

AMENDED IN SENATE APRIL 11, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 348

Introduced by Senator Figueroa
(Principal coauthor: Senator Kuehl)
(Principal coauthor: Assembly Member Levine)
(Coauthor: Senator Escutia)
(Coauthors: Assembly Members Hancock and Lieber)

February 16, 2005

An act to add Chapter 6 (commencing with Section 10700) to Part 2 of Division 2 of Title 2 of the Government Code, relating to international trade.

LEGISLATIVE COUNSEL'S DIGEST

SB 348, as amended, Figueroa. International trade.

Existing constitutional provisions authorize the Legislature to provide for the selection of committees necessary for the conduct of its business, including committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control.

~~This bill would require that the state's consent to be bound to any provisions of an international trade agreement, and the degree of that consent, be determined solely by statute. The bill would require that, within seven days of receiving a letter requesting the state's consent to be bound to the provisions of an international trade agreement, the Governor notify the Legislature by submitting the letter, or copies of the letter, to the Senate Committee on Rules and the Office of the Speaker of the Assembly. The bill would require the Legislature to take legislative action to define the degree of consent to provisions of international trade agreements, including, identifying which branches,~~

~~departments, and agencies of the state government that are bound by the provisions, and would further provide that if the Legislature does not take legislative action to consent to the agreement, the state is not bound to any provision of the international trade agreement. The bill would require that before any consent for the state to sign on to any provision of an international trade agreement, the Legislature and the Governor take joint affirmative action toward consent. prohibit a state official, including the Governor, from binding the state, or giving consent to the federal government to bind the state, to provisions of a Proposed International Trade Agreement, including, the government procurement rules. The bill would authorize the Governor to bind the state or give consent to the federal government to bind the state to provisions of a Proposed International Trade Agreement, including the government procurement rules, only upon the enactment of a statute explicitly authorizing the Governor to bind the state or give consent to the federal government to bind the state to the provisions of that specific Proposed International Trade Agreement.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6 (commencing with Section 10700) is
 2 added to Part 2 of Division 2 of Title 2 of the Government Code,
 3 to read:

4
 5 CHAPTER 6. CONSENT TO BIND CALIFORNIA TO
 6 ~~INTERNATIONAL TRADE AGREEMENTS~~ *PROVISIONS OF PROPOSED*
 7 *INTERNATIONAL TRADE AGREEMENTS*
 8

9 10700. *The Legislature finds and declares all of the*
 10 *following:*

11 (a) *International trade agreements are being negotiated by the*
 12 *federal government without providing for review by state*
 13 *officials concerned with the implications for state laws and state*
 14 *lawmaking authority.*

15 (b) *The federal government has failed to consult with state*
 16 *legislators when seeking the consent of states to be bound by*
 17 *government procurement provisions of international trade*
 18 *agreements.*

1 (c) Government procurement and other provisions contained
2 in international trade agreements may affect the ability of the
3 state to enact common economic development and environmental
4 policies, such as buy local laws, recycled content laws, and
5 renewable energy purchasing requirements. Some measures to
6 achieve important state economic development or environmental
7 objectives could conflict with obligations in one or more
8 international trade agreements and could therefore be
9 challenged as potential barriers to trade.

10 (d) The Legislature and the Governor have historically worked
11 together to adopt and implement state procurement standards
12 and other public policies, and therefore, the decision to consent
13 to the coverage of California under procurement rules and other
14 provisions of international trade agreements should also be
15 considered by the Legislature and the Governor in the form of a
16 statutory change in law.

17 10701. (a) In this section, “Proposed International Trade
18 Agreement” means a trade agreement negotiated, or in the
19 process of being negotiated, between the federal government and
20 a foreign country.

21 (b) A state official, including the Governor, may not bind the
22 state, or give consent to the federal government to bind the state,
23 to provisions of a Proposed International Trade Agreement,
24 including but not limited to, the government procurement rules,
25 except that the Governor may bind the state or give consent to
26 the federal government to bind the state to provisions of a
27 Proposed International Trade Agreement, including but not
28 limited to, the government procurement rules, upon the
29 enactment of a statute explicitly authorizing the Governor to bind
30 the state or give consent to the federal government to bind the
31 state to the provisions of that specific Proposed International
32 Trade Agreement.

