

MAR 07 2014

SENATE CONCURRENT RESOLUTION

A CONCURRENT RESOLUTION REQUESTING CONGRESS TO EXEMPT
HAWAII (JOINED BY PUERTO RICO AND ALASKA) 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 carriage of
9 cargo between coastwise points in the United States to vessels
10 that are U.S.-built, U.S.-flag, U.S.-owned and U.S.-crewed; and

11
12 WHEREAS, the coastwise laws of the U.S. including the Jones
13 Act encompass four (4) of the seven (7) noncontiguous domestic
14 jurisdictions, namely, the State of Alaska, the Territory of
15 Guam, the State of Hawaii and the Commonwealth of Puerto Rico,
16 while the Territory of American Samoa, the commonwealth of the
17 Northern Mariana Islands, and the virgin Islands of the United
18 States are fully exempt from the Jones Act as a result of the
19 international treaties associated with their annexation to the
20 U.S.; and

21
22 WHEREAS, there is historical exemption from the U.S.-build
23 requirement of the Jones Act for all commercial vessels engaged
24 in the domestic Guam trade (46 U.S.C. § 12111) known as the "Guam
25 Exemption" and the other three (3) noncontiguous jurisdictions
26 encompassed by the coastwise laws, namely Hawaii, joined by
27 Alaska and Puerto Rico, are seeking a more limited, similar,
28 exemption; and

29
30 WHEREAS, the Guam Exemption is of limited utility to Guam
31 because the natural westbound trade lane from the U.S. West
32 Coast to Guam passes through Hawaii making it difficult for
33 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.-built requirement
3 despite its exemption and prompting Guam to support the limited
4 extension of their exemption to Hawaii; and
5

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

19 WHEREAS, current Hawaii Governor Neil Abercrombie in his
20 State of the State address on January 21, 2013, strongly
21 implored the Hawaii State Legislature to "move forward with" him
22 to "embark on a path to LNG (liquefied natural gas)[that] will
23 result in long term avoided costs" and "allow us to purchase
24 fuel from American sources" because "our state, our residents,
25 our constituents, our businesses and communities need relief"
26 while "to do nothing puts everyone in the state at risk;" and
27

28 WHEREAS, the former Governor of Puerto Rico, Luis Fortuno,
29 established an LNG program which includes gaining access to
30 domestic sources, for the Commonwealth and his successor
31 Governor Alejandro Garcia Padilla is following suit to reduce
32 their energy costs; and Governor Sean Parnell of Alaska is
33 developing the State's North Slope LNG resources for export
34 primarily to Asia and shipment to Hawaii too; and
35

36 WHEREAS, the ocean shipment of LNG requires specialist
37 tanker ships known as "LNG Carriers" none of which have been
38 built in the U.S. since the mid-1970's and new construction in
39 the U.S. would be cost prohibitive and potentially result in
40 failure as did Project America denying Hawaii access to U.S. LNG
41 sources unless the noncontiguous trades are exempted from the
42 U.S.-built requirement; and
43



1 WHEREAS, the U.S.-build requirement of the Jones Act
2 creates an artificial scarcity of major capital ships, erects
3 substantial barriers to entry domestic trades, and severely
4 restricts the contestability of the domestic ocean
5 transportation markets; and
6

7 WHEREAS, U.S. deep-draft construction is typically three or
8 more times the cost than ships built in Japan or South Korea and
9 U.S. ship production is very limited - building an average of
10 less than three deep draft merchant ships annually in the U.S.
11 since the mid-1980's - putting the major U.S. shipbuilding yards
12 at a distinct disadvantage in terms of economies of scale
13 adversely affecting their ability to apply new technology,
14 expertise and experience in the construction of large modern
15 oceangoing ships as compared to their international peers; and
16

17 WHEREAS, the high cost and low production of the U.S.
18 shipbuilding industry has resulted in an ageing and inefficient
19 deep-sea Jones Act fleet that disproportionately imposes an
20 economic burden on and adversely affects Hawaii and the other
21 noncontiguous jurisdictions; and
22

23 WHEREAS, the average age of containerships employed in
24 noncontiguous trade is twenty-eight years compared to the
25 international average of twelve years, and international
26 maritime insurance data show that accident rates increase with
27 increasing ship-age spiking after twenty years; and
28

29 WHEREAS, foreign and U.S.-built ships alike are designed
30 and built to the universal standards established by the nearly
31 50 international conventions and agreements, and numerous
32 protocols and amendments administered by the United Nation
33 (UN)'s International Maritime Organization (IMO), which have
34 been ratified by the United States and made part of U.S. law;
35 and
36

37 WHEREAS, the United States Coast Guard (USCG) inspects all
38 foreign-built ships seeking to become registered vessels of the
39 United States to ensure that they comply with all U.S. ship
40 construction, safety laws and regulations; and
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42 WHEREAS the U.S.-build requirement of the Jones Act for
43 large oceangoing ships in noncontiguous domestic trades is not
44 essential for the national defense of the United States because



