



Legislative Bulletin.....November 14, 2002

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**Motion to Concur in Senate Amendments with an Amendment to H.R. 5063 -
Armed Forces Tax Fairness Act of 2002**

Order of Business: The House is expected to take up a self-enacting rule providing that the House concur in the Senate amendment to the bill with an amendment. The rule vote will be the only vote on this bill.

Summary: The House amendment would strike all of the language after the enacting clause and insert new text. Below is a summary of the new text.

WELFARE: Extends Welfare Reform through March 31, 2003 (the end of the second quarter of Fiscal Year 2003). The CR adopted yesterday only extended welfare through January 11, 2003. From a programmatic perspective it makes sense to extend welfare on a quarterly basis since that is how payments are made to states.

UNEMPLOYMENT: Allows for extended unemployment benefits in high-unemployment states through February 1st. Permits individuals who would have otherwise been prevented from collecting their full 13-weeks of unemployment assistance (a 13-week extension was provided in the stimulus) to continue collecting unemployment towards their 13-week limit through February 1st.

MEDICARE: Provides that the federal government cannot be sued for its determinations regarding sustainable growth rates (i.e. calculation of physician payments). This would permit the Administration to adjust physician payments without being sued. It would not require the Administration to make such adjustments.

Does the Bill Create New Federal Programs or Rules?: No.

Cost to Taxpayers: An official CBO cost estimate is not available.

Constitutional Authority: Not available.

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S. 1214—Maritime Transportation Security Act of 2002 (Conference Report) (*Senator Hollings*)

Order of Business: The conference report is scheduled to be considered on the House floor on Thursday, November 14th, subject to a rule (H.Res. 605) that waives all points of order against the conference report and its consideration.

Summary: The conference report for S. 1214 is essentially an aggregation of the following two bills that have already passed the House:

- **H.R. 3983**, the Maritime Transportation Antiterrorism Act of 2002, which passed the House by voice vote on June 4, 2002. <http://www.house.gov/burton/RSC/Lb6402.pdf>
- **H.R. 3507**, the Coast Guard Authorization Act for 2002, which passed the House by voice vote on December 20, 2001. <http://www.house.gov/burton/RSC/LB121901A.PDF>

NOTE: The tax increases proposed by Senator Hollings (D-SC) in conference committee did **not** get included in the conference report.

Maritime Transportation Security (originally H.R. 3983):

This portion of the conference report would establish a new port security program to be carried out primarily by the Department of Transportation (DOT), acting through the U.S. Coast Guard, for the purpose of enhancing the security at U.S. ports. The bill focuses on the security of facilities at U.S. and foreign ports, as well as vessels using such facilities.

Major provisions are as follows:

- Requires the Secretary to conduct vulnerability assessments for each port that DOT believes is at high risk of a terrorist act. The results of the vulnerability assessments will be used to implement a national maritime transportation antiterrorism planning system, consisting of a national plan, area plans, as well as vessel, facility, and port terminal plans;
- Requires the Secretary to develop a National Maritime Transportation Antiterrorism Plan for deterring acts of terrorism directed at maritime transportation, and individual plans for areas at risk of attack. The plan must include:
 - 1) Provisions assigning duties and responsibilities among federal agencies and departments;
 - 2) Procedures for coordination between the Coast Guard and the National Maritime Antiterrorism Coordinators;

- 3) A system of surveillance and notification to state and federal agencies of catastrophic emergencies and threats, and;
- 4) Procedures for the identification of a catastrophic emergency or threat of a catastrophic emergency. (“Catastrophic emergency” is defined in the bill as “any event caused by a terrorist act in the United States or on a vessel on a voyage to or from the United States that causes, or may cause, substantial loss of human life or major economic disruption in any particular area.”)

