

106TH CONGRESS
2D SESSION

H. R. 4682

To amend the Merchant Marine Act, 1936, to direct the Secretary of Transportation to establish a simplified formula by which application may be made for Smaller Ship Shared-Risk Financing Guarantees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2000

Mr. METCALF introduced the following bill; which was referred to the
Committee on Armed Services

A BILL

To amend the Merchant Marine Act, 1936, to direct the Secretary of Transportation to establish a simplified formula by which application may be made for Smaller Ship Shared-Risk Financing Guarantees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Title XI Mortgage Ac-
5 cess and National Shipbuilding Initiative Extension Act”.

6 **SEC. 2. FINDINGS AND LEGISLATIVE PURPOSE.**

7 Congress finds that—

1 (1) the authority granted under sections
2 1103(a) and 1104A of the Merchant Marine Act,
3 1936 (46 U.S.C. App. 1273(a) and 1274), as sup-
4 plemented by the National Shipbuilding and Ship-
5 yard Conversion Act of 1993, should be exercised to
6 expand the access of smaller vessel owners to ship
7 mortgage financing under title XI of the Merchant
8 Marine Act, 1936; to reduce uncertainty and unnec-
9 essary burden on all applicants for financing or refi-
10 nancing guarantees under that title so that such fi-
11 nancing better fulfills the policy objectives of the
12 National Shipbuilding and Shipyard Conversion Act
13 of 1993; and to continue and strengthen the title XI
14 program and support United States national water-
15 borne transportation policy; and

16 (2) that initiatives established by the National
17 Shipbuilding and Shipyard Conversion Act of 1993
18 to promote United States shipbuilding and to protect
19 the national defense interests should be continued
20 and potentially expanded in the context of an articu-
21 lated and congressionally endorsed United States
22 merchant shipbuilding policy.

1 **SEC. 3. SMALLER SHIP SHARED-RISK FINANCING GUARAN-**
2 **TEES.**

3 Title XI of the Merchant Marine Act, 1936 (46
4 U.S.C. App. 1271 et seq.), is amended by adding at the
5 end the following:

6 “SEC. 1113. (a) The Secretary shall establish, after
7 consultation with 1 or more Qualified Private Financial
8 Institutions that are United States marine-specialist lend-
9 ers, a simplified form by which application may be made
10 for Smaller Ship Shared-Risk Financing Guarantees.

11 “(b)(1) The Secretary shall—

12 “(A) promptly forward each application sub-
13 mitted for a Smaller Ship Shared-Risk Financing
14 Guarantee to the Qualified Private Financial Insti-
15 tution identified in the application;

16 “(B) remit one-half of the application fee to
17 such institution; and

18 “(C) in the case of an application for guarantee
19 of an obligation to finance an eligible export vessel,
20 make the notification required to the Secretary of
21 Defense.

22 “(2) The Qualified Private Financial Institution shall
23 make a decision under its applicable underwriting guide-
24 lines to offer or decline to extend the proposed financing
25 at a proposed rate of interest, a proposed origination fee
26 not exceeding 1 percent of the amount of finance extended

1 inclusive of the one-half percent commitment fee payable
2 to the Secretary, a proposed repayment term not exceed-
3 ing 15 years on a basis which may but need not allow
4 repayment by equal payments on a fully-amortized basis,
5 with or without proposed guarantees, and with or without
6 collateral additional to a first preferred mortgage on the
7 vessel.

8 “(3) If the applicant determines to accept financing
9 terms proposed by a Qualified Private Financial Institu-
10 tion, such institution shall notify the Secretary of the ap-
11 plicant’s determination and of such Institution’s proposed
12 terms and its analysis of the application under its applica-
13 ble underwriting guidelines (including information suffi-
14 cient for the Secretary to make the computations required
15 under the Federal Credit Reform Act). Such analysis shall
16 be exempt from disclosure under section 552 of title 5,
17 United States Code, popularly known as the Freedom of
18 Information Act.

19 “(4) On receipt of such notification and analysis from
20 such Qualified Private Financial Institution, the Secretary
21 shall review and approve or disapprove the application
22 within 14 days after such receipt. The Secretary may with-
23 in 14 days notify such Institution in writing if the Sec-
24 retary determines the application does not satisfy the re-
25 quirement of economic soundness, or in the case of an eli-

1 gible export vessel if the Secretary of Defense has timely
2 notified the Secretary of the disapproval of the application
3 by the Secretary of Defense, or if for other lawful reasons
4 the Secretary determines not to approve the application,
5 in which event the application is deemed to be disapproved
6 under this title. Absent such written notification of dis-
7 approval within such 14-day period, the application is
8 deemed approved (except as provided in paragraph (6))
9 and the Secretary shall issue a commitment under this
10 title to guarantee unconditionally the repayment of prin-
11 cipal and interest for not more than half of the total fi-
12 nance proposed on the terms proposed by such Qualified
13 Private Financial Institution and accepted by the appli-
14 cant.

