

TO DECLARE A PORTION OF THE JAMES RIVER AND
KANAWHA CANAL IN RICHMOND, VIRGINIA, TO BE NON-
NAVIGABLE WATERS OF THE UNITED STATES

APRIL 27, 1999.—Committed to the Committee on the Whole House on the State of
the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

REPORT

[To accompany H.R. 1034]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1034) to declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FINDINGS.

The Congress finds the following:

- (1) The canal known as the James River and Kanawha Canal played an important part in the economic development of the Commonwealth of Virginia and the city of Richmond.
- (2) The canal ceased to operate as a functioning waterway in the conduct of commerce in the late 1800s.
- (3) Portions of the canal have been found by a Federal district court to be nonnavigable.
- (4) The restored portion of the canal will be utilized to provide entertainment and education to visitors and will play an important part in the economic development of downtown Richmond.
- (5) The restored portion of the canal will not be utilized for general public boating, and will be restricted to activities similar to those conducted on similar waters in San Antonio, Texas.

(6) The continued classification of the canal as a navigable waterway based upon historic usage that ceased more than 100 years ago does not serve the public interest and is unnecessary to protect public safety.

(7) Congressional action is required to clarify that the canal is no longer to be considered a navigable waterway for purposes of subtitle II of title 46, United States Code.

SEC. 2. DECLARATION OF NONNAVIGABILITY OF A PORTION OF THE CANAL KNOWN AS THE JAMES RIVER AND KANAWHA CANAL IN RICHMOND, VIRGINIA.

(a) **CANAL DECLARED NONNAVIGABLE.**—The portion of the canal known as the James River and Kanawha Canal in Richmond, Virginia, located between the Great Ship Lock on the east and the limits of the city of Richmond on the west is hereby declared to be a nonnavigable waterway of the United States for purposes of subtitle II of title 46, United States Code.

(b) **ENSURING PUBLIC SAFETY.**—The Secretary of Transportation shall provide such technical advice, information, and assistance as the city of Richmond, Virginia, or its designee may request to insure that the vessels operating on the waters declared nonnavigable by subsection (a) are built, maintained, and operated in a manner consistent with protecting public safety.

(c) **TERMINATION OF DECLARATION.**—

(1) **IN GENERAL.**—The Secretary of Transportation may terminate the effectiveness of the declaration made by subsection (a) by publishing a determination that vessels operating on the waters declared nonnavigable by subsection (a) have not been built, maintained, and operated in a manner consistent with protecting public safety.

(2) **PUBLIC INPUT.**—Before making a determination under this subsection, the Secretary of Transportation shall—

(A) consult with appropriate State and local government officials regarding whether such a determination is necessary to protect public safety and will serve the public interest; and

(B) provide to persons who might be adversely affected by the determination the opportunity for comment and a hearing on whether such action is necessary to protect public safety and will serve the public interest.

PURPOSE OF BILL

The primary purpose of H.R. 1034 is to declare a portion of the James River and the Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of subtitle II of title 46, United States Code.

The City of Richmond, Virginia, is developing a historical restoration and flood control project on the James River and Kanawha Canal in downtown Richmond. The City hopes to create new tourism development potential for the area.

The City plans to offer boat tours along the Kanawha Canal, and has awarded the boat operating contract to Waterway Excursions, Inc. The City has informed the Committee that Waterway Excursions will use the same type of vessels under the same operating standards in Richmond that are presently used in boat tours operating on the San Antonio, Texas, “Riverwalk”. The City has also informed the Committee that it will not open the James River and Kanawha Canal for the use of any other vessels.

Because of the historical commercial uses of the James River and Kanawha Canal, the Coast Guard has determined that it is a navigable waterway of the United States. The navigable waters determination triggers the application of Federal vessel safety standards under subtitle II of title 46, United States Code. The Coast Guard has informed the Committee that the City of Richmond’s proposed boat tour operation meets Coast Guard vessel standards under subtitle II of title 46, United States Code.

COMMITTEE ACTION

On March 9, 1999, Mr. Bliley introduced H.R. 1034, a bill to declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States.

On April 22, 1999, the Committee on Transportation and Infrastructure met to consider H.R. 1034. Mr. Gilchrest asked unanimous consent that the Subcommittee on Coast Guard and Maritime Transportation be discharged from further consideration of H.R. 1034. The Subcommittee was discharged from consideration of the bill without objection.

Mr. Shuster offered an amendment in the nature of a substitute which limits the application of the bill to Coast Guard vessel standards under subtitle II of title 46, United States Code. The amendment also provides an administrative process to allow the Secretary of Transportation to assert jurisdiction over the James River and Kanawha Canal if necessary to protect the public safety. The Shuster amendment in the nature of a substitute was adopted by voice vote in the presence of a quorum.

H.R. 1034, as amended, was ordered reported to the House of Representatives by a voice vote in the presence of a quorum.

SECTION BY SECTION ANALYSIS OF H.R. 1034

Section 1. Findings

This section includes several findings related to the bill.

