

Calendar No. 234105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-121 }**PROVIDING AN ADMINISTRATIVE PROCESS
FOR OBTAINING A WAIVER OF THE
COASTWISE TRADE LAWS FOR CERTAIN
VESSELS**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 661

OCTOBER 29, 1997.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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PROVIDING AN ADMINISTRATIVE PROCESS FOR OBTAINING A WAIVER OF THE COASTWISE TRADE LAWS FOR CER- TAIN VESSELS

OCTOBER 29, 1997.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 661]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 661) “A Bill to provide an administrative process for obtaining a waiver of the coastwise trade laws for certain vessels”, having considered the same, reports favorably thereon without an amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

S. 661, as reported, would authorize an administrative process through which the Secretary of Transportation could waive the United States-built requirement of the coastwise trade laws for certain vessels carrying no more than 12 passengers for hire.

BACKGROUND AND NEEDS

Subject to certain limited exceptions, the law known as the Jones Act (section 27 of the Merchant Marine Act, 1920), section 8 of the Act of June 19, 1886, and sections 12106 and 12108 of title 46, U.S. Code (hereinafter referred to as “the coastwise trade laws”), provide that only those vessels built in the United States, continuously documented under the laws of the United States, and continuously owned by U.S. citizens may transport merchandise or passengers in the coastwise trade or engage in the fisheries, of the United States. Section 1120(e) of the Coast Guard Authorization Act of 1996 (Pub. L. 104-324) amended section 27 of the Merchant Marine Act, 1920 to waive the requirement that vessels be continuously documented

under the laws of the United States for vessels for less than 200 gross tons. The United States-built requirement continues to apply for all vessels.

Where the facts applicable to a particular vessel suggest the United States-built or continuous United States-documented requirements have not been satisfied, the Coast Guard may not issue a document granting coastwise trading or fisheries privileges for that vessel unless the requirements of the coastwise trade laws are statutorily waived.

For the past several years, a number of bills that would waive the coastwise trade laws for vessels have been referred to the Commerce Committee. The majority of these waiver requests involve U.S. citizen vessel owners who intend to carry no more than 12 passengers for hire on vessels that do not meet either the United States-built or continuous United States-documented requirements of those laws, or both. During the 104th Congress, 73 of the 119 bills considered by the Commerce Committee were requests for a waiver of the coastwise trade laws for specific vessels. With the enactment of Public Law 104-324, the majority of coastwise trade law waiver bills referred to the Committee during the 105th Congress concern foreign-built vessels. The Committee review and approval process is largely a ministerial function. The Committee believes it would be more appropriate for this function to be performed by an expert agency.

Before introduction of S. 661, the Commerce Committee staff met with representatives of the U.S. vessel construction industry and coastwise trade operating industries to discuss the manner in which this ministerial function could be transferred to an appropriate administrative agency. After reviewing the recent history of Commerce Committee coastwise trade waivers, and the expected effect of the amendment to section 27 of the Merchant Marine Act, 1920 made by Public Law 104-324, the Committee staff projected that most coastwise trade law waivers requested after the 104th Congress would concern foreign-built vessels carrying no more than 12 passengers for hire. Because the commercial competition implications of waiving the U.S.-built requirement for vessels carrying a large number of passengers, engaged in commercial towing, or providing offshore marine services are often controversial, waiver authority for vessels that would be so employed was not considered for inclusion in S. 661. Similarly, because the Congress has recently enacted several legislative provisions aimed at reducing the existing overcapacity of U.S. fishing vessels, waiver authority for fisheries endorsements was not considered for inclusion in S. 661. The Committee knows of no industry or agency objections to S. 661. If S. 661 is enacted, only a few waiver requests would likely be considered by the Committee each year, allowing the Committee to focus its attention on more weighty matters.

LEGISLATIVE HISTORY

S. 661 was introduced in the Senate on April 28, 1997, by Senator McCain. In open executive session on June 19, 1997, the Committee considered S. 661, and ordered the legislation reported favorably without objection.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 1997.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 661, a bill to provide for an administrative process for obtaining a waiver of the coastwise trade laws for certain vessels.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 661—A bill to provide for an administrative process for obtaining a waiver of the coastwise trade laws for certain vessels

S. 661 would authorize the Secretary of Transportation to issue certificates of documentation with appropriate endorsements for employment in the coastwise trade for certain eligible passenger vessels. The Secretary could issue certificates for vessels that carry up to 12 passengers and that were constructed or rebuilt outside the United States at least three years earlier, as long as coastwise employment of the vessel would not harm U.S. shipbuilders or coastwise operators of domestic vessels. Finally, the bill would allow the Secretary to revoke an endorsement under certain circumstances.

CBO estimates that enacting S. 661 would have no significant impact on the federal budget because the U.S. Coast Guard already issues these certificates and would continue to do so in the same manner for about the same number of vessels after enactment of the bill. It is possible that the federal government may experience small savings in discretionary costs by eliminating the need to enact legislation approving each request for certification and endorsement, but the amounts involved would be negligible.

