

MAR 11 2016

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 noncontiguous domestic jurisdictions of the
3 United States and the contiguous forty-eight mainland states of
4 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 of the seven 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 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 benefit to Guam
32 because the natural westbound trade lane from the U.S. West



1 Coast to Guam passes through Hawaii making it difficult for
2 ocean common carriers to mount financially viable voyages
3 without carrying cargo to both Hawaii and Guam. Thus, the Guam
4 Exemption is rendered ineffective prompting Guam to support the
5 limited extension of their exemption to Hawaii; and
6

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

28 WHEREAS, the noncontiguous jurisdictions have an interest
29 in ocean transportation of liquefied natural gas (LNG) that
30 requires specialist tanker ships known as "LNG Carriers". No
31 "LNG Carriers" have been built in the U.S. since the 1970's.
32 New 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



1 Coast and Hawaii need a U.S. build exemption to fulfill Governor
2 Bill Walker's goal to accelerate efforts to bring Alaska's gas
3 to market including domestic ones; and
4

5 WHEREAS, Puerto Rico's Ecoeléctrica operates an LNG import
6 terminal at Peñuelas with a 160,000 cubic meter storage capacity
7 and Excelerate Energy L.P. is developing the Aguirre Offshore
8 GasPort near Guayama to supply the Puerto Rico Electrical Power
9 Authority (PREPA)'s Aguirre Power Plant both importing LNG from
10 Trinidad, Governor Alejandro Garcia Padilla would prefer to
11 substitute lower cost U.S. LNG and needs a ship build exemption
12 to realize that goal; and
13

14 WHEREAS, On June 29, 2012, The Federal Reserve Bank of New
15 York issued a Report on the Competitiveness of Puerto Rico's
16 Economy, in which they found "the Jones Act does indeed have a
17 negative effect on the Puerto Rican economy," and recommended,
18 "A temporary exemption from the Jones Act—for a period of
19 perhaps five years . . . to determine if this exemption should
20 be made permanent;" and
21

22 WHEREAS, On January 23, 2013, the World Economic Forum
23 (WEF) in collaboration with Bain & Company and the World Bank,
24 issued a report on Enabling Trade Valuing Growth Opportunities,
25 finding "The most restrictive example (of cabotage) is the
26 United States Jones Merchant Marine Act of 1920" and "such
27 barriers actually damage local economies and saddle businesses
28 and consumers with significant costs;" and
29

30 WHEREAS, On March 14, 2013, the U.S. Government
31 Accountability Office (GAO) published Characteristics of the
32 Island's Maritime Trade and Potential Effects of Modifying the
33 Jones Act (GAO-13-260), finding that for the contract carriage
34 of liquid bulk (such as oil and other fuels) and dry bulk (such
35 as fertilizer, animal feed and grains) cargoes "a limited number
36 of qualified Jones Act vessels may be available at any given
37 time to meet shippers' needs;" and
38

39 WHEREAS, Representative Pedro Rafael Pierluisi Urrutia,
40 Resident Commissioner of Puerto Rico to the U.S., introduced on
41 July 25, 2013, the "Puerto Rico Interstate Commerce Improvement
42 Act of 2013" (H.R. 2838) to exempt self-propelled ships carrying



1 bulk cargoes in the Puerto Rico trade from the U.S. build
2 requirement of the Jones Act in conformity with the
3 aforementioned GAO Report, and found he could not move his
4 measure forward to effect Jones Act reform without support from
5 other jurisdictions; and
6

7 WHEREAS, the Governor's Hawaii State Refinery Task Force's
8 Final Report adopted April 9, 2014, recommended, inter alia, the
9 State seek a Jones Act exemption allowing foreign flag tankers
10 in the Hawaii trade to mitigate the effects of a permanent
11 closure of the State's two small petroleum oil refineries; and
12

13 WHEREAS, the average age of containerships employed in the
14 noncontiguous common carrier trades is thirty years compared to
15 the international average of twelve years, resulting in very
16 high operating costs incurred by older ships. International
17 maritime insurance data show that accident rates increase with
18 increasing ship-age spiking after twenty years; and
19

20 WHEREAS, the U.S.-build requirement of the Jones Act
21 creates an artificial scarcity of major capital ships, erects
22 substantial barriers to entry domestic trades, and severely
23 restricts the contestability of the domestic ocean
24 transportation markets; and
25

