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SENATE

{ REPORT
{ 110-488

GREAT LAKES LEGACY ACT OF 2008

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 2994]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2994) to amend the Federal Water Pollution Control Act to provide for the remediation of sediment contamination in areas of concern, reports favorably thereon and recommends that the bill do pass.

PURPOSES OF THE LEGISLATION

S. 2994 reauthorizes the Great Lakes Legacy Act of 2002. S. 2994 expands the existing program to improve environmental and water quality in the Great Lakes by reducing contaminated sediments in the Lakes.

GENERAL STATEMENT AND BACKGROUND

The Great Lakes hold one-fifth of the world's freshwater and comprise 95 percent of America's fresh surface water. They supply drinking water to millions of people and provide a \$5 billion fishery. However, as the Midwest industrialized over the last two centuries, contaminated sediments accumulated in the Great Lakes. Over time, contaminated sediments release pollutants degrading water quality and harming fish and other wildlife.

To help address this problem, Congress enacted the Great Lakes Legacy Act of 2002 to remove contaminated sediments from Areas of Concern—sites in the Great Lakes that fail to meet the water quality goals established by agreement between the United States and Canada in the Great Lakes Water Quality Agreement. Since

this cleanup program was created in 2002, an estimated 800,000 cubic yards of contaminated sediments have been removed from the Lakes.

To continue tackling this considerable problem and removing contaminated sediments from the remaining Areas of Concern, this bill would expand the program. Specifically, the bill increases authorizations for the program from \$50 million to \$150 million for each of fiscal years 2009 through 2013. It also includes provisions to give the EPA greater flexibility to manage and distribute funds, and will make some projects eligible for habitat restoration under the program.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the “Great Lakes Legacy Act of 2008”.

Sec. 2. Remediation of sediment contamination in areas of concern

Section 2 makes certain demonstration or pilot projects eligible under the program; makes aquatic habitat restoration eligible under the program after remediation; prioritizes certain projects for funding; and permits advance payment by the non-federal sponsor in certain circumstances; authorizes \$150,000,000 for each of fiscal years 2009 through 2013 to carry out the program.

Sec. 3. Public information program

Section 3 authorizes the Administrator to carry out a public information and participation program, including by providing grants to States, Indian tribes, corporations, nongovernmental organizations, and other appropriate entities, for public information and outreach activities relating to the remediation of contaminated sediment in areas of concern that are located wholly or partially in the United States.

Sec. 4. Research and development program

Section 4 authorizes a research and development program through 2013.

LEGISLATIVE HISTORY

S. 2994 was introduced by Senator Levin of Michigan. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The Committee met on July 31, 2008, when S. 2994 was ordered favorably reported without amendment by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee notes that the Congressional Budget Office has found that the bill “contains no private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.” In other words, its costs on private entities would be below the UMRA threshold.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has said that “S. 2994 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments by extending EPA programs to clean up sediment contamination in the Great Lakes and by continuing an existing grant program to provide public information about such contamination. Any costs those governments might incur, including matching funds, would result from complying with conditions of federal aid.”

CONGRESSIONAL BUDGET OFFICE ESTIMATE

SEPTEMBER 17, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2994, the Great Lakes Legacy Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 2994—Great Lakes Legacy Act of 2008

Summary: S. 2994 would reauthorize the Environmental Protection Agency (EPA), in conjunction with nonfederal sponsors, to carry out projects aimed at cleaning up certain areas of the Great Lakes where contamination has settled into sediment at the bottom of the lakes. The bill would authorize the appropriation of \$750 million over the 2009–2013 period to EPA for that purpose. In addition, the bill would authorize the appropriation of \$15 million over the five-year period for EPA to conduct research on the development and use of innovative methods for cleaning up the Great Lakes.

Assuming appropriation of the specified amounts, CBO estimates that implementing this legislation would cost \$629 million over the 2009–2013 period. Enacting S. 2994 would not affect direct spending or receipts.

