

Calendar No. 372

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-174

NIAGARA FALLS NATIONAL HERITAGE AREA ACT

SEPTEMBER 17, 2007.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 800]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 800) to establish the Niagara Falls National Heritage Area in the State of New York, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Niagara Falls National Heritage Area Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) COMMISSION.—The term “Commission” means the Niagara Falls National Heritage Area Commission established by section 4(a).
- (2) GOVERNOR.—The term “Governor” means the Governor of the State.
- (3) HERITAGE AREA.—The term “Heritage Area” means the Niagara Falls National Heritage Area established by section 3(a).
- (4) LOCAL COORDINATING ENTITY.—The term “local coordinating entity” means the local coordinating entity for the Heritage Area designated by section 3(d)(1).
- (5) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Heritage Area developed under section 5.
- (6) MAP.—The term “map” means the map entitled “Niagara Falls National Heritage Area”, numbered P76/80,000, and dated July 2006.
- (7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (8) STATE.—The term “State” means the State of New York.

SEC. 3. NIAGARA FALLS NATIONAL HERITAGE AREA.

- (a) ESTABLISHMENT.—There is established in the State the Niagara Falls National Heritage Area.
- (b) BOUNDARIES.—The National Heritage Area shall consist of—

- (1) the area from the western boundary of the town of Wheatfield, New York, extending to the mouth of the Niagara River on Lake Ontario, as depicted on the map, including—
 - (A) the city of Niagara Falls, New York;
 - (B) the villages of Youngstown and Lewiston, New York; and
 - (C) land and water within the boundaries of the Heritage Area in Niagara County, New York; and
- (2) any additional thematically related sites within Erie and Niagara Counties, New York, that are identified in the management plan under section 5(b)(6).
- (c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.
- (d) LOCAL COORDINATING ENTITY.—
 - (1) DESIGNATION.—The local coordinating entity for the Heritage Area shall be—
 - (A) for the 5-year period beginning on the date of enactment of this Act, the Commission; and
 - (B) on expiration of the 5-year period described in subparagraph (A), a private nonprofit or governmental organization designated by the Commission.
 - (2) AUTHORITIES.—For purposes of implementing the management plan, the local coordinating entity designated under paragraph (1)(B) may use funds made available under this Act to—
 - (A) make grants to, and enter into cooperative agreements with, the State (including a political subdivision of the State), nonprofit organizations, or any person;
 - (B) hire and compensate staff; and
 - (C) enter into contracts for goods and services.
 - (3) DUTIES.—Beginning on the date described in paragraph (1)(B), the local coordinating entity designated by the Commission under paragraph (1)(B) shall assume the duties of the Commission described in section 4(h), other than the duties described in paragraphs (1) and (8) of section 4(h).

SEC. 4. NIAGARA FALLS NATIONAL HERITAGE AREA COMMISSION.

- (a) ESTABLISHMENT.—There is established within the Department of the Interior the Niagara Falls National Heritage Area Commission.
- (b) MEMBERSHIP.—The Commission shall be composed of 17 members, of whom—
 - (1) 1 member shall be the Director of the National Park Service (or a designee);
 - (2) 5 members shall be appointed by the Secretary, after considering the recommendation of the Governor, from among individuals with knowledge and experience of—
 - (A) the New York State Office of Parks, Recreation and Historic Preservation, the Niagara River Greenway Commission, the New York Power Authority, the USA Niagara Development Corporation, and the Niagara Tourism and Convention Corporation; or
 - (B) any successors of the agencies described in subparagraph (A);
 - (3) 1 member shall be appointed by the Secretary, after considering the recommendation of the mayor of Niagara Falls, New York;
 - (4) 1 member shall be appointed by the Secretary, after considering the recommendation of the mayor of the village of Youngstown, New York;
 - (5) 1 member shall be appointed by the Secretary, after considering the recommendation of the mayor of the village of Lewiston, New York;
 - (6) 1 member shall be appointed by the Secretary, after considering the recommendation of the Tuscarora Nation;
 - (7) 1 member shall be appointed by the Secretary, after considering the recommendation of the Seneca Nation of Indians; and
 - (8) 6 members shall be individuals that have an interest in, support for, and expertise appropriate to tourism, regional planning, history and historic preservation, cultural or natural resource management, conservation, recreation, and education, or museum services, of whom—
 - (A) 4 members shall be appointed by the Secretary, after considering the recommendation of the 2 members of the Senate from the State; and
 - (B) 2 members shall be appointed by the Secretary, after considering the recommendation of the member of the House of Representatives whose district encompasses the Heritage Area.
- (c) TERMS; VACANCIES.—
 - (1) TERM.—A member of the Commission shall be appointed for a term not to exceed 5 years.

