

Calendar No. 592

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-299

FEDERAL MARITIME COMMISSION NATIONAL
SHIPPER ADVISORY COMMITTEE ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2894



NOVEMBER 17, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

19-010

WASHINGTON : 2020

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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

R E P O R T

[To accompany S. 2894]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2894) to establish a National Shipper Advisory Committee, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of this legislation is to establish a Federal advisory committee to provide policy recommendations to the Federal Maritime Commission (FMC) on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system.

BACKGROUND AND NEEDS

S. 2894, Federal Maritime Commission National Shipper Advisory Committee Act of 2019, establishes an advisory committee to advise the FMC on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. The advisory committee is one of the recommendations from Fact Finding Investigation No. 28 led by Commissioner

Rebecca F. Dye.¹ Fact Finding Investigation No. 28 was an 18-month inquiry to determine the nature and full extent of demurrage and detention issues in the ocean transportation system, and find ways to address identified problems. In addition to the advisory committee, Commissioner Dye also recommended the FMC issue an interpretive rule regarding how it will assess the reasonableness of detention and demurrage rules and practices of ocean carriers and marine terminal operators.² The interpretive rule was finalized on April 28, 2020. Finally, Commissioner Dye recommended the FMC continue to support the work of the Supply Chain Innovation Teams established during Fact Finding Investigation No. 28.

SUMMARY OF PROVISIONS

If enacted, S. 2894, Federal Maritime Commission National Shipper Advisory Committee Act of 2019, would do the following:

- Establish the National Shipper Advisory Committee.
- Require the Advisory Committee to consist of 24 members appointed by the FMC with expertise relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. Twelve members would represent entities who import cargo to the United States using ocean common carriers. Twelve members would represent entities who export cargo from the United States using ocean common carriers.
- Require the Advisory Committee to submit its recommendations to the FMC in writing.
- Require the FMC to publish any recommendations within 60 days on a public website. Additionally, the FMC would have to respond, in writing, to the Advisory Committee regarding the recommendations, with an explanation of actions taken regarding the recommendations.
- Require the FMC to submit to Congress the advice, reports, and recommendations it receives from the Advisory Committee.

LEGISLATIVE HISTORY

S. 2894, the Federal Maritime Commission National Shipper Advisory Committee Act of 2019, was introduced on November 19, 2019, by Senator Wicker and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On May 20, 2020, the Committee met in open Executive Session and, by voice vote, ordered S. 2894 reported favorably with amendments.

HEARING

The Committee held a hearing entitled “Federal Maritime Agencies: Ensuring a Safe, Secure, and Competitive Future” on April 4, 2019, to assess the state of the maritime sector, and priorities for 2020. FMC Chairman Michael A. Khouri updated the Committee on the FMC’s work, including Fact Finding Investigation No. 28. In November 2019, Senator Wicker sent a letter to FMC Chairman

¹Federal Maritime Commission, “Fact Finding 28” (<https://www.fmc.gov/fact-finding-28/>) (accessed Aug. 21, 2020).

²Federal Maritime Commission, Notice of Proposed Rulemaking, Docket No. 19-05 (https://www2.fmc.gov/readingroom/docs/19-05/19-05_NPRM.pdf/) (accessed Aug. 21, 2020).

Michael A. Khouri asking to be updated on the work of the Supply Chain Innovation Team in Memphis established during Fact Finding Investigation No. 28.

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. 2894, Federal Maritime Commission National Shipper Advisory Committee Act of 2019			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 20, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2894 would require the Federal Maritime Commission (FMC) to establish the National Shipper Advisory Committee to advise the FMC on matters related to the system for delivering international ocean freight. The 24-member committee would consist of representatives from entities that import or export cargo using ocean-going common carriers. The FMC would be required to report the committee's recommendations to the Congress.

