



Maritime & Admiralty Practice

October 2009

House of Representatives Passes Coast Guard Authorization Bill — Again

On October 23, 2009, the U.S. House of Representatives once again passed the authorizing legislation for the U.S. Coast Guard with its accompanying 300 pages of diverse maritime legislative provisions (H.R. 3619). The vote of 385 to 11 manifests broad bipartisan support for the measure.

Will House Momentum Translate Into Senate Action?

The last time the House passed similar legislation in April 2008, the U.S. Senate failed to act and the measure quietly expired at the end of the 110th Session of Congress. Congress last managed to enact into law the Coast Guard's authorization legislation in 2006. As often occurs with this authorizing legislation, pressure builds for enactment as the years pass because the number of proposed legislative provisions mounts and support for the bill's enactment into law grows among members.

The question for the maritime industry remains whether this Congress (ending in 2010) can finish the bill. While the Senate Commerce, Science and Transportation Committee approved its more limited version of the legislation (S.1194) in July, the Senate has not taken up consideration of that bill. And given its preoccupation with passing annual appropriations bills, raising the national debt limit, health care reform, financial regulatory reform, and climate change legislation the prospects look dim for action by the Senate this year.

Many of the key provisions of H.R. 3619 remain from the 2008 version and they are outlined in our previous Maritime Briefing of April 2008 entitled "House of Representatives Passes Coast Guard Authorization Bill," which is available on our web site. Therefore, this briefing focuses first on what has changed from the 2008 version.

New Issues Produce New Legislative Provisions.

Oh what difference a change of administrations makes. In April 2008, the Coast Guard authorization debate in the House featured a fiery dispute with the Bush Administration over LNG vessel and terminal security with President Bush threatening a veto. This time around that issue was quietly resolved with the new administration in a manager's amendment offered by Representative James Oberstar (D-MN), Chairman of the Transportation and Infrastructure Committee.

Debate on the new legislation featured a robust discussion about proposals to protect mariners from legal liability arising from actions taken to combat piracy. The House Judiciary Committee objected to the amendment by committee members Representatives Frank Lobiondo (R-NJ) and Howard Coble (R-NC) which sought to protect mariners from lawsuits when defending U.S.-flag ships against pirate attacks on the high seas. Despite the argument of the Judiciary Committee that the protections went too far and gave mariners unwarranted license to commit acts of violence, the

CHARLOTTE

CHICAGO

GENEVA

HONG KONG

LONDON

LOS ANGELES

MOSCOW

NEW YORK

NEWARK

PARIS

SAN FRANCISCO

WASHINGTON, D.C.

House voted overwhelmingly to adopt the liability protections. Although the House had earlier voted to require the Department of Defense to embark military security teams on U.S.-flag vessels on certain high risk transits, the House leadership acknowledged that the security team provision had already been rejected by the Senate. Thus, the new liability protection provision became the fallback position of the House.

Additionally, Chairman Oberstar incorporated into the new bill separate provisions approved by his committee including most notably: (1) Coast Guard acquisition reform to address the agency's challenges associated with certain aspects of the Deepwater program; (2) authorization of Coast Guard acquisition of a new Great Lakes icebreaker; (3) the maritime workforce development program; (4) extension of the small commercial vessel exemption from the EPA's vessel general permit; and (5) a new congressional appointment process for the Coast Guard Academy.

Coast Guard acquisition reform has been well underway within the agency because of congressional scrutiny, but through this legislation congressional authorizers aim to prevent a return of the private-sector lead system integrators. The Senate Commerce Committee version of the legislation features a companion measure.

Chairman Oberstar has sponsored the \$153 million authorizing legislation in the House to provide for the construction of a new Great Lakes icebreaker to replace smaller icebreakers that Great Lakes carriers consider inadequate to the task. Although the construction of Great Lakes icebreakers is not usually a top Coast Guard priority compared to other acquisition needs, the project remains a favorite of the powerful Great Lakes congressional leaders.

The proposal to establish a marine workforce development program and authorize the expenditure of \$10 million is potentially a welcome aid to the maritime industry. It features a new maritime student loan program and a recruitment and training program. Senate support for the proposal appears likely, but it remains to be seen if funds will be appropriated and how the Secretary of Transportation and the Maritime Administration will implement it.

In recognition that time is running out on the two year exemption enacted into law in July 2008 from the EPA's vessel general permit requirement, the new bill included a five year exemption instead. The inability of the EPA to complete the 2008 congressionally mandated study of discharge streams and for the Congress to consider the results before July 2010 is now clear.

