

MAR 14 2007

## SENATE CONCURRENT RESOLUTION

RESPECTFULLY REQUESTING THE UNITED STATES CONGRESS TO CREATE A REPLACEMENT FOR THE OUTDATED FAST TRACK TRADE AUTHORITY SYSTEM SO THAT UNITED STATES TRADE AGREEMENTS ARE DEVELOPED AND IMPLEMENTED USING A MORE DEMOCRATIC, INCLUSIVE MECHANISM THAT ENSHRINES THE PRINCIPLES OF FEDERALISM AND STATE SOVEREIGNTY.

1 WHEREAS, in general, democratic accountable governance in  
2 the states, and specifically, the authority granted to the  
3 legislative branch by the Constitution of the State of Hawaii,  
4 is being undermined by international commercial and trade rules  
5 enforced by the World Trade Organization and established by the  
6 North American Free Trade Agreement, and is further threatened  
7 by similar provisions in an array of pending trade agreements;  
8 and

9 WHEREAS, today's trade agreements have effects that extend  
10 significantly beyond the bounds of traditional trade matters  
11 such as tariffs and quotas; and  
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13 WHEREAS, the North American Free Trade Agreement and other  
14 United States free trade agreements grant foreign firms new  
15 rights and privileges regarding acquisition of land and  
16 facilities and operating within a state that exceed those  
17 granted to American businesses under state and federal laws; and  
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19 WHEREAS, the North American Free Trade Agreement already  
20 has generated "regulatory takings" cases against state and local  
21 land use decisions, state environmental and public health  
22 policies, adverse state court rulings, and state and local  
23 contracts that would not have been possible in United States  
24 courts; and  
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26 WHEREAS, when states are bound to comply with government  
27 procurement provisions contained in trade agreements, common  
28 economic development and environmental policies such as buy-



1 local laws, prevailing wage laws, policies to prevent offshoring  
2 of state jobs, as well as recycled content laws could be subject  
3 to challenge as violating the obligations in the trade  
4 agreements; and

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

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9 WHEREAS, the World Trade Organization General Agreement on  
10 Trade in Services could undermine state efforts to expand health  
11 care coverage and rein in health care costs and places  
12 constraints on state and local land use planning and gambling  
13 policy; and

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15 WHEREAS, new General Agreement on Trade in Services  
16 negotiations could impose additional constraints on state  
17 regulation of energy, higher education, professional licensing,  
18 and other issues; and

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

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28 WHEREAS, the current encroachment on state regulatory  
29 authority by international commercial and trade agreements has  
30 occurred due in no small part to the fact that United States  
31 trade policy is being formulated and implemented under the Fast  
32 Track Trade Authority procedure; and

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34 WHEREAS, Fast Track Trade Authority eliminates vital checks  
35 and balances established in the United States Constitution by  
36 broadly delegating Congress' exclusive Constitutional authority  
37 to set the terms of trade to the Executive Branch such that the  
38 Executive Branch is empowered to negotiate broad-ranging trade  
39 agreements and to sign them before Congress votes on the  
40 agreements; and

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42 WHEREAS, the ability of the Executive Branch to sign trade  
43 agreements prior to Congress' vote of approval means Executive  
44 Branch negotiators are able to ignore congressional negotiating



1 objectives or states' demands, and neither Congress nor the  
2 states have any means to enforce any decision regarding what  
3 provisions must be contained in every United States trade  
4 agreement and what provisions may not be included in any United  
5 States trade agreement; and

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7 WHEREAS, federal trade negotiators have ignored and  
8 disrespected states' demands regarding whether states agree to  
9 be bound to certain nontariff trade agreement provisions; and

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11 WHEREAS, Fast Track Trade Authority also circumvents normal  
12 Congressional review and amendment committee procedures, limits  
13 debate to twenty hours total, and forbids any floor amendments  
14 to the implementing legislation that is presented to Congress to  
15 conform hundreds of United States laws to trade agreement  
16 obligations and to incorporate the actual trade agreement itself  
17 into United States federal law, which preempts state law; and

18  
19 WHEREAS, Fast Track Trade Authority is not necessary for  
20 negotiating trade agreements, as demonstrated by the existence  
21 of scores of trade agreements, including major pacts such as the  
22 agreements administered by the World Trade Organization  
23 implemented in the past thirty years without use of Fast Track  
24 Trade Authority; and

25  
26 WHEREAS, Fast Track Trade Authority, which was established  
27 in 1974 by President Richard Nixon when trade agreements were  
28 limited to traditional matters such as tariffs and quotas, is  
29 now woefully outdated and inappropriate given the diverse range  
30 of nontrade issues now included in "trade" agreements that  
31 broadly affect federal and state nontrade regulatory authority;  
32 and

33  
34 WHEREAS, the current grant of Fast Track Trade Authority  
35 expires in July 2007; now, therefore,

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37 BE IT RESOLVED by the Senate of the Twenty-fourth  
38 Legislature of the State of Hawaii, Regular Session of 2007, the  
39 House of Representatives concurring, that that the United States  
40 Congress is respectfully requested to create a replacement for  
41 the outdated Fast Track Trade Authority system so that United  
42 States trade agreements are developed and implemented using a  
43 more democratic, inclusive mechanism that enshrines the  
44 principles of federalism and state sovereignty; and



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2 BE IT FURTHER RESOLVED that the Congress is requested to  
3 include in this new process for developing and implementing  
4 trade agreements an explicit mechanism for ensuring the prior  
5 informed consent of state legislatures before states are bound  
6 to the nontariff terms of any trade agreement that affect state  
7 regulatory authority so as to ensure that the United States  
8 Trade Representative respects the decisions made by states; and  
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10 BE IT FURTHER RESOLVED that certified copies of this  
11 Concurrent Resolution be transmitted to the President of the  
12 United States, Ambassador Susan Schwab, United States Trade  
13 Representative, the President of the United States Senate, the  
14 Speaker of the United States House of Representatives, and the  
15 members of Hawaii's congressional delegation.  
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