

Calendar No. 658

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-367 }

A BILL TO AMEND TITLE 46, UNITED STATES CODE, TO EXEMPT OLD VESSELS THAT ONLY OPERATE WITHIN INLAND WATERWAYS FROM THE FIRE-RETARDANT MATERIALS REQUIREMENT IF THE OWNERS OF SUCH VESSELS MAKE ANNUAL STRUCTURAL ALTERATIONS TO AT LEAST 10 PERCENT OF THE AREAS OF THE VESSELS THAT ARE NOT CONSTRUCTED OF FIRE-RETARDANT MATERIALS

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1717



OCTOBER 27, 2016.—Ordered to be printed
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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

R E P O R T

[To accompany S. 1717]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1717), to amend title 46, United States Code, to exempt old vessels that only operate within inland waterways from the fire-retardant materials requirement if the owners of such vessels make annual structural alterations to at least 10 percent of the areas of the vessels that are not constructed of fire-retardant materials, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1717 is to amend title 46 of the United States Code to exempt old vessels that only operate within inland waterways from the fire-retardant materials requirement if the owners of such vessels make annual structural alterations to at least 10 percent of the areas of the vessels that are not constructed of fire-retardant materials.

BACKGROUND AND NEEDS

The Steamer DELTA QUEEN is a 20th century vessel, with an entirely wooden superstructure.¹ This superstructure was deemed unsafe in 1966, when Congress declared that, “no passenger vessel of the United States . . . shall be granted a certificate of inspection . . . unless the vessel is constructed of fire-retardant materials.”² Congress temporarily delayed the effect of this mandate twice. It was initially delayed until 1968. Then, in 1970, Congress again temporarily delayed the effect of the mandate but only for those U.S. passenger vessels then operating on the inland rivers, and only until 1973. In 1973, Congress again temporarily delayed the effect of the mandate for the sole benefit of the steamer DELTA QUEEN until 1978. Congress continued to delay the effect of the mandate for the next three decades.³ Then, in 2008, the mandate was finally made applicable to the DELTA QUEEN, which caused the vessel to cease all operation.⁴ On February 11, 2009, the DELTA QUEEN was docked at Coolidge Park Landing in Chattanooga, Tennessee, where the vessel operated as a floating boutique hotel until 2014.⁵

In 2008, a traveling inspector from the Coast Guard inspected the DELTA QUEEN and noted “evidence of a lack of both short- and long-term maintenance that adversely impacts the safety of the vessel . . . all of which has to do with unintended or excess but unnecessary fire load.”⁶ The fire load of the ship is concentrated in the lower decks. The most likely place for a fire to start would be the almost 100 year old boilers. The boilers are not entirely contained within the steel hull and the tops of the boilers are open directly to the aged and dry wood super structure of the ship.⁷ Given that the vessel currently lacks thermal and structural boundaries, a fire within any part of the ship could quickly spread horizontally and vertically. In a worst-case scenario, a fire would begin in the boilers, overwhelm the vessel’s fire suppression system, and spread throughout the whole of the lower deck and into the sleeping quarters directly above the lower decks. If such a fire were to happen, the planned evacuation route would be made irrelevant because the only exit in the present configuration of the vessel is via the stage (gangway) on the bow, directly through the likely location of the fire.⁸ The Coast Guard has repeatedly advised and requested that the operators of the vessel add a second exit to the vessel’s current configuration, but the operators have not acted.⁹ Accordingly, this bill would incentivize structural improvements to the DELTA QUEEN while also recognizing the historical importance of the vessel. As Senator Portman noted, “The Delta Queen is a true Ohio treasure and an important part of the Queen City’s history . . . We

¹ Letter from M. Tia Johnson, Assistant Secretary for Legislative Affairs for the Department of Homeland Security, to Senator Nelson, January 8, 2016.

² 46 U.S.C. §3503.

³ Letter from M. Tia Johnson, Assistant Secretary for Legislative Affairs for the Department of Homeland Security, to Senator Nelson, January 8, 2016.

⁴ “Majestic America Line,” February 2, 2007, at <http://web.archive.org/web/20070202204238/http://www.majesticamericaline.com:80>.

⁵ “Delta Queen departs Chattanooga North Shore” *WRCBtv*, March 22, 2015, at <http://www.wrcbtv.com/story/28583164/delta-queen-departs-chattanooga-north-shore>.

