

## BEACH PROTECTION ACT OF 2007

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DECEMBER 12, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

### R E P O R T

[To accompany H.R. 2537]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2537) to amend the Federal Water Pollution Control Act relating to beach monitoring, 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 “Beach Protection Act of 2007”.

**SEC. 2. WATER POLLUTION SOURCE IDENTIFICATION.**

(a) SOURCE TRACKING.—Section 406(b) of the Federal Water Pollution Control Act (33 U.S.C. 1346) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

“(3) SOURCE IDENTIFICATION PROGRAMS.—In carrying out a monitoring and notification program, a State or local government may develop and implement a coastal recreation waters pollution source identification and tracking program for coastal recreation waters adjacent to beaches or similar points of access that are used by the public and are not meeting applicable water quality standards for pathogens and pathogen indicators.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 406(i) of such Act (33 U.S.C. 1346(i)) is amended by striking “\$30,000,000 for each of fiscal years 2001 through 2005” and inserting “\$40,000,000 for each of fiscal years 2008 through 2012”.

**SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT.**

Section 8 of the Beaches Environmental Assessment and Coastal Health Act of 2000 (114 Stat. 877) is amended by striking “2005” and inserting “2012”.

#### SEC. 4. STATE REPORTS.

Section 406(b)(4)(A)(ii) of the Federal Water Pollution Control Act (as redesignated by section (2)(a)(1) of this Act) is amended by inserting “and all environmental agencies of the State with authority to prevent or treat sources of pollution in coastal recreation waters” after “public”.

#### SEC. 5. USE OF RAPID TESTING METHODS.

(a) CONTENTS OF STATE AND LOCAL GOVERNMENT PROGRAMS.—Section 406(c)(4)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)(4)(A)) is amended by inserting “, including rapid testing methods,” after “methods”.

(b) REVISED CRITERIA.—Section 304(a)(9) of such Act (33 U.S.C. 1314(a)(9)) is amended by inserting “and rapid testing methods” after “methods”.

(c) CRITERIA FOR USE OF RAPID TESTING METHODS.—Not later than 270 days after the date of enactment of this Act, and after providing notice and an opportunity for public comment, the Administrator of the Environmental Protection Agency shall publish criteria for the use of rapid testing methods, at coastal recreation waters adjacent to beaches or similar points of access that are used by the public, that will enhance the protection of public health and safety through rapid public notification of any exceeding of applicable water quality standards. In developing such criteria, the Administrator shall prioritize the use of rapid testing methods at those beaches or similar points of access that have the highest use by the public.

(d) DEFINITION.—Section 502 of such Act (33 U.S.C. 1362) is amended by adding at the end the following:

“(25) RAPID TESTING METHOD.—The term ‘rapid testing method’ means a method of testing the water quality of coastal recreation waters for which results are available as soon as practicable and not more than 6 hours after a water quality sample is received by the testing facility.”.

#### SEC. 6. NOTIFICATION OF FEDERAL, STATE, AND LOCAL AGENCIES.

Section 406(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)(5)) is amended—

(1) by striking “prompt communication” and inserting “communication, within 24 hours of the receipt of the results of a water quality sample,”;

(2) in subparagraph (A)—

(A) by inserting “(i) in the case of any State in which the Administrator is administering the program under section 402,” before “the Administrator” the first place it appears; and

(B) by inserting at the end the following:

“(ii) in the case of any State other than a State to which clause (i) applies, all agencies of the State government with authority to require the prevention or treatment of the sources of coastal recreation water pollution; and”;

(3) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

“(6) measures for an annual report to the Administrator, in such form as the Administrator determines appropriate, on the occurrence, nature, location, pollutants involved, and extent of any exceeding of applicable water quality standards for pathogens and pathogen indicators;”.

#### SEC. 7. CONTENT OF STATE AND LOCAL PROGRAMS.

Section 406(c) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)) is amended—

(1) by striking “and” at the end of paragraph (7) (as redesignated by section 6(3) of this Act);

(2) by striking the period at the end of paragraph (8) (as redesignated by section 6(3) of this Act) and inserting a semicolon; and

(3) by adding at the end the following:

“(9) a publicly accessible and searchable global information system database with information updated within 24 hours of its availability, organized by beach or similar point of access and with defined standards, sampling plans, monitoring protocols, sampling results, and number and cause of closures and advisory days;

“(10) measures for the immediate posting of signs at beaches or similar points of access that are sufficient to give public notice following the results of any water quality sample that demonstrates an exceeding of applicable water quality standards for pathogens and pathogen indicators for the coastal recreation waters adjacent to such beaches or similar points of access; and

“(11) measures to ensure that closures or advisories are made or issued within 24 hours after the State government determines that any coastal recreation

waters in the State are not meeting applicable water quality standards for pathogens and pathogen indicators.”.

