TULANE MARITIME LAW JOURNAL

VOLUME 45 SPRING 2021 NUMBER 2

The Story of the Jones Act (Merchant Marine Act, 1920): Part II

Constantine G. Papavizas*

 Chair, Maritime Practice Group, and Partner, Winston & Strawn LLP, Washington, D.C. The author wishes to thank Mikhail Koulikov and Sharisse R. Geiger for their invaluable research assistance in preparing this article as well as H. Allen Black, Bryant E. Gardner, and Brian W. Schoeneman for their editorial review.

I. INTRODUCTION

This is the second installment in a two-part series. The first part, which explored the U.S. maritime policy up to the Merchant Marine Act, 1920, was published in the *Tulane Maritime Law Journal* in Volume 44, Issue 3. This installment picks up with the Merchant Marine Act, 1920 itself, commonly referred to as the "Jones Act."

II. MERCHANT MARINE ACT, 1920

The Emergency Fleet Corporation was just beginning an enormous building program when the World War I armistice was signed on November 11, 1918.[1] Of the 1,842 vessels owned by the U.S. Government on September 1, 1918, 302 had been constructed either by commandeering private contracts or via new U.S. Government contracts—the rest had been requisitioned (mostly U.S.-flag vessels), including 87 German vessels and 81 Dutch vessels.[2] Keels laid for the U.S. Government building program were 475 in 1917, 1,131 in 1918, and 416 in 1919.[3] The eventual U.S Government building program amounted to 3,256 vessels, of which 945 had been cancelled by March 1920 and 1,820 delivered by that point in time.[4]

---

1. "The enormity of the task is difficult to visualize"—the U.S. went from 235 building ways in January 1917 to 1,020 building ways in January 1919. K. JACK BAUER, A MARITIME HISTORY OF THE UNITED STATES 299 (1988).

2. U.S. SHIPPING BOARD, SECOND ANNUAL REPORT 21-23 (Dec. 1, 1918). The Dutch vessels had been requisitioned based on a policy of accessing vessels of neutral countries and were re-delivered after the war. *See* JEFFREY J. SAFFORD, WILSONIAN MARITIME DIPLOMACY 1913-1921, at 124-25 (1978); U.S. SHIPPING BOARD, THIRD ANNUAL REPORT 21 (Dec. 1, 1919).

3. U.S. SHIPPING BOARD, *supra* note 2, at 168-69.

4. *Hearing on the Establishment of an American Merchant Marine Before the S. Comm. On Com.*, 66th Cong. 1819 (1920) (statement of Chairman John B. Payne). The original building program included 1,017 wooden vessels, 50 composite vessels, and 43 concrete vessels. H. DAVID BESS & MARTIN T. FARRIS, U.S. MARITIME POLICY: HISTORY AND PROSPECTS 42 (1981) ("Even after the war ended, the board continued to acquire ships and to authorize construction."). The

The political question turned almost immediately to what to do with the vessels the U.S. Government had built and was building.[5] The Board and the Corporation were criticized across the political spectrum for waste, mismanagement, and graft.[6] In the words of one prominent historian, "The shipbuilding program provided a royal harvest for every one concerned with it except the Government which had to pay the cost."[7]

Many in both political parties believed that the vessels should be sold immediately.[8] Sen. Jones stated that "[w]e must not allow private parties to take the cream of this shipping and let the Government hold the balance to dispose of at a great sacrifice."[9] Rather, government ownership must end as soon as possible but "without unnecessary sacrifice and just as a private individual would get rid of property he did not desire to keep but that he did not have to dispose of at a sacrifice."[10]

At the same time, the end of the war was also a time to reexamine the policy question as it existed prior to the war—should the U.S. have a merchant marine and how should that be accomplished if it was thought that a substantial merchant marine was necessary or desirable. The 1920 Act was intended to address both issues—what to do with the U.S. Government-built fleet and how to promote a U.S. merchant marine—the need for a substantial merchant marine was assumed.

A. Senator Wesley Livsey Jones

Sen. Jones, as the Chairman of the Commerce Committee, took the leading role in the hearings and Senate floor deliberations that led to the 1920 Act and is most often credited as being primarily responsible for its enactment.[11] "The popular press of the time was interested in American

---

continued acquisition of vessels after the Armistice was intended in part to prevent shipyard labor unrest. *See* SAFFORD, *supra* note 2, at 175.

5. PAUL MAXWELL ZEIS, AMERICAN SHIPPING POLICY 115 (1938) ("The problem now was not one of acquisition, but one of disposal of the existing Government fleet").

6. *See e.g. Hearings on U.S. Shipping Board Operations Before the H. Select Comm.*, 66th Cong. (1920-21) (known as the "Walsh Committee"); *Walsh Committee Agents Charge Graft in Shipping Board*, NAUTICAL GAZETTE, Nov. 13, 1920, at 5. The Walsh Committee proceedings were "[a]lways intense with charges and countercharges, and often sensational—as when Schwab wept on the witness stand or Denman revealed 'secret' British efforts in 1917 to discriminate against China . . . ." SAFFORD, *supra* note 2, at 245.

7. ZEIS, *supra* note 5, at 106.

8. *See* William S. Forth, Wesley Jones: A Political Biography 487-88 (Nov. 16, 1962) (Ph.D. dissertation, University of Washington).

9. 58 CONG. REC. at 7869 (Nov. 3, 1919).

10. *Id.*

11. *E.g.*, ZEIS, *supra* note 5, at 115; ANDREW GIBSON & ARTHUR DONOVAN, THE ABANDONED OCEAN: A HISTORY OF UNITED STATES MARITIME POLICY 119 (2000). Adm. William

shipping problems and Jones received vast amounts of publicity, most of it favorable, for his work in this area."[12] From the beginning, the 1920 Act was known as the "Jones Law," the "Jones Bill," or the "Jones Act."[13]

Sen. Jones was born in 1863 in Illinois, shortly after his father died serving in the Union army in the Civil War.[14] He graduated from Southern Illinois College in 1885, studied law, and was admitted to the bar in 1886. In 1889, he moved to Yakima in the State of Washington, where he entered politics and was elected as a Republican at-large Member of Congress from Washington in 1899. He served five terms in the U.S. House of Representatives and then was elected to the U.S. Senate in 1909 and re-elected three times until his death on November 19, 1932, shortly after losing his election in the President Franklin Delano Roosevelt Democratic landslide, where Washington State "was swept clean of Republicans."[15] In the Senate, Jones served as a chairman of multiple committees, including Chairman of the Committee on Commerce for twelve years and Chairman of the Appropriations Committee for four years.

According to one biographer, Sen. Jones's main policy interests were prohibition, irrigation, and the merchant marine.[16] "Jones was a tall, sincere, devout former lawyer from Yakima. He did not drink, gamble, smoke, or swear. He was dedicated to middle-class American values and to the Republican party, both of which he in many ways personified."[17] In general, he "was content to work quietly in the wings for small gains."[18]

On Prohibition, Sen. Jones was "the leading defender of the faith," and his "portrait hung conspicuously in the office of the Anti-Saloon League for as long as the organization existed under that name."[19] Indeed,

---

S. Benson, the Chairman of the Board starting in March 1920, was also credited for the 1920 Act. *See* MARY KLACHKO & DAVID F. TRASK, ADMIRAL WILLIAM SHEPHERD BENSON: FIRST CHIEF OF NAVAL OPERATIONS 184 (1987); *see also* SAFFORD, *supra* note 2, at 229.

12. Forth, *supra* note 8, at 567-68.

13. *E.g.*, *Comment on the Jones Law*, NAUTICAL GAZETTE, Aug. 21, 1920, at 229; *Making a Fetich of the Jones Law*, NAUTICAL GAZETTE, Aug. 21, 1920, at 243; *Collectors of Ports Warned as to New Mortgage Law*, NAUTICAL GAZETTE, Oct. 2, 1920, at 425.

14. *See Jones, Wesley Livsey (1863-1932)*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774 – PRESENT, https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=J000257 (last visited Jan. 6, 2021).

15. *See* Forth, *supra* note 8, at 819.

16. *Id.* at 630.

17. NORMAN H. CLARK, THE DRY YEARS: PROHIBITION AND SOCIAL CHANGE IN WASHINGTON 179-80 (rev. ed. 1988); Forth, *supra* note 8, at iv ("Jones was not a man to whom one can assign the label of 'liberal' or 'conservative.' He liked to call himself 'conservatively progressive' by which he meant, presumably, that he was a moderate.").

18. Forth, *supra* note 8, at iv.

19. CLARK, *supra* note 17, at 179.

there was another "Jones Act" or "Jones Law" later in 1929[20]—the "Increased Penalties Act," sponsored by Sen. Jones, to make felonies of Prohibition law violations.[21]

Sen. Jones's interest in the merchant marine appears to stem from his service on the House Merchant Marine Committee starting when he first came to Congress in 1900.[22] He continued that interest through the rest of his time in the House and the Senate.[23] He was "dramatically impressed with America's lack of ships when farm produce lay rotting on the wharves" at the beginning of World War I.[24] Also, he "undoubtedly numbered among his friends, in Seattle and elsewhere, men who were powerful in shipping circles and presumably as interested as he was in a strong merchant marine."[25] Whether this influenced his positions is unknown. At least one provision in the 1920 Act—Section 27, which is the cabotage law known as the "Jones Act"—was pursued by Sen. Jones during Senate floor consideration, to the advantage of Washington State maritime interests.[26]

Sen. Jones's approach to the merchant marine was practical. He apparently voted against the 1916 Act in part because of his opposition to government ownership, at least at the time, and because he was a staunch believer in private enterprise.[27] Yet over time, "Jones was to move further and further to an acceptance of government ownership and operation as the only feasible means of providing a merchant marine at all."[28]

His practical approach is reflected in his introduction of two bills in November 1919 that formed the basis of much of what was to become the

---

20. *Id.* at 206-07.

21. Act of Mar. 2, 1929, Pub. L. No. 70-899, 45 Stat. 1446.

22. Sen. Jones was an active member of the House Merchant Marine Committee. For example, he wrote the Committee report in 1900 in favor of extending the coastwise laws to Hawaii and in 1903 introduced a bill "to promote and encourage an American merchant marine" which was referred to the House Ways and Means Committee. *See* Forth, *supra* note 8, at 56, 61-62, 86. In his private affairs, Sen. Jones's principal biographer describes his correspondence regarding shipping or the merchant marine as "extraordinarily meagre." *Id.* at 485.

23. For example, he was a leader in the enactment of the Merchant Marine Act, 1928 known as the "Jones-White Act." *See id.* at 547-57.

24. *Id.* at 484.

25. *Id.* at 485.

26. *See* 59 CONG. REC. 6811 (May 10, 1920); 59 CONG. REC. 7347-50 (May 20, 1920). The exclusion of Alaska from the Canadian rail exception included in Section 27 "meant that that neglected territory was to be completely at the mercy of Seattle shipping interests . . . ." Forth, *supra* note 8, at 492. In other matters, Sen. Jones had championed many Alaskan causes while in Congress. *Id.* at 92, 140.

27. *See* Forth, *supra* note 8, at 485-86.

28. *Id.* at 485.

1920 Act.[29] He said at the time that the "plan I propose is a concrete one. It has its defects and its dangers. Graft, waste, and extravagance are possible under it; but before it is condemned let some one suggest a plan that will not permit these things."[30] After the 1920 Act was enacted, in an article he wrote in February 1921, he stated that the 1920 Act was "an earnest effort to lay the foundation of a policy that will build up and maintain an adequate American merchant marine in competition with the shipping of the world,"[31] and that "[t]here may be provisions in the act that ought not to be there" or that "things should be added and I hope this will be done."[32]

At the same time, he was passionate about having a U.S. merchant marine.[33] In a Senate floor statement, Sen. Jones stated:

> An adequate merchant marine, built in American shipyards by American labor, owned by American capital, operated and manned by American seamen, carrying American commerce to all the ports of the world, and flying the American flag, has been my dream for many years, and it is my purpose to do whatever I can to attain this great end.[34]

Later, when summarizing the 1920 Act, he wrote that the "man or the paper who would discourage the upbuilding of our merchant marine is fighting the battle of alien interests."[35] A contemporary source critical of the process nevertheless complemented Sen. Jones as a "forceful politician," and said that he was "more than a match for the Senators in debate, and brushed the opposition aside with a wave of his hand."[36]

One prominent U.S. merchant marine historian alleged that the Senate Commerce Committee had been unduly influenced in its deliberations regarding the 1920 Act by private shipping interests.[37] A biographer of Sen. Jones responds that there is nothing in Sen. Jones's papers to support that theory, and Sen. Jones "was not thought of as their

---

29. *See* Merchant Marine Act, 1920 (1920 Act), ch. 250, 41 Stat. 988 (1920).

30. 58 CONG. REC. 7870 (Nov. 3, 1919).

31. Wesley L. Jones, *The Merchant Marine Act of 1920*, IX PROC. OF THE ACAD. OF POL. SCI. 89, 89 (1921).

32. *Id.* at 98.

33. This was noted at the time. *See Wesley L. Jones*, NAUTICAL GAZETTE, Sept. 4, 1920, at 206 (in response to opposition, "the Senator is sturdily defending his measure and appears to be not in the least worried over the agitation against it.").

34. 58 CONG. REC. 7870 (Nov. 3, 1919).

35. Jones, *supra* note 31, at 97.

36. *How Jones Bill Was Rushed Through Congress*, NAUTICAL GAZETTE, Oct. 2, 1920, at 424.

