

What's New in the Revised SHIPS for America Act



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On April 30, Senator Mark Kelly (D-AZ), together with several original co-sponsors, reintroduced the SHIPS for America Act in the U.S. Senate, first introduced in December 2024, divided into two bills. Companion legislation was also introduced in the U.S. House of Representatives by Rep. Trent Kelly (R-MS) and Rep. John Garamendi (D-CA). This is a major, historic effort to revitalize the U.S. merchant marine. The legislation had to be reintroduced to be considered by the new U.S. Congress, which commenced in January.

Here, we concentrate on the differences between the December bill and the April bills. For a more general summary of the proposed legislation, see Sen. Kelly's April 30 press release.

The two Senate bills—S. 1536 and S. 1541—have five original cosponsors: Republicans Todd Young (IN), Lisa Murkowski (AK), and Rick Scott (FL), and Democrats Tammy Baldwin (WI) and John Fetterman (PA). The second proposal consists of tax provisions, with the remaining balance of the original SHIPS Act referred to the Senate Commerce Committee, and the tax provisions referred to the Senate Finance Committee. In this fashion, the bills can move on separate tracks and avoid the potential delay of sequential consideration.

Although the current proposal is substantially the same as the earlier proposal, there are significant differences:

- *Relationship to China Shipbuilding Section 301 Investigation* – The original SHIPS Act cross-referenced the section 301 China shipbuilding investigation undertaken by the U.S. Trade Representative. The USTR issued its final action in that investigation on April 17, imposing substantial

fees on Chinese-built and Chinese-operated vessels. Consideration was reportedly given to having the new SHIPS Act expressly have those fees be deposited in the Maritime Security Trust Fund that the SHIPS Act would create. The new SHIPS Act would direct such fees to the, to be created, Trust Fund – among other fees directed to that Fund and retain its originally proposed “penalty rates” for vessels and owners connected with any “country of concern” which overlap with the section 301 fees. This formulation is in fact what the original U.S. labor section 301 petitioners requested in March 2024.

- *No Fault Termination Payment* – The, to be created, 250-vessel “Strategic Commercial Fleet” is the crown jewel of the SHIPS Act. Private contractors would be required to build vessels in the United States in that Fleet with U.S. government financial assistance pursuant to seven-year renewable contracts. The original SHIPS Act provided a formula in the event the program or contract was terminated early to cover the contractor’s anticipated extra cost of building a vessel in the United States, but at a 50 percent rate. The new SHIPS Act expands that no-fault coverage to 100 percent.

- *SCF Vessel Carriage of U.S. Government Cargoes* – The U.S. government operating support payments to SCF vessels may be greater than the levels of support provided to existing vessels in the Maritime Security and Tanker Security Programs. Vessels in those programs also rely on the carriage of U.S. government cargoes reserved to them by the cargo preference laws to supplement such support payments. To account for the potential support amount difference, the original SHIPS Act provided that SCF vessels would not receive support payments for any day they carried reserved government cargoes and that such carriage would only be permitted if the U.S. Maritime Administrator determined that no SCF U.S.-flag vessel is available. The new SHIPS Act tightens that waiver process and provides that the waiver decision must be made by the Secretary of Transportation -- and such a decision is non-delegable.

- *SCF Vessel U.S. Repairs Requirement* – The original SHIPS Act contains enhanced duties for repairs to U.S.-flag vessels outside the United States with a ten-year exception for the Maritime Security Program, Tanker Security Program, Cable Security Program, SCF vessels, and vessels enrolled in the Voluntary Intermodal Sealift Agreement (VISA) program. The new SHIPS Act adds a requirement that SCF operating agreements require the owner to undertake their vessel repairs in the United States pursuant to a “set percentage, agreed to between” the Maritime Administration and the vessel owner.

- *U.S.-Flag Cargo Preference Non-Availability Determinations* – Although existing cargo preference authority is supposed to reside in the U.S. Maritime Administration, agencies which ship cargoes have sometimes taken unilateral decisions on whether the U.S.-flag reservation can be waived and how it can be waived. The new SHIPS Act tightens that process and inserts the, to be created, Maritime Security Advisor as a decision maker.

- *Adjusting Tariffs to Incentivize U.S.-Flag Carriage* – The United States in its early days supported its merchant marine in foreign trade by either discounting tariffs on goods carried by U.S.-flag vessels or imposing a surcharge on tariffs for foreign carriage. One of the vestiges of that support is a 1790-enacted law that still exists in the U.S. code, which permits the President to add a 10 percent tariff surcharge to goods imported from any country that discriminates against U.S.-flag vessels. Consideration was reportedly given to including new authority to impose such discounts or surcharges. The new SHIPS Act modifies the existing law to provide for an automatic tariff surcharge of 10 percent on any goods imported into the United States on a foreign vessel unless foreign and U.S.-flag rates are the same.

- *Voluntary Ship America Program* – The original SHIPS Act would establish a “Ship America Office” in the Maritime Administration charged with promoting the use of U.S.-flag vessels by commercial

shippers. The new SHIPS Act adds a requirement for that Office to develop a “Ship America verification program to develop self-certification industry standards.”

Chair of Winston & Strawn's top-ranked maritime and admiralty practice, Charlie Papavizas is nationally recognized in major legal directories. Chambers USA ranks him as the only “Star Individual” in the category of “Transportation: Shipping/Maritime: Regulatory,” who is “the Dean of the maritime bar” and “the godfather of maritime law.” He is widely known for his experience with Jones Act laws and the U.S. offshore wind industry.

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