully,



LINDA LINGLER  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO INTERNATIONAL TRADE AGREEMENTS.

**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 procurement rules to  
18 be included in various new international trade agreements now



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

14 The legislature finds that the governor vetoed H.B. No.  
15 2199, C.D. 1, 2006, relating to international trade agreements.  
16 The basis of the veto concerns were:

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







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

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

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

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

17 **"CHAPTER**

18 **INTERNATIONAL TRADE AGREEMENTS**

19 **§ -1 Definitions.** As used in this chapter:

20 "International trade agreement" means a trade agreement or  
21 memorandum of agreement between the United States government and





1 a foreign nation, whether bilateral, multilateral, global, or  
2 regional, to which the State, at the request of the United  
3 States government, is a covered procuring entity; provided the  
4 term shall not include a trade agreement or memoranda of  
5 agreement:

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

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

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

13 **§ -2 International procurement rules, legislative**  
14 **action.** (a) Any international trade agreement entered into by  
15 the President of the United States that contains provisions  
16 relating in any manner to procurement by the states shall not be  
17 valid as to those procurement provisions as it applies to this  
18 State, unless the legislature by a simple majority vote on a  
19 concurrent resolution approves of those procurement provisions.  
20 The legislature shall consider, among other things, the effect  
21 of an international trade agreement upon procurement preferences





1 and upon the possibility of foreign governments ceasing to do  
2 business with the State.

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

13 **§ -3 Federal law; conferral of authority.** This chapter  
14 is not intended to preclude state officials from entering into  
15 international trade agreements when federal law confers the  
16 authority on state officials to do so, subject to section -2.

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





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

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



