

Grassroot Institute of Hawaii / Alaska Policy Forum
POLICY BRIEF, NOVEMBER 2021

Alaska: The Jones Act's original victim

By Jonathan Helton



GRASSROOT
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 **ALASKA**
POLICY FORUM

Letters from the presidents



Keli'i Akina, Ph.D.
President and CEO
Grassroot Institute of Hawaii

Dear Friend,

Hawaii and Alaska go way back together in seeking reform of the Jones Act. During the 1960s and early 70s, the political leadership of both states worked jointly to reform this burdensome federal maritime law.

These days, some of us from each state are working again to change the Jones Act, which requires goods transported between two American ports to be carried on ships that are U.S. flagged and built, and mostly American owned and crewed.

At the Grassroot Institute of Hawaii, we often talk about how the federal Jones Act is a relic of another era, badly in need of an update. When the law was enacted, we were still decades away from standardized shipping containers, the U.S. Air Force, commercial air travel, satellites, personal computers and smartphones. Moreover, Hawaii and Alaska were still territories.

However, nothing brings the archaic nature of the law to light as much as a review of the history and circumstances of its passage – and this report does just that. Produced in conjunction with the Alaska Policy Forum, it explores the issues leading to passage of the act, including how key historical figures dismissed the cost it would impose on America's northernmost territory. At the time, it might have been common to put the needs of a territory behind the economic interests of a state. However, when times and circumstances changed, the Jones Act did not.

Hawaii and Alaska both became states in 1959. But that did little to relieve them of the costs imposed by the law. Both will always be geographically distant from the "lower 48," and both have had to bear extra burdens, in ways that other states do not, to satisfy the protectionist impulses of a bygone era.

Much has changed since the Jones Act was enacted more than 100 years ago. Isn't it time we updated the act for the 21st century? One way to do this would be to modify its U.S.-build requirement, which would lower capital costs for U.S. carriers, lower shipping costs for consumers and make it easier to expand the U.S. commercial fleet.

But whatever changes we make, we need to ensure that the Jones Act no longer unfairly burdens states and territories such as Alaska, Hawaii, Puerto Rico and Guam. A century of the status quo has been more than enough.

Mahalo and aloha,

A handwritten signature in black ink, appearing to read "Keli'i".

Keli'i Akina



Bethany L. Marcum
President and CEO
Alaska Policy Forum

Dear Friend,

Cargo shipping – not the most scintillating topic, right? But I think you will find this new report, presented in conjunction with the Grassroot Institute of Hawaii, to be a surprisingly fascinating read.

It is about the effect of the federal Jones Act on Alaska, and it clearly lays out the history of how Alaska's best interests were ignored from the act's origins, more than 100 years ago.

That is when the federal government, led by protectionist politicians from Washington state, created a monopoly on cargo shipping to and from Alaska. That was actually the intent of the sponsor of the Jones Act: to protect Seattle-based shippers from any competition. But what was good for those Washington shipping companies continues to be quite bad for Alaska.

This issue is paramount for our state because, according to the Alaska Department of Labor, 90% of consumer and industrial goods arrive in Alaska by ship. It is astounding to think how dependent Alaska is on cargo ships. And yet, Jones Act provisions have resulted in Alaska being served by ships that are older, less safe and less fuel-efficient – all of which lead to higher costs and could even impede our fragile supply chain, putting our markets in jeopardy.

In today's divided political climate, it is interesting to read in this report about the history of strong opposition to the Jones Act by multiple Alaska governors and U.S. senators from both sides of the political aisle. Alaska politicians have objected to this onerous federal overreach since before Alaska became a state, and yet it persists today, creating slower and less efficient shipping markets. Oddly, there is less vocal opposition today from our policymakers, even though the negative effects have arguably become worse as time has passed.

Alaska needs new industries – and the related jobs that can create a strong economy. But the Jones Act is doing just what was intended at the onset: restricting Alaska jobs and contributing to our very high cost of living.