S. 2894 would not authorize additional funding to support the activities required under the bill. However, based on the cost of similar activities, CBO estimates that implementing S. 2894 would cost \$1 million over the 2020–2025 period; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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:

NUMBER OF PERSONS COVERED

As reported, S. 2894 would establish the National Shipper Advisory Committee to provide the FMC with advice on policies relating to the competitiveness, reliability, integrity, and fairness of the

international ocean freight delivery system. These recommendations could affect millions of Americans by improving the efficiency and reliability of American ocean transportation.

ECONOMIC IMPACT

As reported, S. 2894 is not expected to have a negative impact on the Nation's economy.

PRIVACY

As reported, S. 2894 is not expected to impact the personal privacy of individuals.

PAPERWORK

As reported, S. 2894 would not create increases in paperwork burdens if enacted.

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. Short title.

This section would provide that the bill may be cited as the "Federal Maritime Commission National Shipper Advisory Committee Act of 2019".

Section 2. Advisory committee.

This section would establish the advisory committee. The advisory committee would consist of 24 members appointed by the FMC with expertise relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. Twelve members would be required to represent entities that import cargo to the United States using ocean common carriers. Twelve members would be required to represent entities that export cargo from the United States using ocean common carriers. This section would require the FMC to solicit nominations for the advisory committee in the Federal Register, prohibit the FMC from considering political affiliation in making appointments, prohibit Federal employees from being appointed, and set the term for members of the advisory committee. Additionally, it would require the FMC to post publicly all recommendations received from the advisory committee within 60 days. Finally, it would require the FMC to submit to Congress the advice, reports, and recommendations received from the advisory committee. This section would also provide that the advisory committee shall terminate on September 30, 2029.

Section 3. No funding authorized.

This section states that no additional funds would be authorized to carry out the Act or the amendment made by this bill, as enacted.

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):

UNITED STATES CODE

* * * * *

TITLE 46—SHIPPING

* * * * *

Subtitle IV—Regulation of Ocean Shipping

* * * * *

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

* * * * *

CHAPTER 424—NATIONAL SHIPPER ADVISORY COMMITTEE

Sec.

42401. *Definitions.*42402. *National Shipper Advisory Committee.*42403. *Administration.***§ 42401. Definitions***In this chapter:*(1) *COMMISSION.*—The term “Commission” means the Federal Maritime Commission.(2) *COMMITTEE.*—The term “Committee” means the National Shipper Advisory Committee established by section 42402.**§ 42402. National Shipper Advisory Committee**(a) *ESTABLISHMENT.*—There is established a National Shipper Advisory Committee.(b) *FUNCTION.*—The Committee shall advise the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system.(c) *MEMBERSHIP.*—(1) *IN GENERAL.*—The Committee shall consist of 24 members appointed by the Commission in accordance with this section.(2) *EXPERTISE.*—Each member of the Committee shall have particular expertise, knowledge, and experience in matters relating to the function of the Committee.

(3) *REPRESENTATION.*—Members of the Committee shall be appointed as follows:

(A) Twelve members shall represent entities who import cargo to the United States using ocean common carriers.

(B) Twelve members shall represent entities who export cargo from the United States using ocean common carriers.

§ 42403. Administration

(a) *MEETINGS.*—The Committee shall, not less than once each year, meet at the call of the Commission or a majority of the members of the Committee.

(b) *EMPLOYEE STATUS.*—A member of the Committee shall not be considered an employee of the Federal Government by reason of service on such Committee, except for the purposes of the following:

(1) Chapter 81 of title 5.

(2) Chapter 171 of title 28 and any other Federal law relating to tort liability.

(c) *VOLUNTEER SERVICES REQUIRED.*—Notwithstanding any other provision of law, a member of the Committee shall serve on such committee on a voluntary basis without pay.

(d) *STATUS OF MEMBERS.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), with respect to a member of the Committee whom the Commission appoints to represent an entity or group—

(A) the member is authorized to represent the interests of the applicable entity or group; and

(B) requirements under Federal law that would interfere with such representation and that apply to a special Government employee (as defined in section 202(a) of title 18), including requirements relating to employee conduct, political activities, ethics, conflicts of interest, and corruption, do not apply to the member.

