HOUSE CONCURRENT RESOLUTION

REQUESTING CONGRESS TO EXEMPT THE NONCONTIGUOUS DOMESTIC TRADES OF ALASKA, HAWAII, AND PUERTO RICO FROM THE UNITED STATES BUILD REQUIREMENT OF THE JONES ACT FOR LARGE OCEANOING SHIPS.

WHEREAS, interstate ocean shipping is a vital economic link between the seven noncontiguous domestic jurisdictions of the United States and the contiguous forty-eight mainland states of the union; and

WHEREAS, Section 27 of the Merchant Marine Act of 1920, P.L. 66-261 (46 U.S.C. 55102), commonly known as the Jones Act, is a federal cabotage law that restricts the carriage of cargo between coastwise points in the United States to vessels that are U.S.-built, U.S.-flag, U.S.-owned and U.S.-crewed; and

WHEREAS, the coastwise laws of the U.S. including the Jones Act, encompass four of the seven noncontiguous domestic jurisdictions, namely, the State of Alaska, the Territory of Guam, the State of Hawaii, and the Commonwealth of Puerto Rico, while the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States are fully exempt from the Jones Act as a result of the international treaties associated with their annexation to the U.S.; and

WHEREAS, there is a historical exemption from the U.S.-build requirement of the Jones Act for all commercial vessels engaged in the domestic Guam trade (46 U.S.C. 12111) known as the "Guam Exemption" and the other three noncontiguous jurisdictions encompassed by the coastwise laws, namely Alaska, Hawaii, and Puerto Rico, are now seeking a similar but more limited exemption for large oceangoing ships engaged in their domestic trades; and
WHEREAS, the Guam Exemption is of limited usefulness to the Territory because the natural westbound trade lane from the U.S. West Coast to Guam passes through Hawaii, making it difficult for the ocean common carriers to mount financially viable voyages without carrying cargo to both Hawaii and Guam, effectively shackling Guam's interstate trade to the U.S.-build requirement despite their exemption and causing Guam to support the limited extension of their exemption to the jurisdictions of Alaska, Hawaii, and Puerto Rico proposed herein; and

WHEREAS, the late U.S. Senator Daniel K Inouye inserted in the Omnibus Appropriations Act of 2003 a limited exemption from the U.S.-built requirement of the vessel documentation laws granting three large foreign-built U.S.-flag cruise ships a coastwise endorsement to operate in the Hawaii trade (P.L. 108-7, division B, title II, section 211), known as the "Hawaii Cruise Trade Exemption," recognizing that U.S. shipyards could not successfully construct large specialist cruise ships after the failure of an earlier program to do the same and which Senator Inouye sponsored, known as "Project America" and was contained in the Department of Defense Appropriations Act for Fiscal Year 1998 (P.L. 105-56 section 8109); and

WHEREAS, current Hawaii Governor Neil Abercrombie in his State of the State address on January 22, 2013, strongly implored the Hawaii State Legislature "to move forward with" him to "embark on a path to LNG (liquefied natural gas) [that] will result in long term avoided costs" and "allow us to purchase fuel from American sources" because "our State, our residents, our constituents, our businesses and communities need relief" while "to do nothing puts everyone in the State at risk"; and

WHEREAS, the former Governor of Puerto Rico Luis Fortuno established an LNG program, which includes gaining access to domestic sources for the Commonwealth, and his successor Governor Alejandro Garcia Padilla is following suit to reduce their energy costs, and Governor Sean Parnell of Alaska is developing the State's North Slope LNG resources for export primarily to Asia and shipment to Hawaii as well; and

WHEREAS, the ocean shipment of LNG requires specialist tanker ships known as "LNG Carriers", none of which have been built in the U.S. since the mid-1970's, and new construction in the U.S. would be cost prohibitive and potentially result in
failure as did Project America denying Hawaii and Puerto Rico
access to U.S. LNG sources and Alaska from supplying LNG to
other States unless the noncontiguous trades are exempted from
the U.S. built requirement; and

WHEREAS, the noncontiguous jurisdictions are completely
dependent on ocean shipping for interstate surface
transportation and their geography precludes access to
alternatives such as interstate railroad, highway, and pipeline
transportation that are readily available and provide
competitive carriage within the contiguous United States; and

WHEREAS, the Jones Act generally restricts competition in
the domestic ocean shipping industry, has led to monopoly-like
shipping markets for interstate ocean common carrier
transportation in the coastwise noncontiguous domestic trades,
and has left many shippers in the contract carriage (non-common
carrier) sectors of those trades without access to the kinds of
efficient ocean transportation for commodities – such as bulk
grains and livestock – which are readily available to the rest
of the world; and

WHEREAS, the U.S.-build requirement of the Jones Act in
particular creates an artificial scarcity of major capital
ships, erects substantial barriers to entry for domestic trades,
and severely restricts the contestability of the domestic ocean
transportation markets; and