Repealing or reforming this relic would go a long way toward making Alaska more competitive and prosperous.

A handwritten signature in black ink that reads "Bethany L. Marcum". The signature is fluid and cursive, with a long horizontal flourish at the end.

Bethany L. Marcum

About the Grassroot Institute of Hawaii

The Grassroot Institute of Hawaii is a nonpartisan, nonprofit research and educational institute devoted to promoting individual liberty, economic freedom and limited, accountable government. Its goal is to improve the quality of life in Hawaii by lowering the cost of living and expanding opportunities for all.

About Alaska Policy Forum

Alaska Policy Forum is a nonprofit, nonpartisan think tank dedicated to empowering and educating Alaskans and policymakers by promoting policies that grow freedom for all. Its vision is an Alaska that continuously grows prosperity by maximizing individual opportunities and freedom.



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Executive summary



Alaska is heavily dependent on waterborne transportation for its survival, yet a federal maritime law known as the Jones Act limits competition among cargo carriers, driving up prices for imports and exports and contributing to the state's high cost of living, the **sixth highest** in the country.¹ From its very beginning, the Jones Act has inflicted a heavy burden on Alaska. Jones Act reform or repeal would enhance shipping competition, help lower prices and generate substantial economic gains for the Last Frontier.



Introduction



The Jones Act has affected Alaska as both a territory and a state since the law was enacted more than a century ago as Section 27 of the Merchant Marine Act of 1920. The law's sponsor, Republican U.S. Sen. Wesley L. Jones of Washington, was eager to protect shipping companies based in his state from losing business to foreign ships and Canadian railroads, so he included Section 27 and inserted wording to specifically benefit his constituents at Alaska's expense.

Generally, the law requires that ships moving goods between U.S. ports be U.S. built and flagged, and mostly U.S. owned and crewed. It **applies** to all U.S. states and territories – though some U.S. territories have been granted exemptions² – and can be viewed as a continuation of protectionist maritime policy that dates back to the earliest days of the United States.

One of the first acts of America's first Congress was to impose tariffs on a host of imported goods. Those goods faced **much higher rates** if they were imported on foreign vessels instead of U.S. ships.³ Three decades later, in 1817, the use of foreign shipping in domestic commerce went from heavily discouraged to **flatly prohibited**, with the stated intent being to boost U.S. commerce and ensure a supply of commercial ships should the need arise during wartime.⁴

Called "**coastwise**"⁵ or "**cabotage**"⁶ laws, these restrictions continued as the United States began acquiring territory outside the lower 48. They **were extended** to Alaska in 1868, after President Andrew Johnson bought the territory from Russia.⁷

In their early days, America's coastwise laws had little effect on U.S. commerce, since U.S. ships were among the finest and least expensive vessels in the world.⁸ But as time progressed, economic protectionism took its toll.

High U.S. tariffs on imported metals discouraged U.S. shipbuilders from transitioning away from wooden ships, which during the late 1800s were

being superseded by ships made of steel and iron.⁹ By the time the United States bought Alaska, U.S. ships were technologically **less efficient and costlier to build and operate** than their foreign counterparts – a far cry from the country’s early days.¹⁰ It made sense for shipping companies to avoid buying them.

To the extent that they did buy costlier U.S.-built ships, they could – due to the lack of foreign competition – easily pass their costs on to the customers, both importers and exporters.

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In turn, many Americans devoted their creative energies to finding ways around the increasingly burdensome coastwise laws, which were responsible for increasing consumer prices in Alaska and hindering the state’s competitive advantage as a raw materials exporter.