S. 661 contains no private-sector or intergovernmental mandates and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 661 would transfer a ministerial function from the Congress to the appropriate expert agency in the Department of Transportation, the legislation will have minimal additional regulatory impact, and will result in no additional reporting requirements. Because the statutory criteria of S. 661 for granting coastwise trade waivers is equivalent to the criteria currently used by the Congress, the legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

The bill consists of four sections.

Section 1. Findings

This section includes four Congressional findings:

First, the coastwise trade laws provide no administrative authority to waive the United States-built requirement of those laws for the limited carriage of passengers for hire on vessels built or rebuilt outside the United States.

Second, requests for such waivers require the enactment of legislation by the Congress.

Third, each Congress routinely approves numerous such requests for waiver and rarely rejects any such request.

Fourth, the review and approval of such waiver requests is a ministerial function which properly should be executed by an administrative agency with appropriate expertise.

Section 2. Administrative waiver of coastwise trade laws

This section provides that the Secretary of Transportation may waive section 12106 of title 46, U.S. Code, section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S. Code App. 289), and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), and issue a certificate of documentation with the appropriate endorsement for employment in the coastwise trade as a passenger vessel, a small passenger vessel, or an uninspected passenger vessel for an eligible vessel, as defined by section 4 of the bill, authorized to carry no more than 12 passengers for hire if the Secretary determines that the employment of the vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person who employs vessels built in the United States in that business.

This section places four restrictions on the coastwise trade law waiver authority granted under the section. First, this waiver authority applies only to vessels which are employed as a passenger vessel, a small passenger vessel, or an uninspected passenger vessel, as defined in section 4 of the bill. Second, this waiver authority applies only to eligible vessels, as defined in section 4 of the bill.

Third, vessels granted waivers under the authority of this section may carry no more than 12 passengers for hire. Finally, before such a waiver is granted, the Secretary must first determine that the employment of such vessel in the coastwise trade will not adversely affect U.S. builders of vessels employed in the coastwise trade or any coastwise trade business that employs the United States-built vessels.

The first three restrictions define the type of coastwise trade law waivers that have been routinely approved by the Committee. The fourth restriction prescribes waiver approval criteria equivalent to that used by the Commerce Committee.

The Committee routinely consults with representatives of the vessel construction industry (e.g., the National Marine Manufacturers Association, the National Shipyard Association, the Shipbuilders Council of America, and the American Shipbuilding Association) and the coastwise trade passenger vessel industry (e.g., the Passenger Vessel Association, the National Association of Charterboat Operators, and the National Party Boat Owners Alliance). The Committee expects these industries will continue to be provided the opportunity to review and comment on applications for waivers under this authority.

Within the Department of Transportation, there are two agencies with responsibilities related to the coastwise trade laws. The Coast Guard issues the vessel documents and endorsements which authorize vessels to engage in the coastwise trade. The Maritime Administration assists domestic shippers in locating suitable coastwise trade eligible vessels and is authorized to grant waivers of the coastwise trade laws on a voyage basis. Of these two agencies, the Committee believes the Maritime Administration is better suited to determine the effect of vessel waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses. The Committee expects the Coast Guard would continue to issue vessel documents and endorsements for vessels granted waivers under section 2 of this bill. The Committee expects the Coast Guard and the Maritime Administration would coordinate the processing of requests for waivers under section 2 of this bill.

Section 3. Revocation

This section authorizes the Secretary of Transportation to revoke a coastwise trade endorsement issued under section 2 of this bill under certain conditions. First, the Secretary must provide adequate notice to the vessel owner and an opportunity for public comment. Second, such an endorsement may only be revoked if the employment of the vessel in the coastwise trade has substantially changed. Finally, such an endorsement may only be revoked if the vessel is employed other than as a passenger vessel, small passenger vessel, or an uninspected passenger vessel (including carrying more than 12 passengers for hire), or the changed employment of the vessel adversely affects United States vessel builders or United States-built vessel coastwise trade businesses. An endorsement issued under section 2 of this bill may not be revoked in circumstances where changes in the passenger vessel market adversely affect United States vessel builders or United States-built

vessel coastwise trade businesses, but the coastwise trade employment of the vessel operating under the authority provided for in section 2 of this bill has not substantially changed.

Section 4. Definitions

This section defines three terms used in the bill:

First, the term "Secretary" means the Secretary of Transportation.

Second, the term "eligible vessel" means a vessel that was not built in the United States and is at least 3 years of age, or a vessel that was rebuilt outside the United States at least 3 years before the certification requested under section 2 of the bill, if granted, would take effect. The purpose of the 3-year waiting period is to discourage vessel owners from purchasing new, foreign-built vessels for the purposes of immediately employing those vessels in the coastwise trade.

Third, the terms "passenger vessel", "small passenger vessel", "uninspected passenger vessel", and "passenger for hire" have the meaning given such terms by section 2101 of title 46, United States Code.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states the bill as reported would make no change to existing law.