1 the remaining eight domestic shipbuilding yards capable of
2 constructing large oceangoing ships mainly build naval ships and
3 produce so few merchant ships each year that this activity does
4 not represent sufficient shipbuilding capacity to address the
5 shipbuilding needs of a major war time contingency and sustains
6 a limited industrial base unable to support ongoing naval
7 construction programs; and

8
9 WHEREAS, granting an exemption to the U.S.-build
10 requirement allows aging ships to be more quickly and
11 economically replaced by less expensive and more fuel efficient
12 ships in accordance with efforts to conserve resources and
13 protect the environment; and

14
15 WHEREAS, more than half of the large oceangoing Jones Act
16 fleet is employed in the coastwise noncontiguous domestic
17 trades, thus imposing more than 50% of the additional cost
18 burden of operating Jones Act ships on less than 2% of the U.S.
19 population; and

20
21 WHEREAS, all other modes of domestic transportation in the
22 U.S. are permitted to use foreign manufactured equipment for
23 commercial operation without restriction including aircraft,
24 railroad cars and locomotives, trucks, automobiles and mass
25 transit vehicles; and

26
27 WHEREAS, in December 1994, the United States signed the
28 Organization for Economic Cooperation and Development (OECD)'s
29 final act of the "Agreement Respecting Normal Competitive
30 Conditions in the Commercial Shipbuilding and Repair Industry"
31 (known as the OECD Shipbuilding Agreement) that would allow
32 certain foreign built ships in the domestic Jones Act trades,
33 but it has not been ratified by the U.S. Congress; and

34
35 WHEREAS, the U.S. domestic build provisions of the Jones
36 Act do not comply with ongoing Multilateral Trade Negotiations
37 (MTN) that began under the General Agreement on Tariffs and
38 Trade (GATT) and continues with the World Trade Organization
39 (WTO); and

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



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1 WHEREAS, the residents of Hawaii and the other coastwise
 2 noncontiguous jurisdictions subsidize an inefficient and
 3 commercially uncompetitive U.S. major ship building industry;
 4 and

5
 6 WHEREAS, the exemption described herein is a limited and
 7 narrowly targeted reform of the Jones Act that would not change
 8 the existing U.S.-flag, U.S.-ownership and U.S.-crew provisions
 9 of the Jones Act as they currently apply to the coastwise
 10 noncontiguous domestic trades, would not allow foreign seamen or
 11 foreign ship-owners in any domestic trade where they are not
 12 currently allowed, would not apply to the domestic tug and barge
 13 industry anywhere in the U.S. including in the Jones Act
 14 noncontiguous jurisdictions, would not affect any domestic
 15 shipping along the coasts of the contiguous U.S. mainland, in
 16 the intercoastal trades, on the inland waterways or on the Great
 17 lakes, and would not negatively impact any maritime industry
 18 jobs in the noncontiguous jurisdictions; and

19
 20 WHEREAS, the passage of federal legislation exempting the
 21 noncontiguous domestic trades from the U.S.-build requirement
 22 for large self-propelled ships would revitalize U.S.-flag
 23 shipping by allowing foreign-built ships into, removing barriers
 24 to entry and encouraging more effective competition in those
 25 trades, and generally making more U.S.-flag merchant ships
 26 available to support military operations; and

27
 28 BE IT RESOLVED by the Senate of the Twenty-seventh
 29 Legislature of the State of Hawaii, Regular Session of 2014, the
 30 House of Representatives concurring, that we do hereby
 31 respectfully request the Congress of the United States to pass
 32 legislation granting an exemption from the U.S.-build
 33 requirement of the Jones Act in the noncontiguous domestic trade
 34 of Hawaii for large self-propelled oceangoing ships (Alaska and
 35 Puerto Rico support and seek the same exemption); and

36
 37 BE IT FURTHER RESOLVED that the Hawaii State Senate, the
 38 Hawaii House of Representatives concurring, respectfully
 39 requests the President of the United States and his
 40 administration to support the congressional legislation
 41 requested herein; and

42
 43 BE IT FURTHER RESOLVED that Hawaii's congressional
 44 delegation is urged to work with their colleagues from Alaska,



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1 Guam and Puerto Rico to introduce in Congress federal
2 legislation that would exempt the Hawaii and other noncontiguous
3 trades from the U.S.-build requirement of the Jones Act for
4 large oceangoing ships; and
5

6 BE IT FURTHER RESOLVED that the Hawaii congressional
7 delegation is urged to request Congress to exempt Hawaii, along
8 with Alaska and Puerto Rico, from the U.S.-build requirement of
9 the Jones Act for large self-propelled oceangoing ships; and
10

11 BE IT FURTHER RESOLVED that certified copies of this
12 Resolution be transmitted to the President of the United States,
13 the President of the United States Senate, the Speaker of the
14 United States House of Representatives, the Secretary of the
15 United States Department of Transportation, members of Hawaii's
16 congressional delegation, members of Alaska, Guam, and Puerto
17 Rico's congressional delegations, and the Governors of Alaska,
18 Guam, Hawaii and Puerto Rico.
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OFFERED BY: _____

