

FEB 23 2015

SENATE CONCURRENT RESOLUTION

A CONCURRENT RESOLUTION REQUESTING CONGRESS TO EXEMPT HAWAII
(JOINED BY PUERTO RICO, ALASKA AND GUAM) FROM THE U.S.
BUILD REQUIREMENT OF THE JONES ACT FOR LARGE OCEANGOING
SHIPS.

1 WHEREAS, interstate ocean shipping is a vital economic link
2 between the seven (7) noncontiguous domestic jurisdictions of
3 the United States and the contiguous forty-eight (48) mainland
4 states of the union; and
5

6 WHEREAS, Section 27 of the Merchant Marine Act of 1920
7 (P.L. 66-261) (46 U.S.C. § 55102), commonly known as the Jones
8 Act, is a federal cabotage law that restricts the surface
9 carriage of cargo by water between coastwise points in the
10 United States to vessels that are U.S.-built, U.S.-flag, U.S.-
11 owned and U.S.-crewed; and
12

13 WHEREAS, the coastwise laws of the U.S. including the Jones
14 Act embrace four (4) of the seven (7) noncontiguous domestic
15 jurisdictions, namely, the State of Alaska, the Territory of
16 Guam, the State of Hawaii and the Commonwealth of Puerto Rico,
17 while the Territory of American Samoa, the Commonwealth of the
18 Northern Mariana Islands (CNMI), and the Virgin Islands of the
19 United States (USVI) are fully exempt from the Jones Act as a
20 result of the international treaties associated with their
21 annexation to the U.S.; and
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23 WHEREAS, there is historical exemption from the U.S.-build
24 requirement of the Jones Act for all commercial vessels engaged
25 in the domestic Guam trade (46 U.S.C. § 12111) known as the "Guam
26 Exemption" and the other three (3) noncontiguous jurisdictions
27 embraced by the coastwise laws, namely Hawaii, joined by Alaska
28 and Puerto Rico, are seeking a more limited, similar, exemption;
29 and
30

31 WHEREAS, the Guam Exemption is of limited utility to Guam
32 because the natural westbound trade lane from the U.S. West
33 Coast to Guam passes through Hawaii making it difficult for



1 ocean common carriers to mount financially viable voyages
2 without carrying cargo to both Hawaii and Guam effectively
3 binding Guam's interstate trade to the U.S.-build requirement
4 despite its exemption and prompting Guam to support the limited
5 extension of their exemption to Hawaii; and
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7 WHEREAS, in recognition of inefficacy of the Guam
8 Exemption alone, the 32nd Legislature of Guam, First Regular
9 Session, adopted on April 15, 2014, by a twelve to three
10 bipartisan floor vote, Resolution 138-32 (COR) calling on their
11 Congresswoman Madeleine Bordallo to introduce federal
12 legislation to also exempt Alaska, Hawaii and Puerto Rico from
13 the U.S. build requirement of the Jones Act; and
14

15 WHEREAS, the late U.S. Senator Daniel K. Inouye inserted a
16 limited exemption from the U.S.-built requirement of the vessel
17 documentation laws granting three large foreign-built U.S.-flag
18 cruise ships a coastwise endorsement to operate in the Hawaii
19 trade into the Omnibus Appropriations Act of 2003, known as the
20 "Hawaii Cruise Trade Exemption" (P.L. 108-7, Div. B, title II §
21 211) recognizing that U.S. shipyards could not successfully
22 construct large specialist cruise ships after the failure of an
23 earlier program to do just that and which Senator Inouye
24 sponsored, known as "Project America" contained in the
25 Department of Defense Appropriations Act for Fiscal year 1998
26 (P.L. 105-56 § 8109); and
27

28 WHEREAS, the noncontiguous jurisdictions have an interest
29 the ocean transportation of liquefied natural gas (LNG) that
30 requires specialist tanker ships known as "LNG Carriers" none of
31 which have been built in the U.S. since the 1970's and new
32 construction in the U.S. would be cost prohibitive and
33 potentially result in failure as did Project America denying
34 Hawaii and Puerto Rico access to U.S. LNG sources and blocking
35 Alaska LNG from domestic markets unless the noncontiguous trades
36 are exempted from the U.S.-built requirement; and
37