The Secretary must also designate the areas where Area Maritime Transportation Antiterrorism Plans must be in place and designate a Coast Guard official to serve as the National Maritime Antiterrorism Coordinator for the area;

- Requires National Maritime Antiterrorism Coordinators to develop and submit to the Secretary an Area Maritime Transportation Antiterrorism Plan for his or her area. The plan must “be adequate to deter a transportation security incident in or near the area to the maximum extent practicable” and be integrated with other area antiterrorism and security plans. Plans are also required to be updated by the Coordinator every five years;
- **Requires owners and operators of port facilities or vessels that the Secretary “believes may be involved in a catastrophic emergency” to develop antiterrorism plans. A vessel or facility required to submit a plan may not operate after January 1, 2003, unless the plan has been approved by the Secretary and the vessel/facility is in compliance with the plan;**
- Establishes a system of transportation security cards issued by DOT that are required to enter secure areas at port facilities, as determined by an antiterrorism plan. The Secretary may deny cards to individuals who pose a terrorism security risk;
- Requires the Secretary to establish maritime antiterrorism teams “to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity” and to respond to such activity in accordance with the security plans discussed above.
- Authorizes grants to ports to implement antiterrorism plans or interim measures required by the Coast Guard. Authorizes the appropriation of **such sums as are necessary for each of fiscal years 2003 through 2008** (as opposed to \$83 million a year over the FY 2003–2005 period in the original House bill). Requires that federal funds do not exceed 75 percent of the total cost of the project, except those projects under \$25,000, and except those which the Secretary determines are critical and cannot happen without a higher level of federal support;
- Authorizes **\$15 million for each of fiscal years 2003 through 2008** for port security research and development grants (no such provision in original House bill);
- Requires the Secretary to make assessments of foreign ports that vessels entering U.S. ports might visit, including in the assessment recommended actions that such ports should take to enhance security and actions that the United States might take if foreign ports fail to maintain effective antiterrorism measures, including denying the entry of foreign vessels into U.S. ports. The Secretary must examine such items as screening of baggage and cargo and security measures at port and aboard the vessel;
- Requires DOT to develop and maintain an antiterrorism cargo identification and screening system by April 1, 2003 (as opposed to June 30, 2003 in the original House bill). Currently, U.S. Customs has this responsibility;

- Requires each commercial vessel seeking to enter the U.S. to submit a passenger and crew manifest to DOT;
- Allows the President to temporarily suspend the end-strength limitations on Coast Guard personnel when a declaration of war or national emergency is in effect;
- Authorizes the assignment of Coast Guard personnel as sea marshals;
- Instructs the Secretary to develop standards and curriculum to allow for the training and certification of maritime security professionals; and
- Allows natural gas to be included in the Deepwater Port Act, which establishes a system for permitting and licensing deepwater terminals. Currently, only oil facilities are included.

Maritime Policy Improvement (originally H.R. 3507):

This title of the conference report would authorize **\$500,000** in FY2003 for the federal share (50%) of building an addition to the American Merchant Marine Memorial Wall of Honor in San Pedro, CA. The bill would also adjust the recording and discharging of maritime liens by extending the laws for preferred mortgages to such liens. This portion of the bill would also make certain technical adjustments and exceptions for certain specific vessels under listed circumstances.

Coast Guard Personnel and Maritime Safety (originally H.R. 3507):

Coast Guard personnel: This part of the conference report would:

- Allow the Coast Guard Band Director to be promoted from the rank of Commander to Captain
- Authorize the Secretary of Transportation to give leaves of absence to personnel in isolated duty stations
- Permit the Coast Guard to promote officers ahead of their peers within a given promotion zone.

Marine safety: This section of the conference report would require foreign-flag ships to monitor radio-telephone frequencies among ships when operating within U.S. waters between three and twelve miles offshore. Six reports that had been eliminated by the Federal Reports Elimination and Sunset Act of 1995 would be reinstated:

- Coast Guard Operations and Expenditures
- Summary of Marine Casualties Reported During Prior Fiscal Year
- User Fee Activities and Amounts
- Conditions of Public Ports of the United States
- Activities of Federal Maritime Commission
- Activities of Interagency Coordinating Committee on Oil Pollution Research.

The Coast Guard would be authorized to borrow up to \$100 million for oil-spill cleanup, but the funds would have to be repaid by the responsible parties. Civil penalties for negligent maritime operations or the interference with safe maritime operation would be raised from \$1,000 to \$5,000 for recreational vessels and \$25,000 for commercial vessels.