Section 2. Declaration of nonnavigability of a portion of the canal known as the James River and Kanawha Canal in Richmond, Virginia

This section declares the portion of the canal known as the James River and Kanawha Canal in Richmond, located between the Great Ship Lock on the east and the limits of the city of Richmond on the west, to be a nonnavigable waterway of the United States for the purposes of subtitle II of title 46, United States Code.

Section 2 also requires the Secretary of Transportation to provide technical advice, information, and assistance as the City of Richmond or its designee may request to insure that the vessels operating on the canal are built, maintained, and operated in a manner consistent with protecting public safety.

Finally, this section allows the Secretary of Transportation to terminate the nonnavigability determination by publishing a determination that vessels operating on the canal have not been built, maintained, and operated in a manner consistent with protecting public safety. Before making this determination reversing his earlier decision, the Secretary must consult with appropriate State and local government officials regarding whether such a determination is necessary to protect public safety and provide individuals who might be adversely affected by the new determination the opportunity to comment and a hearing.

The Mayor of Richmond, Virginia, has sent the following letters, which relate to this legislation, to Representative Thomas J. Bliley, Jr.:

CITY OF RICHMOND,
Richmond, VA, April 20, 1999.

Hon. THOMAS J. BLILEY, JR.,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN BLILEY: It was a pleasure speaking with you on Monday concerning the renovation and reopening of Richmond's Historic Canal System. We certainly appreciate your efforts to assist us with the Coast Guard regulation of the canal.

As we discussed, I will introduce an ordinance on Monday, April 26 mandating that the canal boats will carry no more than 40 passengers during operation. I expect that this ordinance will not encounter any opposition and should be passed at our meeting on May 10. Once the ordinance is passed, I will send a copy to you for appropriate distribution.

Thank you so much for your assistance on this matter. We have waited a long time to reopen this historic resource and it will be a great benefit to generations of Richmonders.

Sincerely,

TIMOTHY M. KAINE, *Mayor.*

CITY OF RICHMOND,
Richmond, VA, April 13, 1999.

Hon. THOMAS J. BLILEY,
Rayburn House Office Building,
Washington, DC.

Hon. ROBERT C. SCOTT,
Rayburn House Office Building,
Washington, DC.

DEAR MESSRS. BLILEY AND SCOTT: I want to express my appreciation on behalf of the City of Richmond to you for introducing H.R. 1934 to declare the James River and Kanawha Canal non-navigable. The time and energy that you and your respective staffs have given on behalf of this important economic development project are greatly appreciated.

I am writing to address certain concerns that have been raised by members of the Committee on Transportation and Infrastructure professional staff regarding the operation of canal boats on the James River & Kanawha Canal. As you know, members of your staffs and the committee visited Richmond yesterday to gain a first hand understanding of what this project entails.

The staff has expressed a desire to have a fuller understanding of the actions the City of Richmond will take after the canal is declared non-navigable to insure that boats operated on the canal are built, maintained and operated in a manner that will insure public safety. As you know, the Coast Guard has reviewed the design of the boats that will be used on this canal and found the design suitable for a passenger load of up to 40 people. The Coast Guard has

also reviewed other aspects of the planned operation. As I understand it, the staff is not concerned with the operations as planned, but is seeking some assurance of how the city will address changes in operation that may be proposed at some time in the future.

It will be the city's intention to require that it receive notification from its franchisee (i.e. the Riverfront Management Corporation), of any material changes in the design or operation of canal boats on the James River & Kanawha Canal. The city would then utilize the provisions of section 2(b) of the current draft of legislation to seek advice and assistance from the Secretary of Transportation to enable the city to determine whether or not the proposed changes in operation or boat design were consistent with protecting public safety. The city would then exercise its authority under existing law to take appropriate action.

The city takes its obligation to protect safety seriously and will make appropriate use of local, state, federal, and private sector expertise to insure that this project is operated consistent with protecting public safety. The canal redevelopment is of vital importance to the economic development of Richmond. The project is nearing completion and prompt passage of legislation is necessary.

I hope this letter will serve to clarify the manner in which the city plans to proceed once these waters are declared non-navigable.

Sincerely,

TIMOTHY M. KAINE, *Mayor*.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1034.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1034 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1034—A bill to declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States

CBO estimates that enacting H.R. 1034 would have no significant effect on the federal budget. Because the bill could reduce off-setting receipts (a credit against direct spending), pay-as-you-go procedures would apply. We estimate, however, that any loss of receipts would be negligible. H.R. 1034 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 1034 would declare a portion of a canal in Richmond, Virginia, to be a nonnavigable waterway for the purposes of administering certain laws under the jurisdiction of the U.S. Coast Guard (USCG). This declaration would make it unnecessary for operators of a few small passenger vessels (for guided tours) to obtain federal safety inspections. As a result, the USCG would forgo a few hundred dollars of fees that it usually charges for such services. Based on information provided by the agency, CBO estimates that the total annual loss of receipts would be less than \$1,000.

The CBO staff contact is Deborah Reis. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104-4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104-1.)