For example, rather than use U.S. vessels to transport products from, say, Seattle to Anchorage, businesses started to hire foreign vessels to carry goods from Seattle to Vancouver, Canada – inserting a foreign port between Seattle and Anchorage, the two U.S. ports. From Vancouver, other foreign ships could complete the shipment to Alaska without violating America’s cabotage laws.¹¹

Congress **barred** such workarounds in 1893,¹² so some businesses started using railroads to move goods to Canadian ports, from which they could be transported by foreign ships to Alaska. Congress moved to close this alternative transportation route as well, through enactment of the Jones Act.¹³



Jones Act to the rescue — of special interests



The Merchant Marine Act of 1920 was an attempt to reorganize U.S. maritime law following World War I.

Before U.S. entry into the war, in 1916, Congress had created the U.S. Shipping Board, which greatly expanded U.S. regulation of waterborne commerce. With the war's end in 1919, Sen. Jones [proposed](#) the Merchant Marine Act of 1920 to amend the 1916 legislation, give the Shipping Board additional authority and address other maritime concerns.¹⁴

Those other concerns included helping [U.S. ocean carriers](#) such as the Alaska Steamship Co. and the Pacific Steamship Co.,¹⁵ both based in Seattle. These lines were [losing business](#) to a scheme that involved merchandise being shipped “from a point in the

United States over a Canadian railway line and thence by water via a British vessel not authorized to carry freight or passengers between American ports to a port in Alaska.”¹⁶

So Sen. Jones included Section 27 – the section now known as the Jones Act – to prohibit such movements. It barred foreign ships from carrying cargo between domestic points “by land and water,” thereby eliminating the rail-to-ship routes for Alaska.¹⁷

But it didn't bar rail-to-ship routes completely. Bowing to U.S. jurisdictions that had voting power in Congress, Jones inserted into Section 27 what is now known as the “[third proviso](#),” which was enacted so as not to disrupt existing cargo movements over Canadian railroads in the [Great Lakes region](#).¹⁸ The third proviso read:

“This section shall not apply to merchandise transported between points within the continental United States, *excluding Alaska*, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for

which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities”¹⁹ [emphasis added]

As the added phrase “excluding Alaska” suggests, Alaska – being a territory – had little power in Congress. It had one non-voting delegate in Congress, George Grigsby, a Democrat who served in the House. Grigsby spoke out against the act, but was unable to remove its onerous wording.

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In a speech he delivered in Juneau on Aug. 17, 1920, after the Jones Act had been enacted, Grigsby **informed his audience**: “I could not get Alaska exempted from the provisions of the bill because it was Senator Jones’ bill, and Senator Jones is from the state of Washington, and Senator Jones does not want Alaska exempted from the provisions of the bill.”²⁰

He said Jones “was more powerful than I was. I didn’t fight with him. I did not incur his enmity; he has helped me since in other matters. If I couldn’t have my way about that, I simply had to let it go and trust for a chance of showing him where he is wrong at some future session.

“But Senator Jones’ interests are in Washington,” he continued. “His constituents, a large part of them, reside in Seattle, and Seattle does not want that Canadian competition, of course.”

In the end, Section 27 made it impossible for shippers in the Alaska trade to use Canadian railroads to bypass U.S. ocean carriers. As attorney Ivan Ascott **wrote** in 2004 in the Seattle University Law Review: “In particular, the infamous Jones Act created a monopoly for Seattle shipping companies that served Alaska, keeping prices for imports and exports artificially high.”²¹



The territory resists; the empire strikes back



These high prices did not go unnoticed in the territory. The 1920 law fueled a backlash and prompted a lawsuit by Alaska Attorney General John Rustgard and the Juneau Hardware Co.

The basis of the case was an attempt by John Troy, U.S. collector of customs in Alaska, to confiscate merchandise that Juneau Hardware had purchased in Michigan and transported to Alaska via a Canadian rail line and foreign ship.

The case, [Alaska v. Troy](#), made its way to the U.S. Supreme Court after failing at the district level.²² Rustgard argued that the Jones Act violated Article I, Section 9, Clause 6 of the U.S. Constitution,²³ otherwise known as the [port preference clause](#).²⁴

"No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another."

