109TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
109–161

RECREATIONAL MARINE EMPLOYMENT ACT OF 2005

JUNE 30, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 940]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 940) to amend the Longshore and Harbor Workers' Compensation Act to clarify the exemption for recreational vessel support employees, and for other purposes, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Recreational Marine Employment Act of 2005".

SEC. 2. CLARIFICATION OF RECREATIONAL VESSEL WORKER EXEMPTION.

The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) is amended as follows:

(1) Section 2 (33 U.S.C. 902) is amended—

(A) in paragraph (3)—

(i) so that subparagraph (C) reads as follows:

"(C) individuals employed by or at, or engaged in the construction or maintenance of, a recreational marine facility or structure;" and

(ii) so that subparagraph (F) reads as follows:

"(F) individuals employed primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, transport by land, or dismantle a recreational vessel;"; and

(B) by redesignating paragraph (22) as paragraph (24) and inserting after paragraph (21) the following new paragraphs:

"(22) The term 'recreational marine facility or structure' means a place used primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, or dismantle recreational vessels.

"(23) The term 'recreational vessel' means a vessel manufactured primarily for pleasure use.".

PURPOSE

H.R. 940, the "Recreational Marine Employment Act of 2005," clarifies the status of employees in the recreational maritime industry under the Longshore and Harbor Workers' Compensation Act ("LHWCA," the "Longshore Act," or the "Act"). As testimony before the Subcommittee on Workforce Protections has made clear, current law is outdated and arbitrarily imposes inappropriate and illogical requirements on the domestic recreational maritime industry. This in turn puts the industry at a competitive disadvantage to foreign competition. H.R. 940 is intended to address the failings in current law by clarifying the recreational marine exemption to reflect the current state of the industry, the appropriate extension of federal workers' compensation coverage, and the realities of the 21st century global economy. Specifically, the bill extends the Act's current law recreational marine exemption—which is based on a twenty-year old fixed and arbitrary standard—by focusing on the practical and functional operations of the recreational marine industry.

COMMITTEE ACTION

107th Congress

On May 22, 2002, Representative Ric Keller (R–FL) introduced H.R. 4811, the "Recreational Marine Employment Act of 2002." The bill was referred to the Committee on Education and the Workforce Subcommittee on Workforce Protections. No action was taken on the bill prior to the adjournment of the 107th Congress.

108th Congress

On March 18, 2003, Representative Keller introduced H.R. 1329, the "Recreational Marine Employment Act of 2003." The bill was again referred to the Committee on Education and the Workforce Subcommittee on Workforce Protections.

The Subcommittee on Workforce Protections held a hearing on H.R. 1329 on July 15, 2004.[1] At this hearing, the Subcommittee heard testimony from Kristina Hebert, Vice President of Ward's Marine Electrics, a recreational marine company in Fort Lauderdale, Florida, who testified on her own behalf and on behalf of the Marine Industries Association of South Florida; Larry Nelson, Vice President of Westport Shipyard, Inc., a boat building company in Westport, Washington; Ian Greenway of St. Petersburg, Florida, owner of the commercial marine insurance company LIG Marine Managers; and Robert E. McGarrah, Jr., Coordinator for Workers' Compensation for the AFL–CIO in Washington, DC.

[1] See Hearing on H.R. 1329, "The Recreational Marine Employment Act of 2003," before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, Second Session, Serial No. 108–69 (hereinafter "Hearing on H.R. 1329").

109th Congress

On February 17, 2005, Representative Keller introduced H.R. 940, the "Recreational Marine Employment Act of 2005," with 15 cosponsors, including two Democrats. H.R. 940 is substantively identical to H.R. 1329 as introduced in the 108th Congress. In light of the legislative hearing held on H.R. 1329 in July 2004, no legislative hearings were held on H.R. 940.

On March 10, 2005, the Subcommittee on Workforce Protections favorably reported H.R. 940, without amendment, to the Committee on Education and the Workforce by a roll call vote of 6 to 5. On April 13, 2005, the Committee on Education and the Workforce favorably reported the bill, as amended by an amendment in the nature of a substitute offered by Mr. Keller, to the House of Representatives by a roll call vote of 27 to 18.