The new congressional appointment process proposed by the House would dramatically alter the admissions process of the Coast Guard Academy which has prided itself on an admissions process free of political influence. Coast Guard Subcommittee Chairman Elijah Cummings (D-MD) has promoted the provision as a reform to improve the Academy's diversity, but the Coast Guard has opposed the provision, as an unhelpful way to address the issue.

With respect to the 2008 version of the House passed measure, the following provisions which were highlighted in our April 2008 briefing, are updated:

1. *LNG Vessel/Terminal Security.* The new provision on this subject is less objectionable to the Coast Guard than the 2008 version that sparked the threat of a presidential veto. It allows the Coast Guard greater flexibility to allocate its resources to accomplish this mission and eliminates a mandate on state and local governments. It also reduces the restriction on the approval of new facilities that the industry found objectionable.
2. *Ballast Water Treatment.* While the 2008 bill featured a title labeled the "Ballast Water Treatment Act of 2008," the new bill omits any mention of ballast water regulation. In the wake of the EPA's new vessel general permit regulation and the Coast Guard's new proposed rule on ballast water treatment systems, the House recognized that the executive branch has largely taken the matter in hand.
3. *Fishing Vessel Safety.* The new bill retains the proposed improvements for fishing vessels proposed in the 2008 version.
4. *Vessel Air Emissions.* The air emissions provision from the 2008 bill was dropped after the stand-alone legislation was enacted into law in 2008.
5. *Jones Act Enforcement.* The new bill retains the proposed enforcement provision proposed in the 2008 version. However, the bill still does not indicate how the Coast Guard will coordinate its efforts with Customs and Border Protection, which also has Jones Act enforcement responsibilities.
6. *Coast Guard ALJ Reform.* Also, missing from the new bill is the former proposal to reform the Coast Guard's Administrative Law Judge program. The corrective actions taken by the Coast Guard to reform its system following a congressional hearing and harsh criticism appear to have satisfied Chairman Oberstar for the time being.

7. *Marine Safety.* Title VII of the new bill retains the previous proposal to reform the Coast Guard marine safety program. The legislation would formalize what the Coast Guard Commandant has already agreed to reform, but by institutionalizing the program in statute Chairman Oberstar aims to prevent future administrations from undercutting the program.
8. *Marine Pollution Investigation Enhancement.* The new bill also omits the previous proposal urged by the Coast Guard to create the “Support of Seafarers Fund” which the agency had asserted would provide for the protection of seafarers abandoned by shipowners in the United States.
9. *Vessel Fuel Tank Protection.* The new bill retains the previously proposed provision requiring double hull equivalent added protection for vessel bunker tanks.
10. *Coast Guard Ombudsmen.* The new bill retains the mandate for the Coast Guard to appoint an ombudsman for each Coast Guard district “to serve as a liaison between ports, terminal operators, shipowners, and labor representatives and the Coast Guard.”
11. *Limitation on Foreign Vessel Regasification in U.S. Waters.* The new bill drops the previously proposed prohibition of vessels engaging in regasifying in U.S. navigable waters if it is not a U.S.-flag vessel unless the vessel transported the gas from a foreign port.
12. *Offshore Supply Vessel Measurement.* The new bill retains the previously proposed amendments to Chapter 21 of Title 46 of the U.S. Code governing offshore supply vessels.
13. *Cruise Ship Crimes.* The new bill incorporates a revised version of legislation aimed to protect Americans from crimes on cruise ships that will enhance safety for cruise ship passengers.
14. *National Pollution Fund Claims.* The bill would cut the limitation period for claims to the National Pollution Fund Center in half, from six years to three years.
15. *New Employee MMD Requirements for Offshore Supply Vessels.* The new bill retains the requirement for the Coast Guard to develop an interim clearance process with respect to the issuance of merchant mariner documents.
16. *Limitation on Jurisdiction of States to Tax Seamen.* The new bill retains the proposed exemption for seamen on interstate voyages from state taxation.

If you have any questions regarding this briefing, please contact one the following Winston & Strawn attorneys:

Washington, D.C.

H. Allen Black	hblack@winston.com	(202) 282-5821
Bryant E. Gardner	bgardner@winston.com	(202) 282-5893
Lawrence I. Kiern	lkiern@winston.com	(202) 282-5811
Thomas L. Mills	tmills@winston.com	(202) 282-5714
Gerald A. Morrissey III	gmorrissey@winston.com	(202) 282-5786
Constantine G. Papavizas	cpapavizas@winston.com	(202) 282-5732

These materials have been prepared by Winston & Strawn LLP for informational purposes only. These materials do not constitute legal advice and cannot be relied upon by any taxpayer for the purpose of avoiding penalties imposed under the Internal Revenue Code. Receipt of this information does not create an attorney-client relationship. No reproduction or redistribution without written permission of Winston & Strawn LLP.