

1 SENATE JOINT RESOLUTION NO. 17

2 INTRODUCED BY J. ELLIOTT

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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA URGING CONGRESS TO CREATE A SYSTEM THAT ENSURES THAT TRADE AGREEMENTS
6 ARE DEVELOPED AND IMPLEMENTED USING A DEMOCRATIC, INCLUSIVE MECHANISM THAT
7 ENSHRINES THE PRINCIPLES OF FEDERALISM AND STATE SOVEREIGNTY.

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9 WHEREAS, democratic, accountable governance in the states generally, and specifically the authority
10 granted by the Montana Constitution to the Legislative Branch, is being undermined by international commercial
11 and trade rules enforced by the World Trade Organization (WTO) and established by the North American Free
12 Trade Agreement (NAFTA) and is further threatened by similar provisions in an array of pending trade
13 agreements; and

14 WHEREAS, today's "trade" agreements have impacts that extend significantly beyond the bounds of
15 traditional trade matters, such as tariffs and quotas, and instead grant foreign investors and service providers
16 certain rights and privileges regarding acquisition of land and facilities and regarding operations within a state's
17 territory, subject state laws to challenge as "nontariff barriers to trade" in the binding dispute resolution bodies
18 that accompany the pacts, and place limits on the future policy options of state legislatures; and

19 WHEREAS, NAFTA and other U.S. free trade agreements grant foreign firms new rights and privileges
20 for operating within a state that exceed those rights and privileges granted to U.S. businesses under state and
21 federal law; and

22 WHEREAS, NAFTA already has generated "regulatory takings" cases against state and local land-use
23 decisions, state environmental and public health policies, adverse state court rulings, and state and local
24 contracts that would not have been possible in U.S. courts; and

25 WHEREAS, when states are bound to comply with government procurement provisions contained in trade
26 agreements, common economic development and environmental policies, such as buy-local laws, prevailing
27 wage laws, and policies to prevent offshoring of state jobs, as well as recycled content laws, could be subject to
28 challenge as violating the obligations in the trade agreements; and

29 WHEREAS, recent trade agreements curtail state regulatory authority by placing constraints on future
30 policy options; and

1 WHEREAS, the WTO general agreement on trade in services (GATS) could undermine state efforts to
2 expand health care coverage and rein in health care costs and places constraints on state and local land-use
3 planning and gambling policy; and

4 WHEREAS, new GATS negotiations could impose additional constraints on state regulation of energy,
5 higher education, professional licensing, and other areas; and

6 WHEREAS, despite the indisputable fact that international trade agreements have a far-reaching impact
7 on state and local laws, federal government trade negotiators have failed to respect states' rights to prior informed
8 consent before binding states to conform state law and authority to trade agreement requirements and have
9 refused even to inform state legislatures of key correspondence; and

10 WHEREAS, the current encroachment on state regulatory authority by international commercial and trade
11 agreements has occurred in no small part because U.S. trade policy is being formulated and implemented under
12 the Fast Track Trade Authority procedure; and

13 WHEREAS, Fast Track eliminates vital checks and balances established in the U.S. Constitution by
14 broadly delegating Congress's exclusive constitutional authority to set the terms of trade to the Executive Branch,
15 such that the Executive Branch is empowered to negotiate broad-ranging trade agreements and to sign them prior
16 to Congress voting on the agreements; and

17 WHEREAS, the ability of the Executive Branch to sign trade agreements prior to Congress's vote of
18 approval means that Executive Branch negotiators are able to ignore congressional negotiating objectives or
19 states' demands, and neither Congress nor the states have any means to enforce any decision regarding what
20 provisions must be contained in every U.S. trade agreement and what provisions may not be included in any U.S.
21 trade agreement; and

22 WHEREAS, federal trade negotiators have ignored and disrespected states' demands regarding whether
23 or not states agree to be bound to certain nontariff trade agreement provisions; and

24 WHEREAS, Fast Track also circumvents normal congressional review and amendment committee
25 procedures, limits debate to 20 hours, and forbids any floor amendments to the implementing legislation that is
26 presented to Congress to conform hundreds of U.S. laws to trade agreement obligations and to incorporate the
27 actual trade agreement itself into U.S. federal law that preempts state law; and

28 WHEREAS, Fast Track is not necessary for negotiating trade agreements as demonstrated by the
29 existence of scores of trade agreements, including major pacts, implemented in the past 30 years without use
30 of Fast Track; and

