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THE WHITE HOUSE

ACTION

WASHINGTON

Last Day - October 29

October 25, 1974

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill H.R. 13561  
Intercoastal Shipping  
Act Amendments

Attached for your consideration is House bill, H.R. 13561, sponsored by Representative Sullivan, which eliminates the carriage, storage or handling of governmental or charitable property free or at reduced rates in the intercoastal trade of the United States.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

We have checked with the Counsel's office (Chapman) and Bill Timmons who both recommend approval.

RECOMMENDATION

That you sign House bill, H.R. 13561 (Tab B).

**APPROVED**  
OCT 26 1974

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13561 - Intercoastal Shipping Act amendments  
Sponsors - Rep. Sullivan (D) Missouri and 5 others

*Posted 10/28*  
*To Archives 10/29*

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Eliminates the carriage, storage or handling of governmental or charitable property free or at reduced rates in the intercoastal trade of the United States.

Agency Recommendations

Office of Management and Budget	Approval
Department of Commerce	Approval
Department of Transportation	Approval
Federal Maritime Commission	Approval
Department of Defense	No objection (informally)
General Services Administration	Does not recommend a veto

Discussion

The Intercoastal Shipping Act authorizes the Federal Maritime Commission (FMC) to exercise economic regulation of common carriers by water in the intercoastal trade of the United States and between the continental United States and the noncontiguous States and dependencies. Generally, the Act authorizes the FMC to enforce maximum and minimum rates and just and reasonable trade practices. Section 6 of the Act provides, however, that "...nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal



Governments, or for charitable purposes." The effect of Section 6 of the Act has been that substantial amounts of Government cargoes are carried at lower ocean freight rates than those applying to commercial cargoes. The enrolled bill would amend the Intercoastal Shipping Act by deleting Section 6.

Section 6 is virtually identical in purpose to section 22 of the Interstate Commerce Act, which is applicable to transportation by rail and motor common carriers regulated by that Act. The Administration has proposed a bill, the Transportation Improvement Act of 1974 (S. 3237, H.R. 12891), which would, among other things, repeal section 22. Accordingly, deletion of Section 6 would be consistent with that Administration proposal.

The purpose of these repeals is to place private and public shippers on an equal footing and to require the Government to pay its fair share of the nation's transportation costs. The Federal Government is presently the largest purchaser of intercoastal transportation services. Most agencies have argued that the rates for Government cargoes, which are substantially lower than those applicable to comparable commercial cargoes, may have caused an artificial and excessive inflation of rates charged commercial shippers.

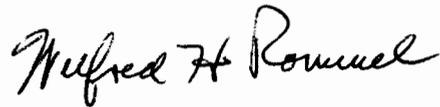
On the other hand, Defense has argued that its rates are adequate to cover costs plus a profit and that lower Government rates have not caused higher commercial rates. It estimates increased transportation costs of \$5 million a year as a result of this legislation. It earlier estimated that repeal of section 22 might cost it as much as \$240 million a year in increased costs until it could convert to a new rate system.

DOT and we have doubted that Defense's costs would increase in the magnitude it estimates although agreeing that there would be some transition costs. Both of us felt that repeal of section 22 was a price that had to be paid if the Administration was to get the other regulatory improvements which were incorporated in the Administration's proposed Transportation Improvement Act.

The enrolled bill would also amend Section 5 of the Intercoastal Shipping Act to expressly apply the other regulatory provisions of that Act to the carriage, storage, and handling

of Government and charitable cargo. As stated in the Report of the House Committee on Merchant Marine and Fisheries, this provision is included in the enrolled bill:

"...to make it clear that the intention of H.R. 13561 is to insure that rates charged for the carriage of government and charitable cargo in the domestic offshore commerce of the United States are subject to the same type of economic regulation by the Federal Maritime Commission as the Commission presently exercises over commercial rates in these trades..."