**SEC. 8. COMPLIANCE REVIEW.**

Section 406(h) of the Federal Water Pollution Control Act (33 U.S.C. 1346(h)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by moving such subparagraphs 2 ems to the right;

(3) by striking “In the” and inserting the following:

“(1) IN GENERAL.—In the”; and

(4) by adding at the end the following:

“(2) COMPLIANCE REVIEW.—On or before July 31 of each calendar year beginning after the date of enactment of this paragraph, the Administrator shall—

“(A) prepare a written assessment of compliance with all statutory and regulatory requirements of this section for each State and local government and of compliance with conditions of each grant made under this section to a State or local government;

“(B) notify the State or local government of such assessment; and

“(C) make each of the assessments available to the public in a searchable database on or before December 31 of such calendar year.

“(3) CORRECTIVE ACTION.—Any State or local government that the Administrator notifies under paragraph (2) that it is not in compliance with any requirement or grant condition described in paragraph (2) shall take such action as may be necessary to comply with such requirement or condition within one year of the date of the notification. If the State or local government is not in compliance with such requirement or condition within one year of such date, any grants made under subsection (b) to the State or local government, after the last day of such one-year period and while the State or local government is not in compliance with all requirements and grant conditions described in paragraph (2), shall have a Federal share of not to exceed 50 percent.

“(4) GAO REVIEW.—Not later than December 31 of the third calendar year beginning after the date of enactment of this paragraph, the Comptroller General shall conduct a review of the activities of the Administrator under paragraphs (2) and (3) during the first and second calendar years beginning after such date of enactment and submit to Congress a report on the results of such review.”.

**SEC. 9. STUDY OF GRANT DISTRIBUTION FORMULA.**

(a) STUDY.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall commence a study of the formula for the distribution of grants under section 406 of the Federal Water Pollution Control Act (33 U.S.C. 1346) for the purpose of identifying potential revisions of such formula.

(b) CONTENTS.—In conducting the study, the Administrator shall consider the base cost to States of developing and maintaining water quality monitoring and notification programs, the States’ varied beach monitoring and notification needs, including beach mileage, beach usage, and length of beach season, and other factors that the Administrator determines to be appropriate.

(c) CONSULTATION.—In conducting the study, the Administrator shall consult with appropriate Federal, State, and local agencies.

(d) REPORT.—Not later than 12 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study, including any recommendation for revision of the distribution formula referred to in subsection (a).

**SEC. 10. PUBLICATION OF COASTAL RECREATION WATERS PATHOGEN LIST.**

Section 304(a)(9) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(9)) is amended by adding at the end the following:

“(C) PUBLICATION OF PATHOGEN AND PATHOGEN INDICATOR LIST.—Upon publication of the new or revised water quality criteria under subparagraph (A), the Administrator shall publish in the Federal Register a list of all pathogens and pathogen indicators studied under section 104(v).”.

**PURPOSE OF THE LEGISLATION**

H.R. 2537, the “Beach Protection Act of 2007”, as amended, amends the Federal Water Pollution Control Act (“Clean Water Act” or “Act”) to reauthorize appropriations for the Beaches Envi-

ronmental Assessment and Coastal Health (“BEACH”) Act through fiscal year 2012, and to make programmatic changes to State coastal recreation water quality monitoring and notification programs.

#### BACKGROUND AND NEED FOR LEGISLATION

The nation is fortunate to have nearly 23,000 miles of ocean shoreline along the continental United States, more than 5,500 miles of Great Lakes shoreline, and 3.6 million miles of rivers and streams. Beaches are an important part of the complex and dynamic coastal watershed, providing numerous recreational opportunities for millions of people, including boating, fishing, swimming, beachcombing, bird-watching, and sunbathing.

Each year, more than 180 million people visit our nation’s coastal and Great Lakes waters for recreational purposes. This activity supports more than 28 million jobs and leads to investments of over \$50 billion in goods and services. It is important to give the public confidence in the quality of our nation’s coastal recreational waters. This confidence is important not only to each citizen who swims or surfs, but also to the tourism and recreation industries that rely on safe and swimmable coastal waters.

According to a recent Environmental Protection Agency (“EPA”) report, over the past 50 years, epidemiological studies and investigations following widespread waterborne illnesses have linked swimming in polluted water with adverse health effects. Swimming-related diseases can range from less severe gastrointestinal diseases (e.g., sore throats and diarrhea) and non-gastrointestinal diseases (e.g., respiratory, ear, eye, and skin infections) to more serious illnesses, such as meningitis or hepatitis.

On October 10, 2000, the Beaches Environmental Assessment and Coastal Health Act (“BEACH Act”) was signed into law. This legislation, which amends Clean Water Act, was introduced to limit and prevent human exposure to polluted coastal recreation waters (including those along the Great Lakes) by assisting States and local governments to implement beach monitoring, assessment, and public notification programs. For these purposes, the BEACH Act authorized \$30 million annually for fiscal years 2001 through 2005.

In addition, the BEACH Act required States and tribes with coastal recreation waters to adopt minimum water quality standards for pathogens and pathogen indicators by April 10, 2004, and directed EPA to promulgate standards for States that failed to establish standards as protective of human health as EPA’s existing criteria—the 1986 Ambient Water Quality Criteria for Bacteria.

