

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5887

To authorize appropriations for the Coast Guard for fiscal years 2013 through 2015, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 1, 2012

Mr. LOBIONDO (for himself and Mr. LARSEN of Washington) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To authorize appropriations for the Coast Guard for fiscal years 2013 through 2015, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Coast Guard and Maritime Transportation Act of 2012”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### TITLE I—AUTHORIZATION

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

## TITLE II—COAST GUARD

- Sec. 201. Selection boards; oath of members.  
 Sec. 202. Special selection boards; correction of errors.  
 Sec. 203. Prohibition of certain involuntary administrative separations.  
 Sec. 204. Annual report on Coast Guard unfunded priorities.

## TITLE III—MISCELLANEOUS

- Sec. 301. Technical corrections.  
 Sec. 302. Fishing vessel certification.  
 Sec. 303. Response Boat-Medium procurement.  
 Sec. 304. USCGC “Polar Sea”.

1           **TITLE I—AUTHORIZATION**2   **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

3           Funds are authorized to be appropriated for each of  
 4 fiscal years 2013, 2014, and 2015 for necessary expenses  
 5 of the Coast Guard as follows:

6           (1) For the operation and maintenance of the  
 7 Coast Guard—

8                   (A) \$6,922,645,000 for fiscal year 2013;

9                   (B) \$7,021,036,000 for fiscal year 2014;

10                   and

11                   (C) \$7,078,327,000 for fiscal year 2015.

12           (2) For the acquisition, construction, rebuild-  
 13 ing, and improvement of aids to navigation, shore  
 14 and offshore facilities, vessels, and aircraft, includ-  
 15 ing equipment related thereto—

16                   (A) \$1,505,312,000 for fiscal year 2013;

17                   (B) \$1,506,448,000 for fiscal year 2014;

18                   and

19                   (C) \$1,507,605,000 for fiscal year 2015;

1 to remain available until expended.

2 (3) For the Coast Guard Reserve program, in-  
3 cluding personnel and training costs, equipment, and  
4 services—

5 (A) \$138,111,000 for fiscal year 2013;

6 (B) \$140,016,000 for fiscal year 2014; and

7 (C) \$141,957,000 for fiscal year 2015.

8 (4) For environmental compliance and restora-  
9 tion of Coast Guard vessels, aircraft, and facilities  
10 (other than parts and equipment associated with op-  
11 eration and maintenance)—

12 (A) \$16,699,000 for fiscal year 2013;

13 (B) \$16,701,000 for fiscal year 2014; and

14 (C) \$16,704,000 for fiscal year 2015;

15 to remain available until expended.

16 (5) To the Commandant of the Coast Guard for  
17 research, development, test, and evaluation of tech-  
18 nologies, materials, and human factors directly re-  
19 lated to improving the performance of the Coast  
20 Guard's mission with respect to search and rescue,  
21 aids to navigation, marine safety, marine environ-  
22 mental protection, enforcement of laws and treaties,  
23 ice operations, oceanographic research, and defense  
24 readiness—

25 (A) \$19,848,000 for fiscal year 2013;

1 (B) \$19,890,000 for fiscal year 2014; and

2 (C) \$19,933,000 for fiscal year 2015.

3 **SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH**  
4 **AND TRAINING.**

5 (a) **ACTIVE DUTY STRENGTH.**—The Coast Guard is  
6 authorized an end-of-year strength for active duty per-  
7 sonnel of 47,000 for each of fiscal years 2013 through  
8 2015.

9 (b) **MILITARY TRAINING STUDENT LOADS.**—The  
10 Coast Guard is authorized average military training stu-  
11 dent loads for each of fiscal years 2013 through 2015 as  
12 follows:

13 (1) For recruit and special training, 2,500 stu-  
14 dent years.

15 (2) For flight training, 165 student years.

16 (3) For professional training in military and ci-  
17 vilian institutions, 350 student years.

18 (4) For officer acquisition, 1,200 student years.

19 **TITLE II—COAST GUARD**

20 **SEC. 201. SELECTION BOARDS; OATH OF MEMBERS.**

21 Section 254 of title 14, United States Code, is  
22 amended to read as follows:

23 **“§ 254. Selection boards; oath of members**

24 “Each member of a selection board shall swear—

1           “(1) that the member will, without prejudice or  
2           partiality, and having in view both the special fitness  
3           of officers and the efficiency of the Coast Guard,  
4           perform the duties imposed upon the member; and  
5           “(2) an oath in accordance with section 635.”.