26 WHEREAS, major U.S. ship construction is typically four to
27 five times the cost of ships built in Japan or South Korea and
28 U.S. ship production is very limited - building an average of
29 less than three deep draft merchant ships annually in the U.S.
30 since the mid-1980's - the major U.S. shipbuilding yards are at
31 a distinct disadvantage adversely affecting their ability to
32 apply new technology, expertise and experience in the
33 construction of large modern oceangoing ships as compared to
34 their international peers; and
35

36 WHEREAS, the high cost and low production of the U.S.
37 shipbuilding industry has resulted in an ageing and inefficient
38 deep-sea Jones Act fleet that disproportionately and adversely
39 affects Hawaii and the other noncontiguous jurisdictions; and
40

41 WHEREAS, foreign and U.S.-built ships alike are designed
42 and built to the universal standards established by the nearly



1 50 international conventions and agreements, and numerous
2 protocols and amendments administered by the United Nation
3 (UN)'s International Maritime Organization (IMO), which have
4 been ratified by the United States and made part of U.S. law;
5 and
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7 WHEREAS, the United States Coast Guard (USCG) inspects all
8 foreign-built ships seeking to become registered vessels of the
9 United States to ensure that they comply with all U.S. ship
10 construction, safety laws and regulations; and
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12 WHEREAS the U.S.-build requirement of the Jones Act for
13 large oceangoing ships in noncontiguous domestic trades is not
14 essential for the national defense of the United States. The
15 remaining seven domestic shipbuilding yards capable of
16 constructing large oceangoing ships mainly build naval ships and
17 produce so few merchant ships each year that this activity does
18 not represent sufficient shipbuilding capacity to address the
19 mobilization needs of a major war time contingency and sustains
20 only a limited industrial base unable to support ongoing naval
21 construction programs due to excessively high costs; and
22

23 WHEREAS, granting an exemption to the U.S.-build
24 requirement allows aging ships to be more quickly and
25 economically replaced by less expensive, safer and more fuel
26 efficient ships in accordance with efforts to conserve resources
27 and protect the environment; and
28

29 WHEREAS, more than half of the large oceangoing Jones Act
30 fleet is employed in the coastwise noncontiguous domestic
31 trades, thus imposing more than 50% of the additional cost
32 burden of operating Jones Act ships on less than 2% of the U.S.
33 population; and
34

35 WHEREAS, all other modes of domestic transportation in the
36 U.S. are permitted to use foreign manufactured equipment for
37 commercial operation without restriction including aircraft,
38 railroad cars and locomotives, trucks, automobiles and mass
39 transit vehicles; and
40

41 WHEREAS, in December 1994, the United States signed the
42 Organization for Economic Cooperation and Development (OECD)'s



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1 final act of the "Agreement Respecting Normal Competitive
2 Conditions in the Commercial Shipbuilding and Repair Industry"
3 (known as the OECD Shipbuilding Agreement) that would allow
4 certain foreign built ships in the domestic Jones Act trades,
5 but it has not been ratified by the U.S. Congress; and
6

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

13 WHEREAS, U.S.-build requirement of the Jones Act is an
14 absolute merchandise import restriction contrary to
15 international trade agreements; and
16

17 WHEREAS, the residents of Hawaii and the other coastwise
18 noncontiguous jurisdictions subsidize an inefficient and
19 commercially uncompetitive U.S. major ship building industry;
20 and
21

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

36 WHEREAS, the passage of federal legislation exempting the
37 noncontiguous domestic trades from the U.S.-build requirement
38 for large self-propelled ships would revitalize U.S.-flag
39 shipping by allowing foreign-built ships into non-contiguous
40 jurisdictions, removing barriers to entry and encouraging more
41 effective competition in those trades, and making more U.S.-flag



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1 merchant ships available to support military sealift operations;
2 and
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4 BE IT RESOLVED by the Senate of the Twenty-eighth
5 Legislature of the State of Hawaii, Regular Session of 2016, the
6 House of Representatives concurring, that we do hereby
7 respectfully request the Congress of the United States to pass
8 legislation granting an exemption from the U.S.-build
9 requirement of the Jones Act in the noncontiguous domestic trade
10 of Hawaii for large self-propelled oceangoing ships (Alaska and
11 Puerto Rico support and seek the same exemption); and
12

13 BE IT FURTHER RESOLVED that the Hawaii Legislature
14 respectfully requests the President of the United States and his
15 administration to support the congressional legislation
16 requested herein; and
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18 BE IT FURTHER RESOLVED that Hawaii's congressional
19 delegation is urged to work with their colleagues from Alaska,
20 Guam and Puerto Rico to introduce in Congress federal
21 legislation that would exempt the Hawaii and other noncontiguous
22 trades from the U.S.-build requirement of the Jones Act for
23 large oceangoing ships; and
24

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

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