

Calendar No. 786

106th Congress }
2d Session }

SENATE

{ REPORT
{ 106-396

UNITED STATES CRUISE VESSEL ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1510



SEPTEMBER 6, 2000.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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SEPTEMBER 6, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 1510]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1510) to revise the laws of the United States pertaining to United States cruise vessels, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

The bill provides American companies, American workers, and American ports with increased opportunity to compete in the United States cruise market. By doing so, it would ultimately give consumers greater choice in domestic cruise destinations and allow more Americans to visit our nation's port cities. The bill allows U.S.-owned foreign-built cruise vessels to enter the domestic market for a limited time if the operators agree to build replacement vessels in the United States. This would allow new companies to enter the domestic market with existing vessels and immediately increase the size of the U.S. commercial fleet, thus providing new jobs for merchant mariners.

Further, by requiring operators to build new vessels in the United States, the bill would create much needed work for U.S. shipyards while creating a fleet of modern and efficient U.S.-flagged cruise vessels.

BACKGROUND AND NEEDS

Subject to certain limited exceptions, the provisions of the law known as the Passenger Vessel Services Act (PVSA) (section 8 of the Act of June 19, 1886) and section 12106 of title 46, United

States Code, provide that only those vessels built in the United States and continuously owned by U.S. citizens and documented in the U.S. may transport passengers in the coastwise trade of the United States (between U.S. ports). The law was enacted in a time when maritime transportation was a significant mode of both domestic and international transportation. The law was intended to prevent U.S.-based companies from facing strong competition in the domestic market from maritime nations such as Great Britain. The law did not address vacation cruising as no market existed at that time.

The Passenger Vessel Services Act has not been interpreted to restrict domestic port calls as long as the domestic port call is part of a trip that includes foreign destinations and the U.S. port calls are intermediary stops. This means that foreign-flagged vessels are currently entitled to make as many U.S. port calls as they choose, provided that it is part of an international route and that passengers who embark at a U.S. port do not permanently disembark at a different U.S. port. Additionally, the U.S. Customs Service has interpreted the Passenger Vessel Services Act to allow a foreign vessel to make as many intermediary U.S. port calls as it chooses, and disembark passengers at a different U.S. port, as long as the vessel makes a port call at a distant foreign port such as Aruba.

One of the exceptions to the PVSA is the Puerto Rico Passenger Ship Act (Public Law 98-563) which allows vessels not qualified to engage in the coastwise trade to carry passengers between U.S. ports and Puerto Rico, and between Puerto Rico ports, if no similar coastwise trade qualified vessels are engaged in that trade. Under this exception, the unqualified vessels must exit that trade 270 days after similar coastwise trade qualified vessels enter that trade. This exemption, however, has not been widely utilized.

Following World War II, the nature of maritime travel changed significantly as both domestic and transoceanic flights became more common and affordable. Air travel provided new competition for passenger vessels. With dwindling passengers, some vessel operators started to package cruising more as a vacation at sea than a mode of travel. By the mid-1970's the last regularly scheduled transoceanic passenger service had ceased.

Companies had to do something with now-empty ships. Cruises to a few tropical ports slowly became popular. The first passenger ship specifically built for warm-weather cruising was introduced in 1970 by Carnival Cruise Lines. From there, the industry grew rapidly and has boomed since the mid-1980's when the first megaships were introduced to the market.

The cruise ship industry is largely a North American phenomenon, and more than 80 percent of the approximately five million passengers traveling are North Americans. The cruise ship market has expanded slightly in the Mediterranean and very slightly in the Far East. In Europe there are a large number of smaller passenger vessel services operating in the domestic or car ferry markets, but these vessels tend to provide transportation rather than entertainment and tourism. In large part, the majority of cruise vessels operate from one of three cities: Miami departing for Caribbean, Mexican, and Central and South American destinations; Los Angeles for West Coast Mexican and Central American destinations; and Vancouver, British Columbia, for seasonal Alas-

kan tours. However, recently there has been increased usage of other U.S. ports as departure points.