6 **SEC. 202. SPECIAL SELECTION BOARDS; CORRECTION OF**  
7 **ERRORS.**

8           (a) IN GENERAL.—Chapter 11 of title 14, United  
9 States Code, is amended by inserting after section 262 the  
10 following:

11 **“§ 263. Special selection boards; correction of errors**

12           “(a) OFFICERS NOT CONSIDERED DUE TO ADMINIS-  
13 TRATIVE ERROR.—

14           “(1) IN GENERAL.—If the Secretary determines  
15 that as the result of an administrative error—

16                   “(A) an officer or former officer was not  
17                   considered for selection for promotion by a se-  
18                   lection board convened under section 251; or

19                   “(B) the name of an officer or former offi-  
20                   cer was not placed on an all-fully-qualified-offi-  
21                   cers list;

22           the Secretary shall convene a special selection board  
23           to determine whether such officer or former officer  
24           should be recommended for promotion and such offi-  
25           cer or former officer shall not be considered to have

1 failed of selection for promotion prior to the consid-  
2 eration of the special selection board.

3 “(2) EFFECT OF FAILURE TO RECOMMEND FOR  
4 PROMOTION.—If a special selection board convened  
5 under paragraph (1) does not recommend for pro-  
6 motion an officer or former officer, whose grade is  
7 below the grade of captain and whose name was re-  
8 ferred to that board for consideration, the officer or  
9 former officer shall be considered to have failed of  
10 selection for promotion.

11 “(b) OFFICERS CONSIDERED BUT NOT SELECTED;  
12 MATERIAL ERROR.—

13 “(1) IN GENERAL.—In the case of an officer or  
14 former officer who was eligible for promotion, was  
15 considered for selection for promotion by a selection  
16 board convened under section 251, and was not se-  
17 lected for promotion by that board, the Secretary  
18 may convene a special selection board to determine  
19 whether the officer or former officer should be rec-  
20 ommended for promotion, if the Secretary deter-  
21 mines that—

22 “(A) an action of the selection board that  
23 considered the officer or former officer—

24 “(i) was contrary to law in a matter  
25 material to the decision of the board; or

1                   “(ii) involved material error of fact or  
2                   material administrative error; or

3                   “(B) the selection board that considered  
4                   the officer or former officer did not have before  
5                   it for consideration material information.

6                   “(2) EFFECT OF FAILURE TO RECOMMEND FOR  
7                   PROMOTION.—If a special selection board convened  
8                   under paragraph (1) does not recommend for pro-  
9                   motion an officer or former officer, whose grade is  
10                  that of commander or below and whose name was  
11                  referred to that board for consideration, the officer  
12                  or former officer shall be considered—

13                  “(A) to have failed of selection for pro-  
14                  motion with respect to the board that consid-  
15                  ered the officer or former officer prior to the  
16                  consideration of the special selection board; and

17                  “(B) to incur no additional failure of selec-  
18                  tion for promotion as a result of the action of  
19                  the special selection board.

20                  “(c) REQUIREMENTS FOR SPECIAL SELECTION  
21                  BOARDS.—Each special selection board convened under  
22                  this section shall—

23                  “(1) be composed in accordance with section  
24                  252 and the members of the board shall be required  
25                  to swear the oaths described in section 254;

1           “(2) consider the record of an applicable officer  
2           or former officer as that record, if corrected, would  
3           have appeared to the selection board that should  
4           have considered or did consider the officer or former  
5           officer prior to the consideration of the special selec-  
6           tion board and that record shall be compared with  
7           a sampling of the records of—

8                   “(A) those officers of the same grade who  
9                   were recommended for promotion by such prior  
10                  selection board; and

11                  “(B) those officers of the same grade who  
12                  were not recommended for promotion by such  
13                  prior selection board; and

14           “(3) submit to the Secretary a written report in  
15           a manner consistent with sections 260 and 261.

16           “(d) APPOINTMENT OF OFFICERS RECOMMENDED  
17 FOR PROMOTION.—

18                   “(1) IN GENERAL.—An officer or former officer  
19                   whose name is placed on a promotion list as a result  
20                   of the recommendation of a special selection board  
21                   convened under this section shall be appointed, as  
22                   soon as practicable, to the next higher grade in ac-  
23                   cordance with the law and policies that would have  
24                   been applicable to the officer or former officer had  
25                   the officer or former officer been recommended for

1 promotion by the selection board that should have  
2 considered or did consider the officer or former offi-  
3 cer prior to the consideration of the special selection  
4 board.