The existence of six Coast Guard advisory committees would be extended through September 30, 2005: Commercial Fishing Industry Vessel Advisory Committee, Houston-Galveston Navigation Safety Advisory Committee, Lower Mississippi River Waterway Advisory Committee, Navigation Safety Advisory Council, National Boating Safety Advisory Council, and Towing Safety Advisory Committee.

Miscellaneous: This portion of the conference report would allow the Coast Guard to accept up to 7 PC-170 patrol ships from the Navy, without cost to the Coast Guard.

The Coast Guard would be authorized to operate a vessel to provide technical assistance, including law enforcement training, to foreign coast guards, navies, or other maritime services. The Coast Guard would be required to continue to offer advice and technical assistance to organizations in the Great Lakes region that maintain lighthouses.

The prohibition of the implementation of any new maritime user fees would be extended from September 30, 2001, to September 30, 2006.

The bill would authorize the conveyance of the Naval Reserve Pier in Portland, Maine, to a private development corporation (provided that the corporation lease portions of the property to the U.S. government for 30 years without any additional direct payment). The bill would also authorize the conveyance of the Slip Point Light Station in Clallam County, Washington, to the County, and Point Pinos Light in California to the City of Pacific Grove, California. In both cases, the Coast Guard would still have to be allowed access to the property at any time for the purpose of maritime assistance.

The State Recreational Boating Safety Grant Program would have its federal funding increased by \$1 million, from \$82 million to \$83 million.

The Secretary of the department in which the Coast Guard is operating 90 days after the enactment of this legislation would have to do a report comparing annual Coast Guard expenditures by mission area before and after September 11, 2001.

Omnibus Maritime Improvements (originally H.R. 3507):

This title of the conference report contains several dozen “maritime improvements.” Highlights include:

- Increased budget authority for Coast Guard housing from \$20.0 million per fiscal year to \$40.0 million
- \$987,400 for fire, oil, and toxic spill response communications, training, equipment, and program administration activities conducted by nonprofit organizations that act in cooperation with the Coast Guard
- Provisions for the establishment of search-and-rescue center safety standards
- Requirement for equipping appropriate personnel with hypothermia protective clothing
- Alignment of Coast Guard severance pay with Department of Defense severance pay
- Strengthening of maritime drug law enforcement

- Conveyance of Coast Guard property in Hampton Township, Michigan, and in Traverse City, Michigan
- Requirement for a new annual report by the Secretary of Transportation on the readiness of the Coast Guard to fulfill its national defense responsibilities
- Reauthorization of the Oil Spill Recovery Institute through the end of FY2012
- Limitation of liability for Coast Guard Vessel Traffic Service pilots who provide information, advice, or communication assistance while under the supervision of a Coast Guard officer
- Authorization of fishing vessel safety training
- \$2.0 million (or one-third of the total project cost, if less) authorized for the demolition of the Old Coast Guard Station along the Chicago lakefront
- \$225,000 for the transfer of Michigan's Pictured Rocks National Lakeshore to the Department of Transportation
- \$25 million for FY2003 in additional (capital) expenses related to the LORAN-C navigation infrastructure
- Authorization for the Secretary to suspend the retired pay of a Coast Guard member or former member during periods in which the member willfully remains outside the U.S. to avoid criminal prosecution or civil liability
- Prohibition of the levy of non-federal taxes, tolls, or other such impositions on water craft operating in waters subject to federal authority

Authorization of Appropriations for the Coast Guard (originally H.R. 3507):

This title of the conference report would authorize \$6.00 billion for Coast Guard programs in FY2003—\$144.5 million (or 2.5%) more than the FY2002 authorization in the original House bill (H.R. 3507). Below are the authorization levels for each of the six accounts in which programs are authorized.

Millions of Dollars

Account	FY 2002 Authorization H.R. 3507	FY 2003 Authorization S. 1214 Conf. Rpt.
Operations & Maintenance	4,205.8	4,327.5
Acquisition & Construction	717.8	725.0
Research & Development	21.7	22.0
Retired Pay	876.3	889.0
Bridge Alteration	15.5	18.0
Environmental Compliance	16.9	17.0
TOTAL	5,854.0	5,998.5

The conference report would also authorize an end-of-year strength of 45,500 active-duty personnel as of September 30, 2003. The estimated personnel level as of December 2001 was 39,665.