38 WHEREAS, Alaska is committed to developing its natural gas
39 reserves on the North Slope including the Point Thompson
40 conventional field with estimated reserves of 236 trillion cubic
41 feet (TCF) and building a gas pipeline to and a liquefaction
42 plant at the tidewater to export LNG to Asia, the U.S. West
43 Coast and Hawaii and needs a U.S. build exemption to fulfill



1 Governor Bill Walker's goal to accelerate efforts to bring
2 Alaska's gas to market including domestic ones; and

3
4 WHEREAS, Puerto Rico's Ecoeléctrica operates an LNG import
5 terminal at Peñuelas with a 160,000 cubic meter storage capacity
6 and Excelerate Energy L.P. is developing the Aguirre Offshore
7 GasPort near Guayama to supply the Puerto Rico Electrical Power
8 Authority (PREPA)'s Aguirre Power Plant both importing LNG from
9 Trinidad, but Governor Alejandro Garcia Padilla would prefer to
10 substitute lower cost U.S. LNG and needs a ship build exemption
11 to realize that goal; and

12
13 WHEREAS, The Federal Reserve Bank of New York issued on
14 June 29, 2012, Report on the Competitiveness of Puerto Rico's
15 Economy, in which they found "the Jones Act does indeed have a
16 negative effect on the Puerto Rican economy," and recommended,
17 "A temporary exemption from the Jones Act—for a period of
18 perhaps five yearsto determine if this exemption should
19 be made permanent;" and

20
21 WHEREAS, the World Economic Forum (WEF) in collaboration
22 with Bain & Company and the World Bank, issued on January 23,
23 2013, Enabling Trade Valuing Growth Opportunities, found "The
24 most restrictive example (of cabotage) is the United States
25 Jones Merchant Marine Act of 1920" and "such barriers actually
26 damage local economies and saddle businesses and consumers with
27 significant costs;" and

28
29 WHEREAS, the U.S. Government Accountability Office (GAO)
30 issued on March 14, 2013, Characteristics of the Island's
31 Maritime Trade and Potential Effects of Modifying the Jones Act
32 (GAO-13-260), found that for the contract carriage of liquid
33 bulk (such as oil and other fuels) and dry bulk (such as
34 fertilizer, animal feed and grains) cargoes "a limited number of
35 qualified Jones Act vessels may be available at any given time
36 to meet shippers' needs;" and

37
38 WHEREAS, Representative Pedro Rafael Pierluisi Urrutia,
39 Resident Commissioner of Puerto Rico to the U.S., introduced on
40 July 25, 2013, the "Puerto Rico Interstate Commerce Improvement
41 Act of 2013" (H.R. 2838) to exempt self-propelled ships carrying
42 bulk cargoes in the Puerto Rico trade from the U.S. build
43 requirement of the Jones Act in conformity with the
44 aforementioned GAO Report, and found acting alone to effect



1 Jones Act reform without support from other jurisdictions he
2 could not move his measure forward; and

3
4 WHEREAS, the Governor's Hawaii State Refinery Task Force's
5 Final Report adopted April 9, 2014 recommended inter alia the
6 State seek a Jones Act exemption allowing foreign flag tankers
7 in the Hawaii trade to mitigate the effects of a permanent
8 closure of the State's two small petroleum oil refineries; and

9
10 WHEREAS, the average age of containerships employed in the
11 noncontiguous common carrier trades is thirty years compared to
12 the international average of twelve years, resulting in very
13 high operating costs incurred by older ships and international
14 maritime insurance data show that accident rates increase with
15 increasing ship-age spiking after twenty years; and

16
17 WHEREAS, Horizon Lines Inc., once the largest common
18 carrier in the noncontiguous trades operating a fleet of 15
19 Jones Act container ships now averaging 37 years old, is
20 scheduled to become defunct in 2015 by terminating its Puerto
21 Rico service, selling its Hawaii service to Pasha Hawaii
22 Transport Line Inc. and its Alaska service to Matson Inc., after
23 earlier withdrawing from Guam service in November 2011, because
24 Horizon could not afford to replace its ageing ships in U.S.
25 shipyards and their exit will cause an erosion of competition at
26 the margins through further industry consolidation and make the
27 trades less subject to competition.; and