(2) *EXCEPTION.*—Notwithstanding subsection (b), a member of the Committee shall be treated as a special Government employee for purposes of the committee service of the member if the member, without regard to service on the committee, is a special Government employee.

(e) *SERVICE ON COMMITTEE.*—

(1) *SOLICITATION OF NOMINATIONS.*—Before appointing an individual as a member of the Committee, the Commission shall publish a timely notice in the Federal Register soliciting nominations for membership on such Committee.

(2) *APPOINTMENTS.*—

(A) *IN GENERAL.*—After considering nominations received pursuant to a notice published under paragraph (1), the Commission may appoint a member to the Committee.

(B) *PROHIBITION.*—The Commission shall not seek, consider, or otherwise use information concerning the political affiliation of a nominee in making an appointment to the Committee.

(3) *SERVICE AT PLEASURE OF THE COMMISSION.*—Each member of the Committee shall serve at the pleasure of the Commission.

(4) *SECURITY BACKGROUND EXAMINATIONS.*—The Commission may require an individual to have passed an appropriate

security background examination before appointment to the Committee.

(5) *PROHIBITION.—A Federal employee may not be appointed as a member of the Committee.*

(6) *TERMS.—*

(A) *IN GENERAL.—The term of each member of the Committee shall expire on December 31 of the third full year after the effective date of the appointment.*

(B) *CONTINUED SERVICE AFTER TERM.—When the term of a member of the Committee ends, the member, for a period not to exceed 1 year, may continue to serve as a member until a successor is appointed.*

(7) *VACANCIES.—A vacancy on the Committee shall be filled in the same manner as the original appointment.*

(8) *SPECIAL RULE FOR REAPPOINTMENTS.—Notwithstanding paragraphs (1) and (2), the Commission may reappoint a member of a committee for any term, other than the first term of the member, without soliciting, receiving, or considering nominations for such appointment.*

(f) *STAFF SERVICES.—The Commission shall furnish to the Committee any staff and services considered by the Commission to be necessary for the conduct of the Committee's functions.*

(g) *CHAIR; VICE CHAIR.—*

(1) *IN GENERAL.—The Committee shall elect a Chair and Vice Chair from among the committee's members.*

(2) *VICE CHAIRMAN ACTING AS CHAIRMAN.—The Vice Chair shall act as Chair in the absence or incapacity of, or in the event of a vacancy in the office of, the Chair.*

(h) *SUBCOMMITTEES AND WORKING GROUPS.—*

(1) *IN GENERAL.—The Chair of the Committee may establish and disestablish subcommittees and working groups for any purpose consistent with the function of the Committee.*

(2) *PARTICIPANTS.—Subject to conditions imposed by the Chair, members of the Committee may be assigned to subcommittees and working groups established under paragraph (1).*

(i) *CONSULTATION, ADVICE, REPORTS, AND RECOMMENDATIONS.—*

(1) *CONSULTATION.—Before taking any significant action, the Commission shall consult with, and consider the information, advice, and recommendations of, the Committee if the function of the Committee is to advise the Commission on matters related to the significant action.*

(2) *ADVICE, REPORTS, AND RECOMMENDATIONS.—The Committee shall submit, in writing, to the Commission its advice, reports, and recommendations, in a form and at a frequency determined appropriate by the Committee.*

(3) *EXPLANATION OF ACTIONS TAKEN.—Not later than 60 days after the date on which the Commission receives recommendations from the Committee under paragraph (2), the Commission shall—*

(A) *publish the recommendations on a public website;*
and

(B) respond, in writing, to the Committee regarding the recommendations, including by providing an explanation of actions taken regarding the recommendations.

(4) SUBMISSION TO CONGRESS.—The Commission shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the advice, reports, and recommendations received from the Committee under paragraph (2).

(j) OBSERVERS.—The Commission may designate a representative to—

- (1) attend any meeting of the Committee; and*
- (2) participate as an observer at such meeting.*

(k) TERMINATION.—The Committee shall terminate on September 30, 2029.

* * * * *

