

SENATE JOINT RESOLUTION NO. 17
INTRODUCED BY J. ELLIOTT

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

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

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

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

WHEREAS, NAFTA already has 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 that would not have been possible in U.S. courts; and

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

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

WHEREAS, the WTO general agreement on trade in services (GATS) could undermine state efforts to

expand health care coverage and rein in health care costs and places constraints on state and local land-use planning and gambling policy; and

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

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

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

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

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

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

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

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

WHEREAS, Fast Track, which was established in 1974 by President Richard Nixon when trade agreements were limited to traditional matters, such as tariffs and quotas, is now woefully outdated and

inappropriate given the diverse range of nontrade issues now included in "trade" agreements that broadly affect state and federal nontrade regulatory authority; and

WHEREAS, the current grant of Fast Track expires in June 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Congress be urged to create a replacement for the outdated Fast Track system so that U.S. trade agreements are developed and implemented using a more democratic, inclusive mechanism that enshrines the principles of federalism and state sovereignty.

(2) That this new process for developing and implementing trade agreements include an explicit mechanism for ensuring the prior informed consent of state legislatures before states are bound to the nontariff terms of any trade agreement that affects state regulatory authority so as to ensure that the United States trade representative respects the decisions made by states.

(3) That copies of this resolution be sent by the Secretary of State to President George W. Bush, Ambassador Susan Schwab, U.S. Trade Representative, the President of the U.S. Senate, the Speaker of the House of Representatives, and the Montana Congressional Delegation.

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