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### LONG ISLAND SOUND STEWARDSHIP ACT OF 2005

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DECEMBER 8, 2005.—Ordered to be printed

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

### REPORT

[to accompany S. 158]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 158) to establish the Long Island Sound Stewardship Initiative, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### GENERAL STATEMENT AND BACKGROUND

The Long Island Sound is a nationally important estuary that contributes more than \$6 billion annually to the regional economy. Ten percent of the population of the United States lives within 50 miles of the sound. For more than a decade, there have been numerous programs implemented to improve water quality, provide greater public access, and secure open spaces.

#### OBJECTIVES OF THE LEGISLATION

S. 158 is intended to establish a Long Island Sound Stewardship Initiative (LISSI), to identify, protect, and enhance sites within the Long Island Sound ecosystem. The bill would authorize up to \$25 million annually for fiscal years 2006 to 2013. It provides for a three to one Federal to local share and it creates an Advisory Committee chaired by the Director of the Long Island Sound Office of the EPA.

The bill establishes the Long Island Sound Stewardship Advisory Committee, which is composed of Federal, State and local officials, along with public interest groups, academics and private landowners. The Advisory Committee will evaluate applications for the acquisition of land or for conservation easements, for the development and implementation of management plans to address threats, and to act on opportunities to protect and enhance stewardship sites. Stewardship areas could be privately owned or be part of existing State parks, nature preserves or wildlife areas. Based on their analysis, the committee will recommend that the EPA Administrator award grants to qualified applicants. Participation in this program will be based upon the request of the property owner and only willing owners will participate.

S. 158 also reauthorizes the Long Island Sound Restoration Act to 2009.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title.*

This section sets forth the short title of the bill as the “Long Island Sound Stewardship Act of 2005.”

##### *Sec. 2. Findings and purpose.*

###### *Summary*

This section includes eight findings regarding the importance of the program.

The purpose of the Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying those values.

##### *Sec. 3. Definitions.*

###### *Summary*

This section defines the terms used in this Act.

- ‘Adaptive management’ means a scientific process for developing predictive models, making management policy decisions based upon the model outputs; revising the management policies as new data becomes available; acknowledging uncertainty and variance in the spatial and temporal aspects of natural systems; and a process that requires management be viewed as experimental.
- ‘Administrator’ means the Administrator of the United States Environmental Protection Agency (EPA).
- ‘Committee’ is the Long Island Sound Stewardship Advisory Committee established under section 5(a) of the Act.
- ‘Region’ refers to the Long Island Sound Stewardship Initiative Region as established under section 4(a) of the Act.
- ‘States’ are the States of Connecticut and New York.
- ‘Stewardship Site’ is a site that qualifies for identification by the committee under section 5(a) and is an area of land or water (or combination), that is in the Region and is Federal, State, local, tribal, privately owned, or owned by a nonprofit organization.

- ‘Systematic Site Selection’ is a process of selecting stewardship sites that has explicit goals, methods and criteria; produces feasible, reportable, and defensible results; provides for consideration of natural, physical and biological patterns; addresses reserve size, replication connectivity, species viability, location, and public recreation values; uses geographic information systems technology and algorithms to integrate selection criteria; and will result in achieving the goals of stewardship site selection at the lowest cost.
- ‘Threat’ means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

*Sec. 4. Long Island Sound Stewardship Initiative Region.*

*Summary*

This section establishes the Long Island Sound Stewardship Initiative Region (LISSI Region). It defines the boundaries of the LISSI Region as encompassing the immediate coastal upland and underwater areas along the Long Island Sound, including portions of the Sound with coastally influenced vegetation and the Peconic Estuary.

*Sec. 5. Long Island Sound Stewardship Advisory Committee.*

*Summary*

This section establishes the Long Island Sound Stewardship Advisory Committee. It designates the Chairperson of the LISSA Committee as the director of the Long Island Sound Office of the EPA or a designee of the Director. This section sets forth the membership of the LISSA Committee requiring that it include a representative from the Regional Plan Association, marine trade organizations, and a representative of private landowner interests. When appointing members, the Chairperson is required to consider the interests of Federal, State and local governments, non-governmental organizations, academia and the private sector. Appointments to the LISSA Committee shall be made within 180 of enactment. This section also establishes the term length of committee members as 4 years and allows for multiple appointments. It establishes procedures regarding vacancies on the committee, hiring and termination of committee staff, meetings, and meeting procedures.

