H.R. 3378 - Tijuana River Valley Estuary and Beach Sewage Cleanup Act (Bilbray (R) CA and Filner (D) CA)

The Administration supports the intent of H.R. 3378, which attempts to address the long-term sewage treatment needs of the U.S.-Mexico border region. The Administration, however, opposes H.R. 3378, because its approach raises serious foreign policy and legal concerns and will hinder our ongoing efforts to address the region's wastewater treatment needs.

The approach taken by H.R. 3378 will hamper the Administration's efforts to implement its existing U.S. legal obligations with Mexico, which Mexico has repeatedly urged the United States to fulfill. Instead of authorizing the funding needed to fulfill these obligations, the bill attempts to legislate the terms of a new agreement. In addition, the bill provides for a 30-year contract that may be unenforceable in Mexico.

The Administration is prepared to work with Congress to produce an environmentally appropriate and cost-effective alternative that would be consistent with our current legal obligations and acceptable to the Mexican Government. The Administration supports adequate funding to fulfill our existing commitments and the development of a comprehensive regional plan to address long-term sewage treatment needs.
Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3378]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3378) to authorize certain actions to address the comprehensive treatment of sewage emanating from the Tijuana River in order to substantially reduce river and ocean pollution in the San Diego border region, 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 "Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000".

SEC. 2. PURPOSE.

The purpose of this Act is to authorize the United States to take actions to address comprehensively the treatment of sewage emanating from the Tijuana River area, Mexico, that flows untreated or partially treated into the United States causing significant adverse public health and environmental impacts.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) COMMISSION.—The term "Commission" means the United States section of the International Boundary and Water Commission, United States and Mexico.

(4) SECONDARY TREATMENT.—The term “secondary treatment” has the meaning such term has under the Federal Water Pollution Control Act and its implementing regulations.

(5) SECRETARY.—The term “Secretary” means the Secretary of State.

(6) MEXICAN FACILITY.—The term “Mexican facility” means a proposed public-private wastewater treatment facility to be constructed and operated under this Act within Mexico for the purpose of treating sewage flows generated within Mexico, which flows impact the surface waters, health, and safety of the United States and Mexico.

(7) MGD.—The term “mgd” means million gallons per day.

SEC. 4. ACTIONS TO BE TAKEN BY THE COMMISSION AND THE ADMINISTRATOR.

(a) SECONDARY TREATMENT.—

(1) IN GENERAL.—Subject to the negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 5, and notwithstanding section 510(b)(2) of the Water Quality Act of 1987 (101 Stat. 81), the Commission is authorized and directed to provide for the secondary treatment of a total of not more than 50 mgd in Mexico—

(A) of effluent from the IWTP if such treatment is not provided for at a facility in the United States; and

(B) of additional sewage emanating from the Tijuana River area, Mexico.

(2) ADDITIONAL AUTHORITY.—Subject to the results of the comprehensive plan developed under subsection (b) revealing a need for additional secondary treatment capacity in the San Diego-Tijuana border region and recommending the provision of such capacity in Mexico, the Commission may provide not more than an additional 25 mgd of secondary treatment capacity in Mexico for treatment described in paragraph (1).

(b) COMPREHENSIVE PLAN.—Not later than 24 months after the date of enactment of this Act, the Administrator shall develop a comprehensive plan with stakeholder involvement to address the transborder sanitation problems in the San Diego-Tijuana border region. The plan shall include, at a minimum, an analysis of—

(1) the long-term secondary treatment needs of the region;

(2) upgrades in the sewage collection system serving the Tijuana area, Mexico; and

(3) an identification of options, and recommendations for preferred options, for additional sewage treatment capacity for future flows emanating from the Tijuana River area, Mexico.

(c) CONTRACT.—

(1) IN GENERAL.—Subject to the availability of appropriations to carry out this subsection, the Commission may enter into a fee-for-services contract with the owner of a Mexican facility in order to carry out the secondary treatment requirements of subsection (a) and make payments under such contract.

(2) TERMS.—Any contract under this subsection shall provide, at a minimum, for the following:

(A) Transportation of the advanced primary effluent from the IWTP to the Mexican facility for secondary treatment.

(B) Treatment of the advanced primary effluent from the IWTP to the secondary treatment level in a manner that is in compliance with water quality laws of the United States, California, and Mexico.

(C) Return conveyance from the Mexican facility of any such treated effluent that cannot be reused in either Mexico or the United States to the South Bay Ocean Outfall for discharge into the Pacific Ocean in compliance with water quality laws of the United States and California.

(D) Subject to the requirements of subsection (a), additional sewage treatment capacity that provides for advanced primary and secondary treatment of sewage described in paragraph (1)(B) in addition to the capacity required to treat the advanced primary effluent from the IWTP.

(E) A contract term of 30 years.

(F) Arrangements for monitoring, verification, and enforcement of compliance with United States, California, and Mexican water quality standards.

(G) Arrangements for the disposal and use of sludge, produced from the IWTP and the Mexican facility, at a location or locations in Mexico.

(H) Payment of fees by the Commission to the owner of the Mexican facility for sewage treatment services with the annual amount payable to reflect all costs associated with the development, financing, construction, operation, and maintenance of the Mexican facility.

(I) Provision for the transfer of ownership of the Mexican facility to the United States, and provision for a cancellation fee by the United States to the owner of the Mexican facility, if the Commission fails to perform its ob-
ligations under the contract. The cancellation fee shall be in amounts declining over the term of the contract anticipated to be sufficient to repay construction debt and other amounts due to the owner that remain unamortized due to early termination of the contract.

(j) Provision for the transfer of ownership of the Mexican facility to the United States, without a cancellation fee, if the owner of the Mexican facility fails to perform the obligations of the owner under the contract.

SEC. 5. NEGOTIATION OF NEW TREATY MINUTE.