Finally, the BEACH Act required EPA to conduct additional studies associated with pathogens and human health and to publish new or revised water quality criteria for pathogens and pathogen indicators within five years of the date of enactment of the BEACH Act (ending on October 10, 2005), based on the results of these studies. EPA is also directed to review these revised water quality criteria every five years, and to revise the criteria, as necessary, to protect human health. States are directed to adopt any revised water quality criteria within three years of publication by EPA.

## IMPLEMENTATION OF THE BEACH ACT

## BEACH ACT FUNDING

From fiscal years 2001 through 2007, Congress has appropriated nearly \$62 million in BEACH Act grant funds to the 35 States and territories with coastal recreation waters to support the implementation of coastal recreation water monitoring and notification programs. According to EPA, States are using the grant funds to implement beach monitoring and notification programs that are consistent with national guidance. States collect and analyze water samples to determine whether local recreation waters exceed (or are likely to exceed) water quality standards for public health protection, and notify the public if water quality standards are exceeded (or likely to be exceeded).

EPA awards grants to the 35 eligible States using an allocation formula developed by the Agency in 2002. According to EPA, this allocation formula was developed in consultation with the States and other stakeholders, and uses three factors—beach season length, beach miles, and beach usage—to determine an equitable allocation of funds. However, because in 2002, data for beach miles and beach usage were not readily available, shoreline length and coastal population were used as surrogates for these factors.

## STATE WATER QUALITY STANDARDS

Prior to the enactment of the BEACH Act, only 16 States and territories with coastal recreation waters had adopted EPA's 1986 criteria for pathogens and pathogen indicators in coastal recreation waters, and incorporated these criteria into their water quality standards. The remaining States were either using water quality criteria older than the 1986 criteria or no water quality criteria at all.

Since enactment of the BEACH Act, all 35 States and territories with coastal recreation waters have adopted criteria for pathogens and pathogen indicators that are at least as protective of human health as EPA's 1986 criteria. Thirteen States and territories adopted these criteria voluntarily, and the remaining 21 States and territories were included in a November 16, 2004 EPA final rule to adopt water quality standards consistent with EPA's 1986 criteria. Water Quality Standards for Coastal and Great Lakes Recreation Waters, 69 Fed. Reg. 67218 (Nov. 16, 2004).

## WATER QUALITY CRITERIA AND STANDARDS

Section 304(a) of the Clean Water Act directs EPA to establish water quality criteria for all waters and uses, including human health criteria for recreational uses of coastal waters. Federal water quality criteria serve as guidance to States and tribes in adopting and revising State and tribal water quality criteria and water quality standards under section 303 of the Clean Water Act. Under current Clean Water Act regulations, States and tribes may adopt the Federal criteria as their own, may modify the Federal criteria to reflect site-specific conditions, or may base their water quality criteria on other scientifically defensible methods. 40 C.F.R. 131.11(b)(1).

According to EPA, the Agency's current criteria for pathogen and pathogen indicators are based on a series of studies conducted by EPA in the late 1970s and early 1980s. In 1986, EPA recommended the use of indicator organisms as a good predictor of potential waterborne illness in water—enterococci for fresh and marine waters, and *E. coli* in fresh water.

However, during consideration of the BEACH Act in the 1990s, the Committee on Transportation and Infrastructure was concerned that the 1986 revised bacteria criteria were inadequate indicators for determining the human health risk from all microorganisms, including viruses or other pathogens, such as giardia or cryptosporidium. The Committee noted, during a 1998 hearing on this issue, that EPA's 1986 criteria needed to be updated to improve the scientific basis for identifying pathogens in coastal recreation waters that were potentially harmful to human health.

In response, the BEACH Act directed the Administrator of EPA to conduct additional studies on revised criteria for coastal recreation waters, and to develop newer, accurate, and expeditious testing methods for detecting the presence of pathogens harmful to human health. Section 304(a) of the Clean Water Act was amended to direct the Administrator to develop and publish new or revised water quality criteria for coastal recreation waters for the purpose of protecting human health within five years of the date of enactment of the BEACH Act (ending on October 10, 2005), and to review, and revise if necessary, these water quality criteria every five years thereafter.

#### LITIGATION AND SCHEDULE FOR PUBLICATION OF NEW OR REVISED WATER QUALITY CRITERIA

On August 3, 2006, the Natural Resources Defense Council sued the EPA for its failure to publish "new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate) . . . for the purpose of protecting human health in coastal recreational waters" by October 10, 2005, as required by section 304(a) of the Clean Water Act, as amended by the BEACH Act.

In March 2007, the United States District Court for the Central District of California, Western Division held that EPA had violated its non-discretionary duty to publish new or revised criteria by the October 2005 deadline, in violation of the Clean Water Act. *Natural Resources Defense Council v. Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency*, No. CV 06-4843 PSG (C.D. Cal. March 21, 2007). The Court directed the parties to discuss the issue of the appropriate amount of time EPA would have to complete publication of new or revised water quality criteria for pathogens and pathogen indicators. This discussion is ongoing.

On August 31, 2007, EPA released a report, entitled "Criteria Development Plan & Schedule, Recreational Water Quality Criteria", that describes the process and timeline EPA proposes to follow in developing and publishing new or revised water quality criteria for pathogens and pathogen indicators for recreational waters. The report concludes that EPA will complete all of the necessary research, studies, analysis, and synthesis for the new or revised criteria, and publish the new or revised criteria by December 2012.