The Jones Act imposed a unique burden on Alaska by prohibiting its residents and businesses from using Canadian railroads in conjunction with foreign ships – a prohibition no state faced.²⁵

"The Jones Act was clearly discriminatory," wrote Claus-M. Naske, one of Alaska's most prominent historians, in 1985.²⁶

Nevertheless, in February 1922, the Supreme Court unanimously ruled against Alaska, with Justice James McReynolds [writing](#) that the term "state" occurred "very often in the Constitution, and, as generally used therein, it clearly excludes a 'territory.'"²⁷

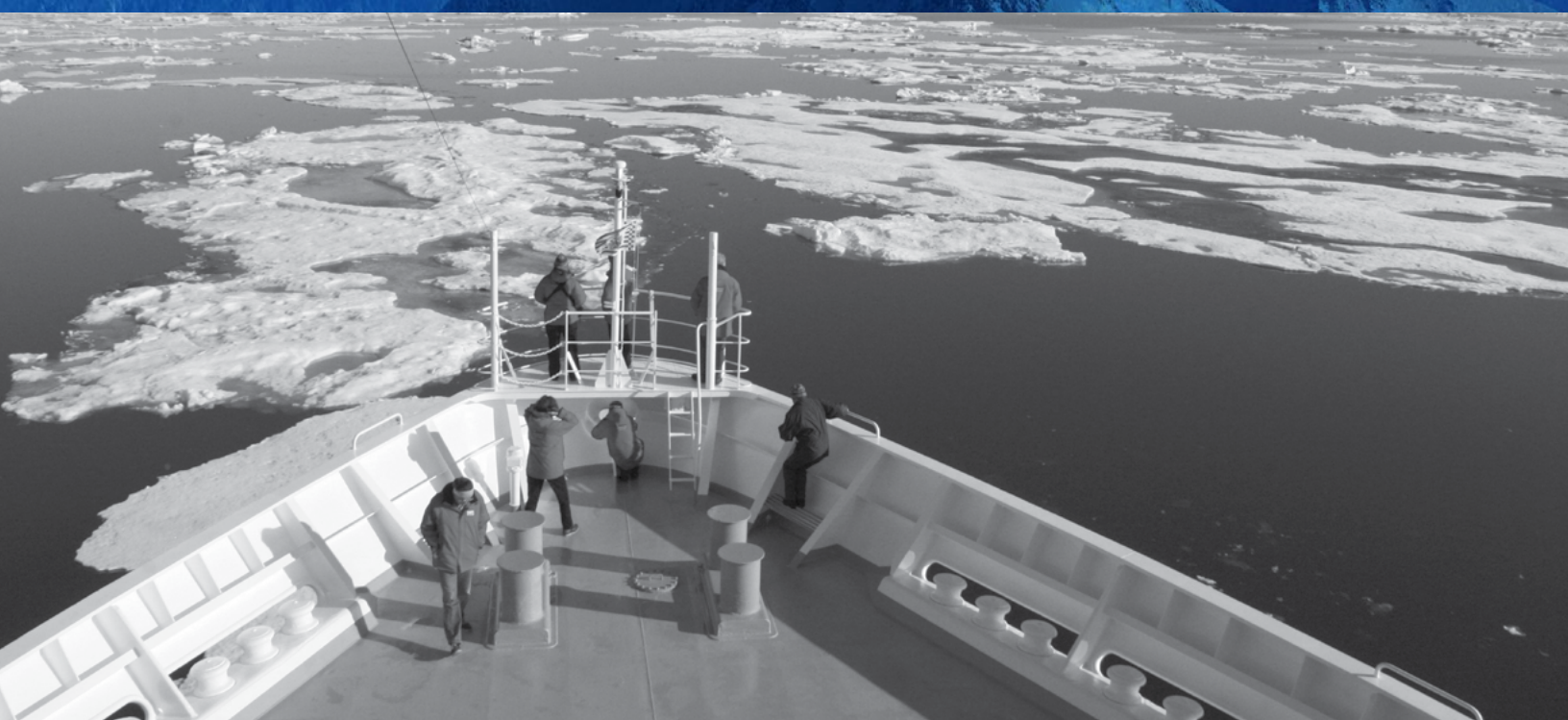
While the lawsuit was making its way through the judicial system, Alaska delegate Daniel Sutherland tried unsuccessfully to reform the Jones Act in Congress. He pointed out that the change had ham-