- (2) VACANCIES.—
 - (A) PARTIAL TERM.—A member appointed to fill a vacancy on the Commission shall serve for the remainder of the term for which the predecessor of the member was appointed.
 - (B) IN GENERAL.—A vacancy on the Commission shall be filled in the same manner as the original appointment was made.
- (d) CHAIRPERSON AND VICE CHAIRPERSON.—
 - (1) SELECTION.—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission.
 - (2) VICE CHAIRPERSON.—The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson.
- (e) QUORUM.—
 - (1) IN GENERAL.—A majority of the members of the Commission shall constitute a quorum.
 - (2) TRANSACTION.—For the transaction of any business or the exercise of any power of the Commission, the Commission shall have the power to act by a majority vote of the members present at any meeting at which a quorum is in attendance.
- (f) MEETINGS.—
 - (1) IN GENERAL.—The Commission shall meet at least quarterly at the call of—
 - (A) the Chairperson; or
 - (B) a majority of the members of the Commission.
 - (2) NOTICE.—Notice of Commission meetings and agendas for the meetings shall be published in local newspapers that are distributed throughout the Heritage Area.
 - (3) APPLICABLE LAW.—Meetings of the Commission shall be subject to section 552b of title 5, United States Code.
- (g) POWERS OF THE COMMISSION.—To the extent that Federal funds are appropriated, the Commission may—
 - (1) enter into contracts and execute any instruments necessary or appropriate to carry out the purposes for which the Commission is established, including the authority to procure temporary and intermittent services and administrative facilities at rates determined to be reasonable by the Commission to carry out the duties of the Commission;
 - (2) appoint and fix the compensation of any staff that may be necessary to carry out the duties of the Commission;
 - (3) request and accept from the head of any Federal agency, on a reimbursable or nonreimbursable basis, any personnel of the Federal agency to the Commission to assist in carrying out the duties of the Commission;
 - (4) request and accept from the head of any State agency or any agency of a political subdivision of the State, on a reimbursable or nonreimbursable basis, any personnel of the agency to the Commission to assist in carrying out the duties of the Commission;
 - (5) make grants to assist in the development and implementation of the management plan;
 - (6) negotiate and enter into any cooperative agreement, lease, contract, or other arrangement with any person, firm, association, organization, corporation, or governmental entity, including Federal, State, tribal, and local government entities, that is necessary to carry out the activities of the Commission;
 - (7) seek, accept, and dispose of gifts, bequests, grants, or donations of money, personal property, or services;
 - (8) assist in—
 - (A) developing educational, informational, and interpretive programs and facilities; and
 - (B) any other activities that may promote the implementation of the management plan;
 - (9) use the United States mails in the same manner as other agencies of the Federal Government;
 - (10) establish any advisory groups that the Commission determines to be necessary; and
 - (11) adopt, amend, and enforce bylaws and rules governing the manner in which—
 - (A) the business of the Commission may be conducted; and
 - (B) the powers vested in the Commission may be exercised.
- (h) DUTIES OF THE COMMISSION.—To further the purposes of the Heritage Area, the Commission shall—
 - (1) in accordance with section 5, develop and submit to the Secretary for approval a management plan;

(2) assist units of local government, regional planning organizations, and non-profit organizations in implementing the management plan by—

(A) carrying out programs and projects that recognize, protect, and enhance important resource values within the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs within the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of, and appreciation for, natural, historic, scenic, and cultural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings in the Heritage Area that are consistent with the themes of the Heritage Area;

(F) ensuring that clear, consistent, and appropriate signs identifying points of public access and sites of interest are posted throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations, and individuals to further the purposes of the Heritage Area;

(3) consider the interests of diverse units of government, businesses, organizations, and individuals in the Heritage Area in the development and implementation of the management plan;

(4) conduct meetings open to the public regarding the development and implementation of the management plan;

(5) coordinate projects, activities, and programs with the Erie Canalway National Heritage Corridor;

(6) for any fiscal year for which Federal funds have been received by the Commission under this Act—

(A) submit an annual report to the Secretary that describes—

(i) the specific performance goals and accomplishments of the local coordinating entity;

(ii) the expenses and income of the local coordinating entity;

(iii) the amounts and sources of matching funds;

(iv) the amounts leveraged with Federal funds and the sources of the leveraging; and

(v) any grants made to any other entities during the fiscal year;

(B) make available to the Secretary for audit any records containing information relating to the expenditure of Federal funds and any matching funds; and

(C) require, with respect to all agreements authorizing the expenditure of Federal funds by other organizations, that the organization receiving the funds make available to the Secretary for audit all records and other information concerning the expenditure of the funds;

(7) encourage, by appropriate means and consistent with the purposes of the Heritage Area, the economic viability of the Heritage Area; and

(8) assist in the transition of the management of the Heritage Area from the Commission to the local coordinating entity designated under section 3(d)(1)(B).

(i) **COMPENSATION OF MEMBERS.**—

(1) **IN GENERAL.**—A member of the Commission shall serve without compensation.

