

# House Joint Memorial 18

Sponsored by Representatives WITT, CLEM; Representatives BARNHART, BUCKLEY, HOLVEY, ROSENBAUM (at the request of Oregon Fair Trade Coalition)

## 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**.

Requests United States Congress to replace Fast Track Authority for ratifying United States trade agreements with new authority that is more democratic and inclusive and that requires United States Trade Representative to seek and obtain consent of Legislative Assembly before binding Oregon to trade agreement obligations.

## JOINT MEMORIAL

To the President of the United States, the Senate and the House of Representatives of the United States of America, in Congress assembled, and the United States Trade Representative, Ambassador Susan Schwab:

We, your memorialists, the Seventy-fourth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the World Trade Organization agreements and the North American Free Trade Agreement, agreements that purport to govern trade, each have an expansive scope of authority that reaches significantly beyond establishing and enforcing tariffs and import-export quotas, matters that were historically within the province of trade regulation; and

Whereas the North American Free Trade Agreement and other trade agreements to which the United States is a party grant foreign businesses that operate in Oregon new rights and privileges that exceed the rights and privileges that United States businesses enjoy under state and federal law, including rights to acquire land and facilities and to conduct operations within Oregon; and

Whereas the rights and privileges granted in trade agreements may enable investors and service providers to challenge Oregon laws as "nontariff barriers to trade" and thereby subject those laws to binding arbitration in dispute resolution bodies created by and operated under the rules set forth in the trade agreements; and

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

Whereas many trade agreements contain provisions that regulate government procurement practices that, because they are binding on Oregon, could subject many Oregon laws that implement common economic development and environmental policies to challenges for violating trade agreement obligations, including buy local laws, prevailing wage laws, laws that require recycled content in products and laws that prevent jobs from being outsourced overseas; and

Whereas the World Trade Organization's General Agreement on Trade in Services could undermine Oregon's efforts to expand health care coverage, control health care costs, regulate gambling, plan local land use, regulate energy production and use, set higher education policy, li-

**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 cense professionals and more; and

2 Whereas the World Trade Organization agreements and the North American Free Trade  
3 Agreement, under which international commercial trade rules are enforced, have undermined demo-  
4 cratic, accountable governance in the states generally and, in particular, have undermined the au-  
5 thority that the Oregon Constitution delegates to the Legislative Assembly; and

6 Whereas challenges to Oregon laws based on the provisions of existing and future trade agree-  
7 ments can encroach on Oregon's regulatory authority, constrain or curtail Oregon's regulatory  
8 options, limit the future policy choices of the Legislative Assembly and further undermine demo-  
9 cratic, accountable governance; and

10 Whereas the Fast Track Authority procedure for negotiating and ratifying trade agreements, in  
11 driving the formulation and implementation of United States trade policy, has allowed much of this  
12 encroachment on state regulatory authority; and

13 Whereas the Fast Track Authority, by delegating to the executive branch of the federal gov-  
14 ernment much of the authority for setting the terms of trade that the United States Constitution  
15 commits to Congress, has eliminated vital constitutional checks and balances and empowered the  
16 executive branch to negotiate and sign broad-ranging agreements before obtaining a congressional  
17 vote; and

18 Whereas allowing the executive branch to sign trade agreements before a congressional vote  
19 enables the executive branch negotiators to ignore congressional trade objectives and states' re-  
20 quirements and to prevent Congress and the states from participating in any decision relating to the  
21 provisions that should or should not be in all United States trade agreements; and

22 Whereas federal trade negotiators have failed to respect states' rights to informed consent, in  
23 advance, in cases where provisions in trade agreements to which the negotiators have agreed will  
24 be binding on the states; and

25 Whereas trade negotiators sometimes refuse to give copies of key correspondence to state leg-  
26 islatures despite the indisputable fact that international trade agreements have a far-reaching im-  
27 pact on state and local laws; and

28 Whereas the Fast Track Authority also prevents Congress from subjecting trade agreements  
29 that negotiators have signed to normal deliberative procedures, including extensive debate and floor  
30 amendments to implementing legislation, that would aid in incorporating the trade agreements into  
31 federal law and in conforming hundreds of federal laws to the obligations that the trade agreements  
32 create; and

33 Whereas limiting debate on trade agreements to 20 hours total and forbidding floor amendments  
34 to implementing legislation ensures that trade agreements receive inadequate consideration, which  
35 in turn results in a wide array of unintended consequences; and

36 Whereas the Fast Track Authority that President Richard Nixon obtained in 1974 to negotiate  
37 ordinary trade agreements that deal with tariffs and quotas is an outdated and inappropriate method  
38 for adequately considering and assessing new trade agreements that venture into a diverse range  
39 of nontrade issues under the guise of regulating trade, and that affect federal and state policies and  
40 regulatory authority in a host of areas unrelated to trade; and

41 Whereas the existence of scores of trade agreements negotiated and ratified during the past 30  
42 years, including such major pacts as the various World Trade Organization agreements, demon-  
43 strates that Fast Track Authority is not necessary to implement a successful trade policy; and

44 Whereas the existing Fast Track Authority will expire in July 2007; now, therefore,

45 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

1       That we, the members of the Seventy-fourth Legislative Assembly, respectfully request the  
2 United States Congress not to renew the Fast Track Authority and to create a replacement method  
3 for negotiating and ratifying trade agreements that is more democratic, accountable and inclusive  
4 and that respects and adheres to principles of federalism and state sovereignty; and be it further

5       Resolved, That the new method include an explicit provision whereby the United States Trade  
6 Representative must seek and obtain the informed consent, in advance, of the Oregon Legislative  
7 Assembly before binding Oregon to any terms in a trade agreement that do not concern tariffs but  
8 that affect Oregon's regulatory authority; and be it further

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

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