WHEREAS, U.S. deep-draft ship construction is typically
three or more times the cost in Japan and South Korea and U.S.
ship production is very limited – building on average fewer than
three deep draft merchant ships annually in the U.S. since the
mid-1980's – putting the major U.S. shipbuilding yards at a
distinct disadvantage in terms of economies of scale adversely
affecting their ability to apply new technology, expertise, and
experience in the construction of large modern oceangoing ships
as compared to their international peers; and

WHEREAS, the high cost and low production of the U.S.
shipbuilding industry has resulted in an aging and inefficient
deep-sea Jones Act fleet that disproportionately imposes a
considerable economic cost on, and adversely affects, the
noncontiguous jurisdictions; and
WHEREAS, the average age of the Jones Act containerships employed in the coastwise noncontiguous domestic trades is twenty-eight years compared to the international average of twelve years for containerships, and international maritime insurance data clearly shows that ship accident rates correlate to the age of ships spiking after twenty years; and

WHEREAS, foreign and U.S.-built ships alike are designed and built to the universal standards established by the nearly 50 international conventions and agreements and numerous protocols and amendments administered by the United Nation's International Maritime Organization (IMO), which have been ratified by the United States and made part of U.S. law; and

WHEREAS, the United States Coast Guard (USCG) inspects all foreign-built ships seeking to become registered vessels of the United States to ensure that they comply with all U.S. ship construction and safety laws and regulations; and

WHEREAS, the U.S.-build requirement of the Jones Act for large oceangoing ships in noncontiguous domestic trades is not essential for the national defense of the United States because the remaining eight major domestic shipbuilding yards capable of constructing large oceangoing ships primarily build naval ships and produce so few merchant ships each year that this activity does not represent sufficient shipbuilding capacity to begin addressing the shipbuilding requirements of a major war time contingency and sustains a limited industrial base unable to support ongoing naval construction programs; and

WHEREAS, more than half of the large oceangoing Jones Act fleet is employed in the coastwise noncontiguous domestic trades, thus imposing more than fifty per cent of the additional cost burden of operating large oceangoing Jones Act ships on less than two per cent of the U.S. population; and

WHEREAS, all other modes of domestic transportation in the U.S. are permitted to use foreign manufactured equipment for commercial operation without restriction including aircraft, railroad cars and locomotives, trucks, automobiles, and mass transit vehicles; and

WHEREAS, in December 1994, the U.S. signed the Organization for Economic Cooperation and Development's final act of the
"Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry" (known as the OECD Shipbuilding Agreement) that would allow certain foreign built ships in the domestic Jones Act trades, but it has not been ratified by the U.S. Congress; and

WHEREAS, the U.S. domestic build provisions of the Jones Act do not comply with ongoing Multilateral Trade Negotiations that began under the General Agreement on Tariffs and Trade and continues with the World Trade Organization; and

WHEREAS, the U.S.-build requirement of the Jones Act is an absolute merchandise import restriction contrary to international trade agreements; and

WHEREAS, the residents of the coastwise noncontiguous jurisdictions subsidize an inefficient and commercially uncompetitive U.S. major ship building industry; and

WHEREAS, the exemption described herein is a limited and narrowly targeted reform of the Jones Act that would not change the existing U.S.-flag, U.S.-ownership and U.S.-crew provisions of the Jones Act as they currently apply to the coastwise noncontiguous domestic trades, would not allow foreign-seamen or foreign-shipowners in any domestic trade where they are not currently allowed, would not apply to the domestic tug and barge industry anywhere in the U.S. including in the Jones Act noncontiguous jurisdictions, would not affect any domestic shipping along the coasts of the contiguous U.S. mainland, in the intercoastal trades, on the inland waterways, or on the Great Lakes, and would not negatively impact any maritime industry jobs in the noncontiguous jurisdictions; and

WHEREAS, the passage of federal legislation exempting the noncontiguous domestic trades from the U.S.-build requirement for large self-propelled ships would revitalize U.S.-flag shipping by allowing new foreign-built ships into the noncontiguous domestic trade, removing barriers to entry and encouraging more effective competition in those trades, and generally making more U.S.-flag merchant ships available to support military operations; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-seventh Legislature of the State of Hawaii, Regular
Session of 2013, the Senate concurring, that this body respectfully requests the Congress of the United States to pass legislation granting an exemption from the U.S.-build requirement of the Jones Act in the noncontiguous domestic trades of Alaska, Hawaii, and Puerto Rico for large self-propelled oceangoing ships; and

BE IT FURTHER RESOLVED that this body respectfully requests the President of the United States and his administration to support the congressional legislation requested herein; and

BE IT FURTHER RESOLVED that the Hawaii congressional delegation is urged to request Congress to exempt Alaska, Hawaii, and Puerto Rico from the U.S. build requirement of the Jones Act for large self-propelled oceangoing ships; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Transportation, members of Alaska, Guam, Hawaii, and Puerto Rico's congressional delegations, and to the Governors of Alaska, Guam, Hawaii and Puerto Rico.

OFTTERED BY:

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