33 ~~10700. The Legislature finds and declares all of the~~
34 ~~following:~~

35 ~~(a) The United States participates in international trade bodies,~~
36 ~~including the World Trade Organization (WTO), and~~
37 ~~international trade agreements such as the North American free~~
38 ~~trade Agreement (NAFTA).~~

39 ~~(b) The consultation between the federal and state~~
40 ~~governments required by both the WTO and NAFTA protocols~~

1 ~~has not included formal or organized consultation with the~~
2 ~~California State Legislature.~~

3 ~~(e) California's role as a global leader on issues of economic~~
4 ~~development, labor standards, human rights, consumer~~
5 ~~protection, and environmental sustainability, and the~~
6 ~~Legislature's role in enacting those standards, are subject to~~
7 ~~challenge by international trade agreements.~~

8 ~~(d) California laws are already being challenged under existing~~
9 ~~international trade rules. NAFTA, which grants foreign firms~~
10 ~~new rights and privileges for operating within a state that exceed~~
11 ~~those granted to United States businesses under state and federal~~
12 ~~law, has already generated two regulatory takings cases against~~
13 ~~California laws protecting public health and governing land use.~~

14 ~~(e) Government procurement provisions contained in~~
15 ~~international trade agreements affect the ability of states to enact~~
16 ~~common economic development and environmental policies,~~
17 ~~such as buy local laws, recycled content laws, and renewable~~
18 ~~energy purchasing requirements. Government procurement~~
19 ~~provisions subject such laws to challenge as barriers to trade as~~
20 ~~they contradict the obligations in the international trade~~
21 ~~agreement.~~

22 ~~(f) International trade agreements curtail state regulatory~~
23 ~~authority by placing constraints on future policy options. The~~
24 ~~WTO services agreement could undermine California's efforts to~~
25 ~~expand health care coverage and rein in health care costs, and~~
26 ~~places constraints on land use planning. New negotiations in the~~
27 ~~services area will have additional implications for California's~~
28 ~~regulation of water, energy, higher education, professional~~
29 ~~licensing, and more.~~

30 ~~(g) Existing international trade agreements have been~~
31 ~~implemented and pending trade agreements are being negotiated~~
32 ~~by federal government trade officials without providing for~~
33 ~~review by California public officials concerned with state laws~~
34 ~~and state lawmaking authority. Furthermore, federal government~~
35 ~~trade negotiators have failed to consult with state legislators~~
36 ~~when seeking the consent of states to comply with international~~
37 ~~trade agreement provisions.~~

38 ~~(h) Consequently, a mechanism for federal government~~
39 ~~international trade negotiators to consult with the California~~
40 ~~Legislature prior to binding California to conform its existing~~

1 laws to the terms of international trade agreements is necessary
2 to ensure democratic accountability in international trade
3 agreements.

4 10701. (a) Whenever the President of the United States, or
5 the United States Trade Representative, submits a letter to the
6 Governor requesting the state's consent to be bound to any
7 provisions of an international trade agreement, including free
8 trade agreements such as, the Central America Free Trade
9 Agreement and the South African Customs Union, the degree of
10 consent shall be determined solely by statute.

11 (b) Within seven days of receiving the letter specified in
12 subdivision (a), the Governor shall notify the Legislature by
13 submitting the letter, or copies of the letter, to the Senate
14 Committee on Rules and the Office of the Speaker of the
15 Assembly. The Senate Committee on Rules and the Speaker of
16 the Assembly shall then distribute the letter, or copies thereof, to
17 the appropriate committees for review.

18 (c) The Legislature shall take legislative action to define the
19 degree of consent to provisions of international trade agreements,
20 including identifying which branches, departments, and agencies
21 of the state government shall be bound by the provisions.

22 (d) If the Legislature does not take legislative action to consent
23 to the agreement, the state shall not be bound to any provision of
24 the international trade agreement.

25 10702. (a) Consent for the state to sign on to any provision
26 of an international trade agreement shall occur only through a
27 joint affirmative action of the Legislature and the Governor.

28 (b) The Governor, or his or her designated trade
29 representative, shall inform the United States Trade
30 Representative of the state's decision regarding the degree of
31 consent to any provisions of any international trade agreements.

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34 CORRECTIONS:
35 Digest – Page 2.
36 Text – Page 2.
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