*Section 6. Duties of the Committee.*

*Summary*

This section requires the committee to evaluate applications from government or nonprofit organizations qualified to hold easements for funds to buy land and development sites, as well as evaluate applications to develop and implement management plans to protect, enhance and address threats. It specifies that the committee will also recommend guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites and publish a list of those sites. Before publishing, owners of the sites shall be given prior notification and given the option to decline being included on the list.

*Sec. 7. Powers of the Committee.**Summary*

This section authorizes the LISSA Committee to hold hearings, meet and act when necessary. It permits the LISSA Committee to secure information directly from Federal agencies. It requires the head of a Federal agency to provide the requested information. This section clarifies that the furnishing of information does not constitute a waiver of any exemptions already available to the Agency. It provides that the committee shall be considered an agency of the Federal Government and that any individual, entity, or organization that is a party to a contract with the committee shall be considered an employee of the committee. This section prohibits the LISSA Committee from disclosing the information unless it is already available to the public. This section provides that the committee may use the U.S. mail in the same manner and conditions as other agencies. It grants the committee the right to accept, use and dispose of donations of services or property that advances the goals of the Act.

*Discussion*

The committee has granted the LISSA Committee the ability to obtain information from other Federal agencies to ensure that the LISSA Committee has as much information as possible. Federal agencies may have information that is not available elsewhere to assist in identifying stewardship sites.

*Sec. 8. Stewardship sites.**Summary*

This section establishes the process to identify stewardship sites. It requires the identification of 20 initial Long Island Sound stewardship sites that are either natural resource-based recreation areas or natural areas with ecological value and promote the purposes of this Act. These sites are not subject to the site identification process described in subsection 8(d). Funds shall be distributed equitably between the States for the initial sites.

This section also establishes a process for stewardship site identification after the 20 initial sites are identified: Property owners may submit applications, for review by the LISSA Committee, to have sites identified as stewardship sites. The LISSA Committee will review applications submitted by owners to determine whether the sites should be identified as exhibiting values consistent with the purposes of this Act. The LISSA Committee, when identifying additional recreation areas, to use a selection technique that includes: public access, community support, areas with high population density, environmental justice (defined in 33 C.F.R. 385.3), connection to existing protected areas and open spaces, cultural, historic and scenic areas, and other criteria developed by the LISSA Committee.

The LISSA Committee also is required to identify additional natural areas with ecological value and potential as stewardship sites based on measurable conservation targets and following a process for prioritizing new sites using a systematic site selection. This

process shall include: ecological uniqueness; species viability; habitat heterogeneity; size; quality; connection to existing protected areas and open spaces; land cover; scientific, research, or educational value; threats; and other criteria developed by the LISSA Committee.

After the site identification process, the LISSA Committee shall publish a list of sites in the Federal Register. Owners of the sites to be published must be notified of the publication and given an opportunity to be excluded from the list. The LISSA Committee must consider public comments when identifying potential stewardship sites.

This section permits the LISSA Committee to deviate from the site identification process set forth in this section if it selects a site that makes an ecological or recreational contribution to the Region. The LISSA Committee must publish its reasons for the deviation, and provide owners of the site notification of publication in the Federal Register along with the opportunity to decline inclusion.

In addition, this section requires the LISSA Committee to use an adaptive management framework to identify the best policy initiatives and actions. This framework must include: definition of strategic goals; definition of policy options for methods to achieve strategic goals; establishment of measures of success; identification of uncertainties; development of informative models of policy implementation; separation of the landscape into geographic units; monitoring key responses at different spatial and temporal scales; and evaluation of outcomes and incorporation into management strategies. The framework must also be applied to the process for updating the list of recommended stewardship sites.

#### *Discussion*

This section establishes the process for identifying sites to be included in the Long Island Sound Stewardship program. First, it specifies the process by which the initial 20 stewardship sites are chosen. It is the committee's understanding that these 20 initial sites have already been identified and that the owners of these sites are willing participants in the program.

#### *Sec. 9. Reports.*

##### *Summary*

This requires the LISSA Committee to submit to the Administrator an annual report, for each of the years 2006–2013. The report must contain detailed findings and conclusions, a description of all recommended stewardship sites, recommendations for legislation and administrative actions, and for the awarding of grants to qualified applicants. After receiving this report, the Administrator has ninety days (90) to review and take action consistent with the recommendations of the committee. This can include approval of identified stewardship sites and the award of grants, unless the Administrator finds that any recommendation is unwarranted. This section provides guidelines to the Administrator for awarding grants recommended by the LISSA Committee. The Administrator may award grants to secure and improve the open space, public access, or ecological values of stewardship sites through the purchase

of property, property rights, or the use of other binding legal arrangements that ensure the sustained value of the site. This section requires the Administrator to distribute funds equitably between the States. Finally, this section requires the Administrator to publish and make available to the public via the Internet and in hard copy, a report that assesses the resources and threats to Long Island Sound and the role of the Long Island Sound Stewardship Initiative, establishes guidelines for evaluating information to identify stewardship sites, includes information about the availability of grants for land purchase, and details the funds spent and received. The report must be updated at least every other year, except that information on funding and new stewardship sites shall be published more frequently.

*Discussion*

The committee understands that in order to meet the multiple purposes and multiple audiences of this report, the Administrator of the EPA may determine that separate reporting documents are appropriate.

*Sec. 10. Private property protection.*

*Summary*

This section provides that this Act does not require any private property owner to allow public access to private property or modifies any provision of Federal, State, or local law regarding public access or use of private property, unless entered into by voluntary agreement of the owner.—It does not create liability of any private property owner or have any effect on liability under any other law. It also does not modify the authority of the Federal, State or local government to regulate land use nor does it require owners of private property within the established region to participate or be associated with the initiative.

In addition, this subsection clarifies that Federal funds provided for the Long Island Sound Stewardship Initiative can only be used within the boundaries of the Region and that the establishment of the Region does not provide any additional regulatory authority on land use in the Region by any management entity.

*Sec. 11. Authorization of appropriations.*

*Summary*

This section authorizes \$25 million per year from 2006–2013 to execute this program. It specifies that moneys be used for buying land, interests in land, development and implementation of site management plans, site enhancements, and administrative expenses. In addition, this section stipulates that the Federal share of the cost of an activity shall not exceed 75 percent of the total cost of the activity.

*Sec. 12. Long Island Sound authorization of appropriations.*

*Summary*

This section amends section 119(f) of the Federal Water Pollution Control by striking “2005” and inserting “2009.”

*Discussion*

This section extends the existing authorization for the Long Island Sound Office within the Environmental Protection Agency. The current authorization provided for \$40,000,000 per year for fiscal years 2001 through 2005. This section extends the authorization for funds to 2009. The committee understands that the initial 20 sites were identified after the Comprehensive Conservation and Management Plan developed by the States of New York and Connecticut in conjunction with the Long Island Sound Office of EPA identified land use and development as one of six priority areas.

*Section 13. Termination of Committee.*

This section establishes a termination date for the LISSA Committee of December 31, 2013.

## LEGISLATIVE HISTORY

On July 20, 2004, in the 108th Congress, Senators Lieberman, Clinton, Dodd and Schumer introduced S. 2691, the Long Island Sound Stewardship Act of 2004. It was discharged from the Committee on Environment and Public Works on October 11, 2004. It passed the Senate by Unanimous Consent the same day. It was referred to the House Resources Committee, Subcommittee on Fisheries Conservation, Wildlife and Oceans, and the House Transportation and Infrastructure Committee.

On July 20, 2004, Representative Rob Simmons introduced H.R. 4876, the House companion to the Long Island Sound Stewardship Act. It had 13 co-sponsors and was referred to the House Committee on Resources and the House Committee on Transportation and Infrastructure.

On January 25, 2005, Senators Lieberman, Clinton, Dodd and Schumer introduced S. 158, which was received, read twice and referred to the Committee on Environment and Public Works. The committee met on July 20, 2005 to consider S. 158, and ordered it reported to the Senate without amendment.

## HEARINGS

No committee hearings were held on S. 158.

## ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 158. The bill was ordered reported without amendment favorably by voice vote.

## REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The bill does not create additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

## MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 158 would not impose any Federal intergovernmental unfunded mandates on State, local, or tribal governments.

## COSTS OF LEGISLATION

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

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*S. 158, Long Island Sound Stewardship Act of 2005, As ordered reported by the Senate Committee on Environment and Public Works on July 20, 2005*

*Summary*

S. 158 would promote the conservation and improvement of the Long Island Sound ecosystem, including the Peconic Bay area. Based on information from the Environmental Protection Agency (EPA), CBO estimates that implementing S. 158 would cost \$117 million over the 2006–2010 period, assuming the appropriation of the necessary amounts.

The bill would establish the Long Island Sound Stewardship Initiative and Advisory Committee. The committee would identify natural areas within the Long Island Sound ecosystem to be protected and improved. S. 158 would authorize the appropriation of \$250 million annually over the 2006–2013 periods for EPA to provide grants to State and local governments, nonprofit organizations, and private landowners for the procurement and enhancement of sites within the Long Island Sound ecosystem, and to cover the committee's administrative costs.

This legislation also would extend the authority to appropriate funding through 2009 to EPA to operate the Office of the Management Conference of the Long Island Sound Study and to provide grants to implement the Long Island Sound Comprehensive Conservation and Management Plans as provided under section 119(f) of the Federal Water Pollution Control Act. Under current law, this authority expires in 2005.

Enacting S. 158 would not affect direct spending or receipts. S. 158 contains no intergovernmental or new private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). The bill would benefit State and local governments in New York and Connecticut; any costs they incur would result from complying with conditions for receiving Federal assistance.

*Estimated Cost to the Federal Government*

The estimated budgetary impact of S. 158 is shown in the following table. For this estimate, CBO assumes that S. 158 will be enacted near the start of fiscal year 2006 and that the amounts authorized by the bill will be appropriated near the start of each fiscal year. Estimated outlays are based on historical spending pat-

terns for similar grant programs. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for the Protection of the Long Island Sound.						
Budget Authority <sup>1</sup> .....	3	0	0	0	0	0
Estimated Outlays .....	3	1	1	0	0	0
Proposed Changes.						
Long Island Sound Stewardship Initiative and Advisory Committee.						
Authorization Level .....	0	25	25	25	25	25
Estimated Outlays .....	0	13	20	24	25	25
Office of the Management Conference of the Long Island Sound Study.						
Estimated Authorization Level .....	0	3	3	3	3	0
Estimated Outlays .....	0	1	2	3	3	1
Total Proposed Changes.						
Estimated Authorization Level .....	0	28	28	28	28	25
Estimated Outlays .....	0	14	22	27	28	26
Spending Under S. 158 for the Protection of the Long Island Sound.						
Estimated Authorization Level .....	3	28	28	28	28	25
Estimated Outlays .....	3	15	23	27	28	26

<sup>1</sup>The 2005 level is the amount appropriated for that year to EPA to fund the Office of Management and Conference of the Long Island Sound Study and to provide grants to implement the Long Island Sound Comprehensive Conservation and Management Plan as provided under section 119(f) of the Federal Water Pollution Control Act.

### *Intergovernmental and Private-sector Impact*

S. 158 contains no intergovernmental or new private-sector mandates as defined by UMRA. The States of New York and Connecticut would benefit from Federal assistance for protecting and enhancing sites within the Long Island Sound ecosystem. Any costs to those States, including matching funds, would result from complying with conditions for receiving Federal assistance.

*Estimate prepared by:* Federal Costs: Susanne Mehlman and Jimin Chung; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Craig Cammarata.

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

### CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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**

(33 U.S.C. 1251 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

\* \* \* \* \*

SEC. 119. LONG ISLAND SOUND.—(a) The Administrator shall continue the Management Conference of the Long Island Sound Study (hereinafter referred to as the “Conference”) as established pursuant to section 320 of this Act, and shall establish an office (hereinafter referred to as the “Office”) to be located on or near Long Island Sound.

\* \* \* \* \*

(f) AUTHORIZATIONS.—(1) There is authorized to be appropriated to the Administrator for the implementation of this section, other than subsection (d), such sums as may be necessary for each of the fiscal years 2001 through **[2005]** 2009.

(2) There is authorized to be appropriated to the Administrator for the implementation of subsection (d) not to exceed \$40,000,000 for each of fiscal years 2001 through **[2005]** 2009.

\* \* \* \* \*