5 “(2) EFFECT.—An officer or former officer who  
6 is promoted to the next higher grade as a result of  
7 the recommendation of a special selection board con-  
8 vened under this section shall have, upon such pro-  
9 motion, the same date of rank, the same effective  
10 date for the pay and allowances of that grade, and  
11 the same position on the active duty promotion list  
12 as the officer or former officer would have had if the  
13 officer or former officer had been recommended for  
14 promotion to that grade by the selection board that  
15 should have considered or did consider the officer or  
16 former officer prior to the consideration of the spe-  
17 cial selection board.

18 “(3) RECORD CORRECTION.—If the report of a  
19 special selection board convened under this section,  
20 as approved by the President, recommends for pro-  
21 motion to the next higher grade an officer not eligi-  
22 ble for promotion or a former officer whose name  
23 was referred to the board for consideration, the Sec-  
24 retary may act under section 1552 of title 10 to cor-  
25 rect the military record of the officer or former offi-

1 cer to correct an error or remove an injustice result-  
2 ing from the officer or former officer not being se-  
3 lected for promotion by the selection board that  
4 should have considered or did consider the officer or  
5 former officer prior to the consideration of the spe-  
6 cial selection board.

7 “(e) APPLICATION PROCESS AND TIME LIMITS.—  
8 The Secretary shall issue regulations regarding the proc-  
9 ess by which an officer or former officer may apply to have  
10 a matter considered by a special selection board convened  
11 under this section, including time limits related to such  
12 applications.

13 “(f) LIMITATION OF OTHER JURISDICTION.—No of-  
14 ficial or court of the United States shall have authority  
15 or jurisdiction over any claim based in any way on the  
16 failure of an officer or former officer to be selected for  
17 promotion by a selection board convened under section  
18 251, until—

19 “(1) the claim has been referred to a special se-  
20 lection board convened under this section and acted  
21 upon by that board; or

22 “(2) the claim has been rejected by the Sec-  
23 retary without consideration by a special selection  
24 board convened under this section.

25 “(g) JUDICIAL REVIEW.—

1           “(1) IN GENERAL.—A court of the United  
2 States may review—

3           “(A) a decision of the Secretary not to  
4 convene a special selection board under this sec-  
5 tion to determine if the court finds that the de-  
6 cision of the Secretary was arbitrary or capri-  
7 cious, not based on substantial evidence, or oth-  
8 erwise contrary to law; and

9           “(B) an action of a special selection board  
10 under this section to determine if the court  
11 finds that the action of the special selection  
12 board was contrary to law or involved material  
13 error of fact or material administrative error.

14           “(2) REMAND AND RECONSIDERATION.—If,  
15 with respect to a review under paragraph (1), a  
16 court makes a finding described in subparagraph (A)  
17 or (B) of that paragraph, the court shall remand the  
18 case to the Secretary and the Secretary shall provide  
19 the applicable officer or former officer consideration  
20 by a new special selection board convened under this  
21 section.

22           “(h) DESIGNATION OF BOARDS.—The Secretary may  
23 designate a selection board convened under section 251  
24 as a special selection board convened under this section.  
25 A selection board so designated may function in the capac-

1 ity of a selection board convened under section 251 and  
2 a special selection board convened under this section.”.

3 (b) SELECTION BOARDS; SUBMISSION OF RE-  
4 PORTS.—Section 261(d) of title 14, United States Code,  
5 is amended by striking “selection board” and inserting  
6 “selection board, including a special selection board con-  
7 vened under section 263,”.

8 (c) FAILURE OF SELECTION FOR PROMOTION.—Sec-  
9 tion 262 of title 14, United States Code, is amended to  
10 read as follows:

11 **“§ 262. Failure of selection for promotion**

12 “An officer, other than an officer serving in the grade  
13 of captain, who is, or is senior to, the junior officer in  
14 the promotion zone established for his grade under section  
15 256 of this title, fails of selection if he is not selected for  
16 promotion by the selection board which considered him,  
17 or if having been recommended for promotion by the  
18 board, his name is thereafter removed from the report of  
19 the board by the President.”.

20 (d) CLERICAL AMENDMENT.—The analysis for chap-  
21 ter 11 of title 14, United States Code, is amended by in-  
22 serting after the item relating to section 262 the following:  
“263. Special selection boards; correction of errors.”.

