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**Legislative Bulletin.....April 15, 2010**

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**Key Conservative Concern**

**--Higher Authorized Spending Levels.** The legislation authorizes \$300 million over six years for the National Estuary Program (or \$50 million annually). Compared to current law, the authorized spending level (subject to appropriation) is 43% above the FY 2010 authorized level, and 53% above the FY 2010 appropriations level. The federal government’s \$3.5 trillion budget may have the ability to cause \$50 million to seem like a small figure by comparison. On the other hand, with our severe budget problems, many conservatives might argue that it is inappropriate to provide authorized spending increases without any effort to restrain spending elsewhere. It can be argued that if Congress does not restrain spending on these (relatively) small spending issues, it will continue to fail to be responsible on larger budget items as well.

*For more details, see below.*

**H.R. 4715—Clean Estuaries Act of 2010  
 (Bishop, D-NY)**

**Order of Business:** The House will consider H.R. 4715 on Thursday, April 15, 2010, under a structured rule that waives all points of order against the resolution except for clauses 9 (the earmark rule) and 10 of Rule XXI (PAYGO), and provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. The rule makes in order seven amendments to be analyzed in a separate RSC document.

The rule waives the requirement that a same day rule receive a two-thirds vote of the House through April 16, 2010 for consideration of legislation relating to extension of unemployment benefits. The rule also makes it in order for such legislation to be considered under suspension of the rules through April 16, 2010.

## **Summary:**

**Authorized Spending Levels:** The legislation authorizes \$300 million (subject to appropriation) over six years, covering the FY 2011-2016 period, for the National Estuary Program. The program previously received appropriations of \$26.7 million in FY 2008, \$27.1 million in FY 2009, and \$32.6 million in FY 2010. The program is authorized at \$35 million in 2010. Compared to the authorized funding level, this is a \$15 million or 42.9% increase. Compared to the FY 2010 appropriated level, the authorized funding level is a \$17.4 million or 53.3% increase.

The legislation allows up to 10% of spending under the National Estuary Program to be used for administrative expenses.

**Comprehensive Conservation and Management Plans:** The legislation requires estuary programs to develop a comprehensive conservation and management plan that:

- Identifies the estuary and its associated upstream waters to be associated with the plan, with consideration given to hydrological boundaries;
- Recommends actions and compliance schedules addressing sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary;
- Considers current and future sustainable commercial activities in the estuary;
- Addresses the impact of climate change on the estuary;
- Increases public education and awareness of the ecological health and water quality conditions of the estuary;
- Identifies and assesses impairments, including upstream impairments, coming from outside of the area addressed by the plan, and the sources of those impairments; and
- Includes performance measures and goals to track implementation of the plan.

An estuary program would be required to monitor, and make available to the public:

- Water quality conditions in the estuary and its associated upstream waters;
- Habitat conditions that relate to the ecological health and water quality conditions of the estuary; and
- The effectiveness of actions taken pursuant to the comprehensiveness conservation and management plan developed for the estuary.

The estuary program would also be required to provide information and educational activities on the ecological health and water quality conditions of the estuary.

**Administration of Plans:** Within 120 days of a comprehensive conservation and management plan submission, the EPA Administrator would be required to approve the plan if it does not violate other provisions of this legislation, and if the affected Governors agree. The legislation further requires the EPA Administrator to, within every four years, complete an evaluation of the implementation of each comprehensive conservation and management plan to determine whether it meets the goals of the plan.

Within 180 days of the Administrator making an evaluation of a comprehensive conservation and management plan available to the public, a management conference shall submit to the Administrator an update of the plan reflecting the results of the evaluation. The bill gives the EPA Administrator 120 days after such a plan is submitted to approve the plan. The legislation also requires the EPA Administrator to complete an evaluation of the National Estuary Program every four years.

**Potential Conservative Concern:** The legislation increases annual authorized spending levels by 43% compared to the current authorized levels, and 53% compared to the FY 2010 appropriations level. The \$50 million annual authorization may be small relative to the \$3.5 trillion budget. The President's budget would cause \$11.2 trillion of deficits over the FY 2010-2020 period, and would lead to a deficit in every single year that, even by the administration's admission, is unsustainable. The average deficit would be 5.2% of GDP—the lowest deficit would be 4.1% of GDP. OMB Director Peter Orszag says that deficits in excess of 3% of GDP are unsustainable. Given the federal government's severe fiscal problems, many conservatives may believe that it is inappropriate to provide a 43% higher authorized spending level for this program without making any effort to reduce other spending by, at least, an equivalent amendment.

**Committee Action:** The legislation was introduced on March 2, 2010 and referred to the House Transportation and Infrastructure Committee, which held a mark-up and ordered the bill to be reported by voice vote on March 17, 2010.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** The legislation authorizes \$300 million (subject to appropriations) over six years. This is a 43% increase over the FY 2010 authorized level, and a 53% increase over the FY 2010 appropriated amount.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill increases the authorized funding level for the National Estuary Program by 43%.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to [CBO](#), the legislation does not contain intergovernmental or private-sector mandates (as defined by the 1995 Unfunded Mandates Reform Act).

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The committee report [states](#): "H.R. 4715 does not contain any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI."

**Constitutional Authority:** The committee report states: "The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution." Article I, Section 8, contains several clauses listing Legislative Branch powers. The committee report does not cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a

statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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