Assistant Director for  
Legislative Reference

Enclosures

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



**OCT 18 1974**

Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, DC 20503

Dear Mr. Ash:

By referral dated October 16, 1974, from the Assistant Director for Legislative Reference, your office requested the views of the General Services Administration on enrolled bill H.R. 13561, 93rd Congress, an act "To amend the Intercoastal Shipping Act, 1933."

The bill would repeal section 6 of the Act which presently permits the carriage of property in intercoastal trade, free or at reduced rates, for the Federal Government or a State or local government or for a charitable purpose. It would provide for the regulation of such transportation by the Federal Maritime Commission.

Although we have expressed opposition to this bill on the same grounds as those advanced by the Department of Defense, its effect on GSA will be very small by comparison. In view of this, and the strong support of the bill by other agencies of the executive branch, we do not recommend a veto of the bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. F. Sampson", with a long horizontal flourish extending to the right.

Arthur F. Sampson  
Administrator



OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 17 1974

Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

You have asked for our comments on H.R. 13561, an enrolled bill

"To amend the Intercoastal Shipping Act, 1933."

This bill would delete from the Act, Section 6 which permits a common carrier by water in intercoastal commerce to carry, store, or handle property free or at reduced rates (1) for the United States, State, or municipal governments, or (2) for charitable purposes. The bill would also amend Section 5 so as to expressly apply the other provisions of the Act to the classes of cargo mentioned in (1) and (2) above.

We note that the enrolled bill is similar in certain respects to Section 7 of an Administration bill proposed by this Department as the Transportation Improvement Act of 1974 which now appears as Section 501 of the Surface Transportation Act of 1974 (H.R. 5385). Section 501 repeals that portion of Section 22 of the Interstate Commerce Act which permits rail and motor carriers to provide transportation to Federal, state, and municipal governments at no cost or at rates below those charged private shippers. Carriers may still provide such services at reduced rates in time of war, or when the shipment involves commodities that are exempt from economic regulation under the provisions of Part II or Part III of the Interstate Commerce Act.

Both the enrolled bill and the provision in the surface transportation legislation place private and public shippers on a more equal footing and require government, as a shipper, to pay its share of the nation's freight bill instead of placing a substantial burden on private shippers or carriers. This was the reason that we supported the enactment of S. 3173, the Senate companion to the enrolled bill in a letter to the Chairman of the Senate Commerce Committee dated June 7, 1974. For the same reason, we recommend that the President sign the enrolled bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rodney E. Eyster", is written over the typed name and title.

Rodney E. Eyster  
General Counsel



**GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

OCT 18 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning H.R. 13561, an enrolled enactment

"To amend the Intercoastal Shipping Act, 1933."

H.R. 13561 would amend the Intercoastal Shipping Act by deleting Section 6 which authorizes free or reduced rate carriage of government cargoes, and by amending Section 5 to subject government cargoes to the economic regulation of the Federal Maritime Commission in the same manner as private cargo is subject to such regulation.

The Department of Commerce recommends approval by the President of H.R. 13561. The maintenance of stable rates and services in the intercoastal trade requires uniform treatment of all shippers and under no circumstance should private shippers be compelled to subsidize the transport of government cargo as is possible under the present provisions of the Intercoastal Shipping Act of 1933.

Enactment of H.R. 13561 would require no additional appropriations for this Department.

Sincerely,

*Karl E. Bakke*

General Counsel



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350

23 October 1974

Honorable Roy L. Ash  
Director, Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

Your transmittal sheet dated 16 October 1974, enclosing an enrolled bill of Congress, H.R. 13561, "To amend the Intercoastal Shipping Act, 1933," and requesting comment of the Department of Defense has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report thereon expressing the views of the Department of Defense.

H.R. 13561 repeals section 6 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 846) which has provided that common carriers by water in the domestic offshore trades may lawfully transport cargo for the U.S. Government, inter alia, at free or reduced rates. Additionally, H.R. 13561 amends section 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845b) by explicitly extending the application of the whole Intercoastal Shipping Act, 1933, to the carriage, storage or handling of property by the United States, or municipal governments, or for charitable purposes.