pered Alaska's commerce. One Juneau sawmill, he said, saw its transportation costs **more than double** after passage of the Jones Act. The mill's profit margin vanished and it had to close down.²⁸

"There was an opportunity for Alaska to come into a little commerce," Sutherland **lamented**, "but we were immediately closed off by reason of the clause in this act."²⁹



Alaska comes in from the cold, sort of



The end of World War II ushered in a transition away from colonialism, as world powers slowly began relinquishing their overseas territories. For the United States, this meant statehood for Alaska and Hawaii. It also meant the end of the Jones Act's "excluding Alaska" clause, which between 1920 and 1959 had hindered Alaska's economic development.

In a 1955 speech, former territorial Gov. Ernest Gruening had condemned the law.

"Again and again have Alaska's delegates sought to have the discriminatory clause in the maritime law repealed," Gruening [stated](#). "But each time the lobbies of the benefitting stateside interests have been successful in preventing any relief action."³⁰

He added that, "If Alaska were a state, the whole discrimination in the Jones Act would go out of the porthole."

This prediction proved correct. Four years later, the federal Alaska Statehood Act [replaced](#) "excluding Alaska" with "including Alaska."³¹ After 39 years of being treated differently under the Jones Act, the Last Frontier was now to be treated the same as any other state.

But even with the revised language, Alaska still suffered.

"The development of Alaska has been too long restrained by the inordinately high costs of water transportation," Alaska Gov. William Egan told a U.S. Senate Subcommittee in 1963. "Transportation costs ... can be lowered effectively and lastingly only so long as there exists a system of true competition."³²

As the Jones Act's requirements prevented meaningful competition, transportation costs remained high. Two decades later, in 1982, the Alaska Statehood Commission [estimated](#) the Jones Act

drained \$225 million a year from Alaska's oil industry, while costing other sectors of the economy \$41 million.³³

In 1986, the U.S. Department of Agriculture's Forest Service **estimated** the Jones Act cost Alaska's timber industry \$4.77 million annually and suppressed employment.³⁴

In 1988, the U.S. Government Accountability Office **found** that the law's U.S.-build requirement alone cost Alaska about \$163 million, equivalent to 2% of the state's personal income at the time.³⁵

—■—
Alaska Sen.
Frank Murkowski
detailed how
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construct in the
United States
than a foreign
yard.

The following year, as the U.S. House Committee on Merchant Marine and Fisheries was considering the proposed **Intermodal Shipping Act of 1989**,³⁶ Alaska Gov. Steve Cowper **beseached its members** to avoid adding more regulations that could further burden the state's Marine Highway System.

"Commodity pricing in Alaska is extremely sensitive to changes in the water-carrier industry," he testified. "Consequently, even a slight increase in the cost of shipping will have an undesirable cumulative effect on the purchasing power of every Alaskan consumer."³⁷

Fortunately, that bill was not enacted, but Alaska's troubles with the Jones Act continued. Just after the turn of the millennium, U.S. Sen. Frank Murkowski of Alaska detailed how ships cost twice as much to construct in the United States than in foreign shipyards. Building an oil tanker in the U.S., he said, "costs about \$200 million. You can build them in Korea for \$100 million. ... You have got to recognize the reality that this is passed on to the consumer."³⁸

In 2004, the Alaska Minerals Commission **noted** that "commodity shippers such as mineral companies in Alaska seeking new markets for their products are especially affected" by the Jones Act, since there were so few bulk carriers in the Jones Act fleet.³⁹ Today, few has become none; the last Jones Act-qualified bulk carrier was **scrapped** in March 2021.⁴⁰



Gone fishin'



Theoretically, including Alaska in the “third proviso” should have minimized the Jones Act’s effect on Alaska, yet that has not been the case. Relatively little cargo has moved because of the exemption – and fear of political backlash is almost certainly to blame.

