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PROVIDING FOR LESS EXACTING REGULATIONS UPON VIRGIN ISLANDS SHIPPING

SEPTEMBER 14 (legislative day, AUGUST 5), 1940.—Ordered to be printed

Mr. TYDINGS, from the Committee on Territories and Insular Affairs, submitted the following

REPORT

[To accompany S. J. Res. 296]

The Committee on Territories and Insular Affairs to whom was referred the joint resolution (S. J. Res. 296) to define common carriers by water engaged in certain commerce with the Virgin Islands of the United States, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

The purpose of the joint resolution is to encourage common carriers by water to furnish shipping facilities between the Virgin Islands and other parts of the United States.

The Virgin Islands are dependent to a considerable extent upon the shipping trade. As a result of the present war, the shipping facilities furnished to the islands have been seriously curtailed. The people of the islands are negotiating for additional transportation services between the islands and other parts of the United States. It is believed that the enactment of the joint resolution would facilitate the successful conclusion of such negotiations.

The effect of the joint resolution is to provide that, so long as the Virgin Islands remain exempt from the coastwise laws of the United States, vessels engaged in commerce between the islands and other parts of the United States shall be subject to the regulatory provisions of the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933 which are applicable to common carriers by water in foreign commerce rather than the provisions applicable to common carriers by water in interstate commerce. The former provisions are less exacting than the latter.

The wording of the joint resolution was suggested to the committee by the United States Maritime Commission in its report upon S. 3788 of the present Congress, a bill which was intended to accomplish a similar purpose to that intended to be accomplished by the joint resolution. The language suggested by the Commission appears to cover the changes in S. 3788 which were suggested by the Department of the Interior and the Department of Commerce in their reports upon the bill.

The purpose of the joint resolution and the effect of its enactment are explained in detail in the report of the United States Maritime Commission on S. 3788, which, together with the reports of the Department of the Interior and the Department of Commerce on such bill, is set out below.

The reports are as follows:

UNITED STATES MARITIME COMMISSION,
Washington, June 12, 1940.

Hon. MILLARD E. TYDINGS,
Chairman, Committee on Territories and Insular Affairs,
United States Senate.

DEAR SENATOR TYDINGS: You have requested the views and recommendations of the Commission with respect to S. 3788, a bill to amend section 18 (U. S. C., title 46, sec. 817; 39 Stat. 735) of the Shipping Act of 1916 (U. S. C., title 46, sec. 801; 39 Stat. 728, ch. 451, approved September 7, 1916), and to amend section 5 (U. S. C., title 46, sec. 8456; 52 Stat. 964) of the Intercoastal Shipping Act (U. S. C., title 46, sec. 848; 47 Stat. 1425, ch. 199, approved March 3, 1933).

Section 18 of the Shipping Act of 1916 provides in substance that (1) every common carrier by water in interstate commerce shall establish and maintain just and reasonable rates and just and reasonable regulations and practices relating to such rates and to the issuance and substance of bills of lading and other papers pertaining to transportation; (2) every such carrier shall file with the Commission schedules of its maximum rates for transportation between points on its routes; (3) no such carrier shall charge a greater compensation for such transportation than the rates filed in compliance with the terms of the section, except with the approval of the Commission obtained after public notice; and (4) whenever the Commission finds that any rate, regulation, or practice charged or observed by any such carrier is unjust or unreasonable, it may prescribe a just and reasonable maximum rate or a just and reasonable regulation or practice.

The Intercoastal Shipping Act of 1933 was originally designed to regulate common carriers by water in the interstate commerce of the United States engaged in transportation by way of the Panama Canal. It provides that such carriers shall file with the Commission, and shall keep open for public inspection, schedules of their rates; and that the schedules so filed shall show the ports to be served and shall contain classifications of freight and passenger accommodations. The act also provides that whenever there shall be filed with the Commission any schedules stating new rates or classifications, or changes in existing rates or classifications, the Commission may, after reasonable notice, enter upon a hearing concerning the lawfulness of such new or altered rate or classification, and if the Commission finds any such rate or classification to be unjust or unreasonable, it may prescribe a just and reasonable maximum or minimum, or maximum and minimum rate, or a just and reasonable classification or practice.

