

Calendar No. 18

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-5

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 AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 89



MARCH 21, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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MARCH 21, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 89]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 89) 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 and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 89 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 passenger 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 *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 vessel 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 superstructure of the vessel.⁷ Given that the vessel currently lacks thermal and structural boundaries, a fire within any part of the vessel 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 deck. 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 are working to make sure the vessel can get

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.*

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. 89 was introduced by Senators McCaskill, Blunt, Brown, Portman, Cassidy, Cotton, and Boozman. On January 24, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 89 to be reported favorably without amendment.

A similar bill, S. 1717, was introduced last Congress by Senators Brown and Portman on July 8, 2015. It was cosponsored by Senators Blunt, Boozman, Cassidy, Cochran, Cotton, McCaskill, and Vitter. 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 without amendment.

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. 89—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 and for other purposes

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. 89 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. 89 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. 89 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

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>.

S. 89 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.

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

There is a single vessel that would be affected by this bill, the *Delta Queen*.

ECONOMIC IMPACT

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

PRIVACY

This bill would 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. The owner or operator of the vessel also would be required to notify, in writing, prospective passengers, prior to the sale of any ticket for boarding, that the vessel does not meet fire safety standards.

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 title 46, United States Code, to exempt old vessels that only operate within inland waterways from the fire-retardant materials requirement if the following conditions are met:

- The owner or operator would be required to make annual structural alterations to at least 10 percent of the areas of the vessels that are not constructed of fire-retardant materials.
- The owner or operator would be required to prioritize fire proofing alterations in the galleys, engineering areas of the vessel, including all spaces and compartments containing, or adjacent to spaces and compartments containing, engines, boiler-

ers, main electrical distribution panels, fuel tanks, oil tanks, and generators.

- The owner or operator would be required to notify the Coast Guard in advance of the annual structural alterations and receive Coast Guard approval that there was a sufficient reduction in the combustible fire load after each annual inspection.

- The owner or operator of the vessel would be required to notify in writing prospective passengers, prior to the sale of any ticket for boarding, that the vessel does not comply with applicable fire safety standards. It also would require the owner of the vessel to display in clearly legible font prominently throughout the vessel, including in each state room, the following: “THIS VESSEL FAILS TO COMPLY WITH SAFETY RULES AND REGULATIONS OF THE U.S. COAST GUARD.”

- The owner or operator of the vessel would be prohibited from disclaiming 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.

- The owner or operator also would be required to acquire and maintain liability insurance in an amount to be prescribed by the Federal Maritime Commission prior to the vessel entering service.

- The owner or operator would be required to notify all ports of call and State emergency management offices of jurisdiction that the vessel does not comply with fire safety standards.

- The crew of an exempt vessel would be required to receive specialized training in shipboard firefighting.

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 stateroom 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 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—

[(A) the owner or managing operator of the vessel shall notify prospective passengers that the vessel does not com-

ply 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 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.

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

§ 3503. Fire-retardant materials

(a)(1) *A passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a certificate of inspection only if—*

(A) *the vessel is constructed of fire-retardant materials; and*

(B) *the vessel—*

(i) *is operating engines, boilers, main electrical distribution panels, fuel tanks, oil tanks, and generators that meet current Coast Guard regulations;*

(ii) *is operating boilers and main electrical generators that are contained within noncombustible enclosures equipped with fire suppression systems; and*

(iii) *has multiple forms of egress off the vessel's bow and stern.*

(2) *Before December 1, 2028, this section 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 subsection (a)—*

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

(i) *notify in writing prospective passengers, prior to the sale of any ticket for boarding and to be affirmatively recognized by such passenger prior to purchase, and any crew member that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas; and*

(ii) *display in clearly legible font prominently throughout the vessel, including in each state room the following: 'THIS VESSEL FAILS TO COMPLY WITH SAFETY RULES AND REGULATIONS OF THE U.S. COAST GUARD.';*

(B) *the owner or managing operator of the vessel—*

(i) *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; and

(ii) shall acquire prior to entering service, and maintain, liability insurance in an amount to be prescribed by the Federal Maritime Commission;

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

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

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

(ii) prioritize alterations in galleys, engineering areas of the vessel, including all spaces and compartments containing, or adjacent to spaces and compartments containing, engines, boilers, main electrical distribution panels, fuel tanks, oil tanks, and generators;

(iii) ensure, to the satisfaction of the Coast Guard, that the combustible fire-load has been reduced pursuant to clause (i) during each annual inspection for certification; and

(iv) provide advance notice to the Coast Guard regarding the structural alterations made pursuant to clause (i) and comply with any noncombustible material requirements prescribed by the Coast Guard;

(E) the Coast Guard, in making the determination required in subparagraph (D)(iii), shall consider, to the extent practicable, the goal of preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public;

(F) the owner or managing operator of the vessel shall annually notify all ports of call and State emergency management offices of jurisdiction that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

(G) the crews manning such vessel shall receive specialized training, above minimum standards, in regards to shipboard firefighting that is specialized for exempted vessels and approved by the Coast Guard; and

(H) the owner or managing operator of the vessel shall, to the extent practicable, take all steps to retain previously trained crew knowledgeable of such vessel or to hire crew trained in operations aboard exempted vessels.

(2) The Secretary shall conduct an annual audit and inspection of any vessel exempted from the fire-retardant standards of subsection (a).

(c) The Secretary shall prescribe regulations to carry out this section. Such regulations shall include the manner in which prospective passengers are to be notified.

(d) In addition to other penalties permitted by law, the Secretary is authorized to immediately withdraw a certificate of inspection for a passenger vessel that does not comply with any requirement under this section.