The amendment in the nature of a substitute adopted by the Committee retained the core provisions contained in H.R. 940 while addressing several concerns raised at Subcommittee markup. Specifically, the substitute amendment: (a) changed the term "principally" to "primarily" within the definitions of recreational vessel and recreational marine facility to more closely track statutory language defining recreational vessels; (b) changed "principally" to "primarily" in the delineation of an employee's duties to comport with statutory and regulatory language regarding the determination of an employee's principal duties under other laws; (c) eliminated a provision within H.R. 940 that would have allowed an employer to qualify for an exemption under the Longshore Act if the employer was simply "in compliance" with state workers' compensation laws; and (d) eliminated a provision unrelated to the Longshore Act that addressed the ability of non-maritime workers to bring tort law claims of "unseaworthiness."

SUMMARY

Congress enacted the Longshore Act to provide workers' compensation coverage to non-seamen maritime workers working on navigable waters who otherwise had no coverage for injuries sustained in the course of their employment. The Act was intended to be the sole remedy for workers' compensation claims for these workers. In 1984, Congress exempted from the Longshore Act certain employees in the recreational boating industry, specifically those employees who built, repaired or dismantled recreational vehicles under 65 feet in length. In doing so, Congress reasoned that: (a) employment in the recreational marine industry was not comparable to employment in the commercial marine industry, and thus such employees were not appropriately included within LHWCA; and (b) injuries suffered by employees during the course of employment in the recreational marine industry would be covered under state workers' compensation laws.

In the twenty years since the 1984 LHWCA amendments, the length of recreational vehicles has increased dramatically. H.R. 940 is intended to update the current-law definition of recreational vessel to reflect these industry changes; rather than setting an arbitrary length limitation, H.R. 940 appropriately defines a recreational vessel with reference to the recreational purpose for which it is manufactured. In addition, recognizing the fundamen-

tally different nature of the work involved and the risk entailed in the broader recreational marine industry (as compared to the commercial shipbuilding industry), H.R. 940 extends the Longshore Act exemption to include those recreational marine employees who construct or maintain recreational marine structures (such as residential docks). Importantly, however, H.R. 940 does not change current law with respect to state workers' compensation—under the bill, as under current law, exemption from the Longshore Act is available only where a maritime employer's employees are subject to coverage under state workers' compensation law.[2]

COMMITTEE VIEWS

Background

In 1917, the U.S. Supreme Court ruled that a state could not extend its workers' compensation system to cover longshoremen injured over the navigable waters of the United States.[3] Thereafter, Congress enacted the Longshore Act, which was intended to resolve the problem of worker coverage for employment activity that occurred on inland navigable waters and thus fell outside the scope of state workers' compensation laws.

The Longshore Act applies to workers loading and unloading cargo, harbor workers, ship repairmen and ship builders, and other longshore occupations. Coverage has also been extended to employees of federal contractors on overseas military, air, or naval bases; individuals on public works contracts performed outside the continental United States; workers employed in non-appropriated fund instrumentalities, such as post exchanges; and employees engaged in operations on the Outer Continental Shelf.

The Longshore Act provides medical benefits, compensation for lost wages, and rehabilitation services to those injured during the course of employment or to those who contract an occupational disease related to their employment. Survivor benefits are also provided if a work-related injury causes the employee's death. Benefits are paid directly by a self-insured employer, an authorized insurance carrier, or in particular circumstances, by a Special Fund administered by the Department of Labor. The Special Fund is funded by fines and penalties levied under the Act; payments by employers for each death case where there is no survivor entitled to the benefits; interest payments on Fund investments; and by far the largest source, payment of annual assessments by self-insured employers and insurance carriers.

The requirement for employers to obtain insurance under the Longshore Act varies from situation to situation, and from state to state. Generally, if an employer has at least one maritime employee

[2] The Committee believes that the Minority's analysis of state workers' compensation law versus federal benefits under LHWCA compared "maximum allowable" benefits under both regimes—such maximum benefits are provided to employees who are paid much more highly than those employed in the recreational marine industry. In support of the Minority's view, during Committee consideration of this legislation, the Minority cited a report prepared by the Congressional Research Service (CRS). To date, the Majority has not been provided a copy of this report and therefore cannot speak to its merits. The Committee restates its view that under H.R. 940, the vast majority of injured employees will fare better—and certainly no worse—than current law.