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H.R. 3210—Terrorism Risk Protection Act (Conference Report) (Oxley)

AGREEMENT SUMMARY

GENERAL PROGRAM SPECIFICS: Program administered by the Secretary of the Treasury. Program terminates on December 31, 2005

COVERAGE: The program is triggered when a terrorism event causes losses in excess of \$5 million. The Federal Government pay 90% of the of the insured losses that exceed the insured deductible (which increases each year of the program). Under the program the Federal Government covers insured losses up to \$100 billion a year. Insured losses do not include punitive damages and federal payments are reduced by the amount of other federal payments to victims.

FEDERAL RECOUPMENT: The bill requires that combination of insured deductibles, non-Federal payments above insured deductibles and surcharges on policyholders be used to cover the first \$10 billion in insured losses for the first year increasing to \$15 billion in year 3. The government may impose additional surcharges for the recoupment of government payments in excess of the \$10 to \$15 billion figures at its discretion.

TORT AGREEMENT:

	House	Senate	Deal
Punitive Damages	Prohibited	Punitive Damages Permitted (Based on State Law), But Could Not Be Paid By the Government	Senate
Non-Economic Damages	Proportional As to Fault	No Language	Senate
Attorney's Fees	20% Cap	No Language	Senate
Litigation	Federal Cause of Action with Consolidation	No Consolidation at Trial	House

MISCELANNEOUS: The agreement also includes language that allows victims of terrorism who have obtained a judgment against a terrorist party to access their blocked assets for satisfaction of the judgment.

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SUPPLEMENTAL INFORMATION

Litigation Issues:

According to a study by the Joint Economic Committee released in May:

“...lawsuits stemming from 9/11 {are} already estimated to cost as much as \$20 billion...”

“...liability costs are estimates to constitute the largest single cost of the 9/11 attacks, and could easily exceed the property damage, life insurance, and workers compensation payments combined.”

“...such lawsuits typically pay 33 percent to 40 percent of the award to the plaintiffs’ lawyers...”

Impact on the Economy & Job Loss:

The claim that the economy has lost more than \$15 billion and 300,000 jobs in the construction industry is based on surveys conducted by the real-estate industry. The \$15 billion figure includes both estimated new construction losses and incompleting sales transactions (i.e. an individual wanted to buy an existing building, but could not secure a loan because he could not get terrorism insurance).

There is, however, disagreement on the extent of the impact of the lack of a federal terrorism reinsurance bill on the economy. CRS notes in a report for example:

“Some of the dire economic disruptions predicted in the absence of congressional agreement on a terrorism backstop have not yet become apparent. **In particular, banks have not stopped their financing for clients who lack terrorism insurance. Instead, banks are charging somewhat higher fees for some customers who are going without terrorism coverage, when there is a perception of increased risk of default as a result.**¹⁴ Lenders have not tightened credit, however, and apparently do not plan to do so for the vast majority of projects; federal bank regulators have indicated that they are not planning to put out any guidance since they have not seen any curtailment of lending.¹⁵ J. Robert Hunter, director of insurance for the Consumer Federation of American, maintains that terrorism insurance is widely available and any federal backstop should be limited to high profile buildings in New York and other major cities.¹⁶”

WHAT OTHERS ARE SAYING

Wall Street Journal Editorial Wednesday, November 6, 2002

A Terrifying Insurance Bill

Will Bush agree to Daschle's trial-lawyer payout?

After the elections the 107th Congress is threatening to return to pass some unfinished business, including a compromise on terrorism insurance. Having looked at the details of the insurance deal, we can only hope they'll all stay home.

The two parties have been battling for a year over this bill, especially the extent to which trial lawyers could profit from acts of terror. Republicans and some Democrats want to ban punitive damages against property owners. But Tom Daschle, carrying his usual two oceans of water for the plaintiff's bar, resisted any erosion in the right to sue the owner should a plane crash into his or her building.

And it looks like Mr. Daschle has prevailed. The compromise permits such suits, albeit before a single federal court as opposed to the more accommodating state courts. In other words, the White House appears to have caved, and after months of arguing the opposite now says terror insurance is about "jobs, not tort reform."