28
29 WHEREAS, the U.S.-build requirement of the Jones Act
30 creates an artificial scarcity of major capital ships, erects
31 substantial barriers to entry domestic trades, and severely
32 restricts the contestability of the domestic ocean
33 transportation markets; and

34
35 WHEREAS, major U.S. ship construction is typically four to
36 five times the cost than ships built in Japan or South Korea and
37 U.S. ship production is very limited - building an average of
38 less than three deep draft merchant ships annually in the U.S.
39 since the mid-1980's - putting the major U.S. shipbuilding yards
40 at a distinct disadvantage in terms of economies of scale
41 adversely affecting their ability to apply new technology,
42 expertise and experience in the construction of large modern
43 oceangoing ships as compared to their international peers; and



1
2 WHEREAS, the high cost and low production of the U.S.
3 shipbuilding industry has resulted in an ageing and inefficient
4 deep-sea Jones Act fleet that disproportionately and adversely
5 affects Hawaii and the other noncontiguous jurisdictions; and
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7 WHEREAS, foreign and U.S.-built ships alike are designed
8 and built to the universal standards established by the nearly
9 50 international conventions and agreements, and numerous
10 protocols and amendments administered by the United Nation
11 (UN)'s International Maritime Organization (IMO), which have
12 been ratified by the United States and made part of U.S. law;
13 and
14

15 WHEREAS, the United States Coast Guard (USCG) inspects all
16 foreign-built ships seeking to become registered vessels of the
17 United States to ensure that they comply with all U.S. ship
18 construction, safety laws and regulations; and
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20 WHEREAS the U.S.-build requirement of the Jones Act for
21 large oceangoing ships in noncontiguous domestic trades is not
22 essential for the national defense of the United States because
23 the remaining seven domestic shipbuilding yards capable of
24 constructing large oceangoing ships mainly build naval ships and
25 produce so few merchant ships each year that this activity does
26 not represent sufficient shipbuilding capacity to address the
27 mobilization needs of a major war time contingency and sustains
28 only a limited industrial base unable to support ongoing naval
29 construction programs due to excessively high costs; and
30

31 WHEREAS, granting an exemption to the U.S.-build
32 requirement allows aging ships to be more quickly and
33 economically replaced by less expensive, safer and more fuel
34 efficient ships in accordance with efforts to conserve resources
35 and protect the environment; and
36

37 WHEREAS, more than half of the large oceangoing Jones Act
38 fleet is employed in the coastwise noncontiguous domestic
39 trades, thus imposing more than 50% of the additional cost
40 burden of operating Jones Act ships on less than 2% of the U.S.
41 population; and
42

43 WHEREAS, all other modes of domestic transportation in the
44 U.S. are permitted to use foreign manufactured equipment for



1 commercial operation without restriction including aircraft,
2 railroad cars and locomotives, trucks, automobiles and mass
3 transit vehicles; and
4

5 WHEREAS, in December 1994, the United States signed the
6 Organization for Economic Cooperation and Development (OECD)'s
7 final act of the "Agreement Respecting Normal Competitive
8 Conditions in the Commercial Shipbuilding and Repair Industry"
9 (known as the OECD Shipbuilding Agreement) that would allow
10 certain foreign built ships in the domestic Jones Act trades,
11 but it has not been ratified by the U.S. Congress; and
12

13 WHEREAS, the U.S. domestic build provisions of the Jones
14 Act do not comply with ongoing Multilateral Trade Negotiations
15 (MTN) that began under the General Agreement on Tariffs and
16 Trade (GATT) and continues with the World Trade Organization
17 (WTO); and
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19 WHEREAS, U.S.-build requirement of the Jones Act is an
20 absolute merchandise import restriction contrary to
21 international trade agreements; and
22

