

1                                   **RESOLUTION REGARDING UNITED STATES**

2   **TRADE NEGOTIATIONS**

3   2005 GENERAL SESSION

4   STATE OF UTAH

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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

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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] are ←§ concerned about §→ [the extent to

53a ~~which those broad~~  
 54 ~~reservations will be translated into] retaining a proper scope for state regulatory authority in ←§~~

54a 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 **Ŝ→ [regulator] regulatory ←Ŝ** and legislative authority, must be  
68a 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 **Ŝ→ [of] that GATS rules on ←Ŝ** domestic  
89a regulation **Ŝ→ may have ←Ŝ** 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] a ←~~§~~ working group ~~§~~→ of state and local officials ←~~§~~  
92a 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] regulatory ←~~§~~  
96a 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**

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**Fiscal Note**  
**Bill Number HJR015**

**Resolution Regarding United States Trade Negotiations**

*03-Feb-05*

*8:10 AM*

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**State Impact**

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

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**