In the early 1980s, for example, a company attempting to offer service between Alaska and the lower 48 using Canadian railroads and West German-flagged ships was stymied by the U.S. Federal Railroad Administration, with which it had to file rates.

As it turned out, the FRA nixed the proposed route after U.S. Sens. Slade Gorton and Henry Jackson,

both from Washington state, [expressed](#) “their concern that the maritime industry and maritime labor would suffer from a diversion of cargo to Canada.”⁴¹

Subsequently, U.S. Rep. Don Bonker of Washington introduced legislation to repeal the third proviso.⁴² Approved by the House, the bill died in the Senate, but Washington state’s desire to maintain its hammerlock on the Alaska trade plainly had not abated.

Fast forward to 2021, and the third proviso again is a matter of controversy that has the health of Alaska’s economy at stake. In August, U.S. Customs and Border Protection slapped the state’s pollock industry with a [\\$350 million fine](#) for alleged Jones Act violations.⁴³ This fine dwarfed the previous largest Jones Act fine of [\\$10 million](#), which was leveled against Texas-based energy company Furie in 2017 – and also involved Alaska.⁴⁴

As of early November 2021, it is not clear that Alaska’s pollock industry violated the law.⁴⁵ The third proviso allows for goods moving between U.S. points to bypass the Jones Act if they are carried on a Canadian railroad for part of the journey. Fishing

company American Seafoods Group had been using this clause for 20 years without legal interference to move fish via foreign vessels from Alaska through the Panama Canal to eastern Canada. There, the fish were offloaded onto a relatively short stretch of rail line, then trucked to the eastern U.S. market.

Perhaps because of political events at the federal level – with President Joe Biden publicly asserting his fealty to the Jones Act on [numerous occasions](#)⁴⁶ – U.S. Customs only recently

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decided to take action against ASG and other companies involved in this clever Jones Act work-around.

Several firms have sued the agency and the case awaits a decision. Should the pollock sector lose its access to this third proviso route, its expenses would skyrocket.

ASG President Inge Andreassen [told](#) Undercurrent News that “any alternative would result in nearly double the cost for transportation.”⁴⁷



Dispersed costs, concentrated benefits



Studies have shown that the costs of the Jones Act are dispersed nationwide, but citizens of states dependent on ocean transportation pay a premium. Recent research has estimated the law costs Hawaii and Puerto Rico **\$1.2 billion** and **\$1.5 billion** a year, respectively,⁴⁸ while coastal states generally can attribute **2% to 3%** of their shipping costs to the Jones Act.⁴⁹

Alaska has more transportation options than Hawaii or Puerto Rico, but since it receives a substantial portion of its goods by water, it still suffers. In 2019, almost 2.5 million short tons of cargo were **moved** north by water from the lower 48 to Alaska, 23.4 million short tons were shipped south, and 5.7 million short tons were moved intrastate.⁵⁰

Many of these goods were carried by Matson Navigation Co., which operates three Jones Act containerships in the Alaska-mainland trade. As of 2021, these ships are all **34 years** old and will need to be replaced soon.⁵¹ Older vessels generally are **less safe**⁵² and **less fuel efficient**,⁵³ leading to higher maintenance and operational costs, which ultimately contribute to higher consumer prices. By way of comparison, containerships in the international market are usually replaced after **25 years** of service.⁵⁴

The Jones Act's U.S.-build requirement is the primary driver behind carrier replacement decisions. Since cargo ships can cost **four to five times** as much to assemble in the United States as in a foreign country,⁵⁵ ocean carriers **delay replacing their vessels**.⁵⁶ If the law's build requirement were lifted, Matson, TOTE or even new shipping firms could purchase drastically lower-priced ships and Alaska would reap the benefits.

