

Calendar No. 307

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-141 }

SPORT FISH RESTORATION AND REC-
REATIONAL BOATING SAFETY ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1657



JANUARY 30, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY ACT OF 2011

JANUARY 30, 2012.—Ordered to be printed

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

REPORT

[To accompany S. 1657]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1657) to amend the provisions of law relating to sport fish restoration and recreational boating safety, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 1657 would reauthorize the Sport Fish Restoration and Boating Trust Fund and its various uses through the end of fiscal year (FY) 2017.

BACKGROUND AND NEEDS

Recreational fishing and boating provide substantial economic opportunities and benefits to the Nation. According to the National Marine Fisheries Service, in 2006 marine recreational anglers spent \$31 billion, with an estimated \$82 billion impact on the U.S. economy.¹ The Coast Guard reports that in 2010 there were 12,438,926 recreational vessels registered in the United States.² According to the National Marine Manufacturers Association, which represents nearly 1,300 boat builders and other marine man-

¹National Oceanic and Atmospheric Administration, National Marine Fisheries Service, The Economic Contribution of Marine Angler Expenditures in the United States, 2006, available at http://www.st.nmfs.noaa.gov/st5/publication/marine_angler.html.

²United States Coast Guard, Recreational Boating Statistics 2010 at 5.

ufacturers responsible for producing in excess of 80 percent of the recreational marine products made in the United States, in 2010 the recreational marine industry contributed \$30.4 billion in new retail sales and services to the economy.³

The Sport Fish Restoration and Boating Trust Fund (Trust Fund) is the mainstay of funding for State and Federal sport fish conservation and recreational boating safety efforts in support of the U.S. angling and boating community. Types of programs supported by the fund include those dealing with coastal wetlands conservation and restoration, recreational vessel sewage disposal, interstate fishery commissions, multistate conservation grants, and fish restoration projects. Funds go to State projects designed to enhance sport fish conservation in the States and to assist States in establishing and maintaining recreational boating safety programs.

The Trust Fund receives income from the following five sources: (1) motorboat fuel taxes; (2) annual tax receipts from small engine fuel used for outdoor power equipment; (3) a manufacturers' excise tax on sport fishing equipment; (4) import duties on fishing tackle and on yachts and pleasurecrafts; and (5) interest on funds invested prior to disbursal. In FY 2009, the Trust Fund received a total of \$667 million from these five sources.

All moneys received in a given FY are apportioned to the States in the following FY. The Trust Fund distributes money to eight programs based on a statutory formula division of appropriations, as follows:

- 18.5 percent to coastal wetlands programs under the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.), of which 70 percent is provided for the Corps of Engineers Louisiana Coastal Wetlands Restoration Program, 15 percent is provided to the National Coastal Wetlands Conservation Grants Program, and 15 percent is provided for the North American Wetlands Conservation Fund;
- 18.5 percent to the U.S. Coast Guard's Office of Boating Safety to provide grants to States and nonprofit organizations for the development and implementation of a coordinated national recreational boating safety program;
- 2 percent to a competitive grant program for States to construct pump-out and dump stations to dispose of vessel sewage from recreational boaters authorized by the Clean Vessel Act of 1992 (33 U.S.C. 1322 note);
- 2 percent to a competitive grant program that provides matching funds to States to install or upgrade docking facilities for transient recreational boats authorized in section 7404(d) of the Transportation Equity Act for the 21st Century (16 U.S.C. 777g-1);
- 2 percent to the Recreational Boating and Fishing Foundation, a tax-exempt corporation established in 1998 to carry out a National Outreach and Communications Program which provides grants to increase participation in recreational boating

³Correspondence from the National Marine Manufacturers Association dated September 6, 2011, on file with majority committee counsel.

and fishing and to encourage greater public involvement in aquatic stewardship as mandated in the Sportfishing and Boating Safety Act of 1998 (112 Stat. 482);

- the Secretary of the Interior receives as much as \$3 million annually (16 U.S.C. 777m(a)) for the Multi-State Conservation Grant Program authorized by the Wildlife and Sport Fish Restoration Program Improvement Act of 2000 (114 Stat. 1763);
- \$200,000 annually goes to four Interstate Fishery Commissions and \$400,000 annually to the Sport Fishing and Boating Partnership Council (16 U.S.C. 777m(e)); and
- the residuum of Fund receipts goes to the U.S. Fish and Wildlife Service Sport Fish Restoration Program (16 U.S.C. 777 et seq.) for apportionment to the States.

SUMMARY OF PROVISIONS

S. 1657, the Sport Fish Restoration and Recreational Boating Safety Act of 2011, would reauthorize the Trust Fund and provide for maximum amounts that can be spent on administration of Trust Fund programs.

LEGISLATIVE HISTORY

S. 1657, the Sport Fish Restoration and Recreational Boating Safety Act of 2011, was introduced by Senator Rockefeller on October 5, 2011, and was referred to the Committee on Commerce, Science, and Transportation. On November 2, 2011, the Committee met in open Executive Session and, by a voice vote, ordered S. 1657 reported 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:

JANUARY 12, 2012.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1657, the Sport Fish Restoration and Recreational Boating Safety Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1657—Sport Fish Restoration and Recreational Boating Safety Act of 2011

S. 1657 would reauthorize and modify the current formula used to distribute funds from the Sport Fish Restoration and Boating

Trust Fund (SFRBTF) through 2017. The legislation would adjust the allocation of amounts from the SFRBTF to programs related to sport fish restoration, boating safety, and coastal wetlands restoration under the Federal Aid Sport Fish Restoration Act but would not affect the overall amounts spent from the fund. CBO estimates that enacting S. 1657 could affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any change in direct spending would be insignificant for each year. Enacting the bill would not affect revenues.

Grants for coastal wetland projects, sport fish restoration, and boating safety are financed by excise taxes and other collections deposited into the SFRBTF. Each program receives direct spending authority equal to a specified allocation of the fund's income. The bill would change how those amounts are allocated from the trust fund after 2012. That change could have a minor effect on the rate of spending; however, the legislation would not change the amount available to be spent from the fund.

CBO has reviewed the nontax provisions of S. 1657 and determined that they contain 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.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for 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

S. 1657 as reported does not create any new programs or impose any new regulatory requirements, and is therefore expected to have no impact in terms number of individuals and businesses regulated.

ECONOMIC IMPACT

The legislation is not expected to have any significant adverse impacts on the Nation's economy. To the contrary, if the current statutory authority for the Trust Fund is allowed to expire due to failure to enact S. 1657 or similar reauthorization legislation, the loss of funding to the States for boating safety programs, boater education programs, and fish and habitat restoration programs would be expected to have significant negative economic consequences.

PRIVACY

The bill would not impact the personal privacy of individuals.

PAPERWORK

S. 1657 would have no impact on paperwork requirements for individuals or businesses.

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 this Act may be cited as the “Sport Fish Restoration and Recreational Boating Safety Act of 2011”.

Section 2. Amendment of Federal Aid in Fish Restoration Act

This section would clarify that, unless stated otherwise, references in S. 1657 are to the Federal Aid in Fish Restoration Act (16 U.S.C. 777 et seq.).

Section 3. Division of annual appropriations

This section would amend section 4 of the Federal Aid in Fish Restoration Act (16 U.S.C. 777c) to: authorize appropriations through FY 2017; increase the amounts authorized for administrative costs; authorize funding to the department in which the Coast Guard is operating for administration of boating safety programs; provide a formula for maximum amounts that the Secretary of Interior can use to administer Trust Fund programs; and make two technical changes.

Section 4. Extension of exception to limitation on transfers to fund

This section would amend section 9504(d)(2) of the Internal Revenue Code of 1986 to extend until March 5, 2017, the exception that allows transfer to the fund of expenditures to liquidate obligations entered into prior to that date.

Section 5. Recreational boating safety

This section would amend section 13107 of title 46, United States Code, to decrease the authorization levels that may be used for investigations, personnel, and administration of boating safety programs. This section would increase the amount available to the Coast Guard for carrying out the purposes of the recreational boating safety program.

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):

FEDERAL AID IN FISH RESTORATION ACT

[16 U.S.C. 777 et seq.]

SEC. 4. DIVISION OF ANNUAL APPROPRIATIONS.

[16 U.S.C. 777c]

(a) IN GENERAL.—For each [of fiscal years 2006 through 2011] *fiscal year through 2017*, and for the period beginning on October 1, 2011, and ending on March 31, 2012, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

(1) COASTAL WETLANDS.—An amount equal to 18.5 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection[,] and Restoration Act (16 U.S.C. 3951 et seq.).

(2) BOATING SAFETY.—An amount equal to 18.5 percent to the Secretary of the department in which the Coast Guard is operating for State recreational boating safety programs under section 13107 of title 46, United States Code.

(3) CLEAN VESSEL ACT.—An amount equal to 2.0 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(4) BOATING INFRASTRUCTURE.—An amount equal to 2.0 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

(5) NATIONAL OUTREACH AND COMMUNICATIONS.—An amount equal to 2.0 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (c) of this section.

(b) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE FOR ADMINISTRATION.—From the annual appropriation made in accordance with section 3, for each [of fiscal years 2006 through 2011] *fiscal year through 2017* and for the period beginning on October 1, 2011, and ending on March 31, 2012, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for [each of fiscal years 2001 and 2002, \$9,000,000;] *fiscal year 2012, \$11,481,000;*

(ii) for fiscal year ~~【2003, \$8,212,000;】~~ 2013, \$11,870,000; and

(iii) for fiscal year ~~【2004】~~ 2014 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(C) *SET-ASIDE FOR BOATING SAFETY.*—

(i) *From the annual appropriation made in accordance with section 3, for each fiscal year through 2017, the Secretary shall transfer to the Secretary of the department in which the Coast Guard is operating—*

(I) *\$6,500,000 for the purposes set forth in section 13107(c) of title 46, United States Code;*

(II) *\$200,000 to fund the National Boating Safety Advisory Council established under section 13110 of Title 46, United States Code; and*

(III) *not less than \$6,000,000 for national boating safety activities of national nonprofit public service organizations, and such sums made available for allocation and distribution shall remain available until expended.*

(ii) *The amounts specified in clause (i) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.*

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under ~~【subsection (e)】~~ *subsection (c)* for the fiscal year.

(c) APPORTIONMENT AMONG STATES.—The Secretary after the distribution, transfer, use and deduction under subsection (b), and after deducting amounts used for grants under section 14 of this title, shall apportion 57 percent of the balance of each such annual appropriation among the several States in the following manner: 40 percent in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 percent in the ratio which the number of persons holding paid licenses to fish

for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 percent nor more than 5 percent of the total amount apportioned. Where the apportionment to any State under this section is less than \$4,500 annually, the Secretary of the Interior may allocate not more than \$4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than \$1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

(d) UNALLOCATED FUNDS.—So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

(e) EXPENSES FOR ADMINISTRATION OF CERTAIN PROGRAMS.—

(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under section 3, the Secretary of the Interior shall use only funds authorized for use under paragraphs (1), (3), (4), and (5) of subsection (a) to pay the expenses for administration incurred in carrying out the provisions of law referred to in [those subsections] *those paragraphs*, respectively.

[(2) MAXIMUM AMOUNT.—For each fiscal year, the Secretary of the Interior may use not more than \$900,000 in accordance with paragraph (1).]

(2) MAXIMUM AMOUNT.—*For fiscal year 2012, the Secretary of the Interior may use not more than \$1,200,000 in accordance with paragraph (1). For each fiscal year thereafter, the maximum amount that the Secretary of the Interior may use in accordance with paragraph (1) shall be determined pursuant to paragraph (3).*

(3) ANNUAL ADJUSTED MAXIMUM AMOUNT.—*The maximum amount referred to in paragraph 2 for fiscal year 2013 and each fiscal year thereafter shall be the sum of—*

(A) *the available maximum amount for the preceding fiscal year; and*

(B) *the amount determined by multiplying—*

(i) *the available maximum amount for the preceding fiscal year; and*

(ii) *the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.*

(f) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of the department in which the Coast Guard is operating and shall be expended for State recreational boating safety programs under section 13107(a) of title 46, United States Code.

TITLE 26. INTERNAL REVENUE CODE

SUBTITLE I. TRUST FUND CODE

CHAPTER 98. TRUST FUND CODE

SUBCHAPTER A. ESTABLISHMENT OF TRUST FUNDS

§ 9504. Sport Fish Restoration and Boating Trust Fund

* * * * *

(d) LIMITATION ON TRANSFERS TO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2), no amount may be appropriated or paid to the Sport Fish Restoration and Boating Trust Fund on and after the date of any expenditure from such Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(2) EXCEPTION FOR PRIOR OBLIGATIONS.—Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before April 1, ~~2012,~~ 2017, in accordance with the provisions of this section.¹

* * * * *

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART I. STATE BOATING SAFETY PROGRAMS

CHAPTER 131. RECREATIONAL BOATING SAFETY

§ 13107. Authorization of appropriations

(a)(1) Subject to paragraph (2) and subsection (c), the Secretary shall expend in each fiscal year for State recreational boating safety programs, under contracts with States under this chapter, an amount equal to the sum of (A) the amount made available from the Boat Safety Account for that fiscal year under under section 15 of the Dingell-Johnson Sport Fish Restoration Act and (B) the amount transferred to the Secretary under subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f)). The amount shall be allocated as provided under section 13104 of this title and shall be available for State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in

¹Section 141 of subtitle D of the Surface and Air Transportation Programs Extension Act of 2011 (125 Stat. 355) (which was enacted on September 16, 2011) strikes “October 1, 2011” and inserts “April 1, 2012.”

question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

(2) The Secretary shall use not more than **[two]** 1.5 percent of the amount available each fiscal year for State recreational boating safety programs under this chapter to pay the costs of investigations, personnel, and activities related to administering those programs.

(b) The Secretary shall establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational boating safety programs may be used. Those purposes shall include—

(1) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

(2) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

(3) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

(4) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

(5) conducting boating safety inspections and marine casualty investigations;

(6) establishing and maintaining emergency or search and rescue facilities, and providing emergency or search and rescue assistance;

(7) establishing and maintaining waterway markers and other appropriate aids to navigation; and

(8) providing State recreational vessel numbering and titling programs.

(c)(1) Of the amount transferred to the Secretary under **[subsection (a)(2)]** *subsection (b)* of section 4 of the Dingell-Johnson Sport Fish Restoration Act **[(16 U.S.C. 777c(a)(2)),]** (16 U.S.C. 777c(b)), **[\$5,500,000]** \$6,500,000 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which not less than \$2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.

(2) No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section.

(3) Amounts made available by this subsection shall remain available during the 2 succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

(4) The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.