S. 2994 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that implementing the bill would cost \$629 million over the 2009–2013 period, assuming appropriation of the amounts authorized for each year. Those estimated outlays are based on historical spending patterns for similar activities. The estimated budgetary impact of S. 2994 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
EPA Funding for Clean-up Projects:						
Authorization Level	150	150	150	150	150	750
Estimated Outlays	60	120	138	147	150	615
Research and Development:						
Authorization Level	3	3	3	3	3	15
Estimated Outlays	2	3	3	3	3	14
Total Proposed Changes:						
Authorization Level	153	153	153	153	153	765
Estimated Outlays	62	123	141	150	153	629

Intergovernmental and private-sector impact: S. 2994 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments by extending EPA programs to clean up sediment contamination in the Great Lakes and by continuing an existing grant program to provide public information about such contamination. Any costs those governments might incur, including matching funds, would result from complying with conditions of federal aid.

Previous CBO estimate: On August 8, 2008, CBO transmitted a cost estimate for H.R. 6460 as ordered reported by the House Committee on Transportation and Infrastructure on July 31, 2008. Both S. 2994 and H.R. 6460 would reauthorize EPA’s grant program for the remediation of sediment contamination in the Great Lakes. However, S. 2994 would authorize the appropriation of a smaller amount for research and development activities. This difference between the two bills is reflected in the cost estimates.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Burke Doherty and Neil Hood. Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 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 matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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FEDERAL WATER POLLUTION CONTROL ACT

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SEC. 101. (a) * * *

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SEC. 118. GREAT LAKES.

(a) * * *

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(c) GREAT LAKES MANAGEMENT.—

(1) FUNCTIONS.—* * *

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(12) REMEDIATION OF SEDIMENT CONTAMINATION IN AREAS OF CONCERN.—

(A) IN GENERAL.—In accordance with this paragraph, the Administrator, acting through the Program Office, may carry out projects that meet the requirements of subparagraph (B).

(B) ELIGIBLE PROJECTS.—A project meets the requirements of this subparagraph if the project is to be carried out in an area of concern located wholly or partially in the United States and the project—

[(ii)] (i) subject to subparagraph (D), implements a plan to remediate contaminated sediment; [or]

[(iii)] (ii) prevents further or renewed contamination of sediment.

(iii) is a demonstration or pilot project that uses innovative approaches, technologies, or techniques for the remediation of sediment contamination;

(iv) restores aquatic habitat after remediation; or

[(i)] (v) monitors or evaluates contaminated sediment;

[(C) PRIORITY.—In selecting projects to carry out under this paragraph, the Administrator shall give priority to a project that—

[(i) constitutes remedial action for contaminated sediment;

[(ii)(I) has been identified in a Remedial Action Plan submitted under paragraph (3); and

[(II) is ready to be implemented;

[(iii) will use an innovative approach, technology, or technique that may provide greater environmental benefits, or equivalent environmental benefits at a reduced cost; or

[(iv) includes remediation to be commenced not later than 1 year after the date of receipt of funds for the project.]

(C) PRIORITY.—

(i) IN GENERAL.—In selecting projects to carry out under this paragraph, the Administrator shall give priority to a project that—

(I) constitutes remedial action for contaminated sediment;

(II)(aa) has been identified in a remedial action plan submitted under paragraph (3); and

(bb) is ready to be implemented;

(III) will use an innovative approach, technology, or technique that may provide greater environmental benefits, or equivalent environmental benefits at a reduced cost; or

(IV) includes remediation to be commenced not later than 1 year after the date of receipt of funds for the project.

(ii) ENVIRONMENTAL SIGNIFICANCE.—Notwithstanding any regulation promulgated or guidance

issued to implement this section, the Administrator may provide additional consideration to a project that is—

- (I) funded by a potentially responsible party; and
- (II) determined to be of greater environmental significance than a competing proposal.

(D) LIMITATION.—The Administrator may not carry out a project under this paragraph for remediation of contaminated sediments located in an area of concern—

- (i) if an evaluation of remedial alternatives for the area of concern has not been conducted, including a review of the short-term and long-term effects of the alternatives on human health and the environment; or
- (ii) if the Administrator determines that the area of concern is likely to suffer significant further or renewed contamination from existing sources of pollutants causing sediment contamination following completion of the project.

(E) NON-FEDERAL SHARE.—

(i) IN GENERAL.—The non-Federal share of the cost of a project carried out under this paragraph shall be at least 35 percent.

(ii) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost of a project carried out under this paragraph may include the value of in-kind services contributed by a non-Federal sponsor.

(iii) NON-FEDERAL SHARE.—The non-Federal share of the cost of a project carried out under this paragraph—

(I) may include monies paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree (*including any in-kind services or funds provided in implementing the administrative order on consent or judicial consent decree*); **but**

(II) may include funds paid, or the value of any in-kind service performed, by a potentially responsible party, subject to the condition that the eligibility of the potentially responsible party to contribute to the non-Federal share is evaluated on the merits on a site-specific basis, in the context of added value, such as at sites at which an orphan share exists or the remedy will be enhanced (such as where the qualitative or quantitative scope of the remediation is improved, innovative methods are employed, or the remediation will be accelerated); *but*

[(II)] (III) may not include any funds paid pursuant to, or the value of any in-kind service performed under, a unilateral administrative order or court order.

(iv) OPERATION AND MAINTENANCE.—The non-Federal share of the cost of the operation and maintenance

nance of a project carried out under this paragraph shall be 100 percent.

(v) PAYMENT AND RETENTION OF NON-FEDERAL SHARE.—*The non-Federal sponsor for a project under this paragraph may pay to the Administrator, for retention and use by the Administrator in carrying out the project, the non-Federal share of the cost of the project.*

[(F) MAINTENANCE OF EFFORT.—The Administrator may not carry out a project under this paragraph unless the non-Federal sponsor enters into such agreements with the Administrator as the Administrator may require to ensure that the non-Federal sponsor will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the project is located at or above the average level of such expenditures in the 2 fiscal years preceding the date on which the project is initiated.]

[(G) (F) COORDINATION.—In carrying out projects under this paragraph, the Administrator shall coordinate with the Secretary of the Army, and with the Governors of States in which the projects are located, to ensure that Federal and State assistance for remediation in areas of concern is used as efficiently as practicable.

(G) ADVANCE PAYMENT AND REIMBURSEMENT COSTS.—*The Administrator, acting through the Program Office, may enter into an agreement with a non-Federal sponsor to carry out a project under this paragraph under which the non-Federal sponsor may, as appropriate—*

(i) *pay in advance the non-Federal share of the cost of the project; and*

(ii) *receive from the Administrator reimbursement for amounts (other than the non-Federal share) expended by the non-Federal sponsor for the project.*

[(H) DEFINITION OF POTENTIALLY RESPONSIBLE PARTY.—*In this paragraph, the term “potentially responsible party” means an individual or entity that may be liable under any Federal or State environmental remediation law (including regulations) with respect to a project carried out under this paragraph.*

[(H) (I) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph **[\$50,000,000 for each of fiscal years 2004 through 2008]** *\$150,000,000 for each of fiscal years 2009 through 2013.*

(ii) AVAILABILITY.—Funds made available under clause (i) shall remain available until expended.

(13) PUBLIC INFORMATION AND PARTICIPATION PROGRAM.—

[(A) IN GENERAL.—The Administrator, acting through the Program Office and in coordination with States, Indian tribes, local governments, and other entities, may carry out a public information program to provide information relating to the remediation of contaminated sediment to

the public in areas of concern that are located wholly or partially in the United States.】

(A) *IN GENERAL.*—*The Administrator, acting through the Program Office and in coordination with States, Indian tribes, local governments, and other entities, shall carry out a public information and participation program, including by providing grants to States, Indian tribes, corporations, nongovernmental organizations, and other appropriate entities, for the provision to the public of information and outreach activities relating to the remediation of contaminated sediment in areas of concern that are located wholly or partially in the United States.*

(B) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this paragraph \$1,000,000 for each of fiscal years **【2004 through 2008】** *2009 through 2013.*

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TITLE I—GREAT LAKES

SEC. 101. SHORT TITLE.

This title may be cited as the “Great Lakes Legacy Act of 2002”.

SEC. 102. REPORT ON REMEDIAL ACTION PLANS.

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SEC. 106. RESEARCH AND DEVELOPMENT PROGRAM.

(a) *IN GENERAL.*—In coordination with other Federal, State, and local officials, the Administrator of the Environmental Protection Agency may conduct research on the development and use of innovative approaches, technologies, and techniques for the remediation of sediment contamination in areas of concern that are located wholly or partially in the United States.

(b) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—In addition to amounts authorized under other laws, there is authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years **【2004 through 2008】** *2009 through 2013.*

(2) *AVAILABILITY.*—Funds appropriated under paragraph (1) shall remain available until expended.

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