The consultants to the Alaska Statehood Commission actually **recommended this** back in 1982, stating: "Given the recent lifting of prohibitions on overseas-built vessels for U.S. subsidized trades, the

State of Alaska may wish to consider an effort to obtain a waiver of the requirement to use vessels built in the U.S. and place less emphasis on changing the remainder of the Act.”⁵⁷

Other proponents of that option include naval historians Andrew Gibson and Arthur Donovan, authors of the [highly](#) regarded 2000 book “The Abandoned Ocean,”⁵⁸ in which they wrote: “Eliminating the domestic build requirement would expand the fleet engaged in coastal trade and make it more competitive.”⁵⁹

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Alaska has more transportation options than Hawaii or Puerto Rico, but since it receives a substantial portion of its goods by water, it still suffers.

Other prominent supporters of this policy include Michael Hansen, president of the Hawaii Shippers Council; North Carolina State professor of economics emeritus Thomas Grennes; Cato Institute policy analyst Colin Grabow; and Keli'i Akina, president of the Grassroot Institute of Hawaii.⁶⁰

In a competitive economy, it's expected that companies would have the choice to buy less expensive ships from foreign manufacturers. But as it stands, with the build requirement acting as a massive barrier to potential competitors, shipping companies such as Matson are content to use older ships as long as they can and continue to profit handsomely from the Alaska trade. Perhaps not coincidentally, Matson is consistently [more profitable](#) than other companies in the marine transportation industry,⁶¹ and its executives are among the [highest paid](#) in the industry.⁶²



Conclusion



The Jones Act has been a burden on Alaska's economy for more than a century, from Section 27's initial discrimination to the costly "equality" that has followed. The evidence is overwhelming and the proposition logically obvious that increased transportation costs lead to lower economic growth and reduced employment opportunities.

Few current legislators in Alaska seem to know it, but a 1984 state ballot measure approved by the Alaska voters directed the state's governor "to seek repeal of federal statutes (the Jones Act) which require the use of United States vessels to ship goods between United States ports."⁶³ Not only does that law appear to have been routinely ignored, these days Alaska's congressional delegates generally **defend the Jones Act**⁶⁴ – which seems counterintui-

tive when considering how the law harms so many of their constituents.

Alaska's situation aside, the Jones Act has failed in its broader mission to protect the nation's shipbuilding industry. As of mid-2021, the Jones Act-qualified fleet of large oceangoing vessels had plummeted to a mere **96**, down from **257** in 1980.⁶⁵

The good news is that there are several Jones Act **reform bills** in Congress, proposed by Sen. Mike Lee, R-Utah; Rep. Tom McClintock, R-Calif.; and Rep. Ed Case, D-Hawaii.⁶⁶ The prospects for their success appear at the moment to be **slim**,⁶⁷ but it certainly wouldn't hurt if Alaska's delegates were to sign on as co-sponsors.

At a minimum, scrapping the Jones Act's U.S.-build requirement ought to be on the table. This would benefit not only Alaska, but the U.S. economy in general, by enabling more efficient and less costly waterborne transportation.

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- 18 Charlie Papavizas, [“Jones Act ‘Third Proviso’ in the News,”](#) Winston & Strawn LLP, Sept. 2, 2021; see also [“Repeal of the Third Proviso,”](#) U.S. House of Representatives, Subcommittee on Merchant Marine, Committee on Merchant Marine and Fisheries, March 18, 1983, p. 220. Since 1920, the need for the third proviso declined. See the Statement of the Interstate Commerce Commission: “During recent years, little use has been made of the third proviso,” p. 226.
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