37. ZEIS, *supra* note 5, at 116-17 (The 1920 Act's "real parents were not the Senate and House of Representatives but rather the Senate Commerce Committee and the shipping lobby.").

creature even by his political enemies who would not have hesitated to make the charge had they thought it would stick."[38] Moreover, "[t]here were, of course, various groups in the country which were in favor of such legislation but to see the Act of 1920 only as a direct service to private shipping interests is absurd."[39] Similarly, although *The New Republic* heavily criticized the 1920 Act at the time, it credited Sen. Jones with avoiding forced sales of vessels after World War I at rock bottom prices to private interests, and it was to Sen. Jones that "the best parts of the new law owe their authorship."[40]

After enactment of the 1920 Act, he almost immediately started working on improvements.[41] He did not succeed until the Merchant Marine Act, 1928, which is often referred to as the "Jones-White Act."[42] During those years he became increasingly pessimistic that the U.S. could have a privately owned U.S. merchant marine.[43] Ultimately, he fell ill, but nevertheless accepted the state party nomination for another term in the Senate in 1932.[44] He died on November 19, 1932, only a few days after losing the 1932 election.

B. Preliminary Congressional Deliberations

Although the 1920 Act has been said to have been rushed into law because it was neither the subject of substantial debate in the U.S. House of Representatives nor in the Cabinet,[45] it was in fact the subject of extensive consideration in the Senate Commerce Committee and received significant attention on the floor of the Senate and "exhaustive investigations by the Merchant Marine and Fisheries Committee."[46] The Senate Commerce Committee hearings commenced on June 10, 1919 and ended on March 13, 1920.[47] The hearing record comprised over 2,000 pages of testimony and exhibits, and the Committee heard over 100

38. Forth, *supra* note 8, at 493.
39. *Id.*
40. *The New Merchant Marine Act*, NEW REPUBLIC, June 16, 1920, at 76.
41. *E.g.*, Forth, *supra* note 8, at 515.f.
42. Act of May 22, 1928, ch. 675, 45 Stat. 689.
43. Forth, *supra* note 8, at 521.
44. *See id.* at 812.
45. ZEIS, *supra* note 5, at 116; Forth, *supra* note 8, at 491 ("[t]he almost casual way the bill was passed through both Houses").
46. H.R. REP. NO. 66-443, at 1 (1919); *Hearings on Providing for the Disposition, Regulation, or Use of the Property Built or Acquired by the United States Before the H. Comm. on Merchant Marine and Fisheries*, 66th Cong. (1919) (hereinafter *1919 House Hearings*).
47. *Hearings on the Establishment of an American Merchant Marine Before the S. Comm. on Merchant Marine and Fisheries*, 66th Cong. (1919) (hereinafter *1919-1920 Senate Hearings*).

witnesses. Testimony was taken from a wide range of persons, including various Commissioners of the Shipping Board and Shipping Board personnel, the Chief of Naval Operations, vessel owners, admiralty lawyers, trade associations, including the U.S. Chamber of Commerce, port and terminal interests, labor representatives, and individuals. The title given to these Senate hearings was forward looking—"Establishment of an American Merchant Marine."

1. Senate Commerce Hearings, Part I

Senate Commerce Committee hearings commenced on June 10, 1919 with the testimony of then Chairman of the Shipping Board, Mr. Hurley.[48] The early discussion focused on the state of the U.S. Government building program and how to effect suspensions and cancellations of contracts without causing undue hardship to U.S. shipyards and suppliers. One criticism voiced by Senators against the policy of restricting U.S. shipyards from selling vessels to foreign purchasers was changed by the Board during the hearings.[49] This had been a policy of President Wilson to obtain leverage in the peace talks.[50]

The Board[51] also presented at the outset of the hearings its recommendations for future legislation "in order to encourage the establishment and development of an adequate merchant marine under the American flag."[52] These recommendations were the blueprint in many ways for the portions of the 1920 Act added by the Senate to the House-passed bill.

The Board recommended "private ownership and operation as a fundamental policy for commercial shipping" and that the U.S. Government should "therefore, contemplate retirement from commercial shipbuilding, shipowning, and ship-operating activities at the earliest date which may be convenient and practical. . ."[53]

This phraseology presaged much of the debate on the 1920 Act. The Board did in fact recommend sales "at the earliest date which may be

48. *Id.* at 5.

49. *Id.* at 37.

50. SAFFORD, *supra* note 2, at 165. Sen. Jones spoke in January 1919 "damning the Shipping Board and President Wilson for not accepting foreign contracts to build wooden and steel ships" because contracts were going to British Columbia firms for which U.S. shipyards could compete. Forth, *supra* note 8, at 486; 57 CONG. REC. 1854-55 (Jan. 22, 1919).

51. At that time, the Board only had three members—Edward N. Hurley, John A. Donald, and Raymond B. Stevens. U.S. SHIPPING BOARD, FOURTH ANNUAL REPORT 13 (1920).

52. *1919-1920 Senate Hearings*, *supra* note 47, at 204.

53. *Id.*

convenient and practical," but that was conditioned on having the Board maintain the world market price of vessels so as "not permit their operation to react unfavorably upon the operation of the ships which have been sold" and to "definitely tend to stimulate the purchase of more ships by private operators."[54] The Board also recognized that vessels would have to be retained and turned over to U.S. operators and managers for "limited periods" but was unconcerned about U.S. Government competition with private owners because "only flagrant mismanagement in the distribution of ships by the Government would be likely to cause overberthing in any trade route."[55] Also on the issue of Government ownership, the Board believed that possible Government ownership should not be limited by a defined period such as the five-year deadline that had been so important to the enactment of the 1916 Act.[56]

The Board also recommended that it be given authority to sell vessels with deferred payments and to take back a mortgage for the deferred amount (and separately recommended that the legal status of vessel mortgages be changed).[57] Interest earned over a certain amount was to be paid to the U.S. Treasury and would be placed in a "Merchant Marine Development Fund" to be used "to encourage the establishment and development of an adequate merchant marine under the American flag."[58] The Board further recommended that vessels be sold to U.S. citizens, that vessel sales to non-citizens only be permitted for vessels "redundant or otherwise undesirable, in the American merchant marine," and that the proceeds of such sales be used "to build the vessels the United States needs to balance its merchant marine."[59] All purchasers, managers, or operators of U.S. Government-owned vessels would be required to incorporate under federal charter, be 100% U.S. citizen-owned, and have a U.S. Government appointed member of its Board of Directors "[d]uring the period in which the Government owns equity in the property of the corporation."[60] Finally, the Board recommended that mail carriage on

54. *Id.* at 204-05.
55. *Id.* at 205.
56. *See id.*
57. The Board recommendations on mortgages is a summary of what became the Ship Mortgage Act, 1920. *See id.* at 208; *Merchant Marine Act*, *supra* note 29, at ch. 250, § 30.
58. *1919-1920 Senate Hearings*, *supra* note 47, at 207.
59. *Id.* at 205.
60. *Id.* at 207.

U.S.-flag vessels be reinvigorated and that U.S.-flag vessels be required to carry cadets for training purposes.[61]

The Board dissent by Vice Chairman Raymond B. Stevens mainly differed with the other two Board members because of the "emphasis laid on the importance of the immediate sale and the policy indicated in the report for handling the ships not sold."[62] Vice Chairman Stevens was not optimistic about the future shipping market and that was in part because of the lack of a U.S. shipping infrastructure—"[f]or all these reasons I believe that the absorption of this great tonnage will be slow."[63]

Over the course of nine months, the Commerce Committee considered a wide range of subjects and collected a substantial amount of data. One of the recurring issues in the 1919-1920 hearings was whether the U.S. merchant marine engaged in the foreign trade, which had grown from nothing in 1914 to a substantial world-wide presence in 1919, could sustain itself in competition with British and other vessels.[64]

The Board had the vessels and was constructing more, but would the private U.S. merchant marine be able to make effective use of them? Among the issues was whether the vessels should be chartered to private persons or managed by private persons on U.S. Government account.[65] The Board had already chosen many managers to operate vessels for the purposes of giving them sufficient experience and with the hope that they would be buyers of the vessels.[66]

Concerns were also expressed, over the course of the Commerce Committee hearings regarding U.S. maritime infrastructure. As stated by Sen. Jones in November 1919:

> No one can reasonably hope that private enterprise and capital in the face of foreign competition and handicapped by our own inexperience and lack of

61. The requirement for vessels to have apprentices was included in the bill reported by the Commerce Committee. *See 1919-1920 Senate Hearings*, *supra* note 47, at 1220. The provision was also discussed on the Senate floor but was not included in the 1920 Act. *See* 59 CONG. REC. 6857-58 (May 11, 1920).

62. *1919-1920 Senate Hearings*, *supra* note 47, at 209.

63. *Id.* at 210. Vice Chairman Stevens also disagreed with the creation of the merchant marine development fund arguing that it was too vaguely drawn and that "[i]f there is to be a subsidy, it must be administered for definite purposes, and under specific regulations prescribed by Congress."

64. *E.g.*, *id.* at 189 (Testimony of J.H. Rosseter, Director of Operations and Trustee, Emergency Fleet Corporation).

65. *E.g.*, *id.*

66. *E.g.*, *id*. at 1844-59.

> business connections and facilities, will be able to absorb and take over all this shipping in a short while and establish the routes we ought to have. . .[67]

Board Chairman Payne was even more emphatic at the end of the Commerce Committee hearings in March 1920 about vessel sale timing.[68] When asked if the vessels could be sold within a year, he said that would be "impossible," adding that "[y]ou can not do it in five years to save your life."[69] Sen. Jones added that he liked Chairman Payne's "frank way of answering things."[70]

U.S. vessel owners had various ideas for how the sales process should proceed. For example, Frank C. Munson of Munson Steamship Co. of New York recommended that all sales occur within six months.[71] E.J. McCormack of Moore & McCormack Co. recommended that an appraisal board be formed to set vessel prices and any vessel not sold within one year be laid up.[72]

One ancillary cause of concern was labor. Even after there had been substantial effort to recruit and train American seamen, less than fifty percent of the seamen on board Shipping Board vessels were American (U.S.-flag vessels at the time were not required to have all U.S. citizen crews).[73] Testimony was taken both in favor and against the reliability and

---

67. 58 CONG. REC. 7869 (Nov. 3, 1919).

68. John Barton Payne was the Chairman of the Shipping Board from August 5, 1919 to March 13, 1920. *See* U.S. SHIPPING BOARD, FOURTH ANNUAL REPORT 13 (Dec. 1, 1920). Chairman Payne had been a magistrate judge early in his legal career and was often referred to as "Judge Payne" in the Senate hearings and other Congressional proceedings. Chairman Payne has also been in private practice in Chicago from 1903 to 1917 in the law firm of Winston, Payne, Strawn and Shaw, an earlier name for the current firm of Winston & Strawn LLP. *See* WINSTON & STRAWN, WINSTON & STRAWN—THE FIRST 150 YEARS 61 (2004). From the Board, he became U.S. Secretary of the Interior and then, after leaving the U.S. Government, he was Chairman of the American Red Cross until his death in 1935. *John B. Payne (1920-1921)*, UNIV. OF VA. MILLER CTR., https://millercenter.org/president/wilson/essays/payne-1920-secretary-of-the-interior (last visited Jan. 22, 2021).

69. *1919-1920 Senate Hearings*, *supra* note 47, at 1912.

70. *Id.* Chairman Payne's dry humor is also evident in the hearing record. When a Senator suggested that "[w]e have no trouble in the Senate" discussing things and working things out, Chairman Payne said—"Your experience is better than mine." *Id.* at 1915. When asked whether there would be trouble constituting the Board in the future, he said that in contrast to Chairman Hurley, "a man of very large affairs," "I came, of course, just because I happened to be here at this time." *Id.* at 1913.

71. *Id.* at 706.

72. *Id.* at 751.

73. *Id.* at 1657.

cost of U.S. crews.[74] U.S. maritime labor union leaders also advocated for requiring all-American crews.[75]

The effect of the Seamen's Act of 1915[76] on the competitiveness of the U.S.-flag fleet was also discussed.[77] That Act, known for its chief sponsor Sen. Robert M. La Follette of Wisconsin as the "La Follette Act," abolished imprisonment for desertion, regulated rations and habitation, established certain manning requirements, and set certain minimum safety standards.[78] Efforts by the U.S. peace delegation to get the Allies to adopt the Seamen's Act standards to level the playing field had failed.[79]

Hanging over the hearings was ongoing competition with Great Britain. In January 1920, Sen. Jones entered into the record a November 12, 1919 article "The Lookout Man" from the British *Fairplay* magazine.[80] The article stated that "when it comes to survival of the fittest, we have invariably done our level best to crush or mold opposition, and, as regard America's new mercantile marine, we shall go on doing it, and expect her to do the same to us."[81] "Thereafter Jones carried this article with him constantly, pulling it out and playing it to its hilt when the occasion warranted."[82]

With respect to the need for a U.S. merchant marine, Adm. R.E. Coontz, Chief of Naval Operations, stated the case succinctly on February 7, 1920:

> In my opinion the Navy is vitally interested in the establishment of an American merchant marine for the reasons, first, that it is an indispensable arm of service in time of war; second, it enables the United States to take her proper place in diplomatic and trade relations with the world; and, third, it is the nursery of seamen.[83]

---

74. *E.g.*, *id.* at 673, 705, 755 (testimony of Capt. W.E. Abernathy, Frank C. Munson & Capt. Gerard T. January).

75. *Id.* at 1531, 1625 (Feb. 24 & Feb. 26, 1920) (testimony of Capt. William A. Wescott, Pres., Masters, Mates, and Pilots of the Pacific Coast & Andrew Furuseth, Pres., The International Seamen's Union of America).

76. Act of Mar. 4, 1915, ch. 153, 38 Stat. 1164 (1915).

77. *E.g.*, *1919-1920 Senate Hearings*, *supra* note 47, at 705, 1531.

78. *See* Paul S. Taylor, *Eight Years of the Seamen's Act*, 15 AM. LAB. LEGIS. REV. 52 (1925).

79. *See* SAFFORD, *supra* note 2.

80. *1919-1920 Senate Hearings*, *supra* note 47, at 397.