## SUMMARY OF THE LEGISLATION

*Section 1. Short title*

Section 1 designates the short title of the bill as the “Beach Protection Act of 2007”.

*Section 2. Water pollution source identification*

This section amends section 406 of the Clean Water Act to expand the eligible uses of coastal recreation water quality monitoring and notification program development and implementation grants, and to reauthorize appropriations for such grants.

Subsection (a) amends section 406(b) of the Act to authorize eligible States and local governments to utilize BEACH grant funding to develop and implement coastal recreation waters pollution source identification and tracking programs.

The Committee received testimony on the importance of identifying the sources of pollution that are causing beach closures. Proper and timely identification of sources of pollution will allow State and local governments to take action to address these sources of pollution. For example, the State of New Jersey has successfully applied microbial source tracking techniques, such as coliphage, multiple antibiotic resistance testing, and optical brighteners, to identify the source of recreational beach water quality impairments. Amending the Clean Water Act to allow States and local governments to use BEACH grant funding for source tracking will help these governments positively identify the sources of pollution to coastal recreation waters. States and local governments can then take the necessary steps to address these sources of pollution. BEACH Act grants are limited to developing and implementing coastal water quality monitoring and notification programs. Accordingly, States and local governments need to pursue other sources of Federal funding, such as the Clean Water State Revolving Fund, for efforts to address sources of pollution.

Subsection (b) amends section 406(i) to reauthorize appropriations for coastal recreation water quality monitoring and notification program development and implementation grants through fiscal year 2012. This subsection increases the authorization of appropriations for grants from \$30 million annually to \$40 million annually, to reflect the expansion of eligible uses for such grants under the Beach Protection Act of 2007.

*Section 3. Funding for Beaches Environmental Assessment and Coastal Health Act*

This section authorizes appropriations for EPA to carry out the provisions of the BEACH Act, other than the grant program authorized under section 406 of the Clean Water Act, from fiscal years 2008 through 2012.

*Section 4. State reports*

This section amends existing section 406(b)(3)(A)(ii) of the Clean Water Act to require States to report to the Administrator on actions taken to notify State environmental agencies with authority to prevent or treat sources of pollution in coastal recreation waters of the extent that a coastal recreation water is exceeding or is likely to exceed applicable water quality standards.

### *Section 5. Use of rapid testing methods*

This section encourages the development, testing, and utilization of rapid testing methods for detecting the contamination of coastal recreation waters. The Committee has received testimony expressing concern that current testing methods, utilizing culture-based methods, require up to 24 hours to determine whether coastal recreation water adjacent to a beach or similar point of access is contaminated. As EPA noted in its March 2007 Report of the Experts Scientific Workshop on Critical Research Needs for the Development of New or Revised Recreational Water Quality Criteria, this extended processing period typically results in contaminated beaches remaining open while testing is underway, potentially placing the public at risk of coming into direct contact with contaminated water. In addition, by the time that water quality results are available and warning signs are posted, the levels of pathogens or pathogen indicators may have returned to normal.

The Committee believes that the period between when a coastal recreation water is sampled to when results are made publicly available needs to be shortened, with the goal of having real-time, same-day information on the condition of the nation's beaches and recreational waters.

The Committee strongly encourages EPA to complete the evaluation and validation of rapid testing methods for detecting contamination of coastal recreation waters. The Committee is aware that rapid testing method technologies are currently available for testing water quality samples for the presence of enterococci and *E. coli* that can produce accurate results in two to three hours. The Committee understands that EPA is currently undertaking an evaluation of the appropriate interim indicator organism for rapid testing methods utilizing the 1986 criteria, and expects to complete the evaluation and validation of rapid testing methods by the end of fiscal year 2010. The Committee encourages EPA to complete its efforts to validate a rapid testing method for the 1986 criteria as expeditiously as practicable, but no later than the end of fiscal year 2010.

Section 5(a) amends section 406(c)(4)(A) of the Clean Water Act to require State and local governments to identify the rapid testing methods utilized, or likely to be utilized, along with the government's existing report on methods for detecting pathogens and pathogen indicators required under section 406(c)(4)(A).

Section 5(b) amends section 304(a)(9) of the Clean Water Act to require, in the publication of new or revised water quality criteria for pathogens and pathogen indicators, that the Administrator include standards for the utilization of rapid testing methods for the new or revised criteria. The Committee expects that, in conjunction with the development of new or revised water quality criteria for coastal recreation waters under section 304(a)(9) of the Clean Water Act, EPA will include appropriate standards and validation for a rapid testing method for the new or revised criteria. If no rapid testing method for the new or revised criteria is technologically feasible, the Committee expects EPA to include an explanation of why such a rapid testing method is technologically infeasible with the release of the new or revised water quality criteria.

Section 5(c) requires EPA to develop and publish criteria for the utilization of rapid testing methodologies. The Committee does not



expect that State or local governments are likely to utilize rapid testing methods at every beach or similar point of access within their jurisdiction. The Committee encourages States and local governments to utilize rapid testing methods at those beaches or similar points of access that have the highest use. The criteria developed under this section should assist States and localities in this determination. The Committee believes that same-day results on water quality testing will enhance the protection of public health by providing real-time information on the condition of coastal recreation waters.