The act of June 23, 1938 (36 U. S. C. 845b; 52 Stat. 964), amending the Intercoastal Shipping Act of 1933, extended the provision of the latter act to "every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916."

Common carriers by water in interstate commerce are, therefore, now required, by section 18 of the Shipping Act of 1916 and the terms of the Intercoastal Shipping Act of 1933, to establish and maintain just and reasonable rates and just and reasonable regulations and practices relating to such rates and to the issuance and substance of bills of lading and other papers pertaining to transportation, and they are further required to file with the Commission schedules of their actual rates for transportation between points on their routes. No changes may be made in such actual rates except after new schedules have been filed and posted, and the new rates may not become effective until after the expiration of 30 days from the date of filing and posting, unless the Commission in its discretion and for good cause permits the changes to become effective upon a shorter notice. Whenever the Commission finds that any rate, regulation, or practice charged or observed by any carrier by water in interstate commerce is unjust or unreasonable, the Commission may determine and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, or a just and reasonable regulation or practice.

The bill would amend section 18 of the Shipping Act of 1916 by adding at the end thereof the following paragraph:

"*Provided, however,* That this section shall not be applicable to any common carrier engaged in the transportation by water of passengers or property on the high seas, from any port in one State, Territory, District, or possession of the United States, to any port in the Virgin Islands of the United States, and from any port in the Virgin Islands of the United States to any port in one State, Territory, District, or possession of the United States, or between ports in the Virgin Islands of the United States."

The effect of the amendment of the Intercoastal Shipping Act, 1933, proposed in the bill, appears from the following comparative text of the existing section 5 of that act with the proposed section 5:

"The provisions of this Act are extended and shall apply to every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916, *excepting from said definition and the application of this Act, however, the Virgin Islands of the United States.*"

Section 1 of the Shipping Act of 1916 defines a common carrier by water in interstate commerce as "a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession." The section also defines a common carrier by water in foreign commerce as "a common carrier * * * engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country * * *." The term "common carrier by water" is defined by the section as "a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port."

The several sections of the Shipping Act of 1916 are variously made applicable by their terms to (1) common carriers by water in foreign commerce, (2) common carriers by water in interstate commerce, (3) common carriers by water, and (4) "other persons subject to this Act," as also defined in section 1. For example, section 14, pertaining to deferred rebates, and section 15, under which the Commission is authorized to regulate conference agreements, apply to common carriers by water. Section 17 provides that no common carrier by water in foreign commerce shall charge rates that are unjustly discriminatory, and authorizes certain action by the Commission for the correction of discriminatory charges or prejudicial practices, while section 18, as above indicated, and section 19, are confined to common carriers by water in interstate commerce.

The effect of the proposed legislation, therefore, would not be confined to the exemption of domestic water carriers engaged in commerce with the Virgin Islands from the regulatory provisions of the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933 insofar as such regulatory provisions apply to interstate commerce; it would exempt such carriers (1) from all of the regulatory provisions of the Intercoastal Shipping Act and (2) from such of the regulatory provisions of the Shipping Act of 1916 as are applicable to carriers in foreign as well as in interstate commerce (except as hereinafter noted), leaving applicable to them only those provisions which pertain to (1) common carriers by water without further specification, and (2) "other persons subject to this Act." The provisions of section 19 of the Shipping Act of 1916, which apply to carriers by water in interstate commerce, would remain applicable to carriers engaged in commerce with the Virgin Islands, but it would be virtually impossible for the Commission to administer the terms of that section if the carriers were exempt from the requirements of section 18.

It should be noted that the Virgin Islands were exempted from the coastwise laws of the United States by the act of April 16, 1936 (46 U. S. C. 877; 49 Stat. 1207), amending section 21 of the Merchant Marine Act of 1920 by the addition at the end thereof of the following proviso:

"*And further provided,* That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of the same."