81. *Id.* at 398.

82. SAFFORD, *supra* note 2, at 223.

83. *1919-1920 Senate Hearings*, *supra* note 47, at 1011.

2. House Enactment of the "Greene" Bill

After the Senate hearings commenced, the House Merchant Marine Committee held hearings in October 1919 on its bill—H.R. 10378—which was to serve as the basis of the 1920 Act.[84] Entitled "Providing for the Disposition, Regulation, or Use of the Property Built or Acquired by the United States,"[85] the hearings did exactly that rather than focusing on measures to promote the merchant marine. The House Merchant Marine Committee mainly had witnesses from the Shipping Board including Chairman Payne, Commissioner Scott, and various Board personnel. The Board personnel suggested changes to the proposed legislation but also generally concurred with it.

The key issue vexing Congress through the legislative process was evident in the House hearings. Mr. Philip A.S. Franklin, President of the International Mercantile Marine Co., testified that the U.S. Government vessels should be sold as soon as possible at whatever price could be obtained and that by this method the U.S. Government would be best able to promote a privately owned merchant marine.[86] IMM, as it was known, was a North Atlantic shipping trust financed by J.P. Morgan in 1902 that included the White Star Line, the owner of the *Titanic*.[87] The formation of IMM contributed to the Alexander Report on conference abuses.[88] Mr. Franklin's advice was backed by J. Parker Kirlin, an admiralty lawyer who represented IMM, who recommended the Committee adopt an outside date by which all Government vessels would have to be sold, such as 18 months.[89]

84. *1919 House Hearings*, *supra* note 46.

85. The subject of adding "for the purpose of maintaining an American merchant marine" was raised by counsel to the Board. *Id.* at 18-19. As introduced, H.R. 10378 provided that one of its purposes was "to provide for the promotion and maintenance of the American merchant marine." H.R. 10378, 66th Cong., 1st Sess. (1919).

86. *Id.* at 218, 225, 253.

87. GIBSON & DONOVAN, *supra* note 11, at 95-96. Philip Franklin was the White Star official in New York at the time of the *Titanic* sinking and interacted with the families and the press during that incident. Fred Rasmussen, *Reports of Titanic's Sinking Were Denied Disaster: Philip A.S. Franklin, Vice President of the Company that Owned the Ship, Could Not Believe It had Gone Down*, BALTIMORE SUN (Apr. 12, 1998), https://www.baltimoresun.com/news/bs-xpm-1998-04-12-1998102194-story.html.

88. GIBSON & DONOVAN, *supra* note 11, at 98.

89. *1919 House Hearings*, *supra* note 46, at 253. Mr. Keating was a name partner in the law firm that became Kirlin, Campbell & Keating. Ira A. Campbell played a prominent role in the enactment of the 1920 Act including having the Mortgage Act, 1920 attributed to him. *See supra* "Ship Mortgage Act—Section 30."

The Board representative opposed such a deadline.[90] And at the other extreme, the Farmers' National Council argued in favor of permanent U.S. Government ownership of vessels to be operated for the benefit of the American people.[91]

H.R. 10378 as revised during Committee deliberations was introduced by Rep. William S. Greene, Chairman of the Merchant Marine Committee, on November 5, 1919[92] and reported by the Committee on November 6, 1919.[93]

That report indicated that it was "the outcome of a number of exhaustive investigations made by the Merchant Marine and Fisheries Committee, covering the past three or four months" and that it "directs that the Shipping Board shall sell judiciously to citizens of the United States their available merchant tonnage, taking into consideration in the sale price the prevailing market prices for vessels of a like character and directs them to disregard the war cost of vessels in making these sales."[94] The report also urged the Board to consider that, given the world-wide building program in progress, vessels "will naturally be depreciated to the present cost of building, which is considerably less than the war cost paid by the Government."[95]

The House considered and passed H.R. 10378 on November 8 by a vote of 240 to 8 (with 184 non-voting) after considering and adopting many amendments.[96] The House-passed bill was thereafter known as the "Greene Act" or "Greene Bill."[97]

H.R. 10378 was a skinny bill with thirteen sections focused on transitioning the 1916 Act to peacetime, although it included in its purpose that it was an act to provide for the promotion and maintenance of the American Merchant Marine.[98] The Greene Bill would have repealed several wartime emergency authorities such as the Urgent Deficiencies Act of June 13, 1917.[99] The beginning of the Greene Bill was a precursor

90. *Id.* at 261-68.
91. *Id.* at 67-95.
92. H.R. 10378, 66th Cong. (1919).
93. H.R. REP. NO. 66-443 (1919).
94. *Id.* at 1-2.
95. *Id.* at 2.
96. 58 CONG. REC. 8173 (1919).
97. *See id.* at 8172.
98. This was noted in the Senate Commerce Committee hearings when Sen. Jones stated that the bill that had passed the House "really has no provision in it looking toward aiding the merchant marine when it gets in private hands; that it deals practically only with the disposal of the ships that we have." *1919-1920 Senate Hearings*, *supra* note 47, at 1901.
99. H.R. 10378, 66th Cong. § 1 (1919); Act of June 13, 1917, ch. 29, 40 Stat. 182 (1917).

to the declaration of policy that became Section 1 of the 1920 Act. The Greene Bill provided that:

> in order that merchant vessels now owned or controlled by the United States may be returned to or placed under private ownership and operation, and to the end that an efficient merchant marine adequate to meet the requirements of our ocean borne commerce and to serve as a naval auxiliary in time of war or national emergency, may be established and operated by citizens of the United States, the board is hereby authorized and directed to sell, as soon as practicable, to citizens of the United States . . .

the vessels owned by the Board or transferred to the Board.[100] In making those sales, the Board was "authorized to take into consideration the prevailing domestic and foreign market price of and demand for vessels" and the "cost of constructing vessels of similar types under prevailing conditions."[101] Only vessels the Board deemed "unnecessary to the promotion and maintenance of an efficient American merchant marine" could be sold to non-U.S. citizens.[102]

The bill authorized deferred payments for vessel sales provided the vessels were insured against loss, liability, or damage.[103] The Board was further authorized to create an insurance fund out of net revenue and issue insurance policies to insure "any interest of the United States" in U.S Government-constructed vessels or plant or materials acquired by the Board.[104] Any vessels not sold could be chartered on such terms as the board shall deem wise for the promotion and maintenance of an efficient merchant marine limited by the original five-year limitation in the 1916 Act.[105]

These House-passed provisions survived, in the main, to become the core of the 1920 Act, although with significant alterations in subsequent Congressional consideration. The provision that provoked the most, and the most disparate, discussion in the Senate Commerce Committee hearings was the concept of selling the U.S. Government-owned and constructed vessels as soon as practicable.

100. H.R. 10378, 66th Cong. § 3 (1919).
101. *Id.*
102. *Id.* at § 4.
103. *Id.* at § 5.
104. *Id.* at § 6.
105. *See id.* at § 7.

3. Senator Jones's Bills

At about the same time, Sen. Jones made it clear that he had a few ideas of how to transition to peacetime. Sen. Jones had already held hearings in the Senate Commerce Committee starting in June, 1919.[106] He introduced two bills on November 3, 1919 reflecting the Board's recommendations the Commerce Committee had received—S. 3355 and S. 3356—plus ideas of his own such as the creation of an entity called the "United States Merchant Marine Corporation" to take over all vessel and property functions of the Board.[107] These bills overlapped with the House bill with regard to the repeal of wartime emergency authorities and on the sale of the U.S. Government-owned vessels. These bills also overlapped with each other.[108]

S. 3356 contained the precursor statement of merchant marine policy that was included as Section 1 of the 1920 Act and that has been hailed by many historians as a landmark policy.[109] The statement affirmed the need for a substantial merchant marine "ultimately to be owned and operated by private parties and capital." Perhaps most significantly, the policy as proposed in S. 3356 "declared" it "to be the policy of the United States *to do under this Act* whatever shall be necessary to produce and encourage the maintenance of such a merchant marine and shipbuilding and repair plants."[110] The limitation "to do under this Act" was replaced in the 1920 Act with "and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board [shall in so acting] keep always in view this purpose and object as the primary end to be attained."[111]

S. 3356 also proposed a substantial reorganization of U.S. Government shipping functions that did not become law. It proposed the creation of the "United States Merchant Marine Corporation" (with Philadelphia as its principal place of business) as a successor to the Emergency Fleet Corporation, with all assets of the Board and prior Corporation transferred to it.[112] With a nine-member board, the new corporation would have wide latitude to do whatever was best to

106. *1919-1920 Senate Hearings*, *supra* note 47.

107. S. 3355, 66th Cong. (1919); S. 3356, 66th Cong. (1919) (hereinafter S. 3355 and S. 3356).

108. *See id.*

109. S. 3356, *supra* note 107, at § 1.

110. *Id.* (emphasis added).

111. *1920 Act*, *supra* note 29, at § 1.

112. S. 3356, *supra* note 107, at § 2.

accomplish the purpose of the act. Competition between the corporation and established private U.S. shipping lines would be prohibited.[113]

Sen. Jones proposed in one or both of S. 3355 and S. 3356 some form of all three of the provisions, which became the most controversial after the enactment of the 1920 Act:

(a) Extension of the coastwise laws to the Virgin Islands, Guam, and the Philippines and directing the newly formed corporation to ensure adequate service to these territories.[114] At the time, the coastwise laws had already been extended to Alaska, Puerto Rico and Hawaii, but not to other territories.[115]
(b) Authorizing the Interstate Commerce Commission and the Shipping Board to require connection between rail and water carriers and to set rates to foster U.S. exports.[116]
(c) Directing the President to take steps to abrogate the provisions of treaties of commerce, navigation, and friendship that restrict the right of the United States to impose discriminating duties on imports favoring U.S.-flag vessels.[117]

One of the bills also proposed reinvigorating U.S. mail carriage on U.S.-flag vessels and requiring apprentice cadets on board U.S.-flag vessels.[118] Neither bill contained the refinement to existing coastwise laws that wound up being Section 27 of the 1920 Act.[119]

4. Senate Commerce Committee Hearings, Part II

Sen. Jones continued Committee hearings in early 1920, where he tested the changes he intended to make to the House bill with Chairman Payne, who had taken over from Chairman Hurley.[120]

---

113. *Id.* at § 6.

114. S. 3355, *supra* note 107, at § 18; S. 3356, *supra* note 107, at § 5.

115. Act of July 27, 1868, ch. 273, § 5, 15 Stat. 241 (1868) (Alaska); Act of Apr. 30, 1900, ch. 339, § 98, 31 Stat. 141 (1900) (Hawaii).

116. S. 3355, *supra* note 107, at § 16 (1919) (authority to be granted to a new entity called the "Federal Joint Commission on Rail and Water Traffic."); S. 3356, *supra* note 107, at § 9 (1919).

117. S. 3355, *supra* note 107, at § 21; S. 3356, *supra* note 107, at § 18.

118. S. 3355, *supra* note 107, at § 15.

119. Both bills also required, however, that the Board or the new corporation, as the case may be, "ascertain and determine the need for ships between the ocean terminal of the Government railroad in Alaska and Pacific and other ports" and to "furnish suitable service" if not provided by privately owned and operated vessels. S. 3356, *supra* note 107, at § 11 (1919); S. 3355, *supra* note 107, at § 20 (1919).

120. For example, Sen. Jones asked Chairman Payne in March 1920 whether extra penalty authority for carriers violating the Alexander Report provisions of the 1916 Act would be useful and whether there was any reason not to extend the coastwise laws to the Philippines. *1919-1920 Senate Hearings*, *supra* note 47, at 1921, 1924-25.

On the issue of whether the expression "as soon as practicable will be broad enough," Chairman Payne responded that the discretion "as to how and when and the price should be left to the Shipping Board," although always with the paramount objective of private ownership.[121] And on government versus private ownership, Chairman Payne was unequivocal—"I do not believe it is possible to establish a permanent merchant marine owned and operated by the Government: that is ownership and operation by private persons is a sine qua non to the successful establishment of a merchant marine."[122]

Sen. Jones also asked about his idea to create a new corporation and enlarge the Board. He asked Chairman Payne whether it would be a good idea to turn over the "routine work of looking after contracts, and adjusting contracts" to a corporation to free the Board to make policy decisions and to increase the size of the Board to seven drawn from around the country.[123] Chairman Payne was equivocal on the corporation and opposed the increase in the size of the Board and instead proposed that the Board have a President-appointed chairman rather than a chairman selected by the Board.[124]

At the time, Chairman Payne was asked if the Board had recommendations for legislation and—although Chairman Payne agreed with many of the suggestions offered by Sen. Jones in the hearings—only offered two suggestions. Both were technical—one concerned modifying Section 9 of the 1916 Act regarding vessel transfers to non-U.S. citizens, and the other related to the Board obtaining authority over the former docks, piers, warehouses, etc. of the North German Lloyd Dock Co. and the Hamburg-American Line Terminal & Navigation Co. acquired by the President pursuant to war time emergency legislation.[125]

The coastwise laws were not the subject of the Senate hearings except in two notable instances. Charles J. McCarthy, Governor of Hawaii, appeared to highlight issues Hawaii was having with getting adequate shipping service from the mainland particularly with respect to passengers.[126]

---

121. *Id.* at 1902.
122. *Id.*
123. *Id.* at 1914.
124. *Id.* at 1914-15.
125. *Id.* at 1874.
126. *Id.* at 1327.

William L. Clark appeared on behalf of the Pacific Steamship Co. to argue for tightening the coastwise laws.[127] He gave detailed testimony of alleged British and Canadian attempts to evade the coastwise laws and manipulate the U.S. Government to permit such evasions including setting up "dummy corporations" to own U.S.-flag vessels.