23 (e) APPLICABILITY.—The amendments made by this  
24 section shall take effect on the date of enactment of this  
25 Act and the Secretary may convene a special selection

1 board on or after that date under section 263 of title 14,  
2 United States Code, with respect to any error or other  
3 action for which such a board may be convened if that  
4 error or other action occurred on or after the date that  
5 is 1 year before the date of enactment of this Act.

6 **SEC. 203. PROHIBITION OF CERTAIN INVOLUNTARY ADMIN-**  
7 **ISTRATIVE SEPARATIONS.**

8 (a) IN GENERAL.—Chapter 11 of title 14, United  
9 States Code, as amended by this Act, is further amended  
10 by inserting after section 426 the following:

11 **“§ 427. Prohibition of certain involuntary administra-**  
12 **tive separations**

13 “(a) IN GENERAL.—Except as provided in subsection  
14 (b), the Secretary may not authorize the involuntary ad-  
15 ministrative separation of a covered individual based on  
16 a determination that the covered individual is unsuitable  
17 for deployment or other assignment due to a medical con-  
18 dition of the covered individual considered by a Physical  
19 Evaluation Board during an evaluation of the covered in-  
20 dividual that resulted in the covered individual being de-  
21 termined to be fit for duty.

22 “(b) REEVALUATION.—

23 “(1) IN GENERAL.—The Secretary may require  
24 a Physical Evaluation Board to reevaluate any cov-  
25 ered individual if the Secretary determines there is

1 reason to believe that a medical condition of the cov-  
2 ered individual considered by a Physical Evaluation  
3 Board during an evaluation of the covered individual  
4 renders the covered individual unsuitable for contin-  
5 ued duty.

6 “(2) RETIREMENTS AND SEPARATIONS.—A cov-  
7 ered individual who is determined, based on a re-  
8 evaluation under paragraph (1), to be unfit to per-  
9 form the duties of the covered individual’s office,  
10 grade, rank, or rating may be retired or separated  
11 for physical disability under this chapter.

12 “(c) COVERED INDIVIDUAL DEFINED.—In this sec-  
13 tion, the term ‘covered individual’ means any member of  
14 the Coast Guard who has been determined by a Physical  
15 Evaluation Board, pursuant to a physical evaluation by  
16 that board, to be fit for duty.”.

17 (b) CLERICAL AMENDMENT.—The analysis for chap-  
18 ter 11 of title 14, United States Code, as amended by this  
19 Act, is further amended by inserting after the item relat-  
20 ing to section 426 the following:

“427. Prohibition of certain involuntary administrative separations.”.

21 **SEC. 204. ANNUAL REPORT ON COAST GUARD UNFUNDED**  
22 **PRIORITIES.**

23 (a) IN GENERAL.—Section 663 of title 14, United  
24 States Code, is amended to read as follows:

1 **“§ 663. Submission of reports and plans to Congress**

2       “(a) IN GENERAL.—On the date on which the Presi-  
3 dent submits to Congress a budget pursuant to section  
4 1105 of title 31, the Commandant shall submit to the  
5 Committee on Transportation and Infrastructure of the  
6 House of Representatives and the Committee on Com-  
7 merce, Science, and Transportation of the Senate—

8               “(1) a capital investment plan for the Coast  
9 Guard that identifies for each capital asset for which  
10 appropriations are proposed in that budget—

11                       “(A) the proposed appropriations included  
12 in that budget;

13                       “(B) the total estimated cost of comple-  
14 tion;

15                       “(C) projected funding levels for each fis-  
16 cal year for the next 5 fiscal years or until  
17 project completion, whichever is earlier;

18                       “(D) an estimated completion date at the  
19 projected funding levels; and

20                       “(E) an acquisition program baseline, as  
21 applicable; and

22               “(2) a list of each unfunded priority for the  
23 Coast Guard.

24       “(b) UNFUNDED PRIORITY DEFINED.—In this sec-  
25 tion, the term ‘unfunded priority’ means a program or  
26 mission requirement that—

1           “(1) has not been selected for funding in the  
2 applicable proposed budget;

3           “(2) is necessary to fulfill a requirement associ-  
4 ated with an operational need; and

5           “(3) the Commandant would have rec-  
6 ommended for inclusion in the applicable proposed  
7 budget had additional resources been available or  
8 had the requirement emerged before the budget was  
9 submitted.”.