No proclamation has been issued by the President, and the Virgin Islands are therefore not subject to the coastwise laws of the United States.

The coastwise laws of the United States prohibit vessels other than vessels documented under the laws of the United States from engaging in the coastwise and intercoastal commerce of the United States (R. S. 4132; 46 U. S. C. 11).

The effect of the exemption of the Virgin Islands from the coastwise laws of the United States, as provided by the act of April 16, 1936, above quoted, is to permit foreign-flag vessels to engage in commerce between ports in the Virgin Islands and ports in the United States. Under the circumstances, when vessels documented under the laws of the United States engage in such commerce with the Virgin Islands, they are in competition with foreign-flag vessels. Therefore, whatever may be the relation of the regulatory provisions of section 18 of the Shipping Act of 1916 and of the Intercoastal Shipping Act of 1933 to commerce with the Virgin Islands, it would seem that vessels engaged in commerce between ports in the United States and ports in the Virgin Islands should at least be subject to the regulatory provisions which pertain to vessels engaged in foreign commerce.

The terminology of the Shipping Act of 1916, however, is such that the exemption of domestic vessels engaged in commerce with the Virgin Islands from regulatory provisions applicable to interstate commerce would not automatically result in their coverage by the regulatory provisions pertaining to foreign commerce. On the contrary, commerce between ports in the United States and ports in the Virgin Islands, or between ports in the Virgin Islands, would continue to be interstate commerce, and vessels engaged in it would continue to be vessels engaged in interstate commerce.

The Commission has been advised by a member of the Legislative Assembly of the Virgin Islands that the purpose of the proposed legislation is to eliminate as far as possible impediments to current negotiations for additional transportation services between the United States and the Virgin Islands. He states that the war has seriously disrupted the services of foreign-flag vessels upon which the Virgin Islands formerly relied, and that as a result of the war, calls by such vessels at the Virgin Islands have been drastically reduced.

Under the circumstances, the Commission would interpose no objection to the purpose to be served by the proposed legislation. It would suggest, however, that (1) inasmuch as the coastwise laws of the United States may be made applicable to the Virgin Islands upon proclamation by the President declaring that such laws shall extend to the Virgin Islands and fixing a date for the going into effect thereof, provision should be made for the renewed application of the requisite regulatory provisions at such time as the coastwise laws shall go into effect as to the Virgin Islands; and (2) for such time as the Virgin Islands shall continue to be exempt from the coastwise laws of the United States and from the regulatory provisions relating to interstate commerce, all vessels, foreign as well as domestic, that are engaged in commerce between ports in the United States and ports in the Virgin Islands, or between ports in the Virgin Islands, should be subject to the regulatory provisions of the Shipping Act of 1916 that are by their terms applicable to common carriers by water in foreign commerce or to common carriers by water without further specification.

The following language is suggested as being appropriate, if the Congress desires to accomplish what the Commission understands to be the purpose of the bill:

[Here appeared the text of the present joint resolution.]

This report has been submitted to the Director of the Bureau of the Budget, in accordance with the usual procedure, and the Commission is now advised by him that there would be no objection to the submission of it to your committee.

Sincerely yours,

E. S. Land, *Chairman.*

The Secretary of the Interior,
Washington, June 7, 1940.

Hon. Millard E. Tydings,
Chairman, Committee on Territories and Insular Affairs,
United States Senate.

My Dear Mr. Chairman: You have requested a report on S. 3788, a bill to amend section 18 of the Shipping Act and section 5 of the Intercoastal Shipping Act.

If S. 3788 is amended in accordance with the suggestions made in this report, I recommend that the bill be enacted.

The amendment to section 18 of the Shipping Act proposed by S. 3788 is apparently designed to encourage shipping between the United States and the Virgin Islands by exempting carriers engaged in such commerce from the regulatory provisions contained in section 18 and applicable to "common carriers by water in interstate commerce." Because the Virgin Islands are especially dependent upon the shipping trade, any measure which will promote this trade is desirable.