Mr. Clark argued that a 1913 U.S. Attorney General opinion by George W. Wickersham had misinterpreted the existing coastwise law (updated in 1898),[128] thereby permitting Canadian firms to avoid the use of U.S.-flag vessels for the carriage of goods between Seattle and Alaska. The 1898 act restricted the "transportation by water" of "merchandise" "from one port of the United States to another port of the United States, either directly or via a foreign port, or for any part of the voyage" to U.S.-flag vessels.[129] The act of 1898 was interpreted by the U.S. Attorney General Wickersham so as not to apply to the movement of cargo from Seattle via U.S.-flag vessels to Skagway, Alaska, then by rail through Canada to Whitehorse in the Yukon Territory and by foreign vessels down river to Fairbanks, Alaska.[130] The Attorney General reasoned that the act of 1898 only applied to any part of the ocean portion of transportation and not to any land portion because of the "by water" language.

Mr. Clark recommended that the coastwise law be amended in several ways—much of which became part of the 1920 Act.[131] To reverse the Wickersham opinion, Mr. Clark recommended adding the phrase "by land and water," using "points" instead of "ports" and expressly providing coverage of any "Territory, district, or possession." With respect to "dummy corporations," Mr. Clark recommended that "at least 75 per cent of the value of the securities" of corporations owning vessels in the coastwise trade be "bona fide owned by . . . citizens of the United States." Finally, Mr. Clark recommended common carriers and their agents be prohibited from selling through tickets and conducting other related activities in the U.S. if any portion of the transportation being sold was between points in the United States with the use of a foreign vessel.

Sen. Jones asked whether the proposed changes affected any place other than Alaska. Mr. Clark replied that "[i]t affects Alaska and Puget

127. *Id.* at 1429-57. Mr. Clark later appeared with Sen. Jones in Tacoma in August 1920 to defend the 1920 Act. *Senator Jones Defends His Bill at Takoma*, NAUTICAL GAZETTE, Aug. 21, 1920, at 228.

128. Act of Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248 (1898).

129. *Id.*

130. Transportation of Merchandise from Seattle to Fairbanks, 30 Op. Att'y Gen. 3 (1913).

131. *1919-1920 Senate Hearings*, *supra* note 47, at 1456.

Sound and vitally affects our 'coast-to-coast' commerce."[132] Mr. Clark argued that "[s]uch amendment is required in order that the law can not be interpreted so that a short rail carriage shall vitiate our coastwise laws and permit foreign carriers to engage in our coastwise trades."[133]

C. Senate and Conference Consideration of the 1920 Act

The Senate Commerce Committee reported H.R. 10378 as amended favorably on May 4, 1920.[134] Senate floor consideration commenced on May 10, 1920,[135] and the bill as further amended passed the Senate by voice vote on May 21 and was sent to the House to be conferenced.[136]

Sen. Jones's firm hand was evident from the beginning—when he pressed for floor time without it apparently being fully cleared in advance with Senate leadership[137]—to the end—when the leading opponent on the floor gave up, stating that it is "so manifest that the Senate is committed to this bill, with all its features, good, bad, and indifferent, that any further attack on it would be futile."[138] Sen. Jones was insistent that the bill get finished by the end of the session (June 4)[139] and compromised as necessary to keep the process of considering the bill, section-by-section, moving through the Senate.

For example, the Commerce Committee had adopted Mr. Clark's formulation of prohibiting sale of through tickets on foreign carriers for an all-in coastwise movement, and although Sen. Jones defended it on the Senate floor, he conceded defeat when the provision was criticized and consented to it being stricken.[140] To Sen. Knute Nelson of Minnesota who opposed the provision, Sen. Jones said he knew of Sen. Nelson's

---

132. *Id.*

133. *Id.*

134. *See* H.R. 10378, 66th Cong. (1920).

135. 59 CONG. REC. 6803 (May 10, 1920).

136. *Id.* at 7420. "This revised bill, one of the most important measures on shipping ever brought before Congress, received practically no debate in the Senate and passed without a record vote." ZEIS, *supra* note 5, at 115-16.

137. 59 CONG. REC. 6803 (May 10, 1920) (interaction between Sen. Jones and Sen. William S. Kenyon of Iowa regarding whether bringing up H.R. 10378 had been approved, with Sen. Kenyon saying— "I am curious to know how a bill reported only a week ago can be placed on any assignment by a steering committee, when bills that have been reported out of committees months ago, such as the bill for the regulation of the packers, can secure no consideration").

138. 59 CONG. REC. 7419 (May 21, 1920) (Statement of Sen. William H. King of Utah).

139. *Id.* at 7334 (May 20, 1920) ("Mr. President, I merely wish to renew the appeal which I made a while ago, that we proceed with the consideration of the shipping bill. I am not scolding Senators, but I do hope that we may proceed with the consideration of that bill, so that we may pass it today").

140. *Id.* at 7350.

"devotion to American interests, and especially his interest in Alaska and Alaskan matters" which "makes it hard for me to press this amendment."[141]

Despite Sen. Jones's compromises, there was persistent opposition to the legislation. Some of the opponents argued that the whole bill was a mistake and that the U.S. Government-owned fleet should not be sold.[142] Sen. John F. Nugent of Idaho argued on the day the bill was passed and sent to the President for his signature that he was "unalterably opposed to selling it [government-owned fleet] to private corporations at a tremendous loss, as will certainly be done if the pending bill is enacted into law."[143]

At the same time, there were virtually no recorded votes, as changes were adopted by voice vote to the Greene Bill section-by-section. The only exceptions were two tax-related votes—one to strike an exemption from the war-profits and excess-profits taxes and the other to strike a provision granting the Secretaries of Treasury and Commerce together with the Board the authority to adjust depreciation of vessels purchased from the Board to put vessel owners on parity with world competitors.[144]

A conference was then held to resolve the differences between the Greene Bill and the bill as approved by the Senate, which produced three conference reports between June 2 and June 4, 1920.[145] The Senate passed the report on June 4 by a vote of 40 to 11, with 45 not voting.[146] The House passed the report the same day by a vote of 145 to 120 with 4 voting present and 158 not voting.[147] The votes occurred on a Friday, the next to last day of the second session of the 66th Congress, which would appear to account for the non-votes. President Wilson signed the legislation into law on Saturday, June 5, 1920.[148]

---

141. *Id.*

142. *Id.* at 8465.

143. *Id.* Sen. Nugent made the argument that the Board had been profitable to date.

144. *See infra* "Other Promotional Authorities—Sections 11, 23, 24, 26 & 29, *Tax Exemption*."

145. H.R. REP. NO. 66-1093 (June 2, 1920); H.R. REP. NO. 66-1102 (June 3, 1920); H.R. REP. NO. 66-1107 (June 4, 1920).

146. 59 CONG. REC. 8502 (June 4, 1920) (this was the second Senate vote; in the first vote it was deemed that there was no quorum).

147. *Id.* at 8608-09.

148. *See id.* at 8662.

D. Provisions of the 1920 Act

The 1920 Act contains thirty-nine sections, including two definition sections and a constitutionality savings provision. The 1920 Act repealed many emergency authorities, but the bulk of the Act is forward-looking, with a variety of indirect aids to the U.S. merchant marine primarily as engaged in the foreign trade. Perhaps the most important section of the 1920 Act was Section 1, the declaration of policy.

1. Declaration of Policy—Section 1

Section 1, which remains in modified form in the U.S. Code today,[149] is the "policy" section of the Act. It declares, among other things, that

> it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine . . . to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States.[150]

The most direct antecedent of this policy provision is S. 3356, introduced by Sen. Jones on November 3, 1919.[151] There were also echoes of this purpose in the Greene Bill[152] and the early recommendations of the Board to the Senate Commerce Committee.[153] S. 3356 contains the same basic elements of requiring a merchant marine for national defense and trade and that the merchant marine be privately owned. As noted above, the limitation in that bill to take actions only "under this Act" was modified in Section 1 of the 1920 Act "not to be inconsistent with the express provisions of this Act" and to "keep always in view this purpose and object as the primary end to be attained."

The tenor of the Commerce Committee report is consistent with the declaration of policy—"We assert the need of a merchant marine for the

149. 46 U.S.C. § 50101 (2012).
150. 1920 Act, *supra* note 29, at § 1.
151. S. 3356, *supra* note 107.
152. *See supra* "House Enactment of the "Greene Bill."
153. *1919-1920 Senate Hearings*, *supra* note 47, at 204 (June 12, 1919) (Legislation was needed "in order to encourage the establishment and development of an adequate merchant marine under the American flag.").

national defense and for commercial growth and declare it to be our policy to do whatever may be necessary to meet this need."[154]

Section 1 was little discussed in the Congressional deliberations. Perhaps the only occasion it was raised directly was on May 20 by Sen. Joseph E. Ransdell of Louisiana, who focused attention on the words "ultimately to be owned and operated privately by citizens of this country," arguing that it was the unanimous view of the Commerce Committee that the U.S. Government-owned vessels should be sold.[155] Sen. Ransdell went on to state that "[w]e are not going to sell these vessels hastily" and "[w]e contemplate the Shipping Board continuing to operate for years."[156] Section 1 was added to H.R. 10378 by voice vote in the Senate on May 10, 1920 word-for-word as it became law.[157]

Sen. Jones wrote in February 1921 that Section 1 "expresses the thought, desire, purpose and aim of the American people" and that the section "is the chart to guide and the yardstick to measure every act of the Shipping Board and should be kept in mind in the construction of every provision of the act and in every decision the board may make."[158] Indeed, Section 5 of the 1920 Act grants the Board authority to sell vessels "in order to accomplish the declared purposes of this Act, and to carry out the policy declared in Section 1 hereof."[159]

One prominent maritime historian stated that Section 1 was a "declaration of mercantilistic policy."[160] Another has written that the policy statement was "framed in an atmosphere of optimism that a strong merchant marine could be maintained under U.S. flag without direct government aid."[161] In any event, there is widespread agreement that the provision was a groundbreaking definition of U.S. maritime goals.[162]

---

154. H.R. 8091, 68th Cong. 364 (1924) ("We assert the need of a merchant marine for the national defense and for our commercial growth and declare it to be our policy to do whatever may be necessary to meet this need.").

155. 59 CONG. REC. 7337-38 (May 20, 1920).

156. *Id.* at 7338.

157. 59 CONG. REC. 6805 (May 10, 1920).

158. Jones, *supra* note 31, at 89.

159. 1920 Act, *supra* note 29, at § 5.

160. ZEIS, *supra* note 5, at 117. One of Sen. Jones's biographers agrees—"The act's preamble was . . . a declaration of an official return to ancient mercantilist policies. . . ." Forth, *supra* note 8, at 491.

161. SAMUEL A. LAWRENCE, UNITED STATES MERCHANT SHIPPING POLICIES AND POLITICS 41 (1966).

162. *E.g.*, GIBSON & DONOVAN, *supra* note 11, at 119.

2. Repeal of Emergency Authorities—Sections 2, 16, and 22

There was Congressional consensus that the emergency shipping authorities granted to the President during the war, which had been conveyed to the Board and the Corporation, should be repealed.[163] The Greene Bill repealed the emergency shipping fund provisions of the Urgent Deficiencies Act, which granted the President extraordinary requisition and ordering authorities. That repeal was retained in the 1920 Act.[164] Other 1918-granted authorities and the Board's authority to build, purchase, and requisition housing were also repealed in the 1920 Act.[165]

The Commerce Committee added a repeal of Sections 5, 7, and 8 of the 1916 Act to Section 2 of the 1920 Act.[166] Those sections granted the Board the power to construct, charter, and sell vessels—all authorities supplanted by new authorities granted in connection with the formation of a new Shipping Board as proposed by the Commerce Committee. The Commerce Committee was also careful to add a provision granting the Board the authority "to complete or conclude any construction work" already begun "if in the opinion of the board, the completion or conclusion thereof is for the best interest of the United States."[167]

The Commerce Committee further added a repeal of the Act of October 6, 1917, which granted coastwise trading privileges to foreign-built vessels reflagged under the Foreign Ship Registry Act.[168] The repeal grandfathered vessels owned by U.S. citizens or owned by the U.S. Government as of February 1, 1920 and any U.S. citizen transferees of such persons.[169] A proviso was added before enactment permitting the Board to authorize foreign vessels to carry passengers between Hawaii and the U.S. West Coast until February 1, 1922 "if it deems it is necessary so to do."[170] This may have been due to earlier House consideration of the

163. Section 2 of the Greene Bill dealing with emergency authority repeal was only amended to repeal Sections 5, 7, and 8 of the 1916 Act with virtually no discussion. 59 CONG. REC. 6805 (May 10, 1920).

164. 1920 Act, *supra* note 29, at § 2(a)(1), 41 Stat. 988 (1920).

165. *Id.* at §§ 2(a)(2)(5), 16.

166. *See* 59 CONG. REC. 6805 (May 10, 1920).

167. *See* 1920 Act, *supra* note 29, at § 2(b).

168. *1919-1920 Senate Hearings*, *supra* note 47, at 16 (Sen. Jones—"I understand there are not a great many of these ships, and we believe that where the ships are wholly owned by American citizens, built by American capital, there can be no injury done to the coastwise trade by allowing them to be admitted to American registry, so long as they continue in that ownership."); 59 CONG. REC. 6864-65 (May 11, 1920).

169. *See 1919-1920 Senate Hearings*, *supra* note 47, at 16.