15 “(5) No applicant for a Smaller Ship Shared-Risk Fi-
16 nancing Guarantee shall be required by the Secretary—

17 “(A) to enter into a Title XI Reserve Fund and
18 Financial Agreement under this title;

19 “(B) to restrict or impound the payment of
20 dividends and earnings beyond any extent required
21 by applicable State law;

22 “(C) to prepare or submit audited or reviewed
23 financial statements if financial statements of the
24 applicant have not previously been reviewed or au-
25 dited; or

1 “(D) to build or maintain a proposed United
2 States-flag vessel in class as a condition of accept-
3 ance of terms or as a condition of the Secretary’s
4 approval.

5 “(6) In no event shall an application for a Smaller
6 Ship Shared-Risk Financing Guarantee be considered ap-
7 proved until the applicant has paid the commitment fee
8 for the element of the finance under this title and unless
9 there remains available unexpended appropriated funds
10 for the Secretary to make the payment required under the
11 Federal Credit Reform Act upon the commitment to guar-
12 antee relating to such application.

13 “(c) In the event of an uncured material default on
14 an issued Smaller Ship Shared-Risk Financing Guarantee
15 and demand for payment made to the Secretary—

16 “(1) the Secretary promptly shall pay according
17 to the terms of the Secretary’s guarantee;

18 “(2) notwithstanding such payment, the Quali-
19 fied Private Financial Institution concerned—

20 “(A) shall be entitled and responsible to
21 enforce the entire indebtedness unpaid by the
22 shipowner against all collateral, all guarantees,
23 and the shipowner; and

24 “(B) shall do so for the joint benefit of the
25 Secretary and such institution;

1 “(3) the United States district courts shall have
2 subject matter jurisdiction over any action to recover
3 in the event of any such default; and

4 “(4) funds recovered following any such default
5 shall, after first being applied to pay or repay the
6 costs of collection thereof, be equally apportioned be-
7 tween the Secretary and the Qualified Private Fi-
8 nancial Institution.

9 “(d) The Secretary may not require an applicant, as
10 a condition to a commitment to guarantee pursuant to this
11 section, to enter into loan or closing documentation sup-
12 plemental to the usual and customary documentation of
13 the Qualified Private Financial Institution concerned, but
14 the Secretary may require an applicant to execute a short-
15 form indemnity relating to the guarantee and the Sec-
16 retary may enter into a simple form of intercreditor agree-
17 ment with the Qualified Private Financial Institution if
18 no terms thereof are inconsistent with the provisions of
19 this section and the provisions of this section and the pro-
20 visions of this Act.

21 “(e) In this section:

22 “(1) The term ‘Qualified Private Financial In-
23 stitution’ means—

24 “(A) any of the United States maritime-
25 specialist lenders Caterpillar Financial Services,

1 Inc., Case Credit Financial Services, Inc., or
2 Safeco Credit, Inc.; and

3 “(B) any other State or federally chartered
4 bank or savings and loan association or other
5 financial lending institution, that the Secretary
6 finds to have reasonable maritime lending expe-
7 rience and underwriting standards that are no
8 less prudent than the standards of the United
9 States maritime-specialist lenders referred to in
10 subparagraph (A).

11 “(2) The term ‘Smaller Ship Shared-Risk Fi-
12 nancing Guarantees’ means a guarantee under this
13 title of an obligation for which—

14 “(A) the proposed repayment term does
15 not exceed 15 years;

16 “(B) the amount of financing for new
17 building, conversion, or refinance for any 1 ves-
18 sel does not exceed \$5,000,000;

19 “(C) the percentage of total actual cost to
20 be financed does not exceed 85 percent; and

21 “(D) an amount at least equal to the
22 amount of the obligation proposed to be guar-
23 anteed would be financed by 1 or more Quali-
24 fied Private Financial Institutions without a
25 guarantee under this title.”.

1 **SEC. 4. ELIGIBILITY FOR SMALLER SHIP SHARED-RISK**
2 **FINANCING GUARANTEES.**

3 Title XI of the Merchant Marine Act, 1936, is further
4 amended by adding at the end the following:

5 “SEC. 1114. (a) Any United States-flag vessel or
6 each eligible export vessel, including any eligible facilities
7 and equipment related to marine operations of such a ves-
8 sel, shall be eligible for a Smaller Ship Shared-Risk Fi-
9 nancing Guarantee if the vessel is—

10 “(1) self-propelled and primarily engaged in the
11 carriage of or afloat supply of goods or services to
12 passengers for remuneration (with or without freight
13 or vehicles, or both), irrespective of minimum service
14 speed or installed horsepower; and

15 “(2) primarily engaged in commercial trade, ex-
16 cept a fishing and fisheries vessel, whether self-pro-
17 pelled (irrespective of minimum service speed or in-
18 stalled horsepower) or nonself-propelled, and wheth-
19 er manned or unmanned and whether surface or
20 subsurface.