The Department of the Navy on behalf of the Department of Defense, opposed enactment of H.R. 13561 in its report to the Chairman of the House Merchant Marine and Fisheries Committee dated 6 August 1974 because the act contravenes the common law right of the sovereign to reduced shipping rates for its cargo, and because the current negotiated contracts between the Military Sealift Command and waterborne common carriers in the domestic offshore trades allow a reasonable profit to the carrier, thus overcoming an apparent objective of the bill.

While the cost impact on DOD cannot be evaluated precisely, it is estimated to be \$5 million annually. However DOD is more deeply concerned with the unsound fiscal precedent established by this legislation at a time when efforts are being mounted against rising costs. If this same legislative action were taken with respect to the current authority for reduced rates for domestic inland surface transportation under section 22 of the Interstate Commerce Act, the cost impact could amount to \$240 million in the first year. Legislation is currently before the Congress to remove this authority.

Although the Department of Defense has reservations as to the legislation as indicated above, it does not feel that they form a sufficiently strong basis on which to recommend a Presidential veto.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. S. Potter", is written over the typed name.

D. S. Potter  
Acting Secretary of the Navy



**Federal Maritime Commission**  
**Washington, D. C. 20573**

Office of the Chairman

October 17, 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

I am writing in reply to your request for the views and recommendations of the Federal Maritime Commission on H.R. 13561, an enrolled bill

To amend the Intercoastal Shipping Act, 1933.

H.R. 13561 would delete Section 6 of the Intercoastal Shipping Act, 1933, which provides

That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal Governments, or for charitable purposes.

Section 5 of the Act is amended to expressly apply the provisions of the Act to the cargos described in Section 6 which move in the domestic offshore trades of the United States. Signing of H.R. 13561 would insure the same statutory standards of reasonableness and fairness to governmental and charitable cargos which presently apply to the transportation of commercial cargos. The economic regulatory authority of this Commission over rates charged for the carriage of governmental and charitable cargos in the domestic offshore trades would be identical to existing authority over commercial cargos. No additional costs will be entailed by this Commission should H.R. 13561 become law.

In our testimony before the Congress your office approved and found in accord with the program of the President, our reason for supporting H.R. 13561: it is inherently unfair for carriers in the domes-

tic offshore trades, commercial shippers, and our offshore citizens to subsidize by inflated rates governmental or charitable shippers.

Accordingly, the Federal Maritime Commission would recommend that the President affix his signature to the enrolled bill H.R. 13561.

Sincerely,

A handwritten signature in cursive script, reading "Helen Delich Bentley". The signature is written in dark ink and is positioned above the typed name.

Helen Delich Bentley  
Chairman

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13561 - Intercoastal Shipping  
Act amendments  
Sponsors - Rep. Sullivan (D) Missouri and 5 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Eliminates the carriage, storage or handling of governmental or charitable property free or at reduced rates in the intercoastal trade of the United States.

Agency Recommendations

Office of Management and Budget	Approval
Department of Commerce	Approval
Department of Transportation	Approval
Federal Maritime Commission	Approval
Department of Defense	No objection (informally)
General Services Administration	Does not recommend a veto

Discussion

The Intercoastal Shipping Act authorizes the Federal Maritime Commission (FMC) to exercise economic regulation of common carriers by water in the intercoastal trade of the United States and between the continental United States and the noncontiguous States and dependencies. Generally, the Act authorizes the FMC to enforce maximum and minimum rates and just and reasonable trade practices. Section 6 of the Act provides, however, that "...nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal

To  
Karen Handrick  
10-23-74  
11:20 a.m.

Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill H.R. 13561  
Intercoastal Shipping  
Act Amendments

Attached for your consideration is House bill, H.R. 13561, sponsored by Representative Sullivan, which eliminates the carriage, storage or handling of governmental or charitable property free or at reduced rates in the intercoastal trade of the United States.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

We have checked with the Counsel's office (Chapman) and Bill Timmons who both recommend approval.

