

FEB 23 2015

SENATE 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

22
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
34 ocean common carriers to mount financially viable voyages
35 without carrying cargo to both Hawaii and Guam effectively
36 binding Guam's interstate trade to the U.S.-build requirement



1 despite its exemption and prompting Guam to support the limited
2 extension of their exemption to Hawaii; and

3
4 WHEREAS, in recognition of inefficacy of the Guam
5 Exemption alone, the 32nd Legislature of Guam, First Regular
6 Session, adopted on April 15, 2014, by a twelve to three
7 bipartisan floor vote, Resolution 138-32 (COR) calling on their
8 Congresswoman Madeleine Bordallo to introduce federal
9 legislation to also exempt Alaska, Hawaii and Puerto Rico from
10 the U.S. build requirement of the Jones Act; and

11
12 WHEREAS, the late U.S. Senator Daniel K. Inouye inserted a
13 limited exemption from the U.S.-built requirement of the vessel
14 documentation laws granting three large foreign-built U.S.-flag
15 cruise ships a coastwise endorsement to operate in the Hawaii
16 trade into the Omnibus Appropriations Act of 2003, known as the
17 "Hawaii Cruise Trade Exemption" (P.L. 108-7, Div. B, title II §
18 211) recognizing that U.S. shipyards could not successfully
19 construct large specialist cruise ships after the failure of an
20 earlier program to do just that and which Senator Inouye
21 sponsored, known as "Project America" contained in the
22 Department of Defense Appropriations Act for Fiscal year 1998
23 (P.L. 105-56 § 8109); and

24
25 WHEREAS, the noncontiguous jurisdictions have an interest
26 the ocean transportation of liquefied natural gas (LNG) that
27 requires specialist tanker ships known as "LNG Carriers" none of
28 which have been built in the U.S. since the 1970's and new
29 construction in the U.S. would be cost prohibitive and
30 potentially result in failure as did Project America denying
31 Hawaii and Puerto Rico access to U.S. LNG sources and blocking
32 Alaska LNG from domestic markets unless the noncontiguous trades
33 are exempted from the U.S.-built requirement; and

34
35 WHEREAS, Alaska is committed to developing its natural gas
36 reserves on the North Slope including the Point Thompson
37 conventional field with estimated reserves of 236 trillion cubic
38 feet (TCF) and building a gas pipeline to and a liquefaction
39 plant at the tidewater to export LNG to Asia, the U.S. West
40 Coast and Hawaii and needs a U.S. build exemption to fulfill
41 Governor Bill Walker's goal to accelerate efforts to bring
42 Alaska's gas to market including domestic ones; and

43



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

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

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

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

35 WHEREAS, Representative Pedro Rafael Pierluisi Urrutia,
36 Resident Commissioner of Puerto Rico to the U.S., introduced on
37 July 25, 2013, the "Puerto Rico Interstate Commerce Improvement
38 Act of 2013" (H.R. 2838) to exempt self-propelled ships carrying
39 bulk cargoes in the Puerto Rico trade from the U.S. build
40 requirement of the Jones Act in conformity with the
41 aforementioned GAO Report, and found acting alone to effect
42 Jones Act reform without support from other jurisdictions he
43 could not move his measure forward; and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

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

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

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

WHEREAS, major U.S. ship construction is typically four to five times the cost than ships built in Japan or South Korea and U.S. ship production is very limited - building an average of less 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



S.R. NO. 10

1 WHEREAS, the high cost and low production of the U.S.
2 shipbuilding industry has resulted in an ageing and inefficient
3 deep-sea Jones Act fleet that disproportionately and adversely
4 affects Hawaii and the other noncontiguous jurisdictions; and
5

6 WHEREAS, foreign and U.S.-built ships alike are designed
7 and built to the universal standards established by the nearly
8 50 international conventions and agreements, and numerous
9 protocols and amendments administered by the United Nation
10 (UN)'s International Maritime Organization (IMO), which have
11 been ratified by the United States and made part of U.S. law;
12 and
13

14 WHEREAS, the United States Coast Guard (USCG) inspects all
15 foreign-built ships seeking to become registered vessels of the
16 United States to ensure that they comply with all U.S. ship
17 construction, safety laws and regulations; and
18

19 WHEREAS the U.S.-build requirement of the Jones Act for
20 large oceangoing ships in noncontiguous domestic trades is not
21 essential for the national defense of the United States because
22 the remaining seven domestic shipbuilding yards capable of
23 constructing large oceangoing ships mainly build naval ships and
24 produce so few merchant ships each year that this activity does
25 not represent sufficient shipbuilding capacity to address the
26 mobilization needs of a major war time contingency and sustains
27 only a limited industrial base unable to support ongoing naval
28 construction programs due to excessively high costs; and
29

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

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

42 WHEREAS, all other modes of domestic transportation in the
43 U.S. are permitted to use foreign manufactured equipment for
44 commercial operation without restriction including aircraft,



1 railroad cars and locomotives, trucks, automobiles and mass
2 transit vehicles; and

3

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

11

12 WHEREAS, the U.S. domestic build provisions of the Jones
13 Act do not comply with ongoing Multilateral Trade Negotiations
14 (MTN) that began under the General Agreement on Tariffs and
15 Trade (GATT) and continues with the World Trade Organization
16 (WTO); and

17

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

21

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

26

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

40

41 WHEREAS, the passage of federal legislation exempting the
42 noncontiguous domestic trades from the U.S.-build requirement
43 for large self-propelled ships would revitalize U.S.-flag
44 shipping by allowing foreign-built ships into, removing barriers



1 to entry and encouraging more effective competition in those
2 trades, and generally making more U.S.-flag merchant ships
3 available to support military sealift operations; and
4

5 BE IT RESOLVED by the Senate of the Twenty-eighth
6 Legislature of the State of Hawaii, Regular Session of 2015,
7 that this body respectfully requests the Congress of the United
8 States to pass legislation granting an exemption from the U.S.-
9 build requirement of the Jones Act in the noncontiguous domestic
10 trade of Hawaii for large self-propelled oceangoing ships
11 (Alaska and Puerto Rico support and seek the same exemption);
12 and
13

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

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

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

31 BE IT FURTHER RESOLVED that Hawaii Governor David Ige is
32 urged to work with his fellow governors from Alaska, Guam and
33 Puerto Rico to support federal legislation that would exempt the
34 Hawaii and other noncontiguous trades from the U.S. build
35 requirement of the Jones Act for large oceangoing ships; and
36

37 BE IT FURTHER RESOLVED that certified copies of this
38 Resolution be transmitted to the President of the United States,
39 the President of the United States Senate, the Speaker of the
40 United States House of Representatives, the Secretary of the
41 United States Department of Transportation, members of Hawaii's
42 congressional delegation, members of Alaska, Guam, and Puerto
43 Rico's congressional delegations, and the Governors of Alaska,
44 Guam, Hawaii and Puerto Rico.



S.R. NO. 10

1
2
3

OFFERED BY:

Amelia J. Stone

Breene Smith

Clarence K. Smith

Lorraine G. Stone

D

Ed Smith

Paul E. Smith

~~John~~ *S.C. Smith*