[3] See *Southern Pacific Co.* v. *Jensen,* 244 U.S. 205 (1917). Subsequent case law has made clear that a state may in fact extend its workers' compensation system to include workers injured over navigable waters, resulting, at times, in cases where an employer is subject to dual coverage requirements (state workers' compensation and the Longshore Act).

working on navigable waters, then that employer is required to obtain insurance under the Longshore Act. The penalties for failing to insure under the Longshore Act include a fine of not more than $10,000, imprisonment, or both, and personal liability jointly with the company for any compensation or benefits which may accrue under Longshore with respect to an injured employee. The program provides over $670 million in monetary, medical and vocational rehabilitation benefits in more than 72,000 cases annually for maritime workers and various other special classes of private industry employees disabled or killed by employment injuries or occupational diseases. The Longshore Act has been amended ten times since 1927, with the most significant changes (summarized below) occurring in 1972 and 1984.

The 1972 amendments

In 1972, Congress amended LHWCA to extend federal workers' compensation coverage to certain maritime workers who were injured on the landward side of the waters' edge (thus not over navigable waters). The amendments extended LHWCA coverage to certain shore-side maritime workers injured as they went between ship and shore. Specifically, the 1972 amendments extended the Act to cover injuries occurring to workers on any adjoining pier, wharf, dry dock, terminal, marine railway or other adjoining area customarily used for loading, unloading, repairing or building a vessel.[4] It also placed limits on third-party suits to reduce multiple liability by employers.[5]

The 1984 amendments

Subsequent to enactment of the 1972 amendments, questions arose as to whether an employee would be covered under state workers' compensation or LHWCA if engaged in maritime work on the landward side of the waters' edge. Similarly, the 1972 amendments had not addressed whether employees working on "recreational vessels" were intended to be covered. Courts, however, had interpreted the Longshore Act to cover the pleasure boat industry, marinas, summer camps, and in some cases persons working far from navigable waters.[6]

In 1984, Congress amended the Act to address these uncertainties. The 1984 amendments specifically excluded certain categories of workers who were not engaged in maritime occupations or who were not exposed to maritime hazards even though they may have been employed by maritime employers. Specifically, the 1984 amendments excluded from Longshore Act coverage: (1) persons performing clerical, data processing, and other office work exclusively; (2) individuals employed by a club, camp, recreational operation, restaurant, museum or retail outlet; (3) those employed by a marina but not engaged in construction work on the marina except for routine maintenance; (4) employees of suppliers, transporters or vendors who are temporarily on the premises of a covered employer but not doing the usual work of that employer; (5)

[4] See U.S. House of Representatives Report No. 92–1441, at 10–11 (1972).

[5] Third-party suits are those that an injured worker may file against a party other than his or her employer (because of, e.g., an unsafe workplace, defective equipment, or other conditions that may have caused the injury). Prior to the 1972 amendments, in certain instances the third party could then recover its losses by bringing suit against the employer.

[6] See *Mississippi Coast Marine, Inc.* v. *Bosarge,* 637 F.2d 994 (5th Cir. 1981).

aquaculture workers; and (6) individuals employed to build, repair, or dismantle recreational vessels under sixty-five feet in length.

Change in the recreational marine industry

Since the 1984 amendments, workers employed to build, repair or dismantle recreational vessels under 65 feet in length have been excluded from coverage under the Longshore Act. Workers working on vessels—recreational or otherwise—of 65 feet or more have been subject to the Act's coverage. In the past 20 years, however, there has been a tremendous growth in the number of recreational boats built as well as an increase in the physical size of recreational boats sold in the United States. Indeed, presently, there are nearly 400,000 boats in the United States measuring 65 feet in length or longer.