⁶ Letter from M. Tia Johnson Assistant Secretary for Legislative Affairs for the Department of Homeland Security, to Senator Nelson, January 8, 2016.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

are working to make sure the vessel can get back in business. It represents a big part of our history, and will help promote recreational activities and economic opportunity along the Ohio River.”¹⁰

LEGISLATIVE HISTORY

S. 1717 was introduced in the Senate on July 8, 2015, by Senator Brown and cosponsored by Senators Portman, McCaskill, Boozman, Vitter, Cotton, Cochran, Cassidy, and Blunt. On March 4, 2015, Representative Chabot introduced companion bill H.R. 1248 in the House of Representatives. On June 29, 2016, the Committee met in open Executive Session and, by voice vote, ordered S. 1717 to be reported favorably.

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:

S. 1717—A bill to amend title 46, United States Code, to exempt old vessels that only operate within inland waterways from the fire-retardant materials requirement if the owners of such vessels make annual structural alterations to at least 10 percent of the areas of the vessels that are not constructed of fire-retardant materials

The U.S. Coast Guard administers a wide range of maritime safety laws and is responsible for inspecting vessels to ensure compliance with safety standards. Under current law, passenger vessels with overnight accommodations for more than 50 passengers must be constructed of fire-retardant materials. S. 1717 would amend current law to exempt from that requirement (through 2028) vessels that operated before 1968, provided that owners operate them only within inland waterways and make certain structural alterations to them each year. CBO estimates that the proposed exemption would affect one vessel, a historic steamboat currently located in Louisiana.

CBO estimates that enacting S. 1717 would have no effect on the federal budget because the proposed exemption would not affect the U.S. Coast Guard’s costs to meet its underlying responsibility to inspect vessels; spending for such inspections is provided in annual appropriation acts. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1717 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 1717 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

¹⁰Rob Portman, U.S. Senator of Ohio, “Portman and Brown’s Bill to Restore Delta Queen Steamboat Passes Senate Commerce Committee,” Accessed June 29, 2016, at <http://www.portman.senate.gov/public/index.cfm/2016/6/portman-brown-s-bill-to-restore-delta-queen-steamboat-passes-senate-commerce-committee>.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

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:

NUMBER OF PERSONS COVERED

The bill would affect the owners and managing operators of certain passenger vessels of the United States that are exempt from the fire-retardant standards of section 3503 of title 46, United States Code.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have any significant adverse impacts on the Nation's economy.

PRIVACY

This bill will not have any adverse impact on the privacy of individuals.

PAPERWORK

This bill would not increase paperwork requirements for private individuals or the Government. It would require the owner of the DELTA QUEEN to notify the Coast Guard before making the alterations required by this legislation.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Fire-retardant materials exemption.

Section 1 would amend section 3503 of title 46, United States Code, to extend until 2028, from 2008, the waiver that exempts old vessels that only operate within inland waterways from the fire-retardant materials requirement if the owners do the following:

- Notify prospective passengers and crew that the vessel does not comply with applicable fire safety standards.
- Make annual structural alterations to not less than 10 percent of the areas of the vessel that are not constructed of fire-retardant materials.
- Provide advance notice to the Coast Guard regarding the alterations made.

- Comply with any noncombustible material requirements prescribed by the Coast Guard.
- Preserve, to the extent practicable, the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public when making alterations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART B. INSPECTION AND REGULATION OF VESSELS

CHAPTER 35. CARRIAGE OF PASSENGERS

§ 3503. Fire-retardant materials

(a) A passenger vessel of the United States having berth or state-room accommodations for at least 50 passengers shall be granted a certificate of inspection only if the vessel is constructed of fire-retardant materials. Before November 1, [2008, this section] *2028*, *this subsection* does not apply to any vessel in operation before January 1, 1968, and operating only within the Boundary Line.

(b)(1) When a vessel is exempted from the fire-retardant standards of [this section] *subsection (a)*—

(A) the owner or managing operator of the vessel shall notify prospective passengers *and crew* that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

(B) the owner or managing operator of the vessel may not disclaim liability to a passenger *or crew member* for death, injury, or any other loss caused by fire due to the negligence of the owner or managing operator;

(C) the penalties provided in section 3504(c) of this title apply to a violation of this subsection; [and]

[(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations comply with any noncombustible material requirements that the Coast Guard prescribes for nonpublic spaces. Coast Guard requirements shall be consistent with preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public.]

(D) *the owner or managing operator of the vessel shall—*

(i) make annual structural alterations to not less than 10 percent of the areas of the vessel that are not constructed of fire-retardant materials;

(ii) provide advance notice to the Coast Guard regarding the alterations made pursuant to clause (i); and

(iii) comply with any noncombustible material requirements prescribed by the Coast Guard; and

(E) the requirements referred to in subparagraph (D)(iii) shall, to the extent practicable, be consistent with the preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public.

(2) The Secretary shall prescribe regulations under this subsection on the manner in which prospective passengers are to be notified.