

MAR 11 2016

S.R. NO. 79

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 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.-flagged,
11 U.S.-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 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



1 without carrying cargo to both Hawaii and Guam effectively
2 binding Guam's interstate trade to the U.S.-build requirement
3 despite its exemption and prompting Guam to support the limited
4 extension of their exemption to Hawaii; and
5

6 WHEREAS, in recognition of inefficacy of the Guam
7 Exemption alone, the 32nd Legislature of Guam, First Regular
8 Session, adopted on April 15, 2014, by a twelve to three
9 bipartisan floor vote, Resolution 138-32 (COR) calling on their
10 Congresswoman Madeleine Bordallo to introduce federal
11 legislation to also exempt Alaska, Hawaii and Puerto Rico from
12 the U.S. build requirement of the Jones Act; and
13

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

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

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



1 requirement of the Jones Act in conformity with the
2 aforementioned GAO Report, and found acting alone to effect
3 Jones Act reform without support from other jurisdictions he
4 could not move his measure forward; and

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

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

18
19 WHEREAS, the U.S.-build requirement of the Jones Act
20 creates an artificial scarcity of major capital ships, erects
21 substantial barriers to entry domestic trades, and severely
22 restricts the contestability of the domestic ocean
23 transportation markets; and

24
25 WHEREAS, major U.S. ship construction is typically four to
26 five times the cost than ships built in Japan or South Korea and
27 U.S. ship production is very limited - building an average of
28 less than three deep draft merchant ships annually in the U.S.
29 since the mid-1980's - putting the major U.S. shipbuilding yards
30 at a distinct disadvantage in terms of economies of scale
31 adversely affecting their ability to apply new technology,
32 expertise and experience in the construction of large modern
33 oceangoing ships as compared to their international peers; and

34
35 WHEREAS, the high cost and low production of the U.S.
36 shipbuilding industry has resulted in an ageing and inefficient
37 deep-sea Jones Act fleet that disproportionately and adversely
38 affects Hawaii and the other noncontiguous jurisdictions; and

39
40 WHEREAS, foreign and U.S.-built ships alike are designed
41 and built to the universal standards established by the nearly
42 50 international conventions and agreements, and numerous



1 protocols and amendments administered by the United Nation
2 (UN)'s International Maritime Organization (IMO), which have
3 been ratified by the United States and made part of U.S. law;
4 and
5

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

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

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

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

40 WHEREAS, in December 1994, the United States signed the
41 Organization for Economic Cooperation and Development (OECD)'s
42 final act of the "Agreement Respecting Normal Competitive



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

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

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

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

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

35 WHEREAS, the passage of federal legislation exempting the
36 noncontiguous domestic trades from the U.S.-build requirement
37 for large self-propelled ships would revitalize U.S.-flag
38 shipping by allowing foreign-built ships into, removing barriers
39 to entry and encouraging more effective competition in those
40 trades, and generally making more U.S.-flag merchant ships
41 available to support military sealift operations; and
42



1 BE IT RESOLVED by the Senate of the Twenty-eighth
2 Legislature of the State of Hawaii, Regular Session of 2016,
3 that this body respectfully requests the Congress of the United
4 States to pass legislation granting an exemption from the U.S.-
5 build requirement of the Jones Act in the noncontiguous domestic
6 trade of Hawaii for large self-propelled oceangoing ships
7 (Alaska and Puerto Rico support and seek the same exemption);
8 and
9

10 BE IT FURTHER RESOLVED that the Hawaii State Senate
11 respectfully requests the President of the United States and his
12 administration to support the congressional legislation
13 requested herein; and
14

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

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

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

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