While there are numerous small- to medium-sized coastwise trade qualified vessels carrying passengers between U.S. ports, there is only one large coastwise trade qualified cruise ship engaged in that trade. The U.S.S. *Independence*, a 46-year old cruise ship, operates among the Hawaiian Islands. The U.S.S. *Independence* will soon be replaced by a foreign-built vessel in accordance with an initiative enacted as part of the Department of Defense Appropriations Act for Fiscal Year 1998. Also as part of this initiative, American Classic Voyages (ACV), which owns and operate the *Independence*, has a contract for two new large cruise vessels which will enter the Hawaiian market in 2003 and 2004.

With the exception of ACV's pilot project, growth in the domestic cruise ship trade has been deterred due to the higher costs of building and operating U.S.-flag cruise ships and competition from modern, foreign-flag cruise ships engaged in cruises to nowhere and international cruises. While many cruise ship operators are headquartered in the United States because of the size of the market, almost all cruise ship operators have registered their ships under flag-of-convenience registries such as Panama, Liberia, and the Bahamas. Operating under a flag-of-convenience provides the cheapest maritime operating structure. Ship operators are only required to pay registration fees, and do not have to pay any U.S. or flag-state taxes on income derived through operations.

Safety and labor standards on flag-of-convenience vessels are dictated by International Maritime Organization (IMO) safety standards that are agreed to by the flag state. Implementation of those standards is routinely delegated to private companies that provide inspections (commonly referred to as classification societies). Labor relations are usually privatized, and labor standards are dictated by International Labor Organization (ILO) labor standards treaties that are agreed to on an international basis.

For many years, numerous U.S. port, travel, tourism, and business associations, and some vessel repair shipyards have touted the economic benefits of U.S. port visits by modern cruise ships. These groups have lobbied for changes in U.S. law that would stimulate growth in the industry by allowing foreign-flag cruise ships to enter the domestic market, provide incentives to build and operate U.S. flag cruise ships, or both. The provisions of the bill reflect the Committee's interest in structuring a compromise which would stimulate the domestic cruise market, while at the same time, ensure maximum benefit for the U.S. maritime industry.

During consideration of S. 1510, members of the Committee expressed concern regarding the possible impact of the measure on cruise ship construction projects currently under development. Therefore, the provisions of the bill are limited in duration and restrict operation of foreign-built vessels in the domestic market, as well as provide the strict requirement for the Secretary of Transportation to ensure that the operation of a foreign-built vessel does not harm the coastwise business of any U.S.-built vessel operator. It is the view of the Committee that the impact on these projects is minimal.

The Committee would expect the Secretary to act upon submitted applications for reflagging a vessel under the bill in a timely man-

ner. The bill clearly restricts the ability of an applicant to transfer applications and does not confer a property right through the filing of applications. The bill does not set a time for completing the application process or receiving a certificate of documentation. The Committee expects that applicants should have a reasonable period of time to complete an application, given the complexity of such a task. The Committee realizes if applications are allowed to linger without action that the market would be subject to unrealistic uncertainties. However, the Committee does want to ensure that operators applying to the Secretary for permission to reflag a vessel into the domestic market are afforded ample time to complete negotiations on a foreign-built vessel and new U.S.-built vessels.

Additional concern was expressed during consideration of the bill that the market would be flooded by unqualified operators who cannot meet the construction requirements contained in the bill. The Committee addressed this concern by including language requiring all operators to meet the same requirements of an operator receiving a title XI maritime loan guarantee under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.). The review of all applications required under section 103(2)(a) of the bill would ensure that the market does not become flooded to the point that operators of U.S.-built vessels cannot compete, and would help ensure that parties seeking to enter the domestic market have the requisite expertise and financial strength to operate a U.S.-flagged cruise line.

LEGISLATIVE HISTORY

Three bills were introduced during the 105th Congress that would have allowed foreign-flag vessels access to the domestic trade, and one bill was introduced allowing foreign-built vessels to be reflagged for use in the domestic trade under certain conditions. The provisions of both bills were patterned after the Puerto Rico exception. S. 668, a bill to increase economic benefits to the United States from the activities of cruise ships visiting Alaska, introduced by Senator Murkowski on April 30, 1997, would have allowed foreign-flag cruise ships of at least 5,000 gross tons displacement to transport passengers between ports in Alaska and between Alaska and other west coast U.S. ports until the Secretary of Transportation determined that U.S.-flag cruise ship service was available.

