

# Senate Memorial 201

Sponsored by Senators SHIELDS, BOQUIST; Senators ATKINSON, BEYER, COURTNEY, DINGFELDER, FERRIOLI, GIROD, KRUSE, MONNES ANDERSON, NELSON, OLSEN, PROZANSKI, ROSENBAUM, STEINER HAYWARD, TELFER, THOMSEN (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Urges Congress to enact and President to sign Trade Reform, Accountability, Development and Employment (TRADE) Act of 2009.

## SENATE MEMORIAL

1  
2 To the President of the United States, the Senate and the House of Representatives of the United  
3 States of America, in Congress assembled, and the United States Trade Representative, Amba-  
4 sador Ron Kirk:

5 We, your memorialists, the Senate of the State of Oregon, in legislative session assembled, re-  
6 spectfully represent as follows:

7 Whereas it is possible to craft trade policy that encourages balanced trade, job creation and  
8 sustainable development both at home and abroad without undermining the traditional American  
9 values of constitutional federalism; and

10 Whereas each of the existing international pacts that purport to govern trade, such as the North  
11 American Free Trade Agreement, Dominican Republic-Central America-United States Free Trade  
12 Agreement and various agreements of the World Trade Organization, has an expansive scope of  
13 authority that reaches significantly beyond establishing and enforcing tariffs and import-export  
14 quotas-matters that were historically within the province of trade regulation; and

15 Whereas these and other pacts, to which the United States is currently a party, grant foreign  
16 businesses that operate in Oregon new rights and privileges that exceed the rights and privileges  
17 that American businesses enjoy under state and federal law; and

18 Whereas the rights and privileges granted in these pacts may enable foreign investors and ser-  
19 vice providers to challenge Oregon laws as "nontariff barriers to trade" and thereby subject those  
20 laws to binding arbitration in dispute resolution bodies that circumvent the United States judicial  
21 system; and

22 Whereas the North American Free Trade Agreement has already generated "regulatory  
23 takings" cases against state and local land use decisions, state environmental and public health  
24 policies, adverse state court rulings and state and local contracts-cases that state and federal courts  
25 would not have heard; and

26 Whereas many such pacts contain provisions that regulate government procurement practices  
27 that, because they are binding on Oregon, could subject Oregon laws that implement common eco-  
28 nomic development and environmental policies to challenges for violating trade pact obligations; and

29 Whereas the World Trade Organization's General Agreement on Trade in Services could  
30 undermine Oregon's efforts to expand health care coverage, control health care costs, regulate

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 gambling, plan local land use, regulate energy production and use, set higher education policy, li-  
 2 cense professionals and more; and

3 Whereas such pacts undermine democratic, accountable governance in the states generally, and  
 4 Oregon in particular; and

5 Whereas such pacts have undermined the authority that the Oregon Constitution delegates to  
 6 the Legislative Assembly; and

7 Whereas pending free trade agreements with South Korea, Panama and Colombia contain similar  
 8 provisions that could encroach upon Oregon's regulatory authority, constrain or curtail Oregon's  
 9 regulatory options, limit the future policy choices of the Legislative Assembly and further undermine  
 10 democratic, accountable governance; and

11 Whereas since the North American Free Trade Agreement was enacted in 1994 and fully im-  
 12 plemented on January 1, 2008, the United States Department of Labor has certified that more than  
 13 50,000 Oregonians have lost their jobs because of direct offshoring or displacement by imports; and

14 Whereas federal legislation known as the Trade Reform, Accountability, Development and Em-  
 15 ployment (TRADE) Act of 2009 requires the Comptroller General of the United States to report on  
 16 any state laws, regulations or policies that are challenged or threatened under existing trade pacts  
 17 and to provide an analysis of any privatization of state services or limiting influence on state pro-  
 18 curement policies that result from such pacts; and

19 Whereas the TRADE Act requires that future international trade pacts ensure that foreign in-  
 20 vestors operating in the United States are not afforded greater rights than those afforded to do-  
 21 mestic investors by the Constitution and laws of the United States, and that state laws, regulations  
 22 and contracts not be subject to investor-to-state dispute settlement mechanisms that circumvent the  
 23 United States judicial system; and

24 Whereas the TRADE Act requires that future international trade pacts preserve the right of  
 25 state and local governments to maintain essential public services and to regulate, for the benefit of  
 26 the public, services provided to consumers in the United States, and also prohibits trade pact pro-  
 27 visions from requiring the privatization or deregulation of state services; and

28 Whereas the TRADE Act requires that future international trade pacts may require state gov-  
 29 ernments to comply with the pacts' procurement, investment or services provisions only if the state  
 30 government has been consulted in full and has given explicit consent to be bound by such provisions;  
 31 and

32 Whereas the TRADE Act contains processes by which existing international trade pacts can be  
 33 renegotiated to meet these standards, and contains a "Sense of the Congress" for improving United  
 34 States trade negotiations with respect to concerns regarding federalism; now, therefore,

35 **Be It Resolved by the Senate of the State of Oregon:**

36 That we, the members of the Senate of the Seventy-sixth Legislative Assembly, respectfully re-  
 37 quest that the United States Congress reintroduce and pass the Trade Reform, Accountability, De-  
 38 velopment and Employment (TRADE) Act of 2009, and that the President sign the Act into law; and  
 39 be it further

40 Resolved, That a copy of this memorial shall be sent to the President of the United States, to  
 41 the Senate Majority Leader, to the Speaker of the House of Representatives, to the United States  
 42 Trade Representative and to each member of the Oregon Congressional Delegation.