

Senate Memorial 2

Sponsored by Senators BOQUIST, ATKINSON; Senators FERRIOLI, KRUSE, OLSEN (at the request of Association of Western Pulp and Paper Workers, Pacific Northwest Regional Council of Carpenters, United Steelworkers Local Union 8378 and United Brotherhood of Carpenters)

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.

SENATE 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 Ron Kirk:

We, your memorialists, the Senate of the State of Oregon, in legislative session assembled, respectfully represent as follows:

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

Whereas each of the existing international pacts that purport to govern trade, such as the North American Free Trade Agreement, Dominican Republic-Central America-United States Free Trade Agreement and various agreements of the World Trade Organization, has 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 these and other pacts, to which the United States is currently a party, grant foreign businesses that operate in Oregon new rights and privileges that exceed the rights and privileges that American businesses enjoy under state and federal law; and

Whereas the rights and privileges granted in these pacts may enable foreign 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 that circumvent the United States judicial system; 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 such pacts contain provisions that regulate government procurement practices that, because they are binding on Oregon, could subject Oregon laws that implement common economic development and environmental policies to challenges for violating trade pact obligations; 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

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 more than 50,000
13 Oregonians as having lost their jobs due to direct offshoring or displacement by imports; and

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

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

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

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

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

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

41