RECOMMENDATION

That you sign House bill, H.R. 13561 (Tab B).

Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
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SUBJECT: Enrolled Bill H.R. 13561  
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SUBJECT: Enrolled Bill H.R. 13561  
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We have checked with the Counsel's office (Chapman) and Bill Timmons who both recommend approval.

RECOMMENDATION

That you sign House bill, H.R. 13561 (Tab B).

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 696

Date: October 23, 1974

Time: 12:00 Noon

FOR ACTION: Michael Duval  
✓ Phil Buchen  
Bill Timmons

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13561 - Intercoastal Shipping Act amendments

ACTION REQUESTED:

- |   |  |
|---|--|
| <input type="checkbox"/> For Necessary Action     | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply                         |
| <input type="checkbox"/> For Your Comments        | <input type="checkbox"/> Draft Remarks                       |

REMARKS:

Please return to Kathy Tindle - West Wing

*No objection  
D.C.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 696

Date: October 23, 1974

Time: 12:00 Noon

FOR ACTION: Michael Duval  
Phil Buchen  
✓ Bill Timmons

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13561 - Intercoastal Shipping Act amendments

ACTION REQUESTED:

\_\_\_ For Necessary Action

XX For Your Recommendations

\_\_\_ Prepare Agenda and Brief

\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

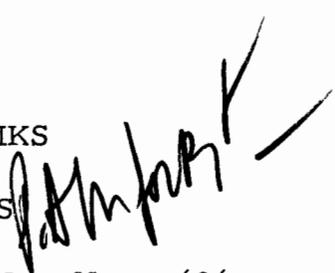
PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

THE WHITE HOUSE  
WASHINGTON

October 24, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS  
FROM: WILLIAM E. TIMMONS   
SUBJECT: Action Memorandum - Log No. 696  
Enrolled Bill H. R. 13561 - Intercoastal  
Shipping Act amendments

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 696

Date: October 23, 1974

Time: 12:00 Noon

FOR ACTION:  Michael Duval  
 Phil Buchen  
 Bill Timmons

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13561 - Intercoastal Shipping Act amendments

ACTION REQUESTED:

- |   |  |
|---|--|
| <input type="checkbox"/> For Necessary Action     | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply                         |
| <input type="checkbox"/> For Your Comments        | <input type="checkbox"/> Draft Remarks                       |

REMARKS:

Please return to Kathy Tindle - West Wing

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\_\_\_\_\_  
K. R. COLE, JR.  
For the President

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day - October 29

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill H.R. 13561  
Intercoastal Shipping  
Act amendments

Attached for your consideration is House bill, H.R. 13561, sponsored by Representative Sullivan, which eliminates the carriage, storage or handling of governmental or charitable property free or at reduced rates in the intercoastal trade of the United States.

Roy Ash recommends approval etc.

We have checked with the Counsel's office (Chapman) and Bill Timmons who both recommend approval.

RECOMMENDATION

That you sign House bill, H.R. 13561 (Tab B).

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 696

Date: October 23, 1974

Time: 12:00 Noon

FOR ACTION: ✓ Michael Duval  
Phil Buchen  
Bill Timmons

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13561 - Intercoastal Shipping Act amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

*OK Mike Duval*

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

ECONOMIC REGULATION BY FEDERAL MARITIME COMMISSION OF GOVERNMENT AND CHARITABLE CARGO IN U.S. DOMESTIC OFFSHORE COMMERCE

---

SEPTEMBER 11, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 13561]

The committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 13561) to amend the Intercoastal Shipping Act, 1933, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That section 5 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 845b), is amended by changing the period to a comma at the end and adding the words: "and shall apply to the carriage, storage or handling of property for the United States, State or municipal governments, or for charitable purposes."

SECTION 2. Section 6 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 846), is deleted.