21 “(b) There shall be no minimum total actual cost for
22 the vessel eligibility established by this Act. The eligibility
23 established by this Act is additional to eligibilities for obli-
24 gation guarantees under laws.”.

1 **SEC. 5. RESTRICTIONS ON CONDITIONS FOR GUARANTEES.**

2 (a) IN GENERAL.—Title XI of the Merchant Marine
3 Act, 1936, is further amended by adding at the end the
4 following:

5 “SEC. 1115. The Secretary may not—

6 “(1) require the payment of an application
7 fee—

8 “(A) greater than \$2,500 on an application
9 for a financing or refinancing guarantee under
10 this title not exceeding \$5,000,000;

11 “(B) greater than \$5,000 on an applica-
12 tion for a guarantee not exceeding \$10,000,000;
13 or

14 “(C) greater than \$10,000 on an applica-
15 tion for a guarantee under this title exceeding
16 \$10,000,000;

17 “(2) require any applicant seeking a financing
18 or refinancing guarantee under this title for a vessel
19 the design and engineering of which will be subject
20 to approval before documentation by the United
21 States Coast Guard or, in the case of an eligible ex-
22 port vessel, by a member society of the International
23 Association of Classification Societies acting for or
24 in addition to a foreign Administration, to submit
25 vessel plans, drawings, and engineering data for

1 independent review by the Secretary, except that the
2 Secretary—

3 “(A) may condition the commitment to
4 guarantee any such obligation on receipt of
5 proof of having obtained such other regulatory
6 or society approvals; and

7 “(B) may require—

8 “(i) submission of such data and
9 drawings as are reasonably necessary to
10 establish a vessel’s capacities for and per-
11 formance in her intended trade insofar as
12 the same affect the determination of eco-
13 nomic soundness in addition to general
14 vessel data and information to the extent
15 necessary to assess collateral and potential
16 collateral resale values; and

17 “(ii) submission of all such data for
18 any proposed vessel that involves tech-
19 nology performance issues that should be
20 assessed independently to determine the
21 presence or absence of unacceptable ship
22 technology risk;

23 “(3) require, except in the unusual case of an
24 applicant for which coastwise trade eligibility is un-
25 certain and for which such eligibility is germane to

1 economic soundness, any applicant for financing or
2 refinancing guarantees of a vessel to be documented
3 under the laws of the United States to submit as
4 part of their application any proof of United States
5 citizenship for independent review by the Secretary
6 as to eligibility, except that the Secretary may condi-
7 tion the commitment to guarantee any such obliga-
8 tion on receipt of proof of having qualified for docu-
9 mentation under the laws of the United States to
10 the satisfaction of the United States Coast Guard;

11 “(4) require any applicant to affirmatively
12 make a claim of exemption from section 552 of title
13 5, United States Code, popularly known as the Free-
14 dom of Information Act, for so much of the applica-
15 tion as exceeds the application’s summary of infor-
16 mation in part 1 of the application, and such bal-
17 ance of application information is exempt from dis-
18 closure under that section;

19 “(5) exclude foreign content from inclusion in
20 actual cost, if at least 51 percent of total cost is not
21 foreign content and the hull and superstructure are
22 assembled entirely in the United States, or exclude
23 domestic sales tax or foreign import duties or value-
24 added tax from inclusion in actual cost if the same

1 normally would be required to be capitalized under
2 accepted accounting principles;

3 “(6) collect or provide by rule for the payment
4 of guarantee fees at the inception of the term for re-
5 payment, and the Secretary shall instead require the
6 payment annually of an amount equal to one-half of
7 1 percent of the then-unpaid principal obligation or
8 portion thereof to which the title XI guarantee ap-
9 plies; or

10 “(7) during the term for repayment of an obli-
11 gation guarantee of \$10,000,000 or less for the fi-
12 nancing or refinancing of a vessel that is docu-
13 mented under the laws of the United States, impose
14 on a shipowner any requirements for survey or in-
15 spection in excess of the requirements then imposed
16 by the United States Coast Guard under title 46 of
17 the Code of Federal Regulations.”.

18 (b) REPEAL OF REQUIREMENT OF FINDING FOR
19 GUARANTEE FOR ELIGIBLE EXPORT VESSEL.—Para-
20 graph (1) of section 1103(g) of the Merchant Marine Act,
21 1936 (46 U.S.C. App. 1273(g)), is repealed.

