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AMERICA'S CUP ACT OF 2011

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1759



DECEMBER 5, 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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## AMERICA'S CUP ACT OF 2011

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

### REPORT

[To accompany S. 1759]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1759) to facilitate the hosting in the United States of the 34th America's Cup by authorizing certain eligible vessels to participate in activities related to the competition, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The America's Cup Act of 2011 is intended to address a technicality under coastwise trade law that would prohibit foreign competitors in the America's Cup competition from being able to come within U.S. navigable waters. Under current law, foreign-flagged vessels are prohibited from sailing between two U.S. ports. The America's Cup competition will move between multiple locations in the United States as part of a sailing competition. The bill is intended to make those movements between ports legal.

#### BACKGROUND AND NEEDS

The America's Cup is a 160 year old series of ocean races between teams of sailing boats. The 34th America's Cup is being held in California and Rhode Island throughout 2011 and 2012, and will culminate in a final race in San Francisco Bay in 2013. This is the first America's Cup race to be held within the three-mile territorial sea limits of the United States. Previous America's Cup races had been held outside the territorial limits and thus did not require support vessels to enter U.S. ports.

Coastwise trade law, which stems from the Jones Act (also known as the Merchant Marine Act, 1920) bans vessels engaged in coastwise trade from being foreign-flagged. The America's Cup race

raises issues under sections 55102, 55103, and 55111 of title 46 of the United States Code because the support vessels for sailing ships will be transporting passengers and supplies between U.S. ports during the lead-in to the final competition. The Coast Guard is granting special permits to America's Cup vessels for Marine Events of National Significance in regard to vessel inspection laws. However, for foreign vessels to fully participate in the America's Cup, legislation is necessary to make them compliant with coast-wise laws. Previous races in the United States had occurred far from the coastal waters of the United States and thus did not require the waivers.

#### SUMMARY OF PROVISIONS

The America's Cup Act of 2011 would allow specified foreign boats recognized for their official participation in America's Cup events to operate domestically, but only in direct connection with official America's Cup events and subject to an eligibility certification by the Maritime Administration (MARAD). Further, it limits participating boats to those that do not carry more than 25 individuals outside the crew, and boats that are not employed in the transportation of individuals from point to point for hire. The legislation thus leaves a role for the U.S. flag fleet of harbor cruise boats, dinner cruise boats, local ferries, and locally qualified vessels, while still allowing the crews and support staff of competing vessels to support their team in the race. The bill also assists the Coast Guard and the Customs and Border Patrol with their waivers for the event, by making the MARAD Administrator the judge of what constitutes an eligible vessel.

#### LEGISLATIVE HISTORY

The legislation was introduced by Senator Feinstein on October 20, 2011, with Senators Boxer, Reed, and Whitehouse as original cosponsors. S. 1759 was approved by the Committee in an Executive Session by a voice vote. S. 1759 was passed by unanimous consent by the full Senate later on November 3, 2011. A House companion measure, H.R. 3321, was passed by the House and sent to the Senate. H.R. 3321 was amended by the Senate to include a series of unrelated waivers at the end, but kept the language of S. 1759 intact. H.R. 3321 was enacted on November 29, 2011.

#### ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it was necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

#### 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

The bill is limited in scope to foreign-flagged boats competing in the 34th America's Cup.

## ECONOMIC IMPACT

The bill's economic impact is limited to the races associated with the 34th America's Cup.

## PRIVACY

This bill will not have any adverse impact on the personal privacy of individuals.

## PAPERWORK

This bill will require boats eligible for a waiver to receive certification by MARAD.

## 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*

Section 1 would state the short title, the "America's Cup Act of 2011".

*Section 2. Definitions*

Section 2 would define 34th America's Cup, America's Cup Race Management, and Eligibility Certification in the bill.

Section 2 would define an "eligible vessel" as a competing or supporting vessel that is recognized by America's Cup Race Management, transports no more than 25 individuals, is not a ferry, does not transport individuals in point-to-point service, and does not transport merchandise between ports in the United States.

A "supporting vessel" would be defined as a vessel that positions competing vessels on the race course, transports equipment and supplies for the competition, and transports individuals who did not purchase tickets who are engaged in the staging of the competition.

*Section 3. Authorization of eligible vessels*

This section would allow eligible vessels to position competing vessels, equipment, and supplies around ports in the United States.

*Section 4. Certification*

Section 4 would require all ships operating to receive an Eligibility Certification from the Administrator of MARAD. The Eligibility Certification would be based solely on the Administrator's discretion of whether boats meet the bill's standards of an eligible vessel.

*Section 5. Enforcement*

Section 5 would stipulate that an Eligibility Certification issued by MARAD can be considered conclusive evidence to the Department of Homeland Security that a vessel has been authorized to participate in the 34th America's Cup.

*Section 6. Penalty*

Section 6 would state that participating vessels that have not received Eligibility Certifications or are not in compliance shall be subject to penalties provided in chapters 221 and 551 of title 46, United States Code.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.