PURPOSE OF THE BILL

The purpose of the bill, H.R. 13561, is to provide for economic regulation by the Federal Maritime Commission of ocean freight rates applicable to the transportation of government and charitable cargo in the domestic offshore trades of the United States in order to insure that such rates meet the same statutory standards of reasonableness and fairness as presently apply to rates charged for the transportation of commercial cargo in these trades. This purpose would be accomplished by deleting Section 6 of the Intercoastal Shipping Act, 1933, a provision which specifically permits the carriage of government and charitable cargo in the domestic offshore trades at free or reduced rates, and by adding language to Section 5 which would expressly apply the other provisions of the Act to government and charitable cargo.

## BACKGROUND OF THE LEGISLATION

The Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, authorize the Federal Maritime Commission to exercise economic regulation over the rates and practices of common carriers by water in the domestic offshore trades of the United States, i.e., the trades between the continental United States and Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the U.S. Virgin Islands. These statutes authorize the Federal Maritime Commission, among other things, to make, approve, suspend, or nullify rules and regulations of common carriers by water in the domestic offshore trades; to investigate discriminatory rates, charges, classifications, and practices of such carriers; to conduct hearings and make determinations prescribed by law relating to the regulation of common carriers by water in these trades; to receive, examine and accept their tariffs for filing; to make analyses of the financial position of carriers servicing these trades and of their need for increased or lower tariff revenues; and, either upon complaint or its own motion, to suspend rate changes by carriers servicing these trades for a period of four months pending a hearing.

The Intercoastal Shipping Act, 1933, was originally enacted for the purpose of subjecting carriers operating by water between the United States Atlantic/Gulf and Pacific Coasts via the Panama Canal to complete economic regulation by the Federal Maritime Commission's predecessor agency. The legislative history of the Act reveals that Section 6 (originally Section 4) was proposed as an amendment to the introduced bill by the Federal Coordinating Service (a predecessor agency of the General Services Administration) for the sole purpose of placing intercoastal steamship carriers on a parity with rail carriers, with which they were presumably competing. (Section 22 of the Interstate Commerce Act permitted railroads to grant reduced rates to the Government in consideration of their land grants from the Government).

In 1938 the provisions of the Intercoastal Shipping Act, including Section 6, were extended to those domestic offshore carriers providing service between the continental United States and Alaska, Guam, Hawaii, Puerto Rico, the U.S. Virgin Islands, or American Samoa. The Transportation Act of 1940 transferred to the Interstate Commerce Commission jurisdiction over intercoastal water carriers, i.e., those carriers operating by water between the United States Atlantic/Gulf and Pacific Coasts via the Panama Canal, and which the 1933 Act was originally intended to regulate. Domestic offshore carriers were, therefore, left subject to a statutory provision which was designed neither historically nor economically for them. Your Committee found that for the past thirty-four years the Federal Maritime Commission has been in the position of having to administer an anachronism.

The principal beneficiary of Section 6 of the 1933 Act has been the Federal Government, primarily the Department of Defense. Pursuant to Section 6, a considerable amount of military cargo is transported in the domestic offshore trades of the United States at freight rates which are established through direct negotiation between the Military Sealift Command of the Department of the Navy and the carrier. Such tariffs are filed with the Federal Maritime Commission on an informational basis only. Section 6 prevents this Commission from exercising

the same economic regulatory authority over such rates as it exercises over commercial rates.

In its negotiations with the various steamship companies servicing our Nation's domestic offshore commerce, the Military Sealift Command adheres to the Armed Services Procurement Regulations which disallow a number of substantial operating costs of the carriers, thereby producing preferential or lower rates for the carriage of military cargo. These differentials must either be absorbed by the carriers or passed on to the shipping public, and ultimately to the consumer, in the form of higher transportation costs.

The Federal Maritime Commission informed the Merchant Marine Subcommittee of your Committee that a recent study by the Commission revealed that government military rates for the carriage of several commodities from the West Coast of the United States to Guam ranged from 12% to 139% below commercial rates. A spot analysis by the Commission of the Hawaiian trade showed government military rates as much as 122% below commercial rates. A similar analysis of the Puerto Rican trade indicated disparities between government and commercial rates of between 5% and 127%.

