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DETROIT RIVER INTERNATIONAL WILDLIFE REFUGE ESTABLISHMENT ACT

DECEMBER 7, 2001.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 835]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 835) to establish the Detroit River International Wildlife Refuge in the State of Michigan, and for other purposes, having considered the same reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

The National Wildlife Refuge System is the most comprehensive system of lands devoted to wildlife protection and management in the world. Currently, there are 526 refuges in the United States and territories, providing important habitat for 700 bird species, 220 mammal species, 250 species of amphibians and reptiles, and over 200 fish species. The refuges range in size from less than one acre at the Mile Lac National Wildlife Refuge in Minnesota, to 19.2 million acres in the Arctic National Wildlife Refuge in Alaska. Each year the refuge system attracts more than 34 million visitors who participate in a variety of recreational activities including observing and photographing wildlife, fishing, hunting and taking part in system-sponsored educational programs.

The Detroit River, which connects the Upper and Lower Great Lakes, is an international waterway that flows through a metropolitan region of over five million people. The Detroit River originally had extensive marshes along its banks and expansive upland

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habitat supporting abundant wildlife. However, an estimated 95 percent of the original wetlands have been lost due to development.

The boundaries begin at the point in Michigan directly across from the northernmost point of Ojibway Shores, and extend to the southern boundary of Sterling State Park. This area contains shipping channels, numerous shoals that support dense stands of aquatic plants, and many islands, five of which are Canadian. These numerous distinct channels and other unique habitats attract and sustain more than 29 species of waterfowl and 65 aquatic species. In addition, this area serves as a major migration corridor for a variety of wildlife.

OBJECTIVES OF THE LEGISLATION

This legislation establishes the Detroit River International Wildlife Refuge in the area of the Lower Detroit River defined as the downstream reach of the river from the confluence of the Rouge River to the mouth of Lake Erie. The proposed refuge would protect remaining high-quality fish and wildlife habitats, authorize international efforts to conserve, restore, and manage the fish and wildlife habitats both in Canada and the United States, and encourage cooperation to promote public awareness of the resources of the Detroit River. The existing Wyandotte National Wildlife Refuge is included within these boundaries, and will become part of the Detroit River International Wildlife Refuge. All federal property located within the new boundary will fall under the jurisdiction of the Secretary of the Interior. Any private lands within the refuge boundary may only be acquired with consent of the owner through purchase or exchange of land, water, or other interests, including conservation easements.

The Detroit River International Wildlife Refuge will be managed in accordance with the National Wildlife Refuge System Improvement Act of 1997, and provide opportunities for compatible fish and wildlife dependent recreation. Accordingly, activities such as hunting, fishing, wildlife observation, photography, and environmental education and interpretation, will be priority public uses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Act may be cited as the "Detroit River International Wildlife Refuge Establishment Act".

Section 2. Findings

This Section elaborates on the need for establishing the Detroit River International Wildlife Refuge because the Detroit River:

- links the upper and lower Great Lakes, as well as the United States and Canada;
- has unique channels, shoals, islands and habitats;
- is a major migration corridor for fish, butterflies, and raptors and other birds and waterfowl, as well as a breeding area for about 150 species of birds;
- provides diverse biota and habitats;
- has lost over 95 percent of its costal wetland habitat; and

- because protection of the remaining wildlife habitats and restoration of degraded wildlife habitats is essential to sustaining the quality of life enjoyed by people living along the Detroit River.

Section 3. Definitions

This Section defines the Detroit River, Refuge, Secretary and State. For purposes of this Act, Detroit River means the land and water within the area described in Section 4; Refuge means the Detroit River International Wildlife Refuge established by Section 4; Secretary means the Secretary of the Interior; and State means the State of Michigan.

Section 4. Establishment of Refuge

Subsection (a) establishes the boundaries for the Detroit River International Wildlife Refuge, as depicted on the map entitled "Detroit River International Wildlife Refuge Proposed" and dated July 30, 2001.

Subsection (b) requires the Secretary to keep a map of the refuge available for inspection in appropriate offices of the U.S. Fish and Wildlife Service.

Subsection (c) includes the Wyandotte National Wildlife Refuge in the newly created Detroit River International Wildlife Refuge and repeals the law establishing the Wyandotte Refuge.

Subsection (d) gives the Secretary discretionary authority to revise the Refuge boundaries as appropriate.

Subsection (e) allows the Secretary to acquire by donation, purchase with donated or appropriated funds, or exchange the land, water, and interests in land or water within the Refuge only from willing sellers.

Subsection (f) allows the property located within the Refuge that is under the administrative jurisdiction of another Federal agency, to be transferred without consideration to the administrative jurisdiction of the Secretary.

Section 5. Administration

Subsection (a) authorizes the Secretary to administer the Detroit River International Wildlife Refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 and gives the Secretary discretionary authority to use other statutory authority to carry out this Act.

Subsection (b) directs the Secretary to conserve, restore and enhance the native aquatic and terrestrial community characteristic of the Detroit River.

Subsection (c) establishes the purposes of the Refuge to be: protecting the remaining high-quality fish and wildlife habitats of the Detroit River; restoring and enhancing degraded wildlife habitats associated with the river; cooperating in international efforts to conserve, restore, and manage the fish and wildlife habitats associated with the Detroit River in the United States and Canada; and encouraging cooperation in facilitating partnerships among the U.S. Fish and Wildlife Service, Canadian national and provincial authorities, State and local governments, local communities in the United States and in Canada, conservation organizations and other non-Federal entities.

Subsection (d) gives priority to uses of the Refuge to fish and wildlife oriented recreation to those opportunities under the National Wildlife Refuge System Administration Act of 1966 and the National Wildlife Refuge System Improvement Act of 1998.

Subsection (e) allows hunting and fishing within the Refuge in accordance with Federal and State law and allows the Secretary to establish zones where and times when hunting or fishing shall not be permitted. This limitation would be based on public safety, administration, fish and wildlife management or public use and enjoyment. Such permits or prohibitions must be in consultation with the State fish and wildlife agency.

Subsection (f) gives the Secretary discretionary authority to enter into cooperative agreements with non-Federal entities to manage the land or water of the Refuge and to promote public awareness of the resources of the Refuge and encourage public participation in the conservation of the resources of the Refuge.

Subsection (g) directs the Secretary to encourage the State to provide funding for acquisition and development of trails within the Refuge.

Section 6. Indemnification

Subsection (a) authorizes the Secretary to hold harmless, defend, and indemnify any person who donates property for the Refuge from and against any suit, demand, or action, liability, judgment, cost or fee arising from any hazardous substance, pollutant, or contaminant on the property. The State must determine that the property meets applicable state standards and the Secretary must determine, after public review and comment, that the property will further the purposes of the Refuge and is in the public interest.

Subsection (b) requires the Secretary to consider whether the benefits to the United States of acquiring the real property concerned outweigh the risks associated with known or potential contamination.

Subsection (c) allows the Secretary to require any additional terms and conditions in connection with granting indemnification as he considers appropriate to protect the interest of the United States.

Subsection (d) defines Secretary as the Secretary of the Interior acting through the Director of the U.S. Fish and Wildlife Service.

Section 7. Authorization of Appropriations

This Section authorizes such sums as are necessary for acquisition of land, water, and interests in land or water within the Refuge and for the development, operation, and maintenance of the Refuge.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 835 on November 8, 2001. The committee agreed to an amendment by Senator Jeffords by a voice vote and agreed to the bill as amended by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 835 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S.835 would impose no unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

S. 835, Detroit River International Wildlife Refuge Establishment Act, as ordered reported by the Senate Committee on Environment and Public Works on November 8, 2001

SUMMARY

S. 835 would establish the Detroit River International Wildlife Refuge in Michigan and Canada. Assuming appropriation of the necessary amounts, CBO estimates that initial costs to establish the new refuge would be between $13 million and $21 million over the five years following enactment. Recurring costs to administer the refuge would be about $0.7 million annually, also assuming appropriation of the necessary amounts. Other costs of implementing S. 835, such as environmental cleanup and restoration, are uncertain but could reach many times the initial investment over several years. Enacting this legislation would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The bill 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.

MAJOR PROVISIONS

The Detroit River International Wildlife Refuge would encompass over 5,400 acres of land around the Detroit River, including the existing Wyandotte National Wildlife Refuge. The bill would authorize the U.S. Fish and Wildlife Service (USFWS) to acquire, by donation, purchase, or exchange, land and other interests within the new boundary. In addition to managing federally owned acreage within the refuge, the USFWS could execute cooperative agreements for the management of refuge lands that remain in state, local, or private ownership. To carry out these activities, the bill would authorize the appropriation of whatever sums are necessary. Finally, S. 835 would authorize the Secretary of the Interior to indemnify persons who donate refuge lands to the federal government from any liability or cost due to the presence of hazardous substances or other pollution on this property.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The initial $13 million to $21 million cost of implementing S. 835 would cover activities such as planning, land acquisition, and basic development. CBO estimates that planning (including the preparation of conservation plan documents, environmental assessments, and studies) would cost about $1 million over the first two years. Land acquisition costs are uncertain, but would probably be between $5 million and $10 million over five years. (CBO expects that the USFWS would not purchase much of the 5,400 acres within the refuge boundary because most of this land is either located in Canada, already protected by government agencies or nonprofit organizations, or badly contaminated with pollutants.)

In addition to these initial costs, CBO estimates that developing at least one site for visitor and administrative use (including demolishing existing man-made structures and building trails, parking lots, a visitor center, and other facilities) would cost between $7 million and $10 million. We estimate that managing the new refuge would increase USFWS operating costs by about $700,000 annually. All of these costs would be subject to the appropriation of the necessary amounts.

Finally, implementing the legislation could result in significant costs for land restoration, decontamination, and indemnification for current property owners . Such costs are uncertain because they would depend on how much land the USFWS would acquire, the condition of that land for conservation purposes, and the type and extent of contamination present (if any).

Restoration Costs

CBO expects that a significant portion of land within the proposed refuge would require some level of restoration. The USFWS would be responsible for all of these costs on any lands it acquires and also could share the cost of restoring nonfederal property within the refuge under cooperative agreements with landowners. The total costs of these activities cannot be estimated in the absence of a land acquisition plan for the refuge and a specific environmental assessment of each parcel. Land restoration costs could be significant, however the cost of similar work undertaken by the USFWS and by nonprofit organizations has ranged from $500 to $1,000 per acre. Restoration activities could include removing old seawalls on riverfront property, demolishing buildings and other facilities at former industrial sites, re-creating wetlands, and re-seeding wetlands and grasslands with local plant species.

Decontamination and Indemnification Costs

While CBO assumes that the USFWS would try to avoid acquiring land for the refuge that is contaminated with hazardous waste or other pollutants, acquisition of such land is authorized by the bill and could occur. Estimated costs to clean up contaminated sites vary widely. Previous cleanup projects at other refuges where the USFWS has discovered contamination have cost the agency anywhere from $3,000 per acre to over $1 million per acre. Cleanup activities range from capping contaminants under barriers to more

expensive solutions, such as removing or incinerating contaminated soil.

Finally, the federal government could incur significant additional costs if the Secretary of the Interior accepts donations of contaminated land and agrees to indemnify the donors against any potential liability resulting from that contamination. If the donated land is contaminated and the donor was held to be liable, the federal government would ultimately pay the full costs of any judgment awarded because of contamination. Because it is impossible to predict the likelihood or outcome of such a sequence of events, CBO cannot estimate the costs of indemnification.

Pay-As-You-Go Considerations: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 835 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

PREVIOUS CBO COST ESTIMATE

On October 29, 2001, CBO prepared a cost estimate for H.R. 1230, the Detroit River International Wildlife Refuge Establishment Act, as ordered reported by the House Committee on Resources on September 12, 2001. H.R. 1230 and S. 835 are very similar, and the estimated costs of the two versions of the legislation are identical.

Estimate Prepared by: Federal Costs: Deborah Reis; Impact on Sate, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Lauren Marks.

Estimate Approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate, provides that reports to the Senate should show changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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