23 WHEREAS, the residents of Hawaii and the other coastwise
24 noncontiguous jurisdictions subsidize an inefficient and
25 commercially uncompetitive U.S. major ship building industry;
26 and
27

28 WHEREAS, the exemption described herein is a limited and
29 narrowly targeted reform of the Jones Act that would not change
30 the existing U.S.-flag, U.S.-ownership and U.S.-crew provisions
31 of the Jones Act as they currently apply to the coastwise
32 noncontiguous domestic trades, would not allow foreign seamen or
33 foreign ship-owners in any domestic trade where they are not
34 currently allowed, would not apply to the domestic tug and barge
35 industry anywhere in the U.S. including in the Jones Act
36 noncontiguous jurisdictions, would not affect any domestic
37 shipping along the coasts of the contiguous U.S. mainland, in
38 the intercoastal trades, on the inland waterways or on the Great
39 lakes, and would not negatively impact any maritime industry
40 jobs in the noncontiguous jurisdictions; and
41

42 WHEREAS, the passage of federal legislation exempting the
43 noncontiguous domestic trades from the U.S.-build requirement
44 for large self-propelled ships would revitalize U.S.-flag



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1 shipping by allowing foreign-built ships into, removing barriers
2 to entry and encouraging more effective competition in those
3 trades, and generally making more U.S.-flag merchant ships
4 available to support military sealift operations; and
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6 BE IT RESOLVED by the Senate of the Twenty-eighth
7 Legislature of the State of Hawaii, Regular Session of 2015, the
8 House of Representatives concurring, that we do hereby
9 respectfully request the Congress of the United States to pass
10 legislation granting an exemption from the U.S.-build
11 requirement of the Jones Act in the noncontiguous domestic trade
12 of Hawaii for large self-propelled oceangoing ships (Alaska and
13 Puerto Rico support and seek the same exemption); and
14

15 BE IT FURTHER RESOLVED that the Hawaii Legislature
16 respectfully requests the President of the United States and his
17 administration to support the congressional legislation
18 requested herein; and
19

20 BE IT FURTHER RESOLVED that Hawaii's congressional
21 delegation is urged to work with their colleagues from Alaska,
22 Guam and Puerto Rico to introduce in Congress federal
23 legislation that would exempt the Hawaii and other noncontiguous
24 trades from the U.S.-build requirement of the Jones Act for
25 large oceangoing ships; and
26

27 BE IT FURTHER RESOLVED that the Hawaii congressional
28 delegation is urged to request Congress to exempt Hawaii, along
29 with Alaska and Puerto Rico, from the U.S.-build requirement of
30 the Jones Act for large self-propelled oceangoing ships; and
31

32 BE IT FURTHER RESOLVED that Hawaii Governor David Ige is
33 urged to work with his fellow governors from Alaska, Guam and
34 Puerto Rico to support federal legislation that would exempt the
35 Hawaii and other noncontiguous trades from the U.S. build
36 requirement of the Jones Act for large oceangoing ships; and
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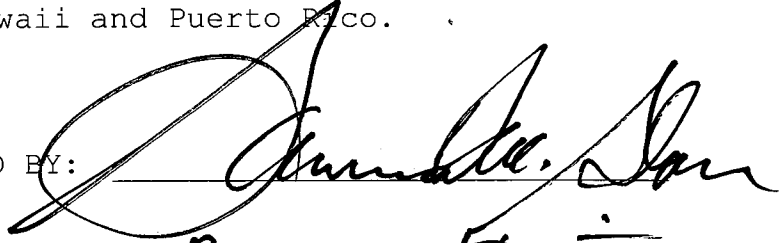
38 BE IT FURTHER RESOLVED that certified copies of this
39 Concurrent Resolution be transmitted to the President of the
40 United States, the President of the United States Senate, the
41 Speaker of the United States House of Representatives, the
42 Secretary of the United States Department of Transportation,
43 members of Hawaii's congressional delegation, members of Alaska,



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1 Guam, and Puerto Rico's congressional delegations, and the
 2 Governors of Alaska, Guam, Hawaii and Puerto Rico.
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