

## Enrolled

# Senate Memorial 201

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

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 gambling, plan local land use, regulate energy production and use, set higher education policy, license professionals and more; and

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

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

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

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

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

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

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

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

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

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

That we, the members of the Senate of the Seventy-sixth Legislative Assembly, respectfully request that the United States Congress reintroduce and pass the Trade Reform, Accountability, Development and Employment (TRADE) Act of 2009, and that the President sign the Act into law; and be it further

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

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Adopted by Senate February 10, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate