

House Study Bill 204

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON MASCHER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to binding international trade agreements by
2 providing for the consent of the general assembly and
3 providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2280HC 83
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PAG LIN

1 1 Section 1. NEW SECTION. 2E.1 SHORT TITLE.
1 2 This chapter shall be known and may be cited as "The Jobs,
1 3 Trade, and Democracy Act".
1 4 Sec. 2. NEW SECTION. 2E.2 LEGISLATIVE FINDINGS.
1 5 The general assembly finds all of the following:
1 6 1. International trade agreements, including the North
1 7 American free trade agreement, and certain other existing and
1 8 pending free trade agreements which contain commercial and
1 9 trade-related provisions enforced by the world trade
1 10 organization are undermining the sovereignty and legitimate
1 11 constitutional authority enjoyed by states generally to pass
1 12 laws for the welfare of residents. Specifically, the
1 13 authority granted by Article III of the Constitution of the
1 14 State of Iowa to the general assembly to enact laws governing
1 15 the state of Iowa is being undermined by these international
1 16 trade agreements.
1 17 2. International trade agreements have impacts which
1 18 extend significantly beyond the bounds of traditional trade
1 19 matters such as tariffs and quotas and instead grant foreign
1 20 investors and service providers certain rights and privileges
1 21 regarding operations within the state of Iowa, subject Iowa
1 22 laws to challenge as barriers to trade in the binding
1 23 international tribunals created by the agreements, and place
1 24 limits on the future policy options of state legislatures.
1 25 3. The North American free trade agreement grants foreign
1 26 firms new rights and privileges for operating within Iowa that
1 27 exceed those granted to businesses domiciled within the United
1 28 States under state and federal law. The North American free
1 29 trade agreement has generated regulatory takings cases against
1 30 state and local land use decisions, state environmental and
1 31 public health policies, state court rulings, and state and
1 32 local contracts that would not have been possible in state or
1 33 federal courts.
1 34 4. When states agree to government procurement provisions
1 35 contained in trade agreements, state economic development and
2 1 environmental policies such as buy local laws, policies to
2 2 prevent the transfer of state jobs to foreign jurisdictions,
2 3 and recycled content laws could be subject to challenge as
2 4 barriers to trade because the state laws and policies conflict
2 5 with obligations in the trade agreements.
2 6 5. Trade agreements also curtail state regulatory
2 7 authority by placing constraints on future policy options.
2 8 The world trade organization services agreement could
2 9 undermine state efforts to expand health care coverage and
2 10 rein in health care costs, and places constraints on state and
2 11 local land use planning. New negotiations in the services
2 12 area could have additional implications for state regulation
2 13 of water, energy, higher education, professional licensing,
2 14 and other areas.
2 15 6. United States government trade negotiators have failed
2 16 to consult in a meaningful way with state legislatures when
2 17 seeking the consent of states to comply with trade agreement

2 18 provisions.
2 19 7. A statutory mechanism that requires federal trade
2 20 negotiators to seek consent from state legislatures prior to
2 21 binding states to conform their laws to the terms of
2 22 international commercial and trade agreements is necessary to
2 23 adhere to the tenets of federalism and to respect state
2 24 sovereignty.

2 25 Sec. 3. NEW SECTION. 2E.3 STATE LEGISLATOR POINTS OF
2 26 CONTACT.

2 27 1. APPOINTMENT. Two members of the general assembly shall
2 28 be appointed as points of contact at the beginning of each
2 29 legislative session, one by the majority leader of the senate
2 30 and one by the speaker of the house of representatives.

2 31 2. DUTIES. The points of contact shall do all of the
2 32 following:

2 33 a. Serve as the state's official liaisons with the federal
2 34 government on trade-related matters and state law and serve as
2 35 the general assembly's liaisons with the governor on
3 1 trade-related matters.

3 2 b. Serve as the designated recipients of federal requests
3 3 for consent or consultation regarding investment, procurement,
3 4 services, or other provisions of international trade
3 5 agreements which may encroach on state law or regulatory
3 6 authority reserved to the states.

3 7 c. Transmit information regarding federal requests for
3 8 state consent to all appropriate legislative committees, the
3 9 office of the governor, and the attorney general.

3 10 d. Inform the members of the general assembly on a regular
3 11 basis about ongoing trade negotiations and dispute settlement
3 12 proceedings with implications for the state more generally.

3 13 e. Communicate the interests and concerns of the general
3 14 assembly to the United States trade representative regarding
3 15 ongoing and proposed trade negotiations.

3 16 f. Notify the United States trade representative of any
3 17 legislative action on trade issues that has taken place.

3 18 Sec. 4. NEW SECTION. 2E.4 AUTHORITY TO BIND THE STATE TO
3 19 TRADE AGREEMENTS.

3 20 1. Except as provided in subsection 2, a state official of
3 21 any branch or department of state government shall not do
3 22 either of the following:

3 23 a. Bind the state to the terms of an international trade
3 24 agreement.

3 25 b. Give consent to the United States trade representative
3 26 or any other branch or official of the United States
3 27 government to bind the state to the terms of an international
3 28 trade agreement or otherwise indicate that the state will
3 29 comply with the nontariff terms of an international trade
3 30 agreement.

3 31 2. The governor may bind the state or give a
3 32 representative of the United States government the consent to
3 33 bind the state only if both of the following conditions exist:

3 34 a. The terms of the agreement to which the governor
3 35 purports to bind the state are terms related to government
4 1 procurement, services, or investment.

4 2 b. The general assembly of the State of Iowa, pursuant to
4 3 the authority granted by Article III of the Constitution of
4 4 the State of Iowa to enact laws, has resolved to give its
4 5 consent to the agreement.

4 6 Sec. 5. NEW SECTION. 2E.5 CONSENT BY JOINT RESOLUTION.

4 7 1. Consent by the state to any provision of a trade
4 8 agreement shall only occur through a joint resolution of the
4 9 general assembly, presented to the governor for approval, as
4 10 provided in this section.

4 11 2. A request for consent to bind the state shall be
4 12 submitted to the general assembly by the governor and the
4 13 request shall contain all of the following:

4 14 a. An explanation by the attorney general as to how the
4 15 agreement of the state to the specific provisions of the
4 16 agreement will change or affect existing state law.

4 17 b. A statement of proposed administrative actions needed
4 18 to implement the trade agreement provisions in the state.

4 19 c. A draft of a joint resolution authorizing the state to
4 20 consent to the specific listed provisions of the agreement.

4 21 3. The president of the senate and the speaker of the
4 22 house of representatives shall refer the request for consent
4 23 and any attached documents to the appropriate standing
4 24 committees of the general assembly.

4 25 4. The standing committee considering a request for
4 26 consent shall hold a public hearing before any final action is
4 27 taken by the committee.

4 28 5. The request for consent shall be passed by the senate

4 29 and the house of representatives and presented to the governor
4 30 in the same manner as a bill.

4 31 Sec. 6. NEW SECTION. 2E.6 PRIOR CONSENT INVALID.

4 32 Any consent that has been given for the state of Iowa to be
4 33 bound by the government procurement rules of any international
4 34 trade agreement on or before the effective date of this Act is
4 35 invalid, and the state of Iowa is not bound by the government
5 1 procurement rules of any international trade agreement unless
5 2 the consent to be bound has been given by the state as
5 3 provided in this chapter.

5 4 Sec. 7. FEDERAL LAW FOR STATE CONSENT. It is the sense of
5 5 the general assembly that the Congress of the United States
5 6 should pass legislation instructing the United States trade
5 7 representative to fully and formally consult individual state
5 8 legislatures regarding procurement, services, investment, or
5 9 any other trade agreement provisions that impact state laws or
5 10 authority before negotiations begin on such an agreement and
5 11 as negotiations develop, and to seek consent from state
5 12 legislatures prior to binding states to conform their laws to
5 13 the terms of international trade agreements. Such federal
5 14 legislation is necessary to ensure the prior informed consent
5 15 of the state of Iowa with regard to international trade and
5 16 investment agreements.

5 17 Sec. 8. NOTICE TO THE UNITED STATES TRADE REPRESENTATIVE.
5 18 The attorney general shall notify the United States trade
5 19 representative of the provisions set forth in section 2E.3 as
5 20 enacted in this Act, in writing no later than July 1, 2009,
5 21 and shall provide copies of such notice to the majority leader
5 22 of the senate, the speaker of the house of representatives,
5 23 the president of the senate, the governor, and Iowa's
5 24 congressional delegation.

5 25 Sec. 9. EFFECTIVE DATE. The section of this Act requiring
5 26 the attorney general to provide notice to the United States
5 27 trade representative, being deemed of immediate importance,
5 28 takes effect upon enactment.

EXPLANATION

5 30 This bill relates to international commercial and trade
5 31 rules enforced by the world trade organization and established
5 32 by agreements such as the North American free trade agreement.

5 33 The bill contains a series of legislative findings
5 34 concerning the trade negotiation process.

5 35 The bill prohibits state officials from binding the state
6 1 to international trade agreements unless by the consent of the
6 2 general assembly. The bill establishes a specific procedure
6 3 for giving state consent for future trade agreements,
6 4 requiring the enactment of a joint resolution, presented to
6 5 the governor for signature, in the same manner as a bill. All
6 6 previous consents which did not follow this process are
6 7 declared void.

6 8 The bill calls on the United States congress to enact
6 9 legislation instructing the United States trade representative
6 10 to consult individual state legislatures regarding
6 11 procurement, services, investment, or any other trade
6 12 agreement provisions that impact state laws or authority
6 13 before negotiations begin and as they develop, and to seek
6 14 consent from state legislatures prior to binding states to
6 15 conform their laws to the terms of international trade
6 16 agreements.

6 17 The bill requires the attorney general to notify the United
6 18 States trade representative and Iowa's congressional
6 19 delegation of the process to give consent to an agreement no
6 20 later than July 1, 2009. This provision takes effect upon
6 21 enactment.

6 22 LSB 2280HC 83

6 23 tw/rj/5