22 **SEC. 6. AUTHORITY.**

23 Title XI of the Merchant Marine Act, 1936, is further
24 amended by adding at the end the following:

1 “SEC. 1116. The Secretary of Transportation, sub-
2 ject to the availability of appropriations—

3 “(1) may contract with disinterested and quali-
4 fied private sector specialists in ship technology and
5 market sectors to advise the Secretary on any appli-
6 cation for a financing or refinancing guarantee
7 under this title for which the Secretary lacks ship
8 technology or market sector specialist expertise,
9 other than for an application for a Smaller Ship
10 Shared-Risk Financing Guarantee under section
11 1113, select disinterested and qualified persons to
12 provide the same advise on an unadvertised basis
13 and reimburse such selected specialists at a fair and
14 reasonable rate; and shall collect from the applicant
15 so much of the investigation and application fees
16 payable in connection with such application as is
17 necessary to pay the cost of such specialists; and

18 “(2) may authorize travel by persons employed
19 or engaged by the Secretary to review an application
20 for any financing or refinancing guarantee, to visit
21 the situs of the applicant.”.

22 **SEC. 7. REPORTS TO CONGRESS.**

23 (a) REPORT BY SECRETARY OF DEFENSE.—The Sec-
24 retary of Defense shall, in consultation with the Secretary

1 of Transportation, before June 30, 2001, submit to the
2 Congress a written report on—

3 (1) the extent to which projects approved within
4 the Maritech and Maritech ASE programs under the
5 National Shipbuilding and Shipyard Conversion Act
6 of 1993 have created technologies and capabilities
7 among both larger and smaller United States ship-
8 builders that support national defense preparedness
9 interests; and

10 (2) how such program may be continued to sup-
11 port national defense interests, including the rec-
12 ommended level of resources to continue such pro-
13 gram.

14 (b) REPORT BY SECRETARY OF TRANSPORTATION.—
15 The Secretary of Transportation shall, before June 30,
16 2001, submit to Congress a written report that—

17 (1) proposes an articulated United States mer-
18 chant shipbuilding policy, identifies the extent to
19 which United States shipyards are competitive with
20 measures to aid or retain competitiveness, identifies
21 the permanent levels of staffing and resources nec-
22 essary to administer title XI of the Merchant Marine
23 Act, 1936, and discusses the advisability of retaining
24 the program under that title under the United
25 States Maritime Administration or transferring its

1 administration to a Government-owned corporation
2 subject to recommended extent of continued congress-
3 sional budgetary and other oversights and whether
4 existing safeguards on title XI credit extension deci-
5 sions are adequate;

6 (2) recommends informational or other meas-
7 ures and the associated level and cost of resources,
8 that may be taken by the Secretary, alone or in co-
9 operation with the Overseas Private Investment Cor-
10 poration, to reduce basis-point-spread market addi-
11 tions on title XI bonds by expanding the pool of
12 bond purchasers;

13 (3) reports whether payments have been made
14 into title XI Reserve Funds to which the Govern-
15 ment made effective resort as collateral following de-
16 fault and that discusses any justification, as against
17 shipowner burden, of retaining the title XI Reserve
18 Fund and Financial Agreement loan feature; and

19 (4) recommends any other measures, including
20 extending title XI obligation authority, that will
21 strengthen the United States merchant marine in-
22 frastructure and promote national policy objectives.

1 **SEC. 8. UNITED STATES PASSENGER VESSEL RESEARCH**
2 **SUPPORT.**

3 The Secretary of Transportation, acting through the
4 Coast Guard and subject to appropriations, may provide
5 financial assistance for research projects proposed to and
6 selected by the United States Passenger Vessel Associa-
7 tion that—

8 (1) foster business process or design tech-
9 nologies to avoid or mitigate adverse environmental
10 impacts from domestic passenger vessel operations;

11 (2) promote cost-effective solutions to passenger
12 and crew safety issues arising from operations and
13 changing technologies;

14 (3) propose, promote, or assess the feasibility of
15 waterborne passenger transport (including effective
16 intermodal connections where applicable) in United
17 States locales with existing or foreseeable nonwater-
18 borne transport congestion of people or goods (or
19 both); or

20 (4) any combination of paragraphs (1) through
21 (3).

22 **SEC. 9. INITIATIVE AUTHORITY CONTINUED.**

23 The authority created under the National Ship-
24 building and Shipyard Conversion Act of 1993 to extend
25 the availability of title XI obligation guarantees to eligible
26 export vessels and for United States shipyard moderniza-

1 tion shall continue until terminated or otherwise modified
2 by the Congress. Annual appropriations for program re-
3 sources and Federal Credit Reform Act payments for the
4 program under title XI of the Merchant Marine Act, 1936,
5 shall be under the jurisdiction of the respective House of
6 Representatives and Senate transportation appropriations
7 subcommittees.

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