At the present time there are no tariffs on file with the Federal Maritime Commission for the carriage of charitable cargo in our domestic offshore trades. It is the view of the Federal Maritime Commission that if a steamship company wishes to assist a charity, it should make a direct contribution out of its own profits. The transportation of charitable cargo at free or reduced rates would be included in the operating expenses of the carrier and may ultimately have to be absorbed by its commercial rate payers.

## GENERAL STATEMENT

Your Committee has concluded that H.R. 13561, as amended, would correct the inequities which have resulted from permitting the carriage of government and charitable cargo at preferential rates in the domestic offshore commerce of the United States. Tariffs covering these shipments would be required to be filed with the Federal Maritime Commission in the same manner and for the same regulatory objectives as tariffs pertaining to commercial shipments are required to be filed with the Commission.

Under H.R. 13561 the economic regulatory authority of the Federal Maritime Commission over rates charged for the carriage of government and charitable cargo in the domestic offshore trades would be identical with the Commission's present economic regulatory authority over rates charged for the carriage of commercial cargo in these trades. The same standards and cost bases which presently determine appropriate levels of commercial rates in these trades would be applied in establishing fair and reasonable rates for the carriage of government and charitable cargo. Moreover, shippers of government and charitable cargo would have the same standing before the Federal Maritime Commission as commercial shippers to protest the reasonableness and fairness of rates charged for the carriage of their cargo.

## HEARINGS

At the hearings on H.R. 13561 before the Merchant Marine Subcommittee of your Committee strong testimony in support of the legis-

lation was received from the Honorable Spark M. Matsunaga (D-Hawaii), the Honorable Helen Delich Bentley, Chairman of the Federal Maritime Commission; John R. Kuykendall, Vice-President of Matson Navigation Company; and Albert E. May, Vice-President of the American Institute of Merchant Shipping. Statements in strong support of the bill were received from the Honorable Antonio Borja Won Pat, Delegate from Guam; the Honorable Carlos G. Camacho, Governor of Guam; the Transportation Association of America; and the National Industrial Traffic League.

The Military Sealift Command of the Department of the Navy presented the only adverse testimony on H.R. 13561, which did not represent the position of the Administration.

#### AMENDMENT TO H.R. 13561

Among the reasons stated by the Military Sealift Command for its opposition to the bill was its belief that if the legislation were enacted, the military, in the absence of an express statutory prohibition, would retain a residual or common law right of the sovereign to have its cargo transported at preferential rates. In support of this position the witness cited two decisions by the Federal Maritime Commission and the 1928 Supreme Court case of *U.S. Shipping Board, Emergency Fleet Corporation v. Western Union Company*. The Merchant Marine Subcommittee of your Committee found this argument, as well as the other arguments of the Military Sealift Command, to be self-serving, without merit, and not representative of the position of the Administration.

However, in order to make it clear that the intention of H.R. 13561 is to insure that rates charged for the carriage of government and charitable cargo in the domestic offshore commerce of the United States are subject to the same type of economic regulation by the Federal Maritime Commission as the Commission presently exercises over commercial rates in these trades, an amendment to H.R. 13561 was presented to the Merchant Marine Subcommittee by the Honorable Frank M. Clark. The Clark Amendment to Section 5 of the Intercoastal Shipping Act, 1933, specifically applies to the carriage, storage and handling of government and charitable cargo all of the existing provisions of the Intercoastal Shipping Act, 1933. The Amendment was unanimously adopted by the Merchant Marine Subcommittee.

H.R. 13561 was unanimously reported by both the Merchant Marine Subcommittee and by the Committee on Merchant Marine and Fisheries.

#### COST OF THE LEGISLATION

It is not possible to accurately estimate the cost to the government of H.R. 13561 because such an estimate would depend largely on the future tonnage requirements of the Department of Defense. In response to an inquiry from the Merchant Marine Subcommittee of your Committee, the Military Sealift Command of the Department of the Navy testified that the transportation of its cargo in the domestic offshore commerce of the United States at commercial rate levels would result in an increased cost of approximately \$5 million annually.