10       (b) CLERICAL AMENDMENT.—The analysis for chap-  
11 ter 17 of title 14, United States Code, is amended by  
12 striking the item relating to section 663 and inserting the  
13 following:

“663. Submission of reports and plans to Congress.”.

14       (c) CONFORMING AMENDMENT.—Section 918 of the  
15 Coast Guard Authorization Act of 2010 (14 U.S.C. 663  
16 note), and the item relating to that section in the table  
17 of contents in section 1(b) of that Act, are repealed.

## 18       **TITLE III—MISCELLANEOUS**

### 19       **SEC. 301. TECHNICAL CORRECTIONS.**

20       Title 14, United States Code, is amended—

21           (1) in section 259(e)(1) by striking “After se-  
22 lecting” and inserting “In selecting”;

23           (2) in section 286a(d) by striking “severance  
24 pay” each place it appears and inserting “separation  
25 pay”;

1 (3) in the second sentence of section 290(a) by  
2 striking “in the grade of vice admiral” and inserting  
3 “in or above the grade of vice admiral”;

4 (4) in section 516(a) by striking “of Homeland  
5 Security”;

6 (5) in section 666(a) by striking “of Homeland  
7 Security” and inserting “of the department in which  
8 the Coast Guard is operating”;

9 (6) in section 673(a)(3) by striking “of Home-  
10 land Security (when the Coast Guard is not oper-  
11 ating as a service in the Navy)”;

12 (7) in section 674 by striking “of Homeland Se-  
13 curity”;

14 (8) in section 675(a) by striking “of Homeland  
15 Security”; and

16 (9) in the first sentence of section 740(d) by  
17 striking “that appointment” and inserting “that ap-  
18 pointment to the Reserve”.

19 **SEC. 302. FISHING VESSEL CERTIFICATION.**

20 Section 4503(c) of title 46, United States Code, is  
21 amended by striking “July 1, 2012” and inserting “the  
22 date that is 1 year after the date on which the Secretary  
23 publishes in the Federal Register a definition of the term  
24 “built” for purposes of this subsection”.

1 **SEC. 303. RESPONSE BOAT-MEDIUM PROCUREMENT.**

2 (a) REQUIREMENT TO FULFILL APPROVED PRO-  
3 GRAM OF RECORD.—Except as provided in subsection (b),  
4 the Commandant of the Coast Guard shall maintain the  
5 schedule and requirements for the total acquisition of 180  
6 boats as specified in the approved program of record for  
7 the Response Boat-Medium acquisition program in effect  
8 on June 1, 2012.

9 (b) APPLICABILITY.—Subsection (a) shall not apply  
10 on and after the date on which the Commandant submits  
11 to the Committee on Transportation and Infrastructure  
12 of the House of Representatives and the Committee on  
13 Commerce, Science, and Transportation of the Senate  
14 such documentation as the Coast Guard Major Systems  
15 Acquisition Manual requires to justify reducing the ap-  
16 proved program of record for Response Boat-Medium to  
17 a total acquisition of less than 180 boats.

18 **SEC. 304. USCGC “POLAR SEA”.**

19 (a) IN GENERAL.—Not later than 180 days after the  
20 date of enactment of this Act, the Secretary of the depart-  
21 ment in which the Coast Guard is operating shall submit  
22 to the Committee on Transportation and Infrastructure  
23 of the House of Representatives and the Committee on  
24 Commerce, Science, and Transportation of the Senate a  
25 report providing a business-case analysis of the options for  
26 and costs of reactivating and extending the service life of

1 the USCGC Polar Sea until the estimated date on which  
2 a new polar-class icebreaker is commissioned. The Sec-  
3 retary shall include in the report—

4 (1) an assessment of the current condition of  
5 the USCGC Polar Sea and a determination of the  
6 vessel's operational capabilities with respect to ful-  
7 filling the Coast Guard's high latitude operating re-  
8 quirements;

9 (2) a detailed estimate of costs with respect to  
10 reactivating and extending the service life of the  
11 USCGC Polar Sea to a condition at least com-  
12 parable to the condition of the USCGC Polar Star  
13 when it enters service in 2013; and

14 (3) a life cycle cost estimate with respect to op-  
15 erating and maintaining the USCGC Polar Sea for  
16 the duration of its extended service life.

17 (b) RESTRICTION.—The Secretary shall not remove  
18 any major equipment, systems, or other appurtenances  
19 from the USCGC Polar Sea for planned or potential work  
20 to refurbish the USCGC Polar Star until the Secretary  
21 submits the report required under subsection (a).

○