S. 803, the United States Cruise Tourism Act of 1997, introduced by Senator Thurmond (cosponsored by Senators Murkowski, Chafee, and McCain) on May 23, 1997, would have allowed foreign-flag cruise ships of at least 4,000 gross tons displacement to transport passengers between ports in the U.S. until the Secretary of Transportation determined that U.S.-flag cruise ships were available. It would have further required such cruise ships to be repaired in the U.S. and would have allowed foreign-flag cruise ship alien crew members to extend their permits to land in the U.S.

Senator Hutchison chaired a Surface Transportation and Merchant Marine Subcommittee hearing on S. 668, S. 803, and the domestic cruise ship trade, on October 21, 1997. Representatives of the Cruising America Coalition and the U.S. maritime industry provided testimony.

Additionally, Senator Breaux introduced S. 2290 on July 10, 1998. S. 2290 would have authorized the Secretary of Transpor-

tation to allow foreign-built cruise ships into the domestic trade if they are U.S.-flagged and replaced with U.S.-built, U.S.-flagged cruise ships. S. 2290 would have also prohibited competition between U.S.-built and foreign-built U.S.-flag cruise ships on the same trade route; prohibited foreign-built U.S.-flag cruise ships from operating between or among the Hawaiian islands; allowed foreign-built U.S.-flag cruise ships to meet international construction standards (in lieu of U.S. standards); and allowed foreign-built, U.S.-flag cruise ships to be transferred to a foreign registry without approval by the Secretary of Transportation.

S. 2507, the United States Cruise Ship Tourism Act of 1998, was introduced by Senators McCain, Thurmond, Hutchison and Burns on September 22, 1998. The bill would have allowed foreign-built vessels to be reflagged as U.S. vessels and engage in domestic commerce, and permitted limited employment of foreign-flag cruise ships in the domestic commerce. S. 2507 would have allowed foreign-built cruise ships, fewer than ten years of age and at least 20,000 gross tons and with accommodations for at least 800 passengers, to be reflagged as U.S.-flag vessels to engage in foreign commerce. The bill would have limited each company that utilized the provisions of the bill to no more than three vessels, and would have waived certain design and safety standards provided that a Coast Guard-recognized classification society had approved the vessel.

The bill also would have allowed the Secretary to approve foreign-flag vessels to operate domestically, with certain limitations:

(1) *Repositioning voyages*.—Foreign-flag vessels could be employed in the coastwise or domestic trades, two voyages a year, as long as the voyage did not exceed two weeks and either started on one coast of the United States and ended on the other, or started along one coast of the United States during a voyage between two countries; and

(2) *Charter voyages*.—The Secretary could approve not more than thirty foreign-flag vessels a year which could be chartered for thirty days, to a non-cruise ship owning company, to be utilized in the domestic commerce.

During the 106th Congress, S. 1510 was introduced by Senators McCain, Hutchison, Feinstein, and Murkowski on August 5, 1999, to allow foreign-built vessels to be reflagged as U.S. vessels and engage in domestic commerce and to permit limited employment of foreign-flag cruise ships in domestic commerce. The bill as originally drafted would authorize the Secretary to issue permits to foreign-built passenger cruise vessels to operate domestic itineraries in the transportation of passengers in the coastwise trade under foreign or U.S.-flag.

The Commerce Committee held a full committee hearing on October 6, 1999. At the hearing, the committee heard from a wide range of the maritime industry including representatives of maritime labor, cruise operators and ports. Many raised concerns about allowing foreign vessels into the domestic market under different standards than current U.S. operators, and potentially different rules of operation. As a result of these expressed concerns, but mindful of the need to stimulate the domestic cruise market, the committee adopted an amendment in the nature of a substitute to help stimulate the U.S. domestic cruise industry during a June 15,

2000 Commerce Committee markup session. The Committee reported S. 1510 favorably on this date.

SUMMARY OF MAJOR PROVISIONS

The bill provides a two-year window of opportunity to encourage the immediate reflagging of large cruise vessels under the United States flag for operation in the domestic cruise trades. The bill would allow the Secretary of Transportation to issue permits for the limited operation of foreign-built cruise vessels in the domestic trades if applications are received within two years of the date of enactment of this legislation.

To be eligible for reflagging and operation in the U.S. domestic cruise trades, a cruise vessel must have been delivered after January 1, 1980, is at least 20,000 gross registered tons, have no fewer than 800 passenger berths, provide a full range of overnight accommodations, dining, and entertainment services, comply with the Safety of Life at Sea requirements for a fixed smoke detection and sprinkler system in the accommodation areas, and be constructed according to internationally accepted construction standards. This will help ensure that any foreign-flag vessels reflagged to take advantage of the bill are modern and safe.