However, if S. 3788 were enacted in its present form, carriers plying between the Virgin Islands and the United States would seemingly be free from all regulation. Protection should still be afforded to shippers, and I suggest that this be done by subjecting carriers between the Virgin Islands and the United States to statutory provisions and regulations similar to those now applicable to "common carriers by water in foreign commerce." The inclusion in the bill of a provision similar to section 17 of the Shipping Act would accomplish this result by forbidding the fixing of discriminatory and prejudicial rates and by requiring carriers to establish and observe various regulations relating to shipments. It is my understanding that the provisions of, and regulations issued under, section 17 are less exacting than the comparable regulations promulgated under section 18 and the provisions of that section.

S. 3788 would also so amend section 5 of the Intercoastal Shipping Act that this section would expressly be in conformity with the act of April 16, 1936 (49 Stat. 1207), excepting the Virgin Islands from the application of the coastwise laws. This amendment would avoid any confusion in the interpretation of the two statutes.

I have been advised by the Director of the Bureau of the Budget that there would be no objection by that Bureau to the presentation of this report to the Congress.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, June 13 1940.

Hon. MILLARD E. TYDINGS
Chairman, Committee on Territories and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: In your letter of April 22, 1940, you requested the views of the Department with respect to S. 3788, a bill now pending before your committee which would amend section 18 of the Shipping Act of 1916, and section 5 of the Intercoastal Shipping Act of 1933.

The bill proposes to amend section 18 of the Shipping Act and section 5 of the Intercoastal Act so as to exempt from the provisions of those sections common carriers trading between ports in the Virgin Islands and ports in the United States and its Territories, districts, or possessions. Section 18 of the Shipping Act deals with the establishment, operation, and enforcement of reasonable rates and regulations of common carriers by water in interstate commerce. Section 5 of the Intercoastal Act, which deals with the rates of common carriers by water in intercoastal commerce, sets forth the scope of that act. The proposed amendment, therefore, would make the entire act inapplicable to the Virgin Islands.

This bill seems to be in harmony with the act of April 16, 1936 (46 Stat. 1207), which exempted the Virgin Islands from the operation of the coastwise laws until the President should by proclamation declare such laws applicable to the Virgin Islands, and the act of August 7, 1939 (53 Stat. 1242), giving the Legislative Assembly of the Virgin Islands the power to enact navigation, boat inspection, and safety laws of local application and providing that the President might make applicable to the Virgin Islands such of the navigation, inspection, and coastwise laws of the United States as he might find and declare to be necessary in the public interest. Apparently the proposed legislation is predicated on the assumption that it would tend to encourage the maintenance of shipping facilities between the Virgin Islands and other parts of the United States. This assumption appears to be reasonable, and accordingly the Department perceives no objection to the general objectives of the bill.

It is suggested, however, that the bill should be amended to make it coextensive with the 1936 and 1939 acts referred to above by giving the President the power to make the provisions of section 18 of the Shipping Act and section 5 of the Intercoastal Act applicable to the Virgin Islands by proclamation at such time as the application of those laws is indicated in the public interest.

The result of the enactment of the bill in its present form would be to relieve shipping between the United States and the Virgin Islands from all regulations as to rates, discriminatory practices, etc. The Department does not believe that this is desirable, and, therefore, recommends that such provisions of the Shipping Act of 1916 as are now applicable to common carriers by water in foreign commerce should be made applicable to shipping engaged in the trade between the United States and the Virgin Islands. The present restrictions on common carriers by water in foreign commerce (for example, sec. 17 of the Shipping Act) are considerably less onerous than on common carriers by water in interstate commerce, and the Department believes that no undue hardship would result to shipping between the United States and the Virgin Islands by making such shipping subject to those restrictions. It is accordingly recommended that the bill be amended by providing that section 17 and other sections of the Shipping Act of 1916 applying to common carriers by water in foreign commerce be made applicable to interstate commerce between the Virgin Islands and other parts of the United States.

If the bill is amended in the particulars above mentioned, the Department has no objection to its enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this letter to the committee.

Very sincerely yours,

EDWARD J. NOBLE,
Acting Secretary of Commerce.

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