The Federal Maritime Commission testified that H.R. 13561 would entail no additional costs to that agency.

#### DEPARTMENTAL REPORTS

H.R. 13561 was referred for comment to the Department of Commerce, the Department of Defense and the Federal Maritime Commission. The Federal Maritime Commission offered strong testimony in support of the bill in lieu of a report. The text of reports from the Department of Commerce and the Department of the Navy follow herewith:

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., July 25, 1974.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Commerce concerning H.R. 13561; a bill to amend the Intercoastal Shipping Act, 1933, by deleting section 6 thereof.

The Intercoastal Shipping Act, 1933, 46 U.S.C. 843-848 (the Act) provides for the economic regulation of water carriers in the non-contiguous domestic trade by the Federal Maritime Commission (FMC). Generally, the Act authorizes the FMC to enforce just and reasonable maximum and minimum rates and trade practices. Section 6 of the Act provides, however, that nothing in the Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State or municipal governments, or for charitable purposes.

The effect of section 6 of the Act has been that substantial amounts of Federal government cargoes are carried at lower rates than those applying to commercial cargoes. It can be surmised that a degree of subsidization of the government rates by the higher commercial rates must necessarily result from this disparate treatment of shippers. Further, the section 6 exemption removes a significant segment of shipping from regulatory oversight that is intended to protect the carriers as well as shippers. As a result of charging unrealistically low rates in order to obtain government cargoes, the economic viability of the carriers and ultimately the service that is available to all shippers may well be affected.

The maintenance of stable rates and services in the trade involved requires uniform treatment of all shippers, and under no circumstances should private shippers be compelled to subsidize the transport of government cargoes. For these reasons, the Department of Commerce recommends enactment of the bill.

The Office of Management and Budget has advised us that there is no objection to the submission of this report and that enactment of H.R. 13561 would be in accord with the program of the President. An Administration bill, the Transportation Improvement Act, introduced as S. 3237 and H.R. 12891 has a similar provision relating to section 22 of the ICC Act which is similar to section 6 of the Intercoastal Act.

Sincerely,

BERNARD V. PARRETTE,  
*Deputy General Counsel.*

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, D.C., August 9, 1974.

HON. LEONOR K. SULLIVAN,  
Chairman, Committee on Merchant Marine and Fisheries, House of  
Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your request for comment on H.R. 13561, a bill "To amend the Intercoastal Shipping Act, 1933," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The bill would amend the Intercoastal Shipping Act, 1933 (46 U.S.C. § 843 et seq.) by deleting section 6 thereof (46 U.S.C. § 846), which provides that common carriers by water in the domestic offshore trades may lawfully transport cargo for the U.S. Government, *inter alia*, at free or reduced rates. (Section 6 of the Intercoastal Shipping Act is virtually identical in purpose to section 22 of the Interstate Commerce Act (49 U.S.C. § 22) applicable to transportation by surface common carriers regulated by that Act. Bills designed to repeal section 22 of the Interstate Commerce Act have also been introduced (H.R. 12891 and S. 3237).)

A fundamental precept in U.S. Government regulation of both land and water common carriers is that all shippers should be treated alike by the carriers so that no shipper gains a competitive advantage over another through preferential or discriminatory arrangements for transportation charges. Such practices are forbidden. Since the Government in transporting military cargo for defense purposes is not competing with any shipper, the reason for prohibitions against preference and discrimination does not exist. Therefore, the Interstate Commerce Act and the Intercoastal Shipping Act, 1933, specifically provide that a carrier who transports Government cargo at free or reduced rates will not be found guilty of engaging in discriminatory or preferential practices which would be condemned if accorded one commercial shipper, but not another.