*Section 6. Notification of Federal, State, and local agencies*

This section amends section 406(c) of the Clean Water Act to expedite the communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for coastal recreation waters to the appropriate Federal, State, and local governmental agencies.

The Committee received testimony that, in many cases, the notification of contaminated coastal recreation waters to the appropriate governmental agencies and the public can be delayed, either through lengthy testing periods or a lack of consistent public notification timelines. Minimizing the potential delay in public notification is critical to protecting public health by ensuring that the public is given the opportunity to avoid contact with contaminated coastal recreation waters.

Under current law, the communication of any exceeding, or the potential exceeding, of applicable water quality standards must occur “promptly” and must be made to the Administrator of the Environmental Protection Agency and a designated local official having jurisdiction over land adjoining the coastal recreation water.

This section removes any ambiguity in the timeline for providing notification by striking the term “prompt communication” in section 406(c)(5) and inserting “communication, within 24 hours of the receipt of the results of a water quality sample”.

This section also amends section 406(c)(5)(A) to include within the list of agencies required to receive notification of any exceeding of water quality standards State governmental agencies with the authority to require the prevention or treatment of the sources of coastal recreation water pollution. These State governmental agencies will typically be the State agencies with approved National Pollutant Discharge Elimination System (“NPDES”) authority under section 402 of the Clean Water Act. However, in those States and territories without approved NPDES authority, this section provides that the 24-hour notification be provided to the Administrator of EPA.

Finally, this section adds a new paragraph 6 to section 406(c) that requires eligible State and local governments to submit an annual report to the Administrator on the occurrence, nature, location, pollutants involved, and extent of any exceeding of applicable water quality standards for pathogens and pathogen indicators. The Committee expects this annual report to be a cumulative accounting of all exceedances of applicable water quality standards during the annual reporting period.

*Section 7. Content of State and local programs*

This section amends section 406(c) of the Clean Water Act to strengthen the requirements for public notification of contaminated coastal recreation waters and publicly available information on beach closures.

This section adds paragraph 9 to section 406(c) of the Act to require eligible State and local governments to identify a publicly accessible and searchable database for the posting of information on individual beaches or similar points of public access for coastal recreation waters. This new paragraph does not require that every eligible State or local government create an individual database to provide information related to its beaches, but contemplates that individual States and local governments will partner with existing public databases, including existing Internet sites, to ensure that the required information is publicly available in a timely fashion.

This section adds paragraph 10 to section 406(c) of the Act to require eligible States and local governments to identify measures for the immediate posting of signs at beaches or similar points of public access that are sufficient to give public notice that a water quality sample taken from adjacent coastal recreation water has exceeded applicable water quality standards for pathogens and pathogen indicators.

The Committee is aware that eight States routinely (and five additional States may) utilize a two-step, re-sampling approach to testing coastal recreation waters. Under this approach, when the test results on a coastal recreation water sample detect that the water may be contaminated, the State or local governmental official can require that a second sample is tested before a decision is made to close the beach. Accordingly, if a State pairs the use of a culture-based testing methodology with a two-step, re-sampling protocol, the result may be that the public will not receive any notification that a coastal recreation water may be contaminated until three days after the initial sample is taken. Given that the best way to reduce the risk of public illness from contaminated coastal recreation waters is to avoid direct contact with such waters, the Committee believes that the time from initial testing to public notification of potential impaired water quality needs to occur as quickly as possible, and preferably on the same day.

New paragraph 10 provides for immediate public notification following the results of any water quality sample that demonstrates a likelihood that the coastal recreation water is contaminated. This new paragraph does not prevent States from continuing to utilize a two-step, re-sampling approach for decisions to close public beaches, but simply requires States and local governments to immediately post an advisory sign warning that a water sample taken at the individual beach demonstrates the likelihood that the water may be contaminated.

This section adds paragraph 11 to section 406(c) of the Act to require eligible States and local governments to identify measures to ensure that any decision to close a beach or to issue an advisory on coastal recreation water quality are made within 24 hours after the State determines that the coastal recreation waters are not meeting applicable water quality standards for pathogens and pathogen indicators.

### *Section 8. Compliance review*

This section amends section 406(h) of the Clean Water Act to authorize the Administrator to conduct a compliance review of implementation of the BEACH Act by State and local governments, and to take corrective action for State and local governments that are not in compliance with the BEACH Act requirements. This section also requires the Government Accountability Office (“GAO”) to review and report on EPA’s administration of the BEACH Act.

This section requires the Administrator of EPA to prepare an annual written assessment of compliance with all of the statutory and regulatory requirements of the BEACH Act for each State and local government that receives a BEACH Act grant. This written assessment is to be provided to the individual State and local governments, and released to the public through a searchable, electronic database, such as the Internet.

This section also provides State and local governments with one year from the date of receipt of a written assessment from the Administrator to come into compliance with the BEACH Act requirements. If at the end of this period, the State or local government continues to be out of compliance with the BEACH Act requirements, this section directs the Administrator to reduce the Federal share of coastal recreation water quality monitoring and notification program development and implementation grants to 50 percent.