(a) CONGRESSIONAL STATEMENT.—In light of the existing threat to the environment and to public health and safety within the United States as a result of the river and ocean pollution in the San Diego-Tijuana border region, the Secretary is requested to give the highest priority to the negotiation and execution of a new Treaty Minute, or a modification of Treaty Minute 283, consistent with the provisions of this Act, in order that the other provisions of this Act to address such pollution may be implemented as soon as possible.

(b) NEGOTIATION.—

(1) INITIATION.—The Secretary is requested to initiate negotiations with Mexico, within 60 days after the date of enactment of this Act, for a new Treaty Minute or a modification of Treaty Minute 283 consistent with the provisions of this Act.

(2) IMPLEMENTATION.—Implementation of a new Treaty Minute or a modification of Treaty Minute 283 under this Act shall be subject to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) MATTERS TO BE ADDRESSED.—A new Treaty Minute or a modification of Treaty Minute 283 under paragraph (1) should address, at a minimum, the following:

(A) The siting of treatment facilities in Mexico and in the United States.

(B) Provision for the secondary treatment of effluent from the IWTP at a Mexican facility if such treatment is not provided for at a facility in the United States.

(C) Provision for additional capacity for advanced primary and secondary treatment of additional sewage emanating from the Tijuana River area, Mexico, in addition to the treatment capacity for the advanced primary effluent from the IWTP at the Mexican facility.

(D) Provision for any and all approvals from Mexican authorities necessary to facilitate water quality verification and enforcement at the Mexican facility.

(E) Any terms and conditions considered necessary to allow for use in the United States of treated effluent from the Mexican facility, if there is reclaimed water which is surplus to the needs of users in Mexico and such use is consistent with applicable United States and California law.

(F) Any other terms and conditions considered necessary by the Secretary in order to implement the provisions of this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 3378 is to authorize the U.S. to take actions to comprehensively address the treatment of sewage generated in the area of Tijuana, Mexico that flows untreated or partially treated into the U.S., causing significant negative public health and environmental impacts.

BACKGROUND AND NEED FOR LEGISLATION

Sanitation problems in San Diego-Tijuana and efforts to resolve them

The San Diego-Tijuana border region’s wastewater infrastructure has not kept pace with the area’s rapid growth. Tijuana, Mexico is situated on elevated terrain compared to San Diego, California, and the Tijuana River drains north into the San Diego area. Since the
infrastructure does not exist to treat all the sewage generated in the Tijuana area, untreated or partially treated sewage emanates from Tijuana and flows into the U.S. leading to serious public health, safety, and environmental concerns.

In the Water Quality Act of 1987, Congress authorized the construction of a wastewater treatment facility in San Diego to provide primary or more advanced treatment of municipal sewage and industrial waste from Mexico, including the city of Tijuana. For the United States, the secondary treatment requirements of the Clean Water Act are defined in federal regulations as a numeric effluent quality attainable through treatment that requires greater removal of certain pollutants than primary or advanced primary treatment.

In 1990, the bi-national International Boundary and Water Commission (Commission) entered into an international treaty agreement, called Minute 283, that directed the U.S. and Mexican governments to cooperate on the construction and operation of a secondary treatment facility in the United States with an approximate capacity of 25 million gallons per day (mgd).

In carrying out the directive of Minute 283, and in order to achieve some treatment of Mexican wastes as quickly as possible, EPA and the U.S. Section of the Commission agreed to construct the San Diego treatment facility in stages—by first building advanced primary treatment facilities followed later by secondary treatment facilities. The South Bay International Wastewater Treatment Plant (IWTP) became operational in 1998, and currently treats only to advanced primary standards. Effluent from the IWTP is discharged three and a half miles off the coast of San Diego through the South Bay Ocean Outfall. However, the Commission remains under a deadline imposed by the California Regional Water Control Board to select a secondary treatment option and complete its construction by December 2000.

Options to meet secondary treatment needs

In order to meet its obligations under the Clean Water Act and Minute 283, EPA has examined several secondary treatment options. In December 1999, EPA and the U.S. Section of the Commission signed a Record of Decision recommending the construction of secondary treatment ponds (Complete Mixed Aerated, or CMA Ponds) at a site adjacent to the current IWTP facility (the Hofer site) as the preferred treatment alternative to achieve secondary treatment.

However, additional funding authorization would be necessary to proceed with the CMA Ponds option because, in the FY 1993 VA/HUD Appropriations Bill, Congress set a statutory cap that EPA could spend no more than $239.4 million on both primary and secondary treatment at the IWTP. According to EPA, it has less than $10 million remaining under this cap, yet construction of the CMA Ponds option would cost approximately $45 million.

Private investors also submitted a proposal, called the “Bajagua proposal,” to construct, operate, maintain and own a secondary treatment facility in Mexico. Under this proposal, a facility with a capacity of not more than 50 mgd (with potential future expansion) would be constructed in Mexico through private investments. The primary advanced effluent from the IWTP would be pumped to the facility in Mexico, and treated to secondary treatment standards.
The owner of the facility could then sell the reclaimed water for use in Mexico and the U.S. Any reclaimed water not sold for reuse would be pumped back for discharge through the South Bay Ocean Outfall off the coast of San Diego. Under this scenario, the United States, acting through the U.S. section of the Commission, would enter into a fee-for-services contract with the owner of the proposed facility in Mexico for the secondary treatment of effluent from the IWTP and additional sewage emanating from Mexico.

There is no final decision on how best to provide for the secondary treatment needs of the San Diego and Mexico border area. In addition to the statutory cap on expenditures, several significant new circumstances exist that warrant a reconsideration of the best means for meeting the region’s future wastewater treatment needs. These include whether the total capacity for wastewater treatment should be expanded beyond 25 mgd due to rapidly growing treatment needs, and whether a treatment facility should be located in Mexico, both of which would require modifying existing statutory requirements and Minute 283.