To be eligible to enter the domestic market, the vessel must be owned by a citizen of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) or section 12106(e) of title 46, United States Code.

The bill would assist the U.S. ship repair industry and would require foreign-built cruise vessels entering the domestic market to have all repair, maintenance, alteration and other work required for operation under the U.S. flag, as well as regular repair and maintenance work, performed in a U.S. shipyard.

Prior to allowing a foreign-built vessel to be reflagged and utilized in the domestic market, the bill would require the operator of a reflagged vessel to enter into a binding contract with U.S. shipyards for the construction of at least one more vessel than the total number of vessels they will operate in the domestic cruise market. The contract must provide for a total number of passenger berths equal to or greater than the number operated in the domestic market by that operator. Additionally, the replacement vessels must be at least 20,000 gross registered tons and have no fewer than 800 passenger berths.

The bill would require the first replacement vessel be delivered within five years of the date the foreign-built vessel commences operation in the domestic trade and that each additional vessel be delivered within two years of the preceding vessel. Foreign-built vessels are required to leave the domestic market two years after the replacement vessel or vessels are delivered.

The bill would require the Secretary of Transportation to ensure that the coastwise business of a U.S.-built vessel operator is not harmed by the operation of a foreign-built vessel in the domestic market. The Secretary, after reviewing the proposed itineraries of foreign-built vessels in the domestic market, as well as taking into consideration public comments, is required to determine if there will be an adverse impact on the operation of a U.S.-built vessel. The Secretary is required to consider the scope of the vessel's itineraries, the duration of the cruise, the size of the vessel and the

retail per diem of the vessel. If there is a conflict, the operator of a foreign-built vessel must change the vessel's itinerary in order to remove the conflict to the satisfaction of the Secretary.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI 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, June 23, 2000.

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. 1510, the United States Cruise Vessel Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1510—United States Cruise Vessel Act

Under current law, cruise vessels that were not built in the United States are not eligible to receive coastwise endorsements, which allow ships to serve the domestic trade. S. 1510 would authorize the Secretary of Transportation to issue certificates of documentation with temporary coastwise endorsements for these cruise vessels under certain conditions. In order to receive the temporary endorsements, cruise ship operators would have to enter into contracts with U.S. shipyards to construct new cruise vessels. The Secretary would have to oversee an operator's choice of cruise routes to ensure that operators of vessels built in the United States are not adversely affected by the entry of foreign-built ships.

CBO estimates that implementing S. 1510 would have no significant impact on federal budget because the costs of issuing vessel documents and overseeing the cruise ship market as required by the bill would be minimal. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, 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:

S. 1510 as reported makes no permanent change to existing law. It would require businesses operating foreign-built vessels in the domestic trade to file proposed itineraries with the Secretary of Transportation. This is an annual reporting requirement limited to the time the foreign-built vessel operates in the domestic market and is necessary in order to ensure that the foreign-built vessel does not have an adverse impact on the coastwise business of a U.S.-built vessel operator.

Additionally, the bill would require the Secretary to review and monitor operations of foreign-built vessels within approved itineraries for the duration of their U.S. domestic operations.

Because S. 1510 does not create any permanent programs, the legislation would have no additional regulatory impact, and would result in no additional reporting requirements. The legislation would 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

Section 1. Short title

This section designates the act as the “United States Cruise Vessel Act”.

Section 2. Definitions

This section defines terms that may be unique to the bill as well as terms defined elsewhere in law.

TITLE I—OPERATIONS UNDER A CERTIFICATE OF DOCUMENTATION

Section 101. Domestic cruise vessel

This section allows the Secretary of Transportation to accept applications for the issuance of a certificate of documentation with a temporary coastwise endorsement to foreign-built vessels that are at least 20,000 gross registered tons with a minimum of 800 passenger berths; that are owned by a person qualified to operate a passenger vessel in the coastwise trade and; that provide a full range of overnight accommodations, entertainment, dining, and other services for their passengers.

The vessel would also have to meet the standards for smoke detection and sprinkler system installation as required by the 1992 Amendments to the Safety of Life at Sea Conventions of 1974 and be classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary as long as it complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel.