Pursuant to 46 U.S.C. § 883, only U.S.-flag vessels may engage in ocean transportation in the domestic offshore trade (i.e., between the 48 contiguous states and Alaska, Hawaii, Puerto Rico and other U.S. overseas territories and possessions). Since the Government has protected U.S.-flag carriers serving these trades from foreign-flag competition, it is not unreasonable to expect that the protected U.S.-flag carriers may lawfully accord the Government reduced rates under appropriate circumstances.

The Government's entitlement to transportation services at reduced rates has been supported on a broad basis. *Nashville, Chattanooga & St. Louis Railway et al. v. Tennessee*, 262 U.S. 318 (1923); *In the Matter of the Carriage of Military Cargo*, 10 FMC 69, 81 (note 19) (1966); *Assembly Time-Port of San Diego*, 13 FMC 1, 6 (note 7) (1969); *Emergency Fleet Corporation, U.S. Shipping Board v. Western Union Telegraph Company*, 275 U.S. 415, 425 (1928).

In addition, the bill is not needed to ensure that military rates do not burden commercial rates, which appears to be a purpose of the bill. At the present time the Military Sealift Command has entered into

contracts with various ocean carriers offering service in the domestic offshore trades. The more recent contracts have been negotiated after analysis of cost data furnished by the carriers and audited by the Defense Contract Audit Agency. The resulting contracts recover all applicable costs plus a profit. Since the Military Sealift Command contracts provide for only three "class" rates (vehicles, refrigerated cargo, and cargo not otherwise specified) and commercial tariffs contained hundreds of specific commodity rates, a comparison with commercial rates is difficult. However, since the negotiated military rates are profitable, the Government should not be required to pay the commercial tariff rates, an apparent objective of the bill.

In view of the above, the Department of the Navy, on behalf of the Department of Defense, is opposed to the enactment of H.R. 13561.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

While the Office of Management and Budget has no objection to the presentation of this report, it has advised us that enactment of H.R. 13561 would be in accord with the program of the President. An Administration bill, the Transportation Improvement Act, introduced as H.R. 12891, has a similar provision relating to section 22 of the I.C.C. Act, which is similar to section 6 of the Intercoastal Shipping Act.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,  
Captain, U.S. Navy,  
Deputy Chief.

#### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTIONS 5 AND 6 OF THE INTERCOASTAL SHIPPING ACT, 1933, AS AMENDED

(47 Stat. 1427, 46 U.S.C. 845b, 846)

SEC. 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, and shall apply to the carriage, storage or handling of property for the United States, State or municipal Governments, or for charitable purposes.

[SEC. 6. That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal Governments, or for charitable purposes.]

H. R. 13561

# Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

## An Act

To amend the Intercoastal Shipping Act, 1933.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 845b), is amended by changing the period to a comma at the end and adding the words: "and shall apply to the carriage, storage or handling of property for the United States, State or municipal governments, or for charitable purposes."

SEC. 2. Section 6 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 846), is deleted.

*Speaker of the House of Representatives.*

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*Vice President of the United States and  
President of the Senate.*

HH  
HHH  
HHH  
HHH  
HHH

October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

S.J. Res. 236 ✓	S. 2840 ✓	H.R. 7768	H.R. 14225
S.J. Res. 250 ✓	S. 3007 ✓	H.R. 7780	H.R. 14597
S.J. Res. 251 ✓	S. 3234 ✓	H.R. 11221	H.R. 15148 ✓
S. 355 ✓	S. 3473 ✓	H.R. 11251 ✓	H.R. 15427
S. 605 ✓	S. 3698 ✓	H.R. 11452 ✓	H.R. 15540 ✓
S. 628 ✓	S. 3792	H.R. 11830 ✓	H.R. 15643 ✓
S. 1411 ✓	S. 3838 ✓	H.R. 12035 ✓	H.R. 16857 ✓
S. 1412 ✓	S. 3979 ✓	H.R. 12281	H.R. 17027 ✓
S. 1769 ✓	H.R. 6624	H.R. 13561 ✓	
S. 2348 ✓	H.R. 6642 ✓	H.R. 13631 ✓	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.