Well, we're not sure it's still about jobs either. The bill makes insurance companies liable for claims amounting to a certain percentage of their premiums, puts the government on the hook for 90% of losses over that deductible, and allows the government to recover some portion of its payment by levying a surcharge on all policy owners. The best news is that government help sunsets in 2005, or at least that's the promise.

Unfortunately, the bill ignores the crucial problem of risk. Risk-based premiums--which reward the careful and punish the careless--are a superb tool for reducing risk. Consider: There are lots of things property owners can do to reduce the damage from terrorism--retrofitting air-filtration systems to guard against biological agents, redesigning underground parking garages to prevent bomb attacks, fireproofing steel girders to minimize fire damage. And insurance companies can discipline them to take these measures by charging risk-based premiums.

If insurers were required to pay premiums to the government based on the premiums they receive, market incentives to reduce risk would improve markedly. If, on the other hand, terror insurance is essentially free, as it would be under the current bill, insurers have less incentive to charge the full cost of risk; instead they have every incentive to underprice it.

An alternative has been suggested by David Moss, an economist at Harvard Business School: Let the federal government pay 80% of losses from a terrorist attack, as long as insurers also pass along 80% of the premiums they collect. This way, says Mr. Moss, insurers would price risk near or at its full cost, exerting discipline against the careless, and prices would be set in the private market.

We mention Mr. Moss's idea because, despite heavy breathing by the insurance industry, it isn't at all clear that there's an immediate economic need for this legislation. It's true that right after 9/11 the property insurance market seized up. Insurers didn't know how to price for the risk of another attack, and so rent their garments that the economy would collapse without government reinsurance. We were also open to the idea, but it turns out they were wrong. The economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.

We aren't arguing that a federal backstop might not perk up business in the short term, or that some sort of insurance wouldn't be nice to have in place before another attack. But the assertion that billions of dollars of projects have been shelved and 300,000 jobs lost is bogus. Despite efforts to quantify a slowdown, including a survey by the Fed, evidence of suffering is scattered and anecdotal--and mostly confined to trophy properties.

The bigger point here is that any legislation is likely to be permanent, since no entitlement of this size has ever been allowed to ride quietly into the sunset. That argues for doing it right, and waiting until the next Congress if need be. Many Republicans are privately unhappy with the deal the White House has cut with Mr. Daschle. We hope they'll urge President Bush to insist on something better.

The Chamber of Commerce

It is vital that the Congress pass this legislation before adjourning for the year. The economy has lost more than \$15 billion and 300,000 jobs in the construction industry alone as a result of a lack of terrorism insurance coverage. We expect this legislation to provide a much needed boost to the economy, providing jobs to hundreds of thousands of workers across the country.

Although the U.S. Chamber would have preferred more extensive litigation management provisions, providing a federal cause of action and consolidation of claims has significant benefits:

- First, without this legislation, and the federal cause of action that it provides, businesses would have absolutely NO protection from predatory lawsuits that result from any future terrorist incident – they would still face forum shopping and multiple claims in state courts; courts known for rendering outrageous awards.
- Second, having these trials in federal court will provide consistent rulings, fair procedures for both plaintiffs and defendants, and provide for the use of relevant state laws that ban or otherwise limit the availability of punitive damages;
- Third, this legislation will prevent a “rush to the court-house,” which would otherwise give early lawsuit filers an advantage over later claimants; and
- Fourth, the proposal represents an improvement over the Senate bill, which did not contain consolidation for trial purposes. This provision will significantly reduce administrative and legal costs, reduce redundant, repetitive and costly discovery, and will enable both plaintiffs and defendants to deal with only one trial, rather than multiple trials with potentially inconsistent outcomes.

Of course, we would have preferred to improve the legal system even more, particularly with respect to punitive damages. However, these improvements are substantial, will add some needed momentum to the economy and are far preferable to no improvements. Ultimately we believe that this bill will improve the legal rights of both plaintiffs and defendants and, importantly will help American workers and the economy.

Considering the negative impacts on the economy that doing nothing will entail, moving a bill that backstops reinsurers and provides for exclusive federal court jurisdiction and consolidation is preferable to a continued stalemate. In short, it is the U.S. Chamber's view that this proposed solution is preferable to no action and that it should be enacted into law.