Proponents of the Bajagua proposal have said they anticipate that project benefits may include: the reclaimed water could provide additional water supply for use in the growing economy of the San Diego-Tijuana border region, thereby freeing up existing potable water supplies; the proposed facility could treat 50 mgd, with the flexibility to expand total capacity later if needed to help meet the area’s rapidly growing treatment needs; and, the Bajagua proposal reportedly could be implemented in a cost-effective, timely manner.

On July 21, 1999, the House passed a Sense of Congress encouraging the Secretary of State to give the highest priority to the renegotiation of Minute 283, to allow for the construction of a wastewater treatment facility with greater than 25 mgd capacity that may be located in Mexico.

DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that H.R. 3378 may be cited as the “Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000.”

Section 2. Purpose

This section provides that the purpose of H.R. 3378 is to authorize the U.S. to take actions to comprehensively address the treatment of sewage generated in the area of Tijuana, Mexico that flows untreated or partially treated into the U.S., causing significant negative public health and environmental impacts.

Section 3. Definitions

This section defines the following terms: “Administrator”, “Commission”, “IWTP”, “Secondary Treatment”, “Secretary”, “Mexican Facility”, and “MGD”.
Section 4. Actions to be taken by the Commission and the Administrator

Subject to the negotiation and conclusion of a new treaty minute or amendment to Minute 283, this section authorizes and directs the Commission to provide secondary treatment for a total of not more than 50 mgd in Mexico of both primary advanced effluent pumped from the IWTP and any additional sewage emanating from the Tijuana River area in Mexico. It also directs the EPA to develop a comprehensive plan with stakeholder involvement within two years of the date of enactment of H.R. 3378. The comprehensive plan will analyze the long-term secondary treatment needs for the San Diego-Tijuana border region, and make recommendations for preferred options to provide additional treatment capacity for future flows emanating from the Tijuana River area.

If the comprehensive plan includes a recommendation for additional treatment capacity to be provided in Mexico rather than in the U.S., the Commission is authorized to provide not more than an additional 25 mgd of such capacity in Mexico.

Subject to the availability of appropriations, this section also authorizes the Commission to enter into a fee-for-services contract and make payments on behalf of the United States for treatment services rendered under the contract with the owner of a Mexican facility. The contract must include, at a minimum, the following terms:

1. That the advanced primary effluent from the IWTP be transported to the Mexican facility, and that it is treated to the secondary treatment level in compliance with U.S., California, and Mexican water quality laws.
2. For any effluent treated at the Mexican facility that is not reused in Mexico or the U.S., that it is returned for discharge through the South Bay Ocean Outfall off the coast of San Diego, and is in compliance with U.S. and California water quality laws.
3. That the Mexican facility may provide sewage treatment capacity in addition to the capacity needed to treat the advanced primary effluent pumped from the IWTP, if recommended as a preferred option in the EPA comprehensive plan analyzing the long-term treatment needs and recommending preferred options to provide such treatment.
4. That the contract has a term of 30 years.
5. That arrangements are made for the monitoring, verification, and enforcement of compliance with U.S., California and Mexican water quality standards.
6. That arrangements are made for the disposal and use of sludge in Mexico, which is from the IWTP and the Mexican facility.
7. That the Commission pay an annual fee to the owner of the Mexican facility covering the costs of development, financing, construction, and operation and maintenance of the facility.
8. That, if the Commission fails to perform its contractual obligations, the ownership of the facility is transferred to the U.S. after the U.S. pays a cancellation fee to the owner of the facility, which reflects the costs of repayment of construction debt and other contractual losses resulting from early termination of the contract. The cancellation fee owed to the owner of the facility shall be in amounts declining over the term of the contract.
(9) That, if the owner of the Mexican facility fails to perform its contractual obligations, ownership of the facility will be transferred to the U.S. without a cancellation fee.

Finally, this section states that the Contract Disputes Act of 1978 does not apply to a contract executed under this section. The Committee has been informed that this provision is necessary in order to promote private financing of the Mexican facility.

Section 5. Negotiation of a new treaty minute

This section includes a Congressional Statement requesting that the Secretary of State give the highest priority to entering into an international treaty agreement with Mexico (by revising the existing Minute 283, or negotiating a new minute) to carry out this Act in light of the threats to health and the environment from sanitation problems in the San Diego-Tijuana border region.

The Secretary is requested to begin negotiations with Mexico within 60 days after H.R. 3378's enactment. The implementation of a new or revised minute shall also require compliance with the National Environmental Policy Act of 1969. Finally, any new or revised minute, should address, at a minimum, the following:

1. The siting of treatment facilities in the U.S. and Mexico.
2. Providing secondary treatment of the IWTP primary advanced effluent in Mexico, if such treatment is not provided for in the U.S.
3. Providing treatment capacity for the advanced primary and secondary treatment of sewage in addition to the IWTP effluent.
4. Providing any and all approvals needed from Mexican officials to facilitate water quality verification and enforcement at the Mexican facility.
5. Any terms and conditions needed for the U.S. to use reclaimed water in the U.S. that are consistent with U.S. and California laws, if there is any reclaimed water not used in Mexico.
6. Any other terms and conditions considered necessary to carry out H.R. 3378.

Section 6. Authorization of appropriations

This section authorizes such sums as necessary to carry out the Act.

HEARINGS

No hearings have been held on this specific legislation, although the Subcommittee on Water Resources and Environment held hearings on the Administration’s FY 2001 budget request, which included funds for U.S.-Mexico border pollution problems, and on meeting wastewater infrastructure needs, generally.

COMMITTEE CONSIDERATION

On July 26, 2000, the Committee on Transportation and Infrastructure met in open session, discharged H.R. 3378 from the Subcommittee on Water Resources and Environment, and ordered the bill reported, as amended, to the House by voice vote.

The Committee adopted an amendment in the nature of a substitute, which, in addition to making technical and clarifying changes:

1. Adds a definition of “secondary treatment.”
(2) Authorizes the Commission to provide 50 mgd of secondary treatment capacity, with authorization for up to an additional 25 mgd based on the results of a comprehensive long-term plan to be developed by EPA and stakeholders.

(3) Directs the EPA and stakeholders to develop a comprehensive, long-term plan analyzing the wastewater treatment needs in the San Diego-Tijuana border region, and making recommendations for preferred options to treat additional sewage flows.

(4) Adds a new provision to be included in the terms of a fee-for-services contract regarding the transfer of ownership of the treatment facility in Mexico to the U.S., if the owner of the facility fails to meet its contractual obligations.

In addition, a unanimous consent request was granted to delete a provision from the substitute amendment waiving federal fiscal procurement laws for a contract entered into under this Act.

ROLLCALL 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 rollcall 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 ordering H.R. 3378 reported.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) 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

In accordance with Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee is required to estimate the costs incurred in carrying out the bill in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year. This rule does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office (CBO) under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report. As no CBO cost estimate and comparison is available at the time of the filing of this report, the Committee has included its own estimate for H.R. 3378. Upon receipt of a CBO cost estimate and comparison, the Committee will evaluate whether or not it should adopt the CBO estimate in place of the Committee’s estimate.

COMMITTEE COST ESTIMATE

H.R. 3378 would authorize the United States, acting through the U.S. Section of the Commission, to enter into a 30-year fee-for-services contract with the owner of a privately financed secondary wastewater treatment facility located in Mexico. The purpose of entering into such contract would be for the U.S. to provide adequate wastewater treatment along the U.S.-Mexico border so that untreated or partially treated sewage from Tijuana, Mexico no longer flows north into the San Diego, California area. H.R. 3378 authorizes the U.S. to pay annual contract fees incorporating the costs of
developing, financing, constructing, operating and maintaining the wastewater treatment facility in Mexico.

The Committee estimates the cost to the U.S. government would be a total of $203 million in budget authority, and the same amount in outlays for fiscal years 2001–2005. This estimate has been developed in accordance with the budget scorekeeping guidelines used by the House and Senate Budget Committees, CBO and the Office of Management and Budget (OMB) in compliance with the Congressional Budget Act of 1974, as amended, and the Gramm-Rudman-Hollings Act, as amended.

In accordance with these guidelines, the fee-for-services contract may be characterized as a lease-purchase contract. Scorekeeping guideline #11 requires that, for lease-purchases, budget authority is scored against the legislation in the year in which the budget authority is first made available in the amount of the estimated net present value of the Government’s total estimated legal obligations, or minimum lease payments, over the life of the contract. This calculation excludes imputed interest costs and identifiable annual operating expenses that would be paid by the Government as owner. The annual minimum lease payments are estimated at $13.7 million. In calculating the annual minimum lease payments, the Committee assumes that the project’s estimated capital costs are $103 million.

In scoring lease purchases, the discount rates used to calculate the net present value of the minimum lease payments should be Treasury rates for marketable debt instruments of similar maturity for the lease term. The discount rate used to calculate the net present value is 6.0%, recommended by CBO as the nominal interest rate on 30-year Treasury notes and bonds.

Outlays for a lease-purchase in which the Government assumes substantial risk are spread across the period during which the contractor constructs the asset, which, in this case, is estimated to be approximately three years. The assumed outlay rates over the three-year period are 25%, 45% and 30% for each year, respectively.

The identifiable operations and maintenance costs are not scored as upfront costs, but are scored over the lease term for both budget authority and outlays. Estimated annual operations and maintenance costs are $6.7 million for this project, and estimated outlays assume a 100% annual outlay rate.

The bill would not affect direct spending or receipts, therefore pay-as-you-go procedures would not apply.

<table>
<thead>
<tr>
<th>SUMMARY OF CHANGES IN SPENDING SUBJECT TO APPROPRIATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>BA</td>
</tr>
<tr>
<td>Ols</td>
</tr>
<tr>
<td>OL rates</td>
</tr>
</tbody>
</table>

The Committee believes the assumptions in this cost estimate are reasonable given the currently available information about the proposed wastewater treatment project. No Federal agency has submitted a similar analysis estimating the costs of this project, however, the Committee understands the Commission has concurred with the project’s estimated capital and annual operations
and maintenance costs provided by the project sponsors, and used in the Committee’s cost estimate.

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 notes in its cost estimate the changes in spending subject to appropriation that would occur as a result of passing H.R. 3378.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on the subject of H.R. 3378.

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 not yet received a cost estimate for H.R. 3378 from the Director of the CBO.

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 plans to adopt as its own the estimate of federal mandates prepared by the Director of the CBO pursuant to section 423 of the Unfunded Mandates Reform Act (UMRA, Public Law 104–4), when such estimate is made available to the Committee. The Committee has concluded that H.R. 3378 contains no intergovernmental or private-sector mandates as defined in UMRA, and would impose no costs on state, local or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were 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).
ESTUARIES AND CLEAN WATERS ACT OF 2000

OCTOBER 24, 2000.—Ordered to be printed

Mr. SHUSTER, from the committee on conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 835]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 835), to encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Estuaries and Clean Waters Act of 2000”.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—ESTUARY RESTORATION

Sec. 101. Short title.
Sec. 102. Purposes.
Sec. 103. Definitions.
Sec. 104. Estuary habitat restoration program.
Sec. 105. Establishment of Estuary Habitat Restoration Council.
Sec. 106. Estuary habitat restoration strategy.
Sec. 107. Monitoring of estuary habitat restoration projects.
Sec. 108. Reporting.
Sec. 109. Funding.
Sec. 110. General provisions.

TITLE II—CHESAPEAKE BAY RESTORATION

Sec. 201. Short title.
Sec. 203. Chesapeake Bay.

TITLE III—NATIONAL ESTUARY PROGRAM

Sec. 301. Addition to national estuary program.
Sec. 302. Grants.
Sec. 303. Authorization of appropriations.

TITLE IV—LONG ISLAND SOUND RESTORATION

Sec. 401. Short title.
Sec. 402. Innovative methodologies and technologies.
Sec. 403. Assistance for distressed communities.
Sec. 404. Authorization of appropriations.

TITLE V—LAKE PONTCHARTRAIN BASIN RESTORATION

Sec. 501. Short title.
Sec. 502. Lake Pontchartrain basin.

TITLE VI—ALTERNATIVE WATER SOURCES

Sec. 601. Short title.
Sec. 602. Pilot program for alternative water source projects.

TITLE VII—CLEAN LAKES

Sec. 701. Grants to States.
Sec. 702. Demonstration program.

TITLE VIII—TIJUANA RIVER VALLEY ESTUARY AND BEACH CLEANUP

Sec. 801. Short title.
Sec. 802. Purpose.
Sec. 803. Definitions.
Sec. 804. Actions to be taken by the Commission and the Administrator.
Sec. 805. Negotiation of new treaty minute.
Sec. 806. Authorization of appropriations.

TITLE IX—GENERAL PROVISIONS

Sec. 901. Purchase of American-made equipment and products.
Sec. 902. Long-term estuary assessment.
Sec. 903. Rural sanitation grants.

TITLE I—ESTUARY RESTORATION

SEC. 101. SHORT TITLE.
This title may be cited as the “Estuary Restoration Act of 2000”.

SEC. 102. PURPOSES.
The purposes of this title are—
(1) to promote the restoration of estuary habitat;
(2) to develop a national estuary habitat restoration strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors;
(3) to provide Federal assistance for estuary habitat restoration projects and to promote efficient financing of such projects; and
(4) to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.
TITLE VII—CLEAN LAKES

Title VII of the Conference substitute reauthorizes and amends the Clean Lakes Program under section 314 of the Clean Water Act. This title is substantially similar to title VIII of the House amendment. The Senate bill had no comparable title. The Conferees adopted title VIII of the House amendment with amendments. Differences between the House amendment and Conference substitute are as follows:

SECTION 702. DEMONSTRATION PROGRAM

House amendment

Section 801 of the House amendment amends section 314(c)(2) of the Clean Water Act by authorizing $50 million for grants to States to implement the Clean Lakes Program for each of fiscal years 2001 through 2005.

Section 802 amends section 314(d) of the Clean Water Act by:
adding several lakes to the list of lakes to receive priority consideration for demonstration projects in paragraph (2); preventing the report to Congress on the Clean Lakes demonstration program in paragraph (3) from expiring under the Federal Reports Elimination and Sunset Act of 1995; and, increasing the special authorization of financial assistance to States to carry out methods and procedures to mitigate harmful effects of high acidity from acid deposition or acid mine drainage in paragraph (4) from $15 million to $25 million.

Conference substitute

Section 702 of the Conference substitute amends section 314(d)(2) of the Clean Water Act authorizing demonstration projects to be undertaken in the following lakes, in addition to those in the House amendment: Lake Tahoe, California and Nevada; Highland Lake, Connecticut; Lake Apopka and Tohopekaliga Lake, Florida; Lake Allatoona, Georgia; Walker Lake, Nevada; Baboosic Lake and French Pond, New Hampshire; Lily Lake and Strawbridge Lake, New Jersey; Lake George, New York; Dillon Reservoir, Ohio; Ten Mile Lakes, and Woahink Lake, Oregon; and, Lake Wallenpaupack, Pennsylvania.

TITLE VIII—TIJUANA RIVER VALLEY ESTUARY AND BEACH CLEANUP

Title VIII of the Conference substitute authorizes certain actions to address the comprehensive treatment of sewage emanating from the Tijuana River to reduce water pollution in the San Diego, California border region. This title is substantially similar to title X of the House amendment. The Senate bill had no comparable title. The Conferees adopted title X of the House amendment with amendments. Differences between the House amendment and Conference substitute are as follows:
SECTION 804. ACTIONS TO BE TAKEN BY THE COMMISSION AND THE ADMINISTRATOR

House amendment

Subject to the negotiation and conclusion of a new treaty minute or amendment to Minute 283, section 1004(a) of the House amendment authorizes and directs the International and Boundary Water Commission (the Commission) to provide secondary treatment for a total of not more than 50 million gallons per day (mgd) in Mexico of both primary advanced effluent pumped from the International Wastewater Treatment Plant (IWTP) in San Diego and any additional sewage emanating from the Tijuana River area in Mexico.

Section 1004(b) directs EPA to develop a comprehensive plan with stakeholder involvement within two years of the date of enactment of the title. The comprehensive plan will analyze the long-term secondary treatment needs for the San Diego-Tijuana border region, and make recommendations for preferred options to provide additional treatment capacity for future flows emanating from the Tijuana River area. If the comprehensive plan includes a recommendation for additional treatment capacity to be provided in Mexico rather than in the U.S., the Commission is authorized to provide not more than an additional 25 mgd of such capacity in Mexico.

Subject to the availability of appropriations, section 1004(c) authorizes the Commission to enter into a fee-for-services contract and make payments on behalf of the U.S. for treatment services rendered under the contract with the owner of a Mexican facility. Section 1004(c)(2) requires the contract to include, at a minimum, the terms listed in the following subparagraphs:

(A) that the advanced primary effluent from the IWTP be transported to the Mexican facility;
(B) that the advanced primary effluent from the IWTP be treated to the secondary treatment level in compliance with U.S., California, and Mexican water quality laws;
(C) that any effluent treated at the Mexican facility not reused in Mexico or the U.S. is returned for discharge through the South Bay Ocean Outfall off the coast of San Diego, and that it is in compliance with U.S. and California water quality laws;
(D) that the Mexican facility may provide sewage treatment capacity in addition to the capacity needed to treat the advanced primary effluent pumped from the IWTP, if recommended as a preferred option in the EPA comprehensive plan analyzing the long-term treatment needs and recommending preferred options to provide such treatment;
(E) that the contract has a term of 30 years;
(F) that arrangements are made for the monitoring, verification, and enforcement of compliance with U.S., California and Mexican water quality standards;
(G) that arrangements are made for the disposal and use of sludge in Mexico, which is from the IWTP and the Mexican facility;
(H) that the Commission pays an annual fee to the owner of the Mexican facility covering the costs of development, financing, construction, and operation and maintenance of the facility;
(I) that, if the Commission fails to perform its contractual obligations, the ownership of the facility is transferred to the U.S. after the U.S. pays a cancellation fee to the owner of the facility, which reflects the costs of repayment of construction debt and other contractual losses resulting from early termination of the contract. The cancellation fee owed to the owner of the facility shall be in amounts declining over the term of the contract;

(J) that, if the owner of the Mexican facility fails to perform its contractual obligations, ownership of the facility will be transferred to the U.S. without a cancellation fee;

(K) that the owner of the Mexican facility uses competitive procedures to the extent practicable in the procurement of property or services for the engineering, construction, and operation and maintenance of the facility;

(L) that the Commission may review and approve the contractors providing for the engineering, construction, and operation and maintenance of the facility;

(M) that the owner of the Mexican facility maintains all records to demonstrate compliance with this section and the contract; and,

(N) that the U.S. Department of State Inspector General has access to all pertinent records to conduct audits to ensure the owner of the Mexican facility is complying with the terms of this title and the contract.

Section 1004(c)(3) states that the Contract Disputes Act of 1978 does not apply to a contract executed under this section.

Section 1004(d) requires the U.S. Department of State Inspector General to monitor the implementation of contracts entered into under this section and to evaluate whether the owner of the Mexican facility has complied with the terms of the section and fulfilled the contract terms.

Conference substitute

The Conference substitute adopts the House amendment with several amendments to the contract terms listed in section 804(c)(2).

In order to ensure greater accountability with respect to the costs of developing, financing, constructing, and operating and maintaining the facility, the Conference substitute requires the owner of the facility to share in all of these costs. New subparagraph (H) requires that the owner of the facility maintain 20 percent equity in the capital structure of the facility throughout the term of the contract. Under new subparagraph (I), the Commission’s annual payments shall maintain the owner’s 20 percent equity position throughout the term of the contract. Revised subparagraph (E) limits the contract term to 20 years.

The Conference substitute requires, in new subparagraph (P), that the owner of the facility provide offsets or credits in the event that the owner is able to sell the treated wastewater from the facility. The parties negotiating the contract may determine the amount of offsets or credits.

The Conference substitute also requires the owner of the facility to competitively bid all subcontracts for the facility. Revised subparagraph (L) specifically applies title III of the Federal Prop-
erty and Administrative Services Act of 1949, as amended by the Competition in Contracting Act.

Finally, the Conference substitute does not provide an exemption from the Contract Disputes Act.

SECTION 806. AUTHORIZATION OF APPROPRIATIONS

House amendment
Section 1006 of the House amendment authorizes such sums as necessary to be appropriated to carry out the title.

Conference substitute
Section 806 of the Conference substitute changes the authorization from “such sums as necessary to carry out” the title to a five-year authorization of $156 million for fiscal years 2001 through 2005. The Conferees acknowledge that the title also authorizes the Commission to enter into a 20-year fee-for-services contract with the owner of a Mexican facility. The five-year authorization is included to be consistent with the authorizations throughout the Conference substitute, and the Conferees do not intend this to affect the Commission’s obligations under the 20-year contract.

TITLE IX—GENERAL PROVISIONS

Other than section 901, this title includes new provisions that were not in the Senate bill or the House amendment.

SECTION 901. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

House amendment
Titles II, VI, VII, and VIII of the House amendment each contained a provision regarding the purchase of American-made equipment and products.

Conference substitute
The Conference substitute deletes the relevant provisions in titles II, VI, VII and VIII in the House amendment, and replaces them with a new section 901. This section states that it is the Sense of Congress, to the extent practicable, for all equipment and products purchased with funds made available under this Act to be made in America. Also, each Federal agency head providing financial assistance under this bill is directed to provide such notice to each recipient of financial assistance, to the extent practicable.

SECTION 902. LONG-TERM ESTUARY ASSESSMENT

Conference substitute
Section 902 of the Conference substitute authorizes the Secretary of Commerce and the Secretary of the Interior to carry out a long-term estuary assessment project for the Mississippi River south of Vicksburg, Mississippi and the Gulf of Mexico. The authorized appropriation levels are $1 million for fiscal year 2001 for the management agreement with a university-based consortium, and $4 million for each of fiscal years 2002 through 2005 to carry out the project.
The Conferees are aware that the Center for Bioenvironmental Research at Tulane University and Xavier University in New Orleans, Louisiana have formed a university-based consortium called the “Long-term Estuary Assessment Group” for the purpose of developing advanced long-term assessment and monitoring systems relating to the Mississippi River and other aquatic ecosystems and encourages the Secretaries of Commerce and of the Interior to examine the work begun by the Center for Bioenvironmental Research and this consortium when selecting a university-based consortium to manage this project.

SECTION 903. ALASKA RURAL SANITATION GRANTS

Conference substitute

Section 903 of the Conference substitute amends section 303(e) of the Safe Drinking Water Act Amendments of 1996 by reauthorizing $40 million for each of fiscal years 2001 through 2005.

ADDITIONAL ITEMS

House amendment

Title IV of the House amendment establishes an EPA grant program to improve water quality in the Florida Keys. Title IX establishes an EPA Mississippi Sound restoration program.

Conference substitute

The Conference substitute deletes titles IV and IX of the House amendment.

BUD SHUSTER,
DON YOUNG,
SHERWOOD BOEHLERT,
WAYNE T. GILCHREST,
TILLIE K. FOWLER,
DON SHERWOOD,
JOHN E. SWEENEY,
STEVEN T. KUYKENDALL,
DAVID VITTER,
JIM OBERSTAR,
BOB BORSKI,
JIM BARCIA,
BOB FILNER,
EARL BLUMENAUER,
JOHN BALDACCI,
Managers on the Part of the House.

BOB SMITH,
JOHN W. WARNER,
MICHAEL D. CRAPO,
MAX BAUCUS,
BARBARA BOXER,
Managers on the Part of the Senate.
H.R. 3378
Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000

As passed by the House of Representatives on September 12, 2000

SUMMARY

H.R. 3378 would direct the U.S. section of the International Boundary and Water Commission (IBWC) to enter into a contract with the owner of a wastewater treatment facility in Mexico. Under this contract, the owner would treat water to certain U.S. standards, and the federal government would make annual payments over a 30-year period to cover the costs of developing, financing, constructing, operating, and maintaining the facility.

The act would authorize the appropriation of amounts necessary to implement the proposed contract. CBO estimates that implementing H.R. 3378 would cost $166 million over the 2001-2005 period and an additional $430 million after fiscal year 2005. H.R. 3378 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 3378 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. 3378 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

<table>
<thead>
<tr>
<th>By Fiscal Year, in Millions of Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
</tr>
<tr>
<td>---------------------------------------</td>
</tr>
<tr>
<td>Estimated Authorization Level</td>
</tr>
<tr>
<td>Estimated Outlays</td>
</tr>
</tbody>
</table>
BASIS OF ESTIMATE

This cost estimate is based on information from the Environmental Protection Agency (EPA), the U.S. section of IBWC, and Agua Clara LLC, a firm interested in the project. Implementing H.R. 3378 would require the U.S. section of the IBWC to follow a competitive-bid process and renegotiate certain treaty minutes with its Mexican counterpart before entering the contract. Once those activities are completed, CBO expects construction of a wastewater treatment plant would begin in fiscal year 2004.

H.R. 3378 would direct EPA to study the wastewater treatment needs of the border region between San Diego and Tijuana, Mexico. The act would authorize the IBWC to enter into a 30-year contract with a private entity for the treatment of 50 million gallons of water per day (mgd), plus an additional 25 mgd subject to the results of the EPA study. Based on information from EPA, CBO expects the study would cost about $1 million (in 2001) and that the IBWC would enter into a contract for the treatment of 75 mgd.

The contract for wastewater treatment services authorized by H.R. 3378 would meet the criteria of a federal lease-purchase contract, meaning that the government is effectively purchasing—not leasing—the wastewater treatment plant. CBO bases this conclusion on the fact that the wastewater treatment plant would be built for the special purpose of the government, and there would be little or no private-sector market for this particular facility. Furthermore, the 30-year term of the lease would extend through most of the plant’s expected economic life, and the lease payments over this period would pay for most of the facility’s cost. Finally, the contract terms would provide that the plant be transferred to the government if either side fails to meet its contractual obligations.

Funds to execute federal lease-purchase contracts receive a special budgetary treatment. When the government enters into lease-purchase contracts, the present value of all expected future lease payments is supposed to be provided in an appropriation act in the first year of the contract. CBO estimates that H.R. 3378 would authorize the appropriation of $280 million in 2004 to enter into the specified wastewater treatment contract. This estimate assumes that the construction of the facility would cost $124 million in 2004, and that its private builder would seek a 15-percent rate of return under the lease terms to cover financing and other costs.

The cost of a lease-purchase contract that involves substantial financial risk for the government is accounted for over the project’s construction period, rather than the term of the lease. Thus, CBO estimates that implementation of H.R. 3378 would cost $280 million over the 2004-2007 construction period. After construction is complete, we estimate that implementing H.R. 3378 would cost between $8 million and $16 million each year for operating and maintaining the plant during the remainder of the contract period. In total, CBO estimates that implementing H.R. 3378 would cost $596 million over the 2004-2034 period.
PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3378 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: Rachel Applebaum
Impact on State, Local, and Tribal Governments: Victoria Heid Hall
Impact on the Private Sector: Lauren Marks

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis
H.R. 4794
A bill to amend the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes

As ordered reported by the House Committee on Transportation and Infrastructure on July 21, 2004

SUMMARY

The International Boundary and Water Commission (IBWC), composed of a U.S. section and a Mexican section, is responsible for applying the boundary and water treaties between the United States and Mexico and settling any differences that may arise out of such treaties. Enacting H.R. 4794 would indefinitely extend the authority of the U.S. section of the IBWC to enter into a contract to build and operate a wastewater treatment facility in Mexico. Under current law, such authority is available through 2005 and is contingent on the negotiation and conclusion of a new treaty between the governments of the United States and Mexico.

On February 20, 2004, a new treaty between the two governments was negotiated, establishing a framework for the development of the wastewater treatment facility. Under this contract, the plant owner would treat wastewater to certain U.S. standards, and the federal government would make annual payments over a 20-year period to cover the costs of developing, financing, constructing, operating, and maintaining the facility. This new facility would be designed to address the problem of untreated or partially treated sewage flowing over the border from Tijuana, Mexico, to San Diego, California.