The section would allow the Secretary to accept applications for up to two years from the date of enactment and the right to reflag a foreign-built vessel under an application may not be transferred by the applicant to any other person.

Section 102. Repairs requirement

This section requires that all vessels documented under the bill have all repair, maintenance, alteration and other work required or necessary to the vessel's operation in the domestic cruise trades performed in a United States shipyard.

Section 103. Construction requirement

This section requires any operator who is issued a certificate of documentation with a temporary coastwise endorsement under the bill to enter into a binding contract with a U.S. shipyard for one more vessel than the total number of vessels brought into the coastwise trade by that operator prior to commencing operations. In order to meet this requirement, the substitute amendment requires the operator and the yard demonstrate to the Secretary of Transportation that they have the abilities to both construct and operate the vessel prior to commencing operations.

Further, it requires that the first vessel be delivered within five years and each additional vessel within two years of the preceding vessel. It allows for an extension of this provision due to impossibility of performance. It requires that the foreign-built vessels leave the coastwise trade within two years of the delivery of the replacement vessel or vessels and allows the operator to reflag the vessels without the approval of the Secretary of Transportation.

Finally, it requires that replacement vessels be at least 20,000 gross registered tons with a minimum of 800 passenger berths, are owned by a person qualified to operate a passenger vessel in the coastwise trade, and has combined vessel berth capacity equal to or greater than the vessel being replaced.

Section 104. Certain operations prohibited

The section prohibits any vessels entering the coastwise trade under the bill from operating as a ferry or regularly carrying for hire both passengers and vehicles or other cargo and from operating between or among the islands of Hawaii.

Section 105. Priorities within domestic markets

The section requires that an operator of a vessel issued a certificate of documentation under the Act, at the request of the Secretary, submit proposed itineraries for review and public comment. The Secretary shall, after consideration of all comments, make a determination if the proposed itinerary would adversely affect the operator of a U.S.-built vessel equal to or greater in size. If a determination is made that a submitted itinerary would adversely affect the operator of a U.S.-built vessel, the Secretary will work to resolve conflicts before publication of a final list of approved itineraries.

Further, the section allows for changes to the itineraries approved by the Secretary, subject to public comment and review by the Secretary. The Secretary would have to follow the same standards set for approval of the original itinerary and would have to ensure the change did not adversely affect the operator of a U.S.-built vessel.

Section 106. Report

The section requires the Secretary of Transportation to issue an annual report on the number of vessels operating under a certificate of documentation granted under the bill and on the progress of construction of replacement vessels.

Section 107. Enforcement

The section provides priority to operate in the domestic market to cruise vessels built in the United States. Under this section the operator of a cruise vessel built in the United States would notify the Secretary of Transportation at least two full calendar years before the vessel is scheduled to commence domestic operations.

Following this notification, the Secretary is required to have the operators of all foreign-built vessels operating under this bill to submit, in April of each year, proposed itineraries for the calendar year beginning 20 months after the required submission for review and public comment.

After the review period, the Secretary is required to notify the operator of a foreign-built cruise vessel of any itineraries that are not available and attempt to work out any disputes prior to publication of a final list of approved itineraries.

For purposes of the review, the Secretary shall consider the scope of the vessel's itinerary; the ports between which it will operate; the duration of the cruise; the size of the vessel; and the retail per diem of the vessel. In conducting the review, if the Secretary determines that the submitted itinerary of a foreign-built vessel will adversely affect the coastwise business of a comparable U.S. cruise vessel in a comparable market, the U.S.-built vessel shall be given priority to operate.

TITLE II—OTHER PROVISIONS

Section 201. Application with Jones Act and other acts

The section states that nothing in the bill shall impact current law relating to the transportation of cargo or passengers in domestic commerce unless specified in the bill. Specifically it states that nothing in the bill would affect the Jones Act, P.L. 87-77, P.L. 98-563, section 27A of the Merchant Marine Act, 1920, and section 8109 of the Department of Defense Appropriations Act, 1998.

Section 202. Glacier Bay and other National Park Service area permits

The section requires that newly created or otherwise available permits to enter Glacier Bay National Park or any other area within the jurisdiction of the National Park Service be issued to U.S.-flagged vessels carrying passengers for hire. It does not require the creation of any new permits or impact current permit holders.

CHANGES IN EXISTING LAW

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