Finally, this section directs the Comptroller General of GAO to conduct a review and report on the actions by the Administrator to carry out annual written compliance assessments and take corrective action as necessary. This report is to be provided to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

### *Section 9. Study of grant distribution formula*

This section requires the Administrator of EPA to carry out a study of the formula for the distribution of coastal recreation water quality monitoring and notification program development and implementation grants under section 406(b) of the Clean Water Act, and to report to Congress on the results of the study, including any recommendations for revision of the existing formula.

The Committee is aware of concerns that the current formula utilized by EPA for the distribution of grant funds may not provide for an equitable allocation of funds among States at current appropriation levels.

GAO raised similar concerns in its May 2007 report focused on the implementation of the BEACH Act in the Great Lakes. GAO pointed out that the existing grant distribution formula, which establishes different weights to the factors of length of beach season, the frequency of beach use, and the number of beach miles within a State, was developed based on the assumption that the program would receive its full authorized allocation of \$30 million annually. According to GAO, EPA intended that the factor for beach season length (currently determining 82 percent of existing grant allocations) would have provided the base funding level, and would have been augmented by additional grant funds utilizing the factors for beach use and beach miles.

During the last five years, the BEACH program has received annual appropriations of approximately \$10 million. GAO concluded that, as a result of reduced appropriations, the current distribution formula fails to adequately address the monitoring needs of the States. The GAO report suggested that reweighing the importance of the three factors of the existing formula to reflect current appropriations would better reflect the monitoring needs of the individual coastal States.

Section 9 requires EPA to conduct a study of potential revisions to the formula, with a specific focus on base cost to States of developing and maintaining water quality monitoring and notification programs, the States' varied beach monitoring and notification needs, including beach mileage, beach usage, and length of beach season, and other factors that the Administrator determines to be appropriate.

The Committee encourages the Administrator, in carrying out the study, to consider methods to accurately reflect the usage of beaches and similar points of access as well as the recommendations included in the May 2007 report by the GAO entitled "Great Lakes: EPA and States Have Made Progress in Implementing the BEACH Act, but Additional Actions Could Improve Public Health Protection (GAO-07-591)". In addition, the Committee encourages EPA, in conducting the study, to take into account both historical appropriations for BEACH Act grants and the increased authorization of appropriations provided for in the Beach Protection Act of 2007.

#### *Section 10. Publication of coastal recreation waters pathogen list*

This section amends section 304(a)(9) of the Clean Water Act to require the Administrator of EPA, upon publication of the new or revised water quality criteria for coastal recreation waters, to publish in the Federal Register a list of all pathogens and pathogen indicators studied in the development of the new or revised water quality criteria.

### ADDITIONAL MATTERS

The Committee has received comments from individual States, researchers, and nongovernmental organizations expressing concern with EPA's efforts to develop appropriate testing methods for existing water quality criteria for coastal recreation waters. Under the existing 1986 criteria, EPA recommended the use of the indicator organisms, enterococci and *E. coli*, as appropriate predictors of potential waterborne illness in water. However, because of the differing nature of marine and fresh water environments, the use of a single indicator for both marine and fresh water environments may be inappropriate to ensure the maximum protection of human health from waterborne illness.

The Committee strongly encourages EPA to evaluate the appropriateness and effectiveness of both enterococci and *E. coli* indicators in its efforts to determine appropriate interim indicators for testing coastal recreation waters, while EPA completes its development of new or revised water quality criteria for coastal recreation waters.

## LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On July 12, 2007, the Subcommittee on Water Resources and Environment held a hearing on “Reauthorization of the Beaches Environmental Assessment and Coastal Health Act”. Testimony was given by Representative Frank Pallone, Representative Brian Bilbray, the Environmental Protection Agency, the Commissioner of the New Jersey Department of Environmental Protection, the Supervisor of the Town of Southampton, New York, the U.S. Government Accountability Office, and representatives of non-governmental organizations.

On October 31, 2007, the Committee on Transportation and Infrastructure met in open session to consider H.R. 2537 and adopted an amendment in the nature of a substitute to the bill. The amendment reduced the authorization of appropriations from \$60 million annually to \$40 million annually, modified the authority for source tracking to make the authority discretionary, directed EPA to develop criteria for the use of rapid testing methodologies, required States and local governments to immediately post signage notifying the public that a coastal recreation water may be impaired, and made technical and clarifying changes to the bill. The Committee ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present.

## RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with any amendment offered to H.R. 2537 or on ordering the bill reported. A motion to order H.R. 2537, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(I) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

## COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to provide for the monitoring of coastal recreation water quality and public notification of any exceeding of applicable water quality standards at beaches or similar points of public access adjacent to coastal recreation waters.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2537 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE,  
U.S. CONGRESS,  
Washington, DC, November 13, 2007.

Hon. JAMES L. OBERSTAR,  
Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2537, the Beach Protection Act of 2007.

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

Sincerely,

ROBERT A. SUNSHINE,  
(For Peter R. Orszag).

Enclosure.

