

1 **RESOLUTION REGARDING UNITED STATES**

2 **TRADE NEGOTIATIONS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

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9

10 **LONG TITLE**

11 **General Description:**

12 This joint resolution of the Legislature urges the United States Trade Representative to
13 maintain the regulatory authority of states and to consult with representatives of state
14 and local governments and industry regarding trade issues.

15 **Highlighted Provisions:**

16 This resolution:

- 17 ▶ urges the United States Trade Representative (USTR), negotiating with other
18 nations, to preserve the responsibility of states to maintain and develop their own
19 regulatory structures;
- 20 ▶ urges the USTR to take further steps to enhance the level of consultation during
21 negotiations on any trade commitments under the World Trade Organization's
22 General Agreement on Trade in Services (GATS);
- 23 ▶ commends the USTR staff for its willingness to learn about the potential impacts of
24 GATS rules on state and local regulation of the energy sector;
- 25 ▶ urges the USTR to disclose, as appropriate, public requests from the United States
26 for GATS commitments from other nations;
- 27 ▶ urges the USTR to give prior notice of the next United States offer or counter offer



28 for GATS commitments, so that state and local governments have time to discuss its potential
29 impact; and

30 ▶ urges the USTR to participate in public discussions of trade policy and energy.

31 **Special Clauses:**

32 None



34 *Be it resolved by the Legislature of the state of Utah:*

35 WHEREAS, although the United States Constitution places the regulation of trade with
36 foreign countries within the prerogative of the Federal Government, the primary responsibility
37 for protecting public health, welfare, and safety is left to the states;

38 WHEREAS, the United States Congress has consistently recognized, respected, and
39 preserved the states' power to protect the health, welfare, and environments of their states and
40 their citizens in a variety of statutes, such as the Clean Air Act, Clean Water Act, and Safe
41 Drinking Water Act;

42 WHEREAS, it is vital that the Federal Government not agree to proposals in the current
43 negotiations on trade in services that might in any way preempt or undercut this reserved state
44 authority;

45 WHEREAS, proposed changes should not, in the name of promoting increased
46 international trade, accord insufficient regard for existing regulatory, tax, and subsidy policies,
47 and the social, economic, and environmental values those policies promote;

48 WHEREAS, statutes and regulations that the states and local governments have validly
49 adopted, that are plainly constitutional and within their province to adopt, and that reflect
50 locally appropriate responses to the needs of their citizens, should not be overridden by federal
51 decisions solely in the interests of increased trade;

52 WHEREAS, although substantial efforts have been made to retain a proper scope for
53 state regulatory authority, states remain concerned about the extent to which those broad
54 reservations will be translated into actual commitments in agreements with one or more United
55 States' trading partners;

56 WHEREAS, it is crucial to maintain the principle that the United States may request,
57 but not require, states to alter their regulatory regimes in areas over which they hold
58 constitutional authority;

59 WHEREAS, if the United States makes broader offers later in the negotiations and the
60 legislation is "fast tracked," there will be little opportunity for states to have improper positions
61 reversed;

62 WHEREAS, it is critical that there be full and effective coordination and consultation
63 with the states before the United States Trade Representative (USTR) makes any binding
64 commitments;

65 WHEREAS, while the State Point of Contact system was meant to create a clearly
66 marked channel for two-way communications, the reality has not lived up to those intentions;

67 WHEREAS, a broader and deeper range of contacts with a variety of state entities,
68 particularly with those bearing regulator and legislative authority, must be improved and
69 maintained over the next several years;

70 WHEREAS, it is important for state authorities to engage with the USTR in the
71 communications process and to respond to timely requests in any equally timely manner;

72 WHEREAS, as negotiations with other nations continue, they should also be conducted
73 in ways that will avoid litigation in world courts;

74 WHEREAS, the United States is the signatory to the World Trade Organization's
75 General Agreement on Trade in Services (GATS);

76 WHEREAS, the United States Trade Representative has published proposals that would
77 apply trade rules under GATS to regulation of electricity by state and local governments;

78 WHEREAS, these proposals would cover regulation of services related to transmission,
79 distribution, and access of energy traders to the grid and, if implemented, might conflict with
80 state energy policy and alter the balance of domestic authority between states and the Federal
81 Energy Regulatory Commission (FERC);

82 WHEREAS, concerns include the impact of market access rules on the structure of
83 Regional Transmission Organizations (RTO), state jurisdiction over utilities that are part of an
84 RTO, RTO contracts for reliability of the electricity grid, and potential roles for the RTO to
85 structure or facilitate wholesale trade and brokering services;

86 WHEREAS, another question is the impact national treatment rules may have on tax
87 incentives to produce wind energy, and market access rules that may impact renewable
88 portfolio standards that mandate minimum quotas for acquisition from renewable sources;

89 WHEREAS, another question is the impact of domestic regulation on rate setting and

90 the public interest standard for exercising regulatory authority by state public utility
91 commissions; and

92 WHEREAS, in early 2004, the working group consulted three times with staff of the
93 USTR who described the meetings as timely, productive, and unprecedented:

94 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah
95 urges the United States Trade Representative to conduct trade negotiations in a manner that
96 will preserve the responsibility of states to develop their own regulator structures and that will
97 avoid litigation in world courts.

98 BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the USTR
99 to take further steps to enhance the level of consultation before negotiations commence on any
100 trade commitments under the World Trade Organization's General Agreement on Trade in
101 Services (GATS).

102 BE IT FURTHER RESOLVED that the Legislature of the state of Utah commends the
103 USTR staff for its willingness to consult with the working group and learn about the potential
104 impacts of GATS rules on state and local regulation of the energy sector.

105 BE IT FURTHER RESOLVED that the Legislature urges the USTR to disclose to the
106 public the United States' requests for GATS commitments from other nations.

107 BE IT FURTHER RESOLVED that the Legislature urges the USTR to give prior notice
108 of the next United States' offer or counter offer for GATS commitments so that state and local
109 governments have time to discuss its potential impact.

110 BE IT FURTHER RESOLVED that the Legislature urges the USTR to participate in
111 public discussions of trade policy and energy.

112 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United
113 States Senate Finance Committee, the House Ways and Means Committee, the Senate
114 Subcommittee on International Trade, the House Subcommittee on Trade, the Secretary of the
115 Department of Energy, the United States Trade Representative, the National Association of
116 Attorneys General, the National Conference of State Legislatures, the President of the United
117 States, and Utah's Congressional delegation.

Legislative Review Note
as of 1-31-05 3:42 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HJR015

Resolution Regarding United States Trade Negotiations

03-Feb-05

8:10 AM

State Impact

Mailing provisions of this resolution can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst