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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT--TRADE

Introduced By: Representatives Ajello, Handy, Sullivan, Fox, and Naughton

Date Introduced: March 01, 2007

Referred To: House Separation of Powers

It is enacted by the General Assembly as follows:

SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND GOVERNMENT" is hereby amended by adding thereto the following chapter:

CHAPTER 26.2

SAFEGUARDING FEDERALISM IN TRADE ACT

42-26.2-1. Short title. -- This chapter shall be known and may be cited as the "Rhode Island Safeguarding Federalism in Trade Act."

42-26.2-2. Legislative findings. -- It is hereby found and declared as follows:

(1) Today's international trade agreements have impacts which 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 operations within a state's territory, subject various state non-trade related laws to challenge as "barriers to trade" in the binding dispute resolution bodies that accompany the pacts, and place limits on the future policy options of state legislatures.

(2) The North American Free Trade Agreement (NAFTA), for example, grants foreign firms new rights and privileges for operating within a state that exceed those granted to U.S. businesses under state and federal law. NAFTA 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 that would not have been possible in U.S. courts.

(3) When states agree to be bound by government procurement provisions contained in

trade agreements such as World Trade Organization (WTO), NAFTA and various NAFTA-expansion agreements such as Central American Free Trade Agreement (CAFTA), common economic development and environmental policies, such as buy-local laws, policies to prevent off-shoring of state jobs, as well as recycled content laws could be subject to challenge as "barriers to trade" as they contradict the obligations in the trade agreements.

(4) Today's trade agreements also curtail state regulatory authority by placing constraints on future policy options. The WTO services agreement undermines state efforts to expand healthcare coverage and rein in healthcare costs, and places constraints on state and local land use planning. New negotiations in the services area will have additional implications for state regulation of energy, higher education, professional licensing, and more.

(5) Despite the indisputable fact that today's international trade agreements have far-reaching impacts on state and local law and policy, federal government trade negotiators have failed to provide state legislatures with necessary information and documents regarding provisions directly affecting state jurisdiction, have failed to consult with state legislatures when seeking the consent of states to be bound to trade agreement procurement obligations, and have sought neither governor nor legislature consent before binding states to comply with numerous other trade agreement provisions.

(6) The current encroachment on state regulatory authority by international trade agreements has been exacerbated because U.S. trade policy is being formulated and implemented under "Fast Track" Trade Authority procedures. Fast Track eliminates any meaningful role for states and limits congress's role to a yes or no vote with no amendments after negotiations are completed and a final agreement is signed. When Fast Track sunsets in 2007, it should be replaced with a more democratic model for negotiating trade agreements, one which ensures that the prior informed consent of states is secured before states are bound to the regulatory terms of any trade agreement.

(7) This law is enacted to protect the state's sovereignty; the state's ability to safeguard the health, safety and welfare of its citizens; and the Founders' system of federalism in the current era of globalization.

42-26.2-3. International trade agreements. -- (a) The individual or office in the state government that has been designated as the "state point of contact" for interactions with the office of the United States Trade Representative (USTR) shall transmit copies of all information received from and sent to the U.S. government to the speaker of the house and the president of the senate.

(b) Except as provided in subsection (c) of this section, [Rhode Island] officials,

including the governor, may not:

(1) Bind the state to the terms of an international trade agreement or otherwise commit the state to comply with the non-tariff terms of an international trade agreement; or

(2) Give consent to the federal government to bind the state to the terms of an international trade agreement or otherwise indicate that the state will comply with the non-tariff terms of an international trade agreement.

(c) The governor may bind the state or give consent to the federal government to bind the state to the government procurement, services or investment rules of an international trade agreement only if the legislature enacts legislation that explicitly authorizes the governor to do so.

42-26.2-4. Communications to the federal government. – (a) It is the sense of this legislature that the congress of the United States should replace the failed "Fast Track" system of trade negotiation with a new, more democratic and inclusive model, and pass binding legislation instructing the USTR to fully and formally consult individual state legislatures regarding procurement, services, investment or any other trade agreement rules that impact state laws or authority before negotiations begin and as they develop, and to seek informed consent from state legislatures prior to binding states to conform their laws to the regulatory terms of international commercial agreements.

(b) Not later than October 1, 2007, the attorney general shall notify the USTR of the enactment of this legislation.

42-26.2-5. Severability. -- If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 2. This act shall take effect on July 1, 2007.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO STATE AFFAIRS AND GOVERNMENT--TRADE

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This act would require that any state official, including the governor, obtain legislative approval in order to bind the state to any international trade agreements.

This act would take effect on July 1, 2007.

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