*H.R. 2537—Beach Protection Act of 2007*

Summary: H.R. 2537 would authorize the appropriation of \$40 million a year over the 2008–2012 period for the water quality program that benefits coastal states under the Clean Water Act. Under this program, the Environmental Protection Agency (EPA) provides grants to state or local governments to support their efforts to monitor the quality of coastal waters and notify the public when beach water does not meet established standards. This legislation also would authorize the appropriation of such sums as may be necessary to manage the water quality program through 2012.

Assuming the appropriation of the necessary funds, CBO estimates that implementing H.R. 2537 would cost \$24 million in 2008 and \$186 million over the 2008–2012 period. Enacting the bill would not affect direct spending or revenues.

H.R. 2537 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: The estimated budgetary impact of H.R. 2537 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—				
	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION					
Spending Under Current Law:					
Budget Authority <sup>1</sup> .....	11	0	0	0	0

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Estimated Outlays .....	11	0	0	0	0
Proposed Changes:					
Administrative Support:					
Estimated Authorization Level .....	*	1	1	1	1
Estimated Outlays .....	*	1	1	1	1
Beach Protection Grants:					
Estimated Authorization Level .....	30	40	40	40	40
Estimated Outlays .....	24	38	40	40	40
Total Changes:					
Estimated Authorization Level .....	30	41	41	41	41
Estimated Outlays .....	24	39	41	41	41
Spending Under H.R. 2537:					
Estimated Authorization Level <sup>1</sup> .....	41	41	41	41	41
Estimated Outlays .....	35	39	41	41	41

Note: \* = less than \$500,000.

<sup>1</sup>The 2008 level is CBO's current estimate of budget authority and outlays for grants and administrative expenses to support EPA's program to protect beaches under Public Law 110-92, a joint resolution making continuing appropriations for the fiscal year 2008 and other purposes. CBO estimates budget authority provided under such continuing resolutions on an annualized basis. (That total of \$11 million was also provided for 2007.)

**Basis of estimate:** For this estimate, CBO assumes that H.R. 2537 will be enacted before the end of calendar year 2007 and that the necessary funds will be appropriated for each year.

The bill would authorize the appropriation of \$40 million annually over the 2008–2012 period for grants to states to implement beach water quality and public notification programs. CBO estimates that, under the current continuing resolution for fiscal year 2008 (Public Law 110-92), \$10 million will be provided for grants in 2008 (on an annualized basis); thus, we estimate that implementing this legislation would require the appropriation of an additional \$30 million in 2008 and \$40 million in each subsequent year. Based on historical spending patterns for those grants, CBO estimates that providing the grants would cost \$182 million over the 2008–2012 period.

H.R. 2537 also would authorize the appropriation of such sums as may be necessary for EPA to manage the program through 2012. Assuming appropriations for such administrative activities would continue at the estimated 2008 level under the current continuing resolution, CBO estimates that implementing the program would cost about \$1 million a year over the 2009–2012 period. In total, CBO estimates that outlays resulting from the appropriations for grants and administrative activities would sum to \$186 million over the 2008–2012 period.

**Intergovernmental and private-sector impact:** H.R. 2537 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

**Estimate prepared by:** Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Neil Hood; Impact on the Private Sector; Amy Petz.

**Estimate approved by:** Peter H. Fontaine, Assistant Director for Budget Analysis.

#### COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2537, as amended, 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 of the Rules of the House of Representatives.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. 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.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or tribal law. The Committee states that H.R. 2537 does not preempt any State, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### 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):

### **FEDERAL WATER POLLUTION CONTROL ACT**

\* \* \* \* \*

#### **TITLE III—STANDARDS AND ENFORCEMENT**

\* \* \* \* \*



## INFORMATION AND GUIDELINES

## SEC. 304. (a)(1) \* \* \*

\* \* \* \* \*

## (9) REVISED CRITERIA FOR COASTAL RECREATION WATERS.—

(A) IN GENERAL.—Not later than 5 years after the date of the enactment of this paragraph, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall publish new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods and *rapid testing methods*, as appropriate), based on the results of the studies conducted under section 104(v), for the purpose of protecting human health in coastal recreation waters.

\* \* \* \* \*

(C) PUBLICATION OF PATHOGEN AND PATHOGEN INDICATOR LIST.—Upon publication of the new or revised water quality criteria under subparagraph (A), the Administrator shall publish in the *Federal Register* a list of all pathogens and pathogen indicators studied under section 104(v).

\* \* \* \* \*

## TITLE IV—PERMITS AND LICENSES

\* \* \* \* \*

## SEC. 406. COASTAL RECREATION WATER QUALITY MONITORING AND NOTIFICATION.

## (a) \* \* \*

## (b) PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANTS.—

## (1) \* \* \*

\* \* \* \* \*

(3) SOURCE IDENTIFICATION PROGRAMS.—In carrying out a monitoring and notification program, a State or local government may develop and implement a coastal recreation waters pollution source identification and tracking program for coastal recreation waters adjacent to beaches or similar points of access that are used by the public and are not meeting applicable water quality standards for pathogens and pathogen indicators.

## [(3)] (4) OTHER REQUIREMENTS.—

(A) REPORT.—A State recipient of a grant under this subsection shall submit to the Administrator, in such format and at such intervals as the Administrator determines to be appropriate, a report that describes—

## (i) \* \* \*

(ii) actions taken to notify the public and all environmental agencies of the State with authority to prevent or treat sources of pollution in coastal recreation waters when water quality standards are exceeded.

\* \* \* \* \*

## [(4)] (5) FEDERAL SHARE.—

(A) \* \* \*

\* \* \* \* \*

(c) CONTENT OF STATE AND LOCAL GOVERNMENT PROGRAMS.—As a condition of receipt of a grant under subsection (b), a State or local government program for monitoring and notification under this section shall identify—

(1) \* \* \*

\* \* \* \* \*

(4)(A) the methods, *including rapid testing methods*, to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

\* \* \* \* \*

(5) measures for **prompt communication** *communication, within 24 hours of the receipt of the results of a water quality sample*, of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A)(i) *in the case of any State in which the Administrator is administering the program under section 402, the Administrator, in such form as the Administrator determines to be appropriate; and*

(ii) *in the case of any State other than a State to which clause (i) applies, all agencies of the State government with authority to require the prevention or treatment of the sources of coastal recreation water pollution; and*

\* \* \* \* \*

(6) *measures for an annual report to the Administrator, in such form as the Administrator determines appropriate, on the occurrence, nature, location, pollutants involved, and extent of any exceeding of applicable water quality standards for pathogens and pathogen indicators;*

(ii) *in the case of any State other than a State to which clause (i) applies, all agencies of the State government with authority to require the prevention or treatment of the sources of coastal recreation water pollution; and*

**[(6)]** (7) measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; **[and]**

**[(7)]** (8) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards**[,]**;

(9) *a publicly accessible and searchable global information system database with information updated within 24 hours of its availability, organized by beach or similar point of access and with defined standards, sampling plans, monitoring protocols, sampling results, and number and cause of closures and advisory days;*

(10) measures for the immediate posting of signs at beaches or similar points of access that are sufficient to give public notice following the results of any water quality sample that demonstrates an exceeding of applicable water quality standards for pathogens and pathogen indicators for the coastal recreation waters adjacent to such beaches or similar points of access; and

(11) measures to ensure that closures or advisories are made or issued within 24 hours after the State government determines that any coastal recreation waters in the State are not meeting applicable water quality standards for pathogens and pathogen indicators.

\* \* \* \* \*

(h) EPA IMPLEMENTATION.—

(1) *IN GENERAL.*—In the case of a State that has no program for monitoring and notification that is consistent with the performance criteria published under subsection (a) after the last day of the 3-year period beginning on the date on which the Administrator lists waters in the State under subsection (g)(1)(B), the Administrator shall conduct a monitoring and notification program for the listed waters based on a priority ranking established by the Administrator using funds appropriated for grants under subsection (i)—

(1) (A) to conduct monitoring and notification; and

(2) (B) for related salaries, expenses, and travel.

(2) *COMPLIANCE REVIEW.*—On or before July 31 of each calendar year beginning after the date of enactment of this paragraph, the Administrator shall—

(A) prepare a written assessment of compliance with all statutory and regulatory requirements of this section for each State and local government and of compliance with conditions of each grant made under this section to a State or local government;

(B) notify the State or local government of such assessment; and

(C) make each of the assessments available to the public in a searchable database on or before December 31 of such calendar year.

(3) *CORRECTIVE ACTION.*—Any State or local government that the Administrator notifies under paragraph (2) that it is not in compliance with any requirement or grant condition described in paragraph (2) shall take such action as may be necessary to comply with such requirement or condition within one year of the date of the notification. If the State or local government is not in compliance with such requirement or condition within one year of such date, any grants made under subsection (b) to the State or local government, after the last day of such one-year period and while the State or local government is not in compliance with all requirements and grant conditions described in paragraph (2), shall have a Federal share of not to exceed 50 percent.

(4) *GAO REVIEW.*—Not later than December 31 of the third calendar year beginning after the date of enactment of this paragraph, the Comptroller General shall conduct a review of the activities of the Administrator under paragraphs (2) and (3) during the first and second calendar years beginning after such

*date of enactment and submit to Congress a report on the results of such review.*

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under subsection (b), including implementation of monitoring and notification programs by the Administrator under subsection (h), ~~【\$30,000,000 for each of fiscal years 2001 through 2005】~~ *\$40,000,000 for each of fiscal years 2008 through 2012.*

\* \* \* \* \*

## TITLE V—GENERAL PROVISIONS

\* \* \* \* \*

### GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) \* \* \*

\* \* \* \* \*

(25) *RAPID TESTING METHOD.*—*The term “rapid testing method” means a method of testing the water quality of coastal recreation waters for which results are available as soon as practicable and not more than 6 hours after a water quality sample is received by the testing facility.*

\* \* \* \* \*

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## BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000

\* \* \* \* \*

### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the provisions of this Act, including the amendments made by this Act, for which amounts are not otherwise specifically authorized to be appropriated, such sums as are necessary for each of fiscal years 2001 through ~~【2005】~~ *2012.*