The marina and boatyard industries maintain that the hazards to which employees in the recreational marine industry are exposed are more similar to those found in the general construction industry than those found in commercial ship building and shipyard operations. Data from the Occupational Safety and Health Administration (OSHA) support industry's position that recreational marine work is far different than commercial work. For example, for 2002, OSHA data indicates that the serious incident rate for the recreational marine industry is 2.35, whereas the serious incident rate for the commercial industry is 11.1.[7]

In testimony before the Subcommittee on Workforce Protections, Ian Greenway, president of LIG Marine Managers, a provider of commercial marine insurance, refuted the notion that there was an increased safety risk for boats greater than 65 feet in length which justifies the exorbitant expense of Longshore coverage. Mr. Greenway testified that there is no difference in the risks associated with repairing the plumbing, air conditioning, or radio on a 75-foot recreational boat as compared to a 65-foot recreational boat.[8] He further testified that current insurance data demonstrate that claims for these larger vessels are significantly lower: for example, claims for workers on vessels of 65–150 feet are at least 38 percent lower than those on vessels under 65 feet.[9]

Global competition

Any company, marina, boatyard, or subcontractor that services recreational boats 65 feet in length or longer must obtain insurance under the Longshore Act. The Committee is concerned that this has forced many small marinas to obtain both Longshore and state workers' compensation coverage because of the uncertainty of who is covered and who is not.

The marina and boatyard industry estimates that one in five boat projects has migrated from the U.S. to Canada as a direct result of the increased cost of doing business in the U.S. Likewise, the industry in South Florida has seen a large but undocumented number of jobs move to the Bahamas. The evidence suggests that Longshore Act requirements put U.S. businesses at a competitive

[7] "Serious Incidents," as defined by OSHA, are those that involve lost time or work restrictions. The OSHA Recordable Incident Rates measure injuries per 100 employees as a function of the total number of hours worked.

[8] Hearing on H.R. 1329, at 22.

[9] Id.

disadvantage to Canadian foreign competition resulting in domestic job loss.

In testimony before the Subcommittee on Workforce Protections, small business owner Kristina Hebert noted that because of the high costs of purchasing Longshore insurance, U.S. businesses have experienced negative consequences in competing with companies in the Bahamas and Caribbean. As Ms. Hebert testified, one of the main reasons costs are lower is that "employers there do not have to pay the extremely high cost of Longshore coverage and can therefore outbid American businesses." [10]

It has been estimated that it is nearly three times more expensive to insure for the same risk under the Longshore Act than under applicable state workers' compensation systems. Domestic boat builders maintain that the duplicative and added cost of the Longshore Act premiums hinders their ability to expand their workforces. At the July 2004 hearing, Ms. Hebert testified that employers such as Ward's Marine Electric would save approximately $200,000 a year by not having to purchase the unnecessary and duplicative Longshore insurance and agreed with other witnesses that this money could "instead be used to expand our services, increase our employees' wages, and hire more skilled workers." [11] Finally, as Larry Nelson, vice president of administration for Westport Shipyard in Westport, Washington explained to the Subcommittee, "[B]y switching to state workers' compensation coverage, which is two to four times less expensive as Longshore coverage, [ ] small businesses would in many instances use the savings to expand their businesses, expand their workforces and update and enhance their production processes." [12]

Conclusion

H.R. 940 clarifies and extends exemption from the Longshore Act across the broad range of the recreational marine industry. The Committee is concerned that since enactment of the 1984 amendments, the recreational marine industry has seen rapid growth in the number of vessels 65 feet or longer, growth which threatens the vitality and integrity of the 1984 recreational vessel exclusion. The bill reflects the Committee's view that the recreational marine industry is fundamentally different than the commercial shipbuilding industry, irrespective of any arbitrary "footage" limitation applied to any single vessel. Finally, H.R. 940 responds to the intense competitive nature of the recreational marine industry: the bill would help restore U.S. jobs in the recreational boating industry that have been lost to foreign competition overseas, while maintaining all existing state remedies and workers' compensation protections.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This act may be cited as the "Recreational Marine Employment Act of 2005."

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[10] Id. at 11.
[11] Id. at 9.
[12] Id. at 15.

Section 2. Clarification of recreational vessel worker exemption.

Section 2 amends section 2(3) of the Longshore and Harbor Workers' Compensation Act to exempt from Longshore Act coverage: (a) individuals who are employed by or at, or who are engaged in the construction or maintenance of, a recreational marine facility or structure; and (b) individuals who are employed primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, transport by land, or dismantle a recreational vessel. Section 2 defines a "recreational marine facility or structure" as "a place used primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, or dismantle recreational vessels" and defines a "recreational vessel" as a vessel, irrespective of size, that is "manufactured primarily for pleasure use."

EXPLANATION OF AMENDMENTS ADOPTED IN COMMITTEE

The Committee adopted an amendment in the nature of a substitute offered by Representative Keller described herein.

The amendment in the nature of a substitute adopted by the Committee retained the core provisions contained in H.R. 940. The substitute changed the term "principally" to "primarily" within the definition of recreational vessel and recreational marine facility to more closely track statutory language defining recreational vessels.[13] It similarly changed "principally" to "primarily" in the delineation of an employee's duties to comport with common statutory and regulatory language regarding the determination of an employee's principal duties.[14]

The substitute eliminated a provision within H.R. 940 that would have allowed an employer to qualify for an exemption under the Longshore Act if that employer was "in compliance with" state workers' compensation coverage. Under current law, an employer may qualify for an exemption from the Longshore Act only if its employees are subject to state workers' compensation coverage. If no state workers' compensation coverage is in place then the employer is required to provide Longshore coverage. Concern was raised at Subcommittee markup that the "in compliance with" language contained in H.R. 940 as introduced may have resulted in some workers falling through a "gap" in state workers' compensation and Longshore Act coverage. The amendment removes the workers' compensation language that may have inadvertently created such a gap and thus retains current law in this regard.

Finally, the substitute eliminated a provision of the bill unrelated to the Longshore Act that addressed the ability of non-maritime workers to bring tort law claims of "unseaworthiness." This provision raised substantive concern at Subcommittee markup; as it was not fundamentally related to the necessary Longshore Act reforms that H.R. 940 is intended to make, this provision was dropped in the substitute.

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[13] The general provisions of the U.S. Code applicable to vessels and seamen define "recreational vessel" at 46 U.S.C. § 2101(25). The Department of Labor has also used this terminology in regulations implementing the Longshore and Harbors Workers' Compensation Act. See 20 C.F.R. § 701.301(a)(12)(iii)(F) (1985) (defining recreational vessel as one operated primarily for pleasure).

[14] See, e.g., 29 C.F.R. § 541.700 (defining "primary duty" under Fair Labor Standards Act).

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. H.R. 940 clarifies the status of employees in the recreational maritime industry under the Longshore and Harbor Workers' Compensation Act ("LHWCA," the "Longshore Act," or the "Act"). The bill does not restrict legislative branch employees from the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget & Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office and as such the Committee agrees that the bill does not contain any unfunded mandates. See infra.

ROLLCALL VOTES

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 **BILL** H.R. 940 **DATE** April 13, 2005
AMENDMENT NUMBER 2 **Defeated 18 – 25**
SPONSOR/AMENDMENT Ms. Woolsey / amendment regarding state workers' compensation law

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman				X
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE				X
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER				X
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT				X
Mrs. DAVIS				X
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA				X
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	18	25		6

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 BILL H.R. 940 DATE April 13, 2005

H.R. 940 was ordered favorably reported, as amended, by a vote of 27 - 18

SPONSOR/AMENDMENT Mr. Johnson / motion to report the bill to the House with an amendment and with the recommendation that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. SOUDER	X			
Mr. NORWOOD	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER	X			
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. PORTER	X			
Mr. KLINE	X			
Mrs. MUSGRAVE	X			
Mr. INGLIS	X			
Ms. McMORRIS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. JINDAL	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mrs. DRAKE	X			
Mr. KUHL	X			
Mr. MILLER				X
Mr. KILDEE		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT				X
Mrs. DAVIS				X
Ms. McCOLLUM		X		
Mr. DAVIS		X		
Mr. GRIJALVA				X
Mr. VAN HOLLEN		X		
Mr. RYAN		X		
Mr. BISHOP		X		
Mr. BARROW		X		
TOTALS	27	18		4

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII 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. 940 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 29, 2005.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 940, the Recreational Marine Employment Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 940—Recreational Marine Employment Act of 2005

H.R. 940 would amend the Longshore and Harbor Workers' Compensation Act to clarify the exemption for certain workers in the shipbuilding industry. Current law requires special workers' compensation coverage for that industry, with an exemption for employees of companies that build boats less than 65 feet in length. This bill would expand the exemption to all workers in the recreational marine industry, regardless of the length of the vessel.

Most of the insurance premium payments and workers' compensation benefits are paid to and from private insurance companies. However, the Department of Labor (DOL) oversees an account that assesses fines and penalties, makes annual assessments of authorized private insurance carriers, and pays benefits to workers in special circumstances. DOL estimates that payments related to the recreational marine industry into and out of this special fund amount to less than $1 million annually. Therefore, CBO estimates the effects of this legislation on mandatory spending and receipts would be insignificant.

H.R. 940 contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal govern-

ments. Under current law, employers in the recreational marine industry must purchase insurance required by the Longshore and Harbor Workers' Compensation Act. This bill would shift that coverage to policies meeting the requirements of state laws governing workers' compensation.

This estimate was prepared by Christina Hawley Sadoti (for federal costs), Nabeel Alsalam (for the private-sector impact), and Leo Lex (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of House Rule XIII, the goal of H.R. 940 is to clarify the status of employees in the recreational maritime industry under the Longshore and Harbor Workers' Compensation Act ("LHWCA," the "Longshore Act," or the "Act"). The Committee expects the Department of Labor to implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

H.R. 940 amends the Longshore Harbor Workers' Compensation Act, and thus falls within the scope of Congressional powers under Article I, section 8, clause 3 and Article III, section 2, clause 1 of the Constitution of the United States to the same extent as does the Longshore Act.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 940. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 2 OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

* * * * * * *

DEFINITIONS

SEC. 2. When used in this Act—
(1) * * *

* * * * * * *

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

(A) * * *

* * * * * * *

[(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);]

(C) individuals employed by or at, or engaged in the construction or maintenance of, a recreational marine facility or structure;

* * * * * * *

[(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;]

(F) individuals employed primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, transport by land, or dismantle a recreational vessel;

* * * * * * *

(22) The term "recreational marine facility or structure" means a place used primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, or dismantle recreational vessels.

(23) The term "recreational vessel" means a vessel manufactured primarily for pleasure use.

[(22)] *(24)* The singular includes the plural and the masculine includes the feminine and neuter.

MINORITY VIEWS

We oppose H.R. 940, the "Recreational Marine Employment Act of 2005." The effect of this legislation is to substantially diminish the income and living standards of injured workers, too often to poverty levels; and to create much greater uncertainty and consequent litigation regarding the parameters of the Longshore and Harbor Workers' Compensation Act.

PROBLEMS WITH H.R. 940 AS REPORTED BY COMMITTEE

H.R. 940 Imposes Substantial Cuts in Benefits for Injured Workers

While State benefits typically compensate workers at a rate of two-thirds of their weekly income, States typically have much lower benefits ceilings. As consequence, well paid injured workers, such as the highly skilled workers who may be expected to be employed building multi-million dollar yachts, suffer a much greater loss of income under State workers' compensation laws than they do under the Longshore Act.

According to information provided by CRS, a worker who earns $1200 a week ($60,000 a year assuming the person takes two weeks off) who is totally disabled would receive a benefit of $800 a week under the Longshore Act. By contrast, the same worker under Florida's workers' compensation law would only receive $626 a week, almost half of their former income. In North Carolina, the same worker would only receive $688 a week under state law. In Tennessee, the worker would only receive $618 a week under state law. In Mississippi that worker would have only received $341 a week, and in Georgia would only receive a benefit of $425 a week.

The Longshore Act also pays more for "scheduled injuries" which are injuries to specific body parts included in a "schedule" in the workers' compensation statute. For the loss of an arm at the shoulder, for example, a marina worker would receive $321,603 under the Longshore Act. For an identical injury, however, a worker would only receive $121,100.60 in South Carolina and $90,704.39 in the state of Washington.

According to the National Academy of Social Insurance, in 1998 the average temporary total disability benefit payment in sixteen states (Alabama, Iowa, Kentucky, South Carolina, Nebraska, Oklahoma, Maine, North Dakota, Idaho, New Mexico, Georgia, Louisiana, Kansas, South Dakota, Montana and Mississippi) is below the poverty threshold for a family of four. In addition, Utah and Indiana benefits were right at the poverty line for average temporary total disability weekly compensation.[1]

[1] See page 75, "Adequacy of Earnings Replacement in Workers' Compensation Programs, A Report of the Study Panel on Benefit Adequacy of the Workers' Compensation Steering Com-

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Finally, unlike the Longshore program, not a single state workers' compensation program annually indexes benefits for inflation. Hence, the disparity between what an injured worker and family would be awarded under current law, in contrast to H.R. 940, increases over time to the further detriment of injured workers and their families.

H.R. 940 Exempts Those Working on Commercial Vessels from Longshore Coverage

Although the sponsors of H.R. 940 claim the bill only effects recreational vessels, it is much broader. The bill exempts individuals employed by or at or engaged in construction or maintenance of a recreational marine facility. A recreational marine facility is defined as "a place used primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore or dismantle a recreational vessel." If a shipyard is deemed to primarily build or repair recreational vessels, regardless of the size of those vessels, then that yard is exempt from the Longshore Act regardless of the fact that it may also do substantial work on commercial vessels.

The bill exempts "individuals employed primarily to build, repair, test, maintain, accommodate, buy, sell, store, restore, transport by land or dismantle a recreational vessel." A worker who works primarily on recreational vessels is exempt from Longshore coverage even if the employee is injured while working on a commercial vessel.

Anyone employed at a recreational marine facility is exempt even if they are working on a commercial vessel; and any employee who works primarily on recreation vessels is exempt even if they are working at a commercial shipyard on a commercial vessel.

H.R. 940 Exempts Workers who Have Always Been Covered by the Longshore Act Since Its Inception

Those who construct marinas, pile drivers and carpenters, have been covered by the Longshore Act since it was enacted in 1927. When recreational marinas were exempted in 1984, such employees were explicitly excluded from the scope of that exemption. No evidence has ever been offered to the Committee that this work has gotten safer or otherwise should be exempted from the Longshore Act. Nevertheless, H.R. 940 exempts workers engaged in construction of a recreational marine facility.

H.R. 940 Is Unduly Ambiguous Regarding the Size and Definition of a Recreational Vessel

Recreation vessel is defined as a vessel "manufactured primarily for pleasure use" without regard to the size of the vessel. Ships that can only be constructed or repaired in dry docks on navigable waters can nevertheless be deemed recreational vessels. A ship that is also used for commercial purposes is nevertheless a recreational vessel if it is used primarily for pleasure use. A ship that is used exclusively for commercial use may nevertheless be deemed a recreational vessel if the ship was manufactured primarily for

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mittee," National Academy of Social Insurance, H. Allan Hunt, Editor, W.E. Upjohn Institute for Employment Research, 2004.

pleasure use. What is meant by "pleasure use" is also uncertain. Is a cruise liner operated by Carnival Lines a vessel that is operated primarily for pleasure use? What about a yacht owned by a corporation that is used partly to woo customers and partly for the relaxation of executives? How does one determine whether a large yacht will be used as a charter boat, and if so, is it a vessel primarily for pleasure use?

The Burdens Imposed on Injured Workers by H.R. 940 Significantly Outweigh the Bill's Purported Benefits

The justification offered by the Republicans for enacting H.R. 940 is that the reduction in premiums will better enable recreational marinas and recreational yacht builders to compete with foreign competition. However, according to the author of the bill, Mr. Keller, the "employers in the recreational marine industry would save an average of $99,000 per year if they were exempt from the Longshore Act."[2] The estimate for these savings is based on a survey that has never been entered into the record. Even assuming the estimate is accurate, it hardly begins to close the gap between American labor costs and those of Carribean and Chinese workers with whom American yacht builders and marinas compete. In addition, when one considers that a single yacht that is sixty-five feet or more may sell for millions of dollars, the hardships imposed by the bill upon workers are not justifiable.

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[2] See "Statement of Hon. Ric Keller, a Representative in Congress from the State of Florida," in H.R. 1329, Recreational Marine Employment Act of 2003, Hearing Before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, 2nd Session, July 15, 2004, Serial No. 108–69, at page 4.