H.R. 4794 would authorize the appropriation of $230 million for the wastewater treatment contract. We expect that implementing the contract would constitute a federal lease-purchase of the new treatment facility. CBO estimates, however, that implementing this legislation would require appropriations of $295 million over the 2005-2009 period. In addition, CBO estimates that appropriations of $316 million would be needed after 2009 to cover the costs associated with operating and maintaining the facility through the remainder of the contract period.
Enacting this bill would not affect direct spending or receipts because the IBWC could not enter into a contract to build the plant until the full amount necessary to implement the contract is provided in advance in an appropriation act.

H.R. 4794 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. The bill would benefit California, the City of San Diego, and other local and tribal governments in that state by reauthorizing and increasing federal support of a wastewater treatment project along the U.S.-Mexico border.

**ESTIMATED COST TO THE FEDERAL GOVERNMENT**

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2005 and that the estimated amounts necessary to build and maintain the wastewater treatment plant will be appropriated. Estimated outlays are based on historical spending patterns for other similar construction projects. The estimated budgetary impact of H.R. 4794 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

<table>
<thead>
<tr>
<th></th>
<th>By Fiscal Year, in Millions of Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2004</td>
</tr>
<tr>
<td><strong>SPENDING SUBJECT TO APPROPRIATION</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Spending Under Current Law to Build and Operate Wastewater Treatment Facility</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorization Level(^a)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Estimated Outlays</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed Changes</th>
<th>Estimated Authorization Level</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Estimated Outlays</td>
<td>0</td>
<td>66</td>
<td>118</td>
<td>79</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Spending Under H.R. 4794 to Build and Operate Wastewater Treatment Facility</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Authorization Level</td>
<td>0</td>
<td>263</td>
<td>0</td>
<td>0</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Estimated Outlays</td>
<td>0</td>
<td>66</td>
<td>118</td>
<td>79</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

\(^a\) Current law authorizes the appropriation of $156 million over the 2001-2005 period. To date no funding has been provided.
BASIS OF ESTIMATE

This cost estimate is based on information from the U.S. section of the IBWC and a firm that is interested in constructing the new facility and has performed limited design work for such a facility. Because a new treaty was agreed to by the governments of Mexico and the United States on February 20, 2004, CBO expects that design of the wastewater treatment facility would begin in 2005. In total, CBO estimates that implementing H.R. 4794 would cost $295 million over the next five years and $316 over the 2010-2025 period. The budgetary treatment of those costs as well as the various components are described below.

Budgetary Treatment of Lease-Purchases

CBO expects that the contract for wastewater treatment services authorized by H.R. 4794 would meet the criteria of a federal lease-purchase contract, meaning that the government is effectively purchasing—not leasing—the wastewater treatment plant. CBO bases this conclusion on the fact that the wastewater treatment plant would be built for the special purpose of the U.S. government, and there would be little or no private-sector market for this particular facility. Furthermore, the 20-year term of the lease would extend through most of the plant’s expected economic life, and the lease payments over this period would pay for nearly all of the facility’s cost.

Despite the fact that the U.S. federal government would provide the funding to develop, finance, construct, operate, and maintain the facility, the legislation would require the facility to be conveyed to “an appropriate governmental entity” (apparently, a Mexican governmental entity) in the event that either the IBWC or the plant operator fails to meet its contractual obligations to operate the plant. CBO, however, assumes that because the U.S. government would be providing the necessary funding to support the facility, the U.S. government effectively controls the facility and directs its transfer to a Mexican governmental entity at the end of the contract period.

Funds to execute federal lease-purchase contracts receive a special budgetary treatment (see Office of Management and Budget Circular A-11). When the government enters into lease-purchase contracts, the present value of all expected future lease payments (excluding annual operating and maintenance costs) must be provided in an appropriation act in the first year of the contract. Because the cost of a lease-purchase contract that involves substantial financial risk for the government is accounted for over the project’s construction period rather than the term of the lease, the outlays associated with the appropriation would follow the three-year construction schedule assumed for the project.
Construction Cost

CBO estimates that implementing this bill would require an appropriation of $263 million in 2005. At this estimated level of funding, CBO assumes that the new facility would treat up to about 59 million gallons per day of sewage (which is the capacity level identified in EPA’s Master Plan for the Tijuana region), construction of the facility would cost about $159 million in 2005, that the private builder would seek a 15-percent rate of return under the lease terms to cover financing and other costs, and that the present value of the expected future lease payments would be discounted using CBO’s projection of Treasury’s long-term borrowing rate of 5.43 percent. To the extent that different assumptions are used to estimate the net present value associated with the cost of the proposed project, the estimates for appropriations to support the project could vary.

Operation and Maintenance Cost

In addition, after construction is completed, funding for operating and maintaining the facility during the remainder of the 20-year contract period could be required. While current law would allow for such costs to be offset by payments the owner of the facility might receive through the sale of treated water, there is no guaranty that such an agreement would be negotiated, according to the firm interested in designing the facility. As a result, CBO estimates that additional appropriations of $16 million annually could be necessary beginning in fiscal year 2008. Adjusting for anticipated inflation, such costs could reach as high as $23 million by 2025.

Total Costs

CBO estimates that enacting this legislation would require a total appropriation of $295 million over the next five years and $316 million in subsequent years. This estimated cost would exceed the amount specifically authorized by the bill by a total of $381 million over the 2005-2025 period. CBO estimates that the amount specifically authorized to be appropriated by the bill would be insufficient to implement the 20-year lease-purchase contract authorized by the legislation.
INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4794 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would benefit California, the city of San Diego, and other local and tribal governments in that state by reauthorizing and increasing federal support of a wastewater treatment project along the U.S.-Mexico border.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman
Impact on State, Local, and Tribal Governments: Gregory Waring
Impact on the Private Sector: Amina Masood

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis