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110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
110–735

TO AMEND THE WILD AND SCENIC RIVERS ACT TO DESIGNATE SEGMENTS OF THE TAUNTON RIVER IN THE COMMONWEALTH OF MASSACHUSETTS AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

JULY 8, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 415]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 415) to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the Commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System, 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. DESIGNATION OF TAUNTON RIVER, MASSACHUSETTS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

"(____) TAUNTON RIVER, MASSACHUSETTS.—The main stem of the Taunton River from its headwaters at the confluence of the Town and Matfield Rivers in the Town of Bridgewater downstream 40 miles to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, to be administered by the Secretary of the Interior in cooperation with the Taunton River Stewardship Council as follows:

"(A) The 18-mile segment from the confluence of the Town and Matfield Rivers to Route 24 in the Town of Raynham, as a scenic river.

"(B) The 5-mile segment from Route 24 to 0.5 miles below Weir Bridge in the City of Taunton, as a recreational river.

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"(C) The 8-mile segment from 0.5 miles below Weir Bridge to Muddy Cove in the Town of Dighton, as a scenic river.

"(D) The 9-mile segment from Muddy Cove to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, as a recreational river.".

SEC. 2. MANAGEMENT OF TAUNTON RIVER, MASSACHUSETTS.

(a) TAUNTON RIVER STEWARDSHIP PLAN.—

(1) IN GENERAL.—Each river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act shall be managed in accordance with the Taunton River Stewardship Plan, dated July 2005 (including any amendment to the Taunton River Stewardship Plan that the Secretary of the Interior (referred to in this section as the "Secretary") determines to be consistent with this Act).

(2) EFFECT.—The Taunton River Stewardship Plan described in paragraph (1) shall be considered to satisfy each requirement relating to the comprehensive management plan required under section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

(b) COOPERATIVE AGREEMENTS.—To provide for the long-term protection, preservation, and enhancement of each river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act, pursuant to sections 10(e) and 11(b)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e) and 1282(b)(1)), the Secretary may enter into cooperative agreements (which may include provisions for financial and other assistance) with—

(1) the Commonwealth of Massachusetts (including political subdivisions of the Commonwealth of Massachusetts);

(2) the Taunton River Stewardship Council; and

(3) any appropriate nonprofit organization, as determined by the Secretary.

(c) RELATION TO NATIONAL PARK SYSTEM.—Notwithstanding section 10(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), each river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act shall not be—

(1) administered as a unit of the National Park System; or

(2) subject to the laws (including regulations) that govern the administration of the National Park System.

(d) LAND MANAGEMENT.—

(1) ZONING ORDINANCES.—The zoning ordinances adopted by the Towns of Bridgewater, Halifax, Middleborough, Raynham, Berkley, Dighton, Freetown, and Somerset, and the Cities of Taunton and Fall River, Massachusetts (including any provision of the zoning ordinances relating to the conservation of floodplains, wetlands, and watercourses associated with any river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act), shall be considered to satisfy each standard and requirement described in section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)).

(2) VILLAGES.—For the purpose of section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)), each town described in paragraph (1) shall be considered to be a village.

(3) ACQUISITION OF LAND.—

(A) LIMITATION OF AUTHORITY OF SECRETARY.—With respect to each river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act, the Secretary may only acquire parcels of land—

(i) by donation; or

(ii) with the consent of the owner of the parcel of land.

(B) PROHIBITION RELATING TO ACQUISITION OF LAND BY CONDEMNATION.—In accordance with section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)), with respect to each river segment added to section 3(a) of the Wild and Scenic Rivers Act by section 1 of this Act, the Secretary may not acquire any parcel of land by condemnation.

PURPOSE OF THE BILL

The purpose of H.R. 415 is to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the Commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System.

BACKGROUND AND NEED FOR LEGISLATION

The 106th Congress authorized a study of a roughly 30-mile segment of the Taunton River in southeastern Massachusetts (Public Law 106–318) to determine whether the river is eligible for designation under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). In response to local petitions, and a request from three Members of the Massachusetts Congressional Delegation, the study was later expanded to include a roughly ten-mile section of the Lower Taunton River.

The National Park Service released a draft report in June 2007, finding that the river is eligible and identifying designation of the entire 40-mile segment as the environmentally preferred alternative.

H.R. 415 amends section 3(a) of the Wild and Scenic Rivers Act to add the Taunton River to the list of rivers designated under the Act. Specifically, the bill would designate "the segment downstream from the headwaters, from the confluence of the Town River and the Matfield River in Bridgewater, to the Mount Hope Bay in the city of Fall River, Massachusetts."

In 2005, the Federal Energy Regulatory Commission gave preliminary approval to Weaver's Cove Energy, a subsidiary of the Hess Corporation, to construct a liquefied natural gas (LNG) terminal in Fall River on the bank of the Taunton River. However, the United States Coast Guard recently found that the segment of the Taunton near the proposed terminal would be too difficult for LNG tankers to navigate and determined that the river was unsuitable for an LNG terminal. That finding has been upheld on appeal. So, while designation of the Taunton under the Wild and Scenic Rivers Act would likely prohibit the terminal project from receiving a federal license or assistance, this issue is mooted by the Coast Guard's ruling.

COMMITTEE ACTION

H.R. 415 was introduced on January 11, 2007 by Representative Barney Frank (D–MA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests, and Public Lands. On October 30, 2007, the Subcommittee held a hearing on H.R. 415.

On June 25, 2008, the Subcommittee was discharged from further consideration of the legislation and the Full Natural Resources Committee met to consider the bill. Subcommittee Chairman Raúl Grijalva (D–AZ) offered an amendment in the nature of a substitute. Subcommittee Ranking Member Rob Bishop (R–UT) offered five amendments en bloc dealing with property rights to the substitute. The Bishop en bloc amendments were not agreed to by voice vote. The Grijalva substitute was then agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Designation of Taunton River, Massachusetts

Section 1 amends section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) to add the Taunton River. Twenty-six miles of

the river are designated as "scenic," while fourteen miles are designated as "recreational."

Section 2. Management of the Taunton River, Massachusetts

Section 2(a) specifies that the river shall be managed in accordance with the Taunton River Stewardship Plan. Section 2(b) authorizes the Secretary of the Interior to enter into cooperative agreements with the State, the Taunton River Stewardship Council and appropriate non-profit organizations to "provide for the long-term protection, preservation, and enhancement" of the river. Section 2(c) specifies that the Taunton will not be managed as a unit of the National Park System. Finally, section 2(d) makes clear that local zoning ordinances in place along the river are sufficient to prohibit any condemnation authority under the Wild and Scenic Rivers Act. The section then goes on to specifically prohibit condemnation.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. 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 which would be incurred in carrying out this bill. 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 of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the Commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 415—A bill to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System

H.R. 415 would designate four segments of the Taunton River in Massachusetts as scenic or recreational rivers under the Wild and Scenic Rivers Act. The bill would authorize the Secretary of the Interior to execute cooperative agreements with Massachusetts and local nonprofit organizations to manage the newly designated segments, which encompass about 40 miles of the river between Bridgewater and Fall River. Based on information provided by the National Park Service and assuming the availability of appropriated funds, CBO estimates that the agency would spend about $150,000 a year to manage the designated areas. Enacting H.R. 415 would not affect direct spending or revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On May 16, 2008, CBO transmitted a cost estimate for S. 868, a bill to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System. S. 868 was ordered reported by the Senate Committee on Energy and Natural Resources on May 7, 2008. The two versions of the legislation are very similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 415 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

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SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * * * *

(____) TAUNTON RIVER, MASSACHUSETTS.—The main stem of the Taunton River from its headwaters at the confluence of the Town and Matfield Rivers in the Town of Bridgewater downstream 40 miles to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, to be administered by the Secretary of the Interior in cooperation with the Taunton River Stewardship Council as follows:

(A) The 18-mile segment from the confluence of the Town and Matfield Rivers to Route 24 in the Town of Raynham, as a scenic river.

(B) The 5-mile segment from Route 24 to 0.5 miles below Weir Bridge in the City of Taunton, as a recreational river.

(C) The 8-mile segment from 0.5 miles below Weir Bridge to Muddy Cove in the Town of Dighton, as a scenic river.

(D) The 9-mile segment from Muddy Cove to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, as a recreational river.

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DISSENTING VIEWS

H.R. 415 is a shameful abuse of the Wild and Scenic Rivers Act. We recognize that the Commonwealth of Massachusetts does not have the same understanding of property rights as do States in the West, and we also recognize its right to place itself under additional regulatory burdens. However, we must oppose this bill because it exacerbates the energy crisis at a time when we should be expanding our ability to provide clean, reliable sources of fuel.

Many Members of Congress may not be aware of the unique nature of the Taunton River. While the upper segment of the River has some of the characteristics you may attribute to a "wild" or "scenic" river, the lower portion is highly industrialized. In fact, the National Park Service stated this would be the "most industrialized" Wild and Scenic River ever. What beautiful scenery should one expect to find on a canoe trip down the Lower Taunton? Among other sights, you will see power plants, oil refineries, vessel repair docks, shipyards, dilapidated bridges, a battleship museum, yacht clubs, a designated port area, street lights, a hair salon, and even a McDonald's.

So why is this area targeted for designation? Proponents of the designation know that a designation under the Wild and Scenic Rivers Act will stop the planned liquefied natural gas terminal at Weaver's Cove. Natural gas is a clean-burning source of energy that is desperately needed as our crisis continues to deepen. As previously stated, New England can do whatever damage it sees fit to itself (although come February, this source of home heating would be most welcome), but to punish the rest of the country by eliminating yet another source of energy is unacceptable.

So how did it come to pass that this lower, "rustic" segment of the Taunton River was found eligible for designation? It appears the National Park Service and local environmental zealots found a loophole. This portion of the River is being designated for its "recreational values." The only requirement for this designation is that the river be "free-flowing." In other words, if gravity is pulling the water, it is free-flowing and therefore can be protected under the Wild and Scenic Rivers Act.

When the Park Service studied the Taunton River, it came up with several alternatives. One alternative would have designated most of the River, but left the inappropriate areas out. The alternative included in this bill is known as the "environmentally preferred alternative." During the Subcommittee on National Parks, Forests and Public Lands' hearing on this bill, Subcommittee Ranking Republican Rob Bishop asked the Park Service official who wrote the report what "environmentally preferred alternative" means. His response surprised Congressman Bishop to the point where he had to ask him to repeat it. The Park Service witness stated that the environmentally preferred alternative "is what the

river would choose if it could speak." We know that we have Members of the Natural Resources Committee who can speak for Polar Bears, but now we have a government agency interpreting the will of a river. This bill goes beyond the ridiculous.

In the Natural Resources Committee markup, amendments were offered that would have allowed the Park Service to impose its federal zoning regulations in accordance with the will of the people of the Commonwealth but would have excluded the areas that have no business being described as "wild" or "scenic." Unfortunately, these and other private property protections were flatly refused by the Democrats.

It is our hope that a thorough debate under an open rule on the House Floor will provide Members the opportunity to reinstate some logical evaluation of this designation by protecting property rights and access to clean, affordable energy.

In the meantime, we strongly oppose this bill, as should every American concerned about the high cost of energy in this country.

DON YOUNG.
ROB BISHOP.

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