170. 1920 Act, *supra* note 29, at § 22.

problem of inadequate passenger service to Hawaii[171] or Governor McCarthy's testimony before the Commerce Committee in February 1920.[172]

3. Creation of the New Shipping Board—Sections 3, 4, 17, and 35

The 1920 Act created a new U.S. Shipping Board to take over from the one created in the 1916 Act.[173] Board commissioners in office upon effectiveness of the 1920 Act were to hold office until new commissioners were appointed.[174] All vessels and other property of the earlier Board, including all docks, piers, warehouses, and other equipment and facilities were transferred to the new Board.[175]

All power and authority vested in the new Board could be exercised by the Emergency Fleet Corporation, which was left intact "until all vessels are sold in accordance with the provisions of" the 1920 Act.[176] Sen. Jones's earlier contemplation of a new corporation to be set forth in statute was not included in the 1920 Act,[177] although the expanded Board with seven "commissioners" serving staggered six-year terms and to be geographically apportioned became law substantially as initially proposed by Sen. Jones in 1919.[178]

Concerns regarding the workability of a large Board expressed in the Commerce Committee hearings[179] were echoed on the Senate floor. Sen. Edge argued for a single commissioner or a compromise based on

171. Protection of United States Coastwise Trade, H.R. REP. NO. 66-135 (July 19, 1919) ("[I]t must not be overlooked that during the war a very large amount of tonnage both passenger and freight was diverted from the Pacific to the Atlantic. Virtually no portion of that tonnage has been returned . . . . In consequence the islands of Hawaii are confronted with a situation which has been and will continue to be acute until relief is granted by the Congress").

172. *See 1919-1920 Senate Hearings*, *supra* note 47, at 1327 (Statement of Governor McCarthy).

173. 1920 Act, *supra* note 29, at § 3(a).

174. *Id.*

175. *Id.* at § 4.

176. *Id.* at § 12 (Sen Jones—"[T]he Emergency Fleet Corporation remains just as it is . . . . It is really the instrumentality of the Shipping Board to handle and dispose of the ships and so on; but it does not take care of the matter of discrimination or of regulating rates or revising the navigation laws or matters of policy or so forth." 59 CONG. REC. 7044 (May 14, 1920)).

177. 1920 Act, *supra* note 29, at § 12.

178. *See* S. 3356, *supra* note 107, at § 2. According to the Commerce Committee Report, geography should have been taken into account in the original Board and would be mandated in the 1920 Act.

179. *E.g.*, *1919-1920 Senate Hearings*, *supra* note 47, at 1915.

the current Board of five.[180] Sen. Nelson argued that the geographic apportionment would lead to the creation of "the establishment of a lot of non-paying shipping lines" as the commissioners engaged in "logrolling."[181] He argued for a Board of three. In the end, Sen. Jones prevailed, arguing that "[o]ne of the most important provisions of this bill is that increasing the board and distributing it over the different sections of the country" pointing out that the U.S. west coast already lacked adequate service to compete with Japanese and British service.[182] He added that "[t]here will be no logrolling."[183]

Throughout Congressional consideration, Sen. Jones made it clear that success or failure of the vessel sales and creation of a privately owned U.S. merchant marine depended on the Board. The Commerce Committee report indicated that the Board "has the most difficult, as well as the most important work to do," that "[t]his board will make or mar our merchant marine" and it "should be composed of men of the greatest ability, widest experience and highest character."[184] Some skepticism was expressed about how likely this was to occur in practice. Sen. James A. Reed of Missouri said on the Senate floor that—"I have not seen anything about the Shipping Board performances up to date to lead me to the conclusion that we ought to confer any more powers on the board."[185]

4. Basic Board Authorities—Sections 5, 6, 7, 13, and 19

Possibly the two greatest imperatives for the new Board were to sell vessels and establish shipping lines and routes and to do so in combination if possible. With regard to vessel sales, the new Board was "to sell, as soon as practicable, consistent with good business methods and the objects and purposes to be attained by this Act" all the vessels being transferred to it by the Act to U.S. citizens.[186] As was anticipated and much discussed during the Commerce Committee hearings, the phrase "consistent with good business methods" was added by the Commerce Committee to the "as soon as practicable" phraseology in the Greene Bill and was retained

180. 59 CONG. REC. 6985 (May 13, 1920) (Sen. Edge—"I am convinced that a board of seven is unwieldy, unbusinesslike, and can not result in that effective administration which is necessary in such large responsibility").

181. *Id.* at 6810.

182. *Id.* at 6815.

183. *Id.*

184. *See 1919-1920 Senate Hearings*, *supra* note 47, at 4.

185. 59 CONG. REC. 6869 (May 11, 1920).

186. 1920 Act, *supra* note 29, at § 5.

in the 1920 Act.[187] The Commerce Committee also added what the Board should consider in selling vessels—"any other facts or conditions that would influence a prudent, solvent business man in the sale of similar vessel or property which he is not forced to sell."[188]

The only exception for sale of vessels to non-citizens were vessels as the Board "after careful investigation" might deem "unnecessary to the promotion and maintenance of an efficient American merchant marine" and even then only after diligent efforts were made to sell the vessels to citizens and the Board by super-majority approved the sale.[189] Consideration was also given to prohibiting sales to non-citizens of vessels over 6,000 dead weight tons unless the vessels were over ten years of age—which was not adopted.[190]

The balancing act of demanding that sales occur "as soon as practicable" and "consistent with good business methods," which anticipated a long period of U.S. Government ownership, was evident in the Senate floor consideration of the legislation. Sen. Nugent adamantly opposed any sale that would lose the U.S. Government any portion of its investment—"I absolutely refuse to give my asset to any proposition of any kind or character or description which will tend, either directly or indirectly, to take a thousand millions of the people's money out of their pockets and turn it over to private interests . . . I would continue to operate them under Government control."[191] Others, like Sen. Edge, emphasized that some immediate loss was necessary to prevent "a continuing loss and drain on the pocketbooks by sticking to Government ownership or Government management."[192]

To go along with its direction to sell vessels, the new Board was authorized and directed to investigate "what steamship lines should be established," which "in its judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service."[193] To accomplish this, the Board was authorized to sell or charter vessels to U.S.

187. *See 1919-1920 Senate Hearings*, *supra* note 47, at 12.

188. *Id.*; 59 CONG. REC. 7211 (May 18, 1920).

189. 1920 Act, *supra* note 29, at § 6.

190. *See* 59 CONG. REC. 6989 (May 13, 1920). The U.S. Chamber of Commerce recommended that all vessels less than 6,000 dead weight tons be sold immediately as they were "not permanently suitable for overseas trade." *1919-1920 Senate Hearings*, *supra* note 47, at 540 ("Report of the Special Comm. on Ocean Transportation").

191. 59 CONG. REC. 7337 (May 20, 1920).

192. *Id.* at 6988.

193. 1920 Act, *supra* note 29, § 7.

citizens who would agree to maintain the service and that if no U.S. citizen would purchase or charter vessels to establish routes that the Board could continue to own and operate vessels on such routes.[194] In so doing, the Board was charged with not offering any service at less than cost including "a proper interest and depreciation charge" where U.S. citizens already operated.[195]

The new Board was also granted very broad general powers.[196] Among other things, it could "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to meet general or special conditions that may be unfavorable to our trade."[197] Moreover, it could request other federal agencies to suspend or modify their rules except for those of certain enumerated agencies such as the Steamboat Inspection Service. Sen. Jones later admitted that "[v]ast and unusual powers are given to this board" and that Section 19 of the 1920 Act "is one of far-reaching consequence."[198] Finally, the Board was authorized to sell all other property "upon such terms and conditions as the board may determine and prescribe."[199]

5. Ancillary Board Authorities and Direction—Sections 9, 10, 12, 14, and 15

The new Board was also accorded a variety of authorities to assist and direct the Board in its essential mission of selling the government fleet and promoting a privately-owned U.S. merchant marine. The Board was given the authority to "recondition" vessels, keep them "in suitable repair" until sold, and to self-insure its vessels and property.[200] For any vessel sold under deferred payment terms, the Board had to require the purchaser to have adequate insurance on the vessel.[201] Net proceeds of sales not needed

194. *Id.*

195. Sen. Jones indicated, "I do not imagine that the Shipping Board would think about establishing lines where American lines are already established." 59 CONG. REC. 6815 (May 10, 1920). The provision was accepted as compromise. *Id.* at 7353 (May 20, 1920).

196. 1920 Act, *supra* note 29, at § 19. Those powers could also be exercised by the Emergency Fleet Corporation. *Id.* at § 35. Sen. Jones appeared to have faith in these powers. *See Pacific Coast Trade Will Be Safeguarded*, NAUTICAL GAZETTE, July 17, 1920, at 67 (Sen. Jones—"There is full authority in the Transportation Act, 1920, to absolutely control all import and export shipments in trans-pacific trade").

197. Wesley L. Jones, *The Merchant Marine Act of 1920*, IX PROC. OF THE ACAD. OF POL. SCI. 90, 92 (1921).

198. *Id.*

199. 1920 Act, *supra* note 29, at § 13.

200. *Id.* at §§ 10, 12.

201. *Id.* at § 9.

as "operating capital" were to be paid to the Treasury "to the credit of the board" and "may be authorized, for the construction, requisitioning, or purchasing of vessels" up until July 1, 1921.[202] This authority to order even more vessels than had already been ordered was criticized on the Senate floor. The Board also was not permitted to charge the War Department for charter hire for the period from July 1, 1918 to June 30, 1919.[203]

6. Noteworthy Promotional Authorities—Sections 8, 21, 28, and 34

The 1920 Act contained "three powerful indirect aids" to a private merchant marine[204]—preferential rail rates, expanding the coastwise laws to cover the Philippines, and authorizing the President to abrogate treaties preventing the use of discriminating duties favoring U.S.-flag vessels. None of the three were implemented after enactment.[205]

Preferential Rail Rates. The Board under Chairman Benson recommended in April 1920 that Congress grant the Board authority to order railroads to restrict preferential rail rates relating to imports and exports to U.S.-flag vessels.[206] It was the Board's view that preferential rail rates were the key to the success Germany and Japan had had in maintaining a substantial national flag presence in their import and export trade.[207] Chairman Benson further reported to the Commerce Committee that it was unnecessary for the U.S. to adopt a direct subsidy if the U.S. adopted preferential import and export rail rates for U.S.-flag vessels.[208] He stated that "[o]ther nations have, by direct subsidy, guaranteed the operation of their fleets in world competition."[209] But, he added, "[w]e believe it unnecessary for the United States to adopt a like policy" so long as preferential rail rates were accorded to U.S. carriers.[210]

Section 28 of the 1920 Act required that any preferential rail rates granted for U.S. imports or exports under the jurisdiction of the Interstate Commerce Commission be granted to U.S.-flag vessels where the Board certified to the ICC that there was adequate service under the U.S.-flag.[211]

---

202. *Id.* at § 14.
203. *Id.* at § 15.
204. LAWRENCE, *supra* note 161, at 41, n. 20.
205. *E.g.*, ZEIS *supra* note 5, at 120-23 ("The three major provisions of the Merchant Marine Act—preferential rail rates, treaty abrogation to allow for the reinstitution of discriminating duties, and extension of coastal laws to the Philippines—we nullified by administrative inaction").
206. *1919-1920 Senate Hearings*, *supra* note 47, at 6-9. *See* SAFFORD, *supra* note 2, at 228.
207. *Id.* at 7-8.
208. *Id.* at 6.
209. *Id.*
210. *Id.*
211. 1920 Act, *supra* note 29, at § 28.

As stated by Sen. Jones subsequently, "the sole purpose and effect of Section 28 is to provide that if American shipping is available then preferential freight rates shall not be given to imports or exports carried over American railroads unless such exports or imports are carried in American ships."[212]

Section 8 of the 1920 Act also gave the Board "in cooperation with the Secretary of War" authority to investigate intermodal connections "with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce."[213] The Board was further authorized to recommend changes to rates, charges or rules of common carriers by rail if the Board determined such rates, charges or rules were "detrimental to the declared object of this section."[214]

Connecting rail rates and charges to promotion of the U.S. merchant marine was controversial among a variety of interests,[215] but was not the subject of extensive discussion in either the House or the Senate. In 1921, Sen. Jones blamed criticisms on foreign interests—"A large part of this criticism, though honestly made by our people, I am convinced has its origin in alien interests."[216] In the end, the Board did not certify adequate U.S. service until 1924 and then "[f]ierce protests from exporting interests and others" forced the Board to back down, and the provision was never implemented.[217]

Extension of the Coastwise Laws to the Island Territories. A second measure intended to boost the U.S. merchant marine was the extension of the coastwise laws to the Philippines, then a territory of the United States acquired from Spain in 1899.[218] The U.S. had agreed with Spain at the time that Spanish vessels could continue to serve the Philippines trade for ten years.[219] Several attempts were nevertheless made to include the Philippines under U.S. coastwise laws including a 1906 legislation later

212. Jones, *supra* note 31, at 95.

213. 1920 Act, *supra* note 29, at § 8.

214. *Id.*

215. Among other things, Section 28 apparently violated "no fewer than thirty-two foreign treaties and lead to opposition in the President's Cabinet during consideration of the 1920 Act. *See* SAFFORD, *supra* note 2, at 232-34.

216. Jones, *supra* note 31, at 95.

217. *See* ZEIS, *supra* note 5, at 120-21; *see also* E.S. Gregg, *The Failure of the Merchant Marine Act of 1920*, 11 THE AM. ECON. REV. 601, 606 (1921).

218. *See* GERALD R. JANTSCHER, BREAD UPON THE WATERS: FEDERAL AIDS TO THE MARITIME INDUSTRIES 47, n. 6 (1975).

219. *See* U.S. DEP'T OF TREASURY, BUREAU OF NAVIGATION, ANNUAL REPORT OF THE U.S. COMMISSIONER OF NAVIGATION 244 (1907).

repealed in 1908.[220] Sen. Jones also had a long history with the Philippines having argued, for example, in 1902 that all U.S. Government supplies going to the Philippines should be carried on U.S.-flag vessels.[221]

Section 21 of the 1920 Act extended the coastwise laws effective February 1, 1922 "to the island Territories [including Guam] and possessions of the United States not now covered thereby" in conjunction with direction to the Board to establish "adequate steamship service at reasonable rates" to such places.[222] Further, the President was authorized to extend the February 1, 1922 date as needed until such time as such adequate service was established with special emphasis on the Philippines.[223]

This extension of the coastwise laws to territories was criticized in the Senate. For example, Sen. Nelson asserted that it "would be a death blow to the commerce and trade of the Philippine Islands," and "it will be destructive to the commerce and a burden to the people of those islands."[224] Sen. Jones retorted that the provision "does not mean injury to the Philippine Islands," because it is put off a year and the Board is directed to ensure adequate service.[225]

Sen. Charles S. Thomas of Colorado pointed out that U.S. tariffs hampered the export of sugar from the Philippines to the U.S. and that the lack of such return cargoes would make U.S.-flag service expensive.[226] He further pointed out that any enterprise "which is protected by ironclad legislation" "will not be particularly modest nor particularly conscientious in fixing of its charges."[227] Sen. Jones responded that the rates and service of any lines serving the Philippines would be under the purview of the Board and that there had been no suggestions in the long Commerce Committee deliberations of monopoly or rate issues in the existing coastwise trades.[228] To respond to these criticisms, the effective date was put off from one year from the enactment of this Act to 1922, and a

220. ZEIS, *supra* note 5, at 57-58.
221. 35 CONG. REC. 6890-91 (June 16, 1902); FORTH, *supra* note 8, at 86.
222. 1920 Act, *supra* note 29, at § 21.
223. *Id.*
224. 59 CONG. REC. 6810 (May 10, 1920).
225. *Id.* at 6811.
226. *Id.* at 6861. In so doing, Sen. Thomas noted Sen. Jones's Prohibition prominence by pointing out that two U.S.-flag vessels were stuck in France looking for return cargoes which could not include French wine—"for which my very genial friend, the Senator from Washington, is in some degree responsible."
227. *Id.* at 6862.
228. *Id.*

provision requiring "full investigation of the local needs and conditions" to ensure adequate service was added.[229]

The extension of the coastwise laws to the Philippines, like the preferential rail rates, was never implemented.[230]

Authority to Abrogate Treaty Obligations. In the Act of March 1, 1817, which first established the exclusions of foreign vessels from the U.S. coastwise trade,[231] the U.S. "included most of the restrictions on trade contained in the English Navigation Acts of the seventeenth century."[232] The 1817 Act and subsequent acts also authorized bilateral agreements to eliminate shipping discriminating duties that eventually resulted in treaties between the U.S. and its trading partners eliminating such duties.[233]

By the late nineteenth and early twentieth century, the politics had shifted in favor of using discriminating duties to support the merchant marine again.[234] For example, the June 1896 Republican national party platform favored restoration of the "early American policy of discriminating duties for upbuilding of our merchant marine" while retaining the requirement that vessels be U.S.-built.[235] A discriminating tariff in favor of U.S.-flag vessels was attempted in the Revenue Act of 1913 (the "Underwood Tariff"), but the Treasury Department refused to apply it because it violated U.S. anti-discrimination treaty obligations and the Supreme Court later rendered an opinion to the same effect.[236]

Sen. Jones had long advocated a return to the use of discriminating duties even in the face of potential retaliation by other countries. For example, he said in 1911 that "I feel satisfied that the only way we will ever build up the American merchant marine will be by the ancient policy of years ago; that is, by discriminating duties. . . ."[237] Then again in the debate on the "Ship Purchase Bill," he argued against government ownership of vessels and in favor of promoting the merchant marine through discriminating duties.[238]

Section 34 of the 1920 Act sought to make the imposition of discriminating duties possible and to avoid the fate of the Underwood

---

229. *See* 1920 Act, *supra* note 29, § 21.
230. *See* ZEIS, *supra* note 5, at 122.
231. Act of Mar. 1, 1817, ch. 31, § 4, 3 Stat. 351 (1817).
232. GIBSON & DONOVAN, *supra* note 11, at 40.
233. *Id.* at 41.
234. *See* 53 CONG. REC. 12433-34 (Aug. 11, 1916).
235. Rebecca Edwards, *Republican Party Platform*, 1896, http://projects.vassar.edu/1896/gopplatform.html (last accessed Mar. 1, 2021).
236. *See* Five Percent Discount Cases, 243 U.S. 97 (1916).
237. 46 CONG. REC. 1822 (Feb. 2, 1911).
238. 53 CONG. REC. 12433-35 (Aug. 11, 1916).

Tariff by abrogating treaties in advance of such imposition. It provided that it is the "judgment of Congress" that provisions in treaties that prevent the imposition of "discriminatory tonnage dues on foreign vessels . . . should be terminated, and the President is hereby authorized and directed within ninety days after this Act becomes law to give notice to the several Governments" that the U.S. will terminate such provisions.[239]

As Sen. Jones explained, the purpose of Section 34 was to meet what other countries were already doing, such as France, in renouncing treaty obligations so that they could engage in commercial post-war competition.[240] Sen. Jones argued that the U.S. had to do the same and that Section 34 would "unshackle us."[241] He made it clear that the provision did not mean "a return to the discriminating-duty policy," but rather "[i]t puts us in a position where we can return to it if we think it wise to do so."[242] He added the U.S. is "not seeking a war of retaliation, but . . . we are not running away from it."[243]

Neither President Wilson nor subsequent Presidents followed the Congressional direction "with the result that section 34 of the Merchant Marine Act has been a dead letter upon the statute books."[244]

7. Other Promotional Authorities—Sections 11, 23, 24, 26, and 29

In addition to the three aids to the private U.S. merchant marine most often remarked by maritime historians, the 1920 Act also contained several other provisions intended to provide indirect aid—a construction loan fund for new construction, a tax exemption from the war-profits and excess-profits taxes, the reinvigoration of the carriage of mails on U.S.-flag vessels, permission for U.S. cargo vessels to carry up to sixteen persons in addition to the crew and not be considered "passenger vessels," an exemption from the anti-trust laws for the provision of marine insurance, and official recognition to the American Bureau of Shipping.

Construction Loan Fund. Section 11 of the 1920 Act authorized, for a period of five years, the Board to set up a "construction loan fund to be used in aid of the construction of vessels of the best and most efficient type for the establishment and maintenance of service on steamship lines

239. 1920 Act, *supra* note 29, at § 34.
240. 59 CONG. REC. 7352 (May 20, 1920).
241. *Id.* at 7351.
242. *Id.*
243. *Id.*
244. ZEIS, *supra* note 5, at 121.

deemed desirable and necessary by the board."[245] The fund is an apparent antecedent to Title XI of the Merchant Marine Act, 1936, which authorized U.S. Government guarantees of private construction.[246] The fund as enacted had an annual cap of $25 million. Loans to U.S. citizens to build vessels were limited to two-thirds of the cost of the vessel.

As reported by the Commerce Committee, the cap was $50 million and authorized the Board to construct vessels for its own account to serve routes the Board deemed "highly important" that were not being served by "responsible citizens of the United States."[247] This latter provision was dropped during conference consideration and was criticized in the Senate on the basis that the U.S. Government should not be building any new vessels.[248] For example, Sen. Edge argued that the public wanted the U.S. Government out of the business of owning vessels as soon as possible and that he questioned "the advisability of passing an act establishing the policy for the future" of the government building more vessels for its own account.[249]

Tax Exemption. The Revenue Act of 1918 imposed war-profits and excess-profits taxes on U.S. businesses.[250] Section 23 of the 1920 Act granted U.S.-flag vessel owners engaged in the foreign trade a way to avoid that tax by granting a deduction from net income of any amount deposited in a trust fund for the purpose of constructing new vessels in the United States subject to the supervision of the Board and the Department of the Treasury.[251] As with the construction fund, this provision appears to be the precursor of a later policy—the Capital Construction Fund and Capital Reserve Fund provisions in the Merchant Marine Act, 1970.

The tax provision elicited an extended debate in the Senate.[252] Objections were raised regarding the precedent being set and whether the merchant marine should be treated any differently than a number of other vital U.S. industries.[253] Sen. Irvine Lenroot of Wisconsin was particularly adamant that the profits tax provision should not be limited to the foreign

245. 1920 Act, *supra* note 29, at § 11.

246. *See* 46 U.S.C. §§ 53701-35 (2019).

247. *1919-1920 Senate Hearings*, *supra* note 47, at 14.

248. 59 CONG. REC. 6809 (May 10, 1920).

249. *Id.*

250. Act of Feb. 24, 1919, ch. 18, 40 Stat. 1057 (1919).

251. 1920 Act, *supra* note 29, at § 23. In addition, the proceeds of the sale of any U.S.-flag vessels constructed prior to January 1, 1914 would be exempt from income tax if invested in building new vessels in the United States.

252. *See* 59 CONG. REC. 7336-45 (May 20, 1920).

253. *E.g.*, *id.* at 7342 (Sen. Nugent—"I do not believe that . . . the shipowners should be given this exemption from taxation which is not enjoyed by other people in the country").

trade and should also cover vessels in the coastwise trade.[254] Sen. Jones and Sen. Ransdell argued that the coastwise trade was already a monopoly and there was no need for special tax treatment in contrast to vessels engaged in international competition.[255]

Sen. Lenroot nevertheless insisted on his amendment[256] and in contrast to virtually every other amendment that was either adopted or rejected by voice vote, Sen. Lenroot's motion to delete the profits provision had a recorded vote. The amendment lost 22 to 28, with 46 not voting.[257] The issue, however, did not die—Sen. Reed argued on the last day of the consideration of H.R. 10378 that exempting the shipping industry from taxation was wrong and that he was "utterly opposed on principle to exempting any class of citizens from taxation."[258]

As reported by the Commerce Committee, the legislation also included a provision authorizing the Secretaries of Treasury and Commerce in conjunction with the Board to adjust depreciation rates to make U.S.-flag vessels internationally competitive.[259] Sen. Nugent moved to strike the provision and insisted on a recorded vote.[260] The motion to strike failed 19 to 31, with 46 not voting.[261] Ultimately, however, Sen. Nugent succeeded, as the provision was dropped in conference.[262]

Carriage of Mail. The U.S. Government had attempted to provide support for the U.S. merchant marine in the foreign trade in the Merchant Marine Act of 1891.[263] That effort had failed to sustain a substantial U.S.-flag presence in the foreign trade.[264] Section 24 of the 1920 Act again directed the Postmaster General to utilize U.S.-built U.S.-flag vessels "if practicable" and to determine the "just and reasonable rate" for such carriage given the policy of the Act of promoting a privately owned U.S. merchant marine.[265] The Commerce Committee report justified the provision as follows—"We require our mails to be carried on American

254. *E.g.*, *id.* at 7226.
255. *See, e.g.*, *id.* at 7227.
256. *Id.* at 7226.
257. *Id.* at 7341.
258. *Id*. at 8500.
259. *1919-1920 Senate Hearings*, *supra* note 47, at 17.
260. 59 CONG. REC. 7343, 7345 (May 20, 1920).
261. *Id.* at 7345.
262. *See* 1920 Act, *supra* note 29, at § 24.
263. *See* Act of Mar. 3, 1891, ch. 519, 26 Stat. 830.
264. 59 CONG. REC. 6867 (May 11, 1920). Sen. Jones indicated that—"The act of 1891 . . . has been practically a dead letter. We secured, I think, four ships under that act soon after it was passed, and we never obtained anymore." *Id.*
265. 1920 Act, *supra* note 29, at § 24.

ships wherever practicable."[266] Two-thirds of the current payments are going to foreign vessels—"[t]his is nothing more nor less than a direct subsidy to them and should cease."[267] Sen. Lenroot argued that the provision as proposed should be limited to appropriations[268]—which is the way it was enacted.[269] Sen. Lenroot's other objection—that U.S.-flag vessels not be paid any more than foreign vessels in part because he expected that routes and rates would devolve into lobbying of the Postmaster General and the Board[270]—was not adopted.

This direction to steer mail contracts to U.S. carriers proved ineffective, and Congress moved in the Merchant Marine Act, 1928 (known as the "Jones-White Act" after Sen. Jones and Sen. Wallace H. White of Maine) to make the mail subsidies more direct.[271] The ultimate outcome was a mail subsidy system that "became an enormous political embarrassment" as the "costs and collusion of the mail subsidy program became the stuff of scandal," which had a substantial influence on the adoption of direct subsidies in the Merchant Marine Act, 1936.[272]

Carriage of Passengers. In an era where cargo vessels carried passengers more often than in the more modern era, Section 26 of the 1920 Act granted U.S.-flag cargo vessels the right to carry up to 16 persons in addition to the crew and not be considered "passenger vessels" provided that nothing exempted such vessels from rules regarding life-saving equipment and that notice had to be given to the passengers of the carriage of any "dangerous article."[273]

Marine Insurance Anti-Trust Exemption. Congress addressed the lack of marine insurance as an emergency war time measure in the War Risk Insurance Act.[274] Section 29 of the 1920 Act exempted "an association entered into by marine insurance companies" from the anti-trust laws for the purpose of transacting "marine insurance and reinsurance business in the United States and in foreign countries."[275] "Marine insurance companies" were defined as those "authorized to write marine insurance or reinsurance under the laws of the United States or a State."

---

266. *See 1919-1920 Senate Hearings*, *supra* note 47, at 5.
267. *Id.*
268. 59 CONG. REC. 6865 (May 11, 1920).
269. *See* 1920 Act, *supra* note 29, at § 24.
270. 59 CONG. REC. 6866-67 (May 11, 1920).
271. LAWRENCE, *supra* note 161, at 43-44; GIBSON & DONOVAN, *supra* note 11, at 122-23.
272. GIBSON & DONOVAN, *supra* note 11, at 123, 126-33.
273. 1920 Act, *supra* note 29, at § 26.
274. Act of Sept. 2, 1914, ch. 293, 38 Stat 711 (1914). *See infra* "Shipping Laws Prompted by World War I."
275. 1920 Act, *supra* note 29, at § 29.

An earlier version of Section 29 would have required such associations to file their agreements with the Board and would have given the Board the authority to investigate and make referrals to the Attorney General of the United States if such association engaged in unfair methods of competition.

American Bureau of Shipping. Section 25 of the 1920 Act recognized the American Bureau of Shipping (ABS) as the classification society for all "vessels owned by the United States."[276] The House had passed legislation in 1919 to the same effect although it would have applied to "vessels of the United States."[277] The purpose of the section was to promote the "development of an organization" like the "Lloyd's shipping organization in England."[278] It was predicted at the time that Section 25 would cause about 200 vessels classified by Lloyd's to shift over the ABS.[279]

8. Common Carrier Regulation—Section 20

The 1916 Act had implemented various recommendations of the Alexander Report with respect to regulating common carriers involved in U.S. foreign trade.[280] The 1920 Act in the main tweaked the 1916 Act and added new enforcement authority.[281] The tweak to Section 14 of the 1916 Act made it clear that the prohibitions in that section applied to transportation to and from U.S. territories and possessions in addition to U.S. states. The new enforcement authority permitted the Shipping Board to certify to the Secretary of Commerce any violations of Section 14 and the Secretary of Commerce was to refuse entry by the violator's vessels to U.S. ports.

The only complaint on the Senate floor was about the lack of due process in the provision as proposed—Section 20 was amended to include "after due notice to all parties in interest and hearing."[282] Sen. Jones subsequently stated that Section 20 was meant to ensure that foreign

276. 1920 Act, *supra* note 29, at § 25.

277. *See 1919-1920 Senate Hearings*, *supra* note 47, at 1877-78.

278. 59 CONG. REC. 6984 (May 13, 1920).

279. *American Bureau of Shipping—New Marine Act Strengthens Its Position and Makes it a Potential Rival of Lloyd's*, NAUTICAL GAZETTE, July 2, 1920, at 22.

280. Shipping Act, ch. 451, §§ 14-33, 39 Stat. 728 (1916) (hereinafter 1916 Act). *See supra* "The 'Ship Purchase Bill.'"

281. 1920 Act, *supra* note 29, at § 20; *See Conference Lines Granting Rebates Penalized*, NAUTICAL GAZETTE, May 29, 1920, at 834.

282. 59 CONG. REC. 6859 (May 11, 1920) (Sen. King—"Does not the Senator think that perhaps an injustice may be done if the provision . . . is literally adhered to? It would seem to be purely ex parte.").

carriers could be punished like U.S. carriers for violations even though they might not otherwise be within U.S. jurisdiction.[283]

9. Transfers and Citizenship—Sections 18 and 38

The 1920 Act also amended the U.S. citizenship definition in Section 2 of the 1916 Act and the U.S. Government authority over U.S.-flag vessel transfers contained in Section 9 of the 1916 Act.[284] Both of these changes have had lasting effects, and the citizenship definition continues to have an important role in foreign investment in the U.S. merchant marine and with respect to current U.S.-flag promotional measures such as the Maritime Security Program.

U.S. Citizenship. Section 2 in the 1916 Act provided that an entity "shall be deemed a citizen of the United States" only if a "controlling interest" was owned by U.S. citizens.[285] Moreover, in the case of corporations, they had to be organized in the United States and the president and all "managing directors" of the corporation had to be U.S. citizens.[286]

Congress had determined in 1918 that this "controlling interest" test was being evaded.[287] In response, Congress amended Section 2[288] to prevent "every possible device by which foreign interests could obtain control in law or fact over corporations formed under American law."[289] Among other things, the law was amended such that the citizenship test encompassed "any other means whatsoever" by which "control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States."[290]

Echoing what the Commerce Committee heard during its hearings regarding the use of "dummy corporations,"[291] the Board also reported in April 1920 that the citizenship law was still being evaded:

> Subjects of foreign Governments, and even foreign Governments themselves now own and operate vessels of the United States in our domestic coasting trades. This is accomplished through the medium of

283. Jones, *supra* note 31, at 93.
284. *See* 1916 Act, *supra* note 280, at §§ 2, 9.
285. *Id.* at § 2.
286. *Id.*
287. H.R. REP. NO. 65-568, at 2 (1918); S. REP. NO. 65-536, at 2 (1918).
288. Act of July 15, 1918, ch. 152, § 2, 40 Stat. 900 (1918).
289. H.R. REP. NO. 65-658, *supra* note 287, at 4.
290. Act of July 15, 1918, *supra* note 288, at § 2.
291. *1919-1920 Senate Hearings*, *supra* note 47, at 1437-38 (testimony of William L. Clark).

> corporations of the United States, the actual ownership of all or a majority of the securities of which are vested in foreign subjects, so that the corporations are in fact but 'dummies' ostensibly held by American citizens but in reality a 'camouflage' to the foreign ownership.[292]

On April 19, 1920, Chairman Benson wrote to Sen. Jones suggesting that Section 2 be made more stringent.[293] Specifically, he proposed that the "controlling interest" test be made 100% U.S. citizen ownership for U.S.-flag vessels in the coastwise trade (wholly and bona fide owned by citizens of the United States) and 75% U.S. citizen ownership for U.S.-flag vessels in the foreign trade.[294] Chairman Benson also proposed that all directors of corporations be citizens, not just "managing directors."[295] Chairman Benson justified the recommendation as follows:

> Unless our coasting fleet be wholly and unequivocally owned by loyal United States citizens, it can not be rated a dependable unit in time of national emergency. Such dependability must always be insured, and this can only be accomplished by making 100 per cent bona fide American ownership the only key to our coasting trade[296]

The Commerce Committee reported favorably the provision as proposed by the Board asserting that it had been "strongly urged by the Shipping Board."[297]

Sen. Edge argued on the Senate floor that the 100 %-stock ownership requirement was unenforceable because of the nature of public company securities ownership: "I think it is very indefensible to pass any act providing something that we know perfectly well is impossible of enforcement."[298] He proposed a 90% ownership requirement for the coastwise trade, which was not adopted.

Sen. King suggested an amendment to require the transfers of stock to be recorded with the Shipping Board.[299]That amendment also was not adopted and ultimately the conference committee restored the controlling interest requirement to establish U.S. citizenship in general and revised the

---

292. *See 1919-1920 Senate Hearings*, *supra* note 47, at 1438.
293. *See 1919-1920 Senate Hearings*, *supra* note 47, at 10.
294. *Id.*
295. *Id.*
296. *Id.*
297. *Id.* at 9.
298. 59 CONG. REC. 7045 (May 14, 1920). Sen. Edge was prescient even though the 100% threshold was relaxed to 75% in the 1920 Act. Public companies have had difficulty complying with that 75% requirement. *See Mechanisms of Compliance with U.S. Citizenship Requirements for the Owner of Vessels*, 77 Fed. Reg. 70, 452 (Nov. 26, 2012); *see also* Constantine G. Papavizas, *Public Company Jones Act Citizenship*, 39 TUL. MAR. L.J. 383 (2015).
299. 59 CONG. REC. 7047-48.

100% number to 75%, which became law—and remains the law today for coastwise eligibility.[300] The controlling interest requirement therefore applied to vessels sold by the Board for the foreign trade—it did not supplant citizenship requirements for U.S. vessel documentation.[301]

Vessel Transfers. Section 9 of the 1916 Act permitted vessels "purchased, chartered, or leased from the board" be registered as U.S.-flag vessels and it prohibited the transfer of any such vessel "to a foreign register or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased" without approval of the Shipping Board.[302] The same transfer approval applied to all U.S.-flag vessels regardless of ownership in times of war or a President proclaimed national emergency.[303]

Section 9 was expanded in 1918 to make transfers and sales of all U.S.-flag vessels, even in peacetime, subject to Board approval "unless such vessel is first tendered to the board at the price in good faith offered by others. . ."[304] The 1918 Act also created a separate section—Section 37—in case of war or national emergency which broadened the Board's powers over vessels and brought shipyards and ship repair facilities under its ambit in such circumstances.[305] Chairman Payne suggested to the Commerce Committee in March 1920 that this be further modified to include a "mortgage" as an approvable transfer and to eliminate the tendering condition.[306] Ultimately, Section 18 of the 1920 Act amended Section 9 as suggested by Chairman Payne and that formulation remains largely the law today.[307]

10. Coastwise Laws in General—Section 27 or the "Jones Act"

When the 1920 Act is referred to as the Jones Act, that is often the case because of Section 27, which was a modification of prior law reserving the carriage of merchandise in U.S. domestic commerce to U.S.-flag vessels. Section 27 is often wrongly referenced as if it commenced the policy of reserving U.S. domestic maritime trade to U.S.-flag vessels.

---

300. *See* 46 U.S.C. § 50501 (2006).

301. Vessels registered with the U.S. Coast Guard for foreign trade must be owned by a "citizen of the United States." 46 U.S.C. § 12103 (2006). However, a corporation can qualify as such a citizen even if it is 100 percent foreign owned.

302. 1916 Act, *supra* note 280, at § 9.

303. *Id.*

304. Act of July 15, 1918, *supra* note 288, at § 3.

305. *Id.* at § 4.

306. *1919-1920 Senate Hearings*, *supra* note 47, at 1874.

307. *See* 46 U.S.C. § 56101 (2006).

Such reservation first occurred with the third Act of the first U.S. Congress in 1789 by virtue of a tariff preference to U.S.-flag vessels then converted into an outright permanent reservation in 1817, which remains the essence of the current U.S. coastwise law.[308]

By 1920, the coastwise reservation existed in the 1898 law.[309] The 1898 Act restricted the "transportation by water" of "merchandise" "from one port of the United States to another port of the United States, either directly or via a foreign port, or for any part of the voyage" to U.S.-flag vessels.[310] As described above,[311] the 1898 Act had been interpreted by Attorney General Wickersham in 1913 so as not to apply to certain mixed water/land movements between Seattle and Alaska.

The 1898 Act and its predecessor acts were widely credited, across political party lines, with making a substantial contribution to the U.S. war effort.[312] Sen. Jones, for example, stated that—"Practically the only shipping we had was in the coastwise trade, built up under our coastwise laws; and if we had not built up that merchant marine under the coastwise laws, the result of this war might have been far different."[313] Speaker of the House Joseph G. Cannon stated just before the House voted on the 1920 Act that: "One thing there is with this bill, and that is it protects the coastwise trade of the United States. [Applause.] And we would have been in purgatory if we had not had the coastwise trade prior to the war, because we did have some ships in the coastwise trade and some shipbuilding establishments on the coasts of the United States."[314]

The Merchant Marine Committee[315] and Commerce Committee[316] both heard testimony to the effect that the 1898 Act was being evaded via various methods between Seattle and Alaska in connection with the

308. Act of July 20, 1789, ch. 3, 1 Stat. 27; Act of Mar. 1, 1817, ch. 31, § 4, 3 Stat. 351; *see* LAWRENCE, *supra* note 161, at 29 ("The United States' cabotage law, passed in 1817, still stands"); JANTSCHER, *supra* note 218, at 46 ("This statute [1817 Act] was the nation's first true cabotage law, and its substance is preserved in the laws today").

309. Act of Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248 (1898).

310. *Id.*

311. *See supra* "Merchant Marine Act, 1920—Preliminary Congressional Deliberations—Senate Commerce Committee Hearings, Part II."

312. *E.g.*, *1919-1920 Senate Hearings*, *supra* note 47, at 7 ("Except for the American-built seagoing tonnage developed under that [coastwise] policy, we would have been in sorry plight at the time of our entrance into the World War").

313. 59 CONG. REC. 6811 (May 10, 1920).

314. *Id.* at 8607.

315. *1919 House Hearings*, *supra* note 46, at 274 (testimony of William L. Clark).

316. *1919-1920 Senate Hearings*, *supra* note 47, at 1440-41.

issuance of the Wickersham opinion.[317] A recommendation was made to the Commerce Committee to amend the 1898 Act to add the phrase "by land and water," use "points" instead of "ports" and expressly to provide coverage of any "Districts, Territories, and possessions."[318] Congress essentially adopted this recommendation in Section 27 of the 1920 Act.

Section 27 covered the transportation of merchandise "by water, or by land and water" and modified "ports" to "points" such that it applied to transportation "between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws."[319] It further modified the word "voyage" so as to apply to "any part of the transportation."[320]

As proposed by the Commerce Committee, the section also would have prohibited any "agent or employee of a common carrier" from contracting for any transportation between U.S. ports or places where a foreign vessel provided part of the transportation including prohibiting anyone to "check baggage, issue bills of lading, or otherwise arrange for through carriage of property between ports or places in the United States . . . when all or part of the carriage is in a foreign vessel."[321]

Sen. Jones explained the need for Section 27 as "a provision that prevents its evasion."[322] Sen. Jones complained about through tickets being sold in Seattle for voyages to Alaska via Vancouver on foreign vessels. Sen. Jones indicated that this was a "clear evasion of our law; and . . . I am not in favor of a foreign country evading them in any way."[323] Moreover, he stated that Section 27 was not a departure from prior coastwise law—"We do not deal in general in this bill with the coastwise laws. They are left just as they are; we have not attempted to interfere with them."[324]

During Senate consideration, Sen. Thomas indicated concern about rates charged in the coastwise trade—"the operation of every enterprise which is controlled by itself and which is protected by ironclad legislation . . . will not be particularly modest nor particularly

317. 59 CONG. REC. 7348 (May 20, 1920) (Sen. Jones referenced the Wickersham opinion as one that "is entirely contrary to the language of the act itself.").

318. *Id.* at 7347.

319. 1920 Act, *supra* note 29, at § 27.

320. *Id.*

321. *1919-1920 Senate Hearings*, *supra* note 47, at 18.

322. 59 CONG. REC. 6811 (May 10, 1920).

323. *Id.*

324. *Id.* at 6863.

conscientious in the fixing of its charges."[325] Sen. King and Sen. Jones responded with a colloquy to the effect that no evidence had been presented to the Commerce Committee of any monopoly in the coastwise trade or of unfair rates.[326]

The portion of proposed Section 27 prohibiting the checking of baggage and sale of through tickets in Seattle to Alaska was criticized on the Senate floor.[327] Sen. Nelson argued that the provision was "unduly and unjustly restrictive" even though he was "aware of the antipathy entertained on the Pacific coast against" certain Canadian rail lines.[328] Sen. Thomas asserted that the provision would make it particularly difficult to extend the coastwise laws to the Philippines.[329] Sen. Jones admitted that a person could buy a ticket to Vancouver and then purchase a separate ticket to Alaska—in each instance on a foreign vessel—"and we do not attempt to prevent that."[330] In the end, the through ticket provision was dropped and was not included in the 1920 Act.

In its place, a proviso was included stating that Section 27 did not apply to the transportation of merchandise "in part over Canadian rail lines and their own or other connecting water facilities" provided such routes were recognized by the Interstate Commerce Commission and route tariffs had been filed with the ICC for such routes. Alaska, however, was excluded from the proviso except that Section 27 was also not applied to the Yukon River "until the Alaska Railroad shall be completed" and the Board had determined that there were adequate transportation facilities. The overall provision was opposed by Alaskan interests at the time,[331] and the proviso exclusion was widely reviled in Alaska for decades following enactment of the 1920 Act.[332]

---

325. *Id.* at 6862. Sen. Nelson also stated—"I have been over this route to Alaska . . . this plan of inconveniencing American citizens in the interest of a few vessel owners at Seattle seems to me monstrous"). *Id.* 7350 (May 20, 1920).

326. *Id.* at 6862.

327. *Id.* at 7347-50.

328. *Id.* at 6810.

329. *Id.* at 6861.

330. *Id.*

331. *E.g.*, *Against Extending Coastwise Laws to Philippines*, NAUTICAL GAZETTE, June 5, 1920, at 847 (George B. Grigsby, delegate from Alaska to Congress, said that the coastwise provision "was drawn by representatives of private steamship companies to preserve the monopoly now enjoyed by private concerns in the Alaskan trade.").

332. *See*, *e.g.*, Forth, *supra* note 8, at 501 ("Alaskans were and remained bitterly opposed to the act. . ."); Eric Gislason, *Senator Ernest Gruening: "Let Us Now End American Colonialism,"* http://xroads.virginia.edu/~CAP/BARTLETT/colonial.html (last visited Jan. 22, 2021); 151 CONG. REC. 25, 433-35 (2005) (remarks of Sen. Ted Stevens).

One last change was made to the Commerce Committee proposal. The words "built in" were added such that only U.S.-built, U.S.-flag vessels could participate in the coastwise trade. That was then the law anyway since all U.S.-flag vessels had to be U.S.-built.[333] It has been speculated that the addition was requested by U.S. shipyards to ward off any further forays by the "free ship policy" provision as were contained in the Panama Canal Act of 1912 and the Act of October 6, 1917.[334]

11. Ship Mortgage Act—Section 30

The Commerce Committee inserted into H.R. 10378[335] the "Ship Mortgage Act, 1920"[336] as a single section which had been under active consideration by the House as a separate bill.[337] That legislation had been drafted by all appearances by Ira A. Campbell, then admiralty counsel to the Board at the request of Chairman Hurley.[338] In 1919, Mr. Campbell moved to New York and became a prominent member of the admiralty bar,[339] including serving as General Counsel to The American Club from 1924 to 1958.[340]

Mr. Campbell explained that the mortgage act was needed "to better safeguard the Government's interest in the sale of its ships with deferred payments" and "in the hope that the financial investors, or banking interests in this country, will be willing to invest their money more freely in ship securities."[341] The courts had heretofore asserted that a mortgage was not a maritime contract and could not be enforced in a federal court

333. *See* Act of Sept. 1, 1789, ch. 11, § 1, 1 Stat. 55 (1789); Act of Aug. 24, 1912, ch. 390, § 5, 37 Stat. 560, 562 (1912).

334. Mark D. Aspinwall, *Coastwise Trade Policy in the United States: Does it Make Sense Today?*, 18 J. MAR. L. & COM. 243, 248 (1987).

335. *1919-1920 Senate Hearings*, *supra* note 47, at 19-22.

336. *See* Philip Adler, *Current Legislation—The Ship Mortgage Act, 1920*, 20 COLUM. L. REV. 788 (Nov. 1920).

337. *Hearings on the Recording of Mortgages on Vessels and Subordinating Maritime Liens Upon Vessels for Necessaries to the Liens of Mortgages Before the H. Comm. on the Merchant Marine and Fisheries*, 66th Cong. 4 (1919) (hereinafter 1919 Mortgage Hearings).

338. *Id.* One Sen. Jones biographer having interviewed Sen. Jones's son believes that Ira Campbell may have written most of the 1920 Act. FORTH, *supra* note 8, at 494. Mr. Campbell was an advocate for the Ship Mortgage Act appearing at both a number of House Merchant Marine and Senate Commerce Committee hearings and writing and re-writing the proposal to accommodate concerns and suggestions. *E.g. 1919-1920 Senate Hearings*, *supra* note 47, at 927-81.

339. He joined the firm of Kirlin, Woolsey & Hickox, which then changed its name to Kirlin, Woolsey, Campbell, Hickox & Keating, and later to Kirlin, Campbell & Keating. *See* RICHARD BLODGETT, THE AMERICAN CLUB 40 (2016).

340. *Id.*

341. *1919 Mortgage Hearings*, *supra* note 337, at 4.

sitting in admiralty.[342] The proposal would grant to mortgagees who had recorded their mortgages priority over all maritime liens except wages and salvage. Mr. Campbell further argued that a uniform federal law was needed regarding the process of foreclosure versus having to comply with foreclosure laws state-by-state.[343]

The mortgage act proposal was opposed by a variety of interests, including vessel repair companies that did not appreciate their liens coming behind a recorded mortgage, and many members of the admiralty bar who claimed that the proposal was unnecessary.[344] To the vessel repair companies, Mr. Campbell argued that they could protect themselves since they would know of the recorded mortgage before undertaking repairs.[345]

Sen. Jones was persuaded of the need for mortgage legislation. The Commerce Committee report indicates that "[m]ortgage security on ships now is practically worthless" and that "[w]e make it good except as to certain demands that should be superior to everything else, such as wages."[346] On the floor of the Senate, Sen. Jones argued that the Ship Mortgage Act was necessary "to encourage investments in shipping on the part of our people. Without any security for his money, a man is not going to make a loan on a ship."[347] Although there was discussion in the Senate particularly regarding the potential pre-emption of state law,[348] the Ship Mortgage Act as reported by the Commerce Committee in substance was adopted as Section 30 of the 1920 Act.

12. Seamen—Sections 31, 32, and 33

The 1920 Act contains several sections dealing with the rights of merchant mariners. Two of the sections tweak provisions contained in the Seamen's Act of 1915.[349] Section 33 dealt with injuries suffered in the course of employment and is also routinely referred to as the "Jones Act."

Section 20 of the Seamen's Act had provided a right of recovery to seamen for injuries sustained on board a vessel.[350] Those rights, however, had been limited by the Supreme Court in the 1918 case of *Chelentis v.*

342. *See 1919-1920 Senate Hearings*, *supra* note 47, at 933.
343. *1919 Mortgage Hearings*, *supra* note 337, at 11; *1919-1920 Senate Hearings*, *supra* note 47, at 933.
344. *E.g.*, *1919-1920 Senate Hearings*, *supra* note 47, at 932.
345. *E.g.*, *id.* at 976-77.
346. *1919-1920 Senate Hearings*, *supra* note 47, at 9.
347. 59 CONG. REC. 6992 (May 13, 1920).
348. *Id.* at 6993.
349. *See id.* at 7036.
350. Act of Mar 4, 1915, ch. 153, 38 Stat. 1185 (1915).

Luckenbach S.S. Co.[351] Section 33 provided an express cause of action for any seaman who shall suffer personal injury in the course of employment against his employer on the same basis as was provided to railway employees, *i.e.* under the Federal Employers' Liability Act enacted in 1908.[352] Section 33 did not define who constituted a seaman. The provision was included in the 1920 Act without remark.[353]

A. Aftermath

The 1920 Act received mixed reactions at the time. Some argued that the process had been hasty.[354] There were substantial criticisms regarding the "discriminatory features" of the 1920 Act such as the preferential rail rates and concern that the Act would lead to foreign retaliation without any benefit to the U.S. merchant marine.[355] "[T]he backlash was strong from U.S. shippers who did not relish a general rate war against the whole world as much as Benson and Jones did."[356] There was also opposition to the extension of the coastwise laws to the Philippines and vigorous criticisms in Alaska and Canada.[357] Even the Ship Mortgage Act, 1920 caused consternation.[358]

At the same time, the legislation received praise. For example, *The New Republic* indicated that "[t]he bill is a complete victory for those who have resisted the cry (popular among business men and Republican politicians) for the immediate sale of the government's merchant fleet."[359] Mr. Furuseth was particularly pleased with the legislation and "was enthusiastically to endorse Jones in the fall election" writing that it would

351. 247 U.S. 372 (1918).

352. 45 U.S.C. § 51 *et seq.*

353. 59 CONG. REC. 7044 (May 14, 1920).

354. *How Jones Bill Was Rushed Through Congress*, NAUTICAL GAZETTE, Oct. 2, 1920, at 424.

355. *E.g.*, *Experts Discuss Merchant Marine Act at Political Science Academy Meeting—Discriminatory Features Condemned by Stevens, Kirlin and Coudert—Senator Jones, Powell and Marvin Defend Measure*, NAUTICAL GAZETTE, Dec. 18, 1920, at 3.

356. RENE DE LA PEDRAJA, THE RISE AND DECLINE OF U.S. MERCHANT SHIPPING IN THE TWENTIETH CENTURY 62 (1992); *Pacific Coast Trade Will Be Safeguarded*, NAUTICAL GAZETTE, July 17, 1920, at 67; *Senator Jones Defends His Bill at Takoma—Declares that Law will not be Altered Unless Proven Injurious to American Trade*, NAUTICAL GAZETTE, Aug. 21, 1920, at 228.

357. *Against Extending Coastwise Laws to Philippines*, NAUTICAL GAZETTE, June 5, 1920, at 847; Forth, *supra* note 8, at 500-02.

358. *See Collectors of Ports Warned as To New Mortgage Law*, NAUTICAL GAZETTE, Oct. 2, 1920, at 425.

359. *The New Merchant Marine Act*, NEW REPUBLIC, June 16, 1920, at 76.

"be a misfortune for the workers in Washington if Jones was not reelected."[360]

Sen. Jones stood steadfast in his defense of the 1920 Act. As was noted at the time, "the Senator is sturdily defending his measure and appears to be not in the least worried over the agitation against it."[361] In 1921, he defended the Act as "an earnest effort to lay the foundation of a policy that will build up and maintain an adequate American merchant marine in competition with the shipping of the world."[362]

The Board itself almost immediately ran into trouble even though at first the future looked bright.[363] President Warren G. Harding, who took office in 1921, served on the Commerce Committee as a Senator from Ohio throughout its deliberations on the 1920 Act.[364] He was a strong supporter of the U.S. merchant marine.[365] But when it came to Board appointments, Sen. Jones was unhappy with the choices and opposed nominees. The Board was also under fire because of Congressional hearings on Shipping Board operations (known as the "Walsh Committee")[366] and "[a]lmost immediately following passage of the Merchant Marine Act of 1920, the shipping boom collapsed."[367]

The Board nevertheless eventually "put its almost 10-million ton war-built fleet on the block" and "the indirect subsidy provided by making good ships available to American operators at extremely low prices greatly increased U.S. presence on the world's ocean routes"—which was the aim of the 1920 Act.[368]

Although Sen. Jones resisted changes to the 1920 Act at first, it became apparent over time that changes would have to be made.[369] Sen. Jones took a leading role in those discussions leading eventually to the

---

360. Forth, *supra* note 8, at 503. As a result of an interview with Sen. Jones's son in 1959, William Forth indicates as follows regarding the labor changes made in the 1920 Act: "Mr. Jones stated that his father was 'very fond' of Furuseth. He felt that Jones's desire to improve the lot of seamen was as important a motive in the Act of 1920 as was the improvement of the merchant marine generally." *Id.* at n. 44.

361. *Wesley L. Jones*, NAUTICAL GAZETTE, Sept. 4, 1920, at 206.

362. Jones, *supra* note 197, at 89.

363. SAFFORD, *supra* note 2, at 243-44.

364. *See 1919-1920 Senate Hearings*, *supra* note 47.

365. *Election Results Indicate Greater Assistance to American Shipping—President-Elect Harding Committed to Merchant Marine Policy*, NAUTICAL GAZETTE, Nov. 4, 1920, at 4.

366. "Shipping Board Operations," *Hearings Before the Select Committee on U.S. Shipping Board Operations*, 66th Cong., 2d Sess. (1920).

367. LAWRENCE, *supra* note 161, at 42; SAFFORD, *supra* note 2, at 245.

368. GIBSON & DONOVAN, *supra* note 11, at 120-21.

369. *E.g.*, Forth, *supra* note 8, at 515.

Merchant Marine Act, 1928 called the "Jones-White Act"—which is a story for another article.

III. CONCLUSION

The Merchant Marine Act, 1920 was much more than the single section, or sections, that are referred to today as the "Jones Act." It covered much more than the coastwise trade or seamen's rights. The 1920 Act was a fundamental step in favor of direct U.S. Government involvement in the private U.S. merchant marine which has not, to this day, run its course. For that it should be remembered as the landmark maritime legislation that it was.[370]

370. John G.B. Hutchins, *The American Shipping Industry since 1914*, 28 BUS. HIST. REV. 105 (1954) ("The Merchant Marine Act of 1920 opened a new period in American maritime history").