(2) **TRAVEL EXPENSES.**—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(j) **GIFTS.**—For purposes of section 170(c) of the Internal Revenue Code of 1986, any gift or charitable contribution to the Commission shall be considered to be a charitable contribution or gift to the United States.

(k) **USE OF FEDERAL FUNDS.**—Except as provided for the leasing of administrative facilities under subsection (g)(1), the Commission may not use Federal funds made available to the Commission under this Act to acquire any real property or interest in real property.

SEC. 5. MANAGEMENT PLAN.

(a) **IN GENERAL.**—Not later than 3 years after the date on which funds are first made available to carry out this Act, the Commission shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) **REQUIREMENTS.**—The management plan shall—

(1) include comprehensive policies, strategies, and recommendations for conservation, funding, managing, and developing the Heritage Area;

(2) take into consideration existing State, county, and local plans;

(3) include a description of actions that governments, private organizations, and individuals have agreed to take to protect the natural, historic, and cultural resources of the Heritage Area;

(4) identify any existing and potential sources of funding or economic development strategies to protect, manage, and develop the Heritage Area;

(5) include an inventory of the natural, historic, scenic, cultural, educational, and recreational resources of the Heritage Area relating to the themes of the Heritage Area that should be preserved, restored, managed, developed, or maintained;

(6) establish criteria and identify thematically related sites in Niagara and Erie Counties, New York, that—

(A) may participate in the Heritage Area; and

(B) shall be included in the boundary of the Heritage Area;

(7) include recommended policies and strategies for resource management that consider the application of appropriate land and water management techniques, including the development of intergovernmental and interagency cooperative agreements to protect the natural, historic, scenic, cultural, educational, and recreational resources of the Heritage Area;

(8) describe a program of implementation for the management plan, including a description of—

(A) performance goals;

(B) plans for resource protection, restoration, interpretation, enhancement, management, and development; and

(C) any specific commitments for implementation that have been made by the local coordinating entity or any government, organization, or individual;

(9) include an analysis of, and recommendations for ways in which, Federal, State, tribal, and local programs would best be coordinated to further the purposes of this Act, including an analysis of the role of the National Park Service in the Heritage Area;

(10) include an interpretive plan for the Heritage Area;

(11) include a business plan that—

(A) describes the role, operation, financing, and functions of—

(i) the local coordinating entity; and

(ii) each of the major activities addressed in the management plan; and

(B) provides adequate assurances that the local coordinating entity has the partnerships and financial and other resources necessary to implement the management plan; and

(12) includes provisions for—

(A) the designation under section 3(d)(1)(B) of a nonprofit or governmental organization as the local coordinating entity to administer the Heritage Area consistent with the management plan; and

(B) the transition of the management of the Heritage Area from the Commission to the organization designated as the local coordinating entity at the end of the 5-year period specified in section 3(d)(1)(A).

(c) **TERMINATION OF FUNDING.**—If the Commission does not submit the management plan to the Secretary by the date that is 3 years after the date on which funds are first made available to carry out this Act, the local coordinating entity shall be ineligible to receive additional funding under this Act until the date on which the management plan is submitted to and approved by the Secretary.

(d) **APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) **CONSIDERATIONS.**—In determining whether to approve or disapprove the management plan under paragraph (1), the Secretary shall consider whether—

(A) the organization proposed to succeed the Commission as the local coordinating entity would be representative of the diverse interests of the Heritage Area, including governments, natural and historic resource protection organizations, educational institutions, businesses, and recreational organizations;

(B) the local coordinating entity has afforded adequate opportunity for public and governmental involvement, including public meetings, in the preparation of the management plan;

(C) the resource protection and interpretation strategies contained in the management plan, if implemented, would adequately protect the natural, historic, and cultural resources of the Heritage Area;

(D) the Secretary has received adequate assurances from the appropriate State, tribal, and local officials whose support is needed to ensure the effective-

tive implementation of the State, tribal, and local aspects of the management plan; and

(E) the local coordinating entity has demonstrated the financial capability, in partnership with others, to carry out the plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan under paragraph (1), the Secretary shall—

(A) advise the local coordinating entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 180 days after the receipt of any proposed revision of the management plan, approve or disapprove the proposed revision.

(e) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review and approve any substantial amendments to the management plan in accordance with subsection (d).

(2) USE OF FUNDS.—Funds made available under this Act shall not be expended by the local coordinating entity to implement any changes made by an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 6. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—On request of the local coordinating entity, the Secretary may provide technical and financial assistance, on a reimbursable or non-reimbursable basis, to the Heritage Area for the development and implementation of the management plan.

(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the local coordinating entity and other public or private entities to provide assistance under paragraph (1).

(3) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant natural, historic, scenic, and cultural resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities, consistent with the purposes of the Heritage Area.

(b) DETAIL OF DEPARTMENT OF THE INTERIOR EMPLOYEES.—

(1) IN GENERAL.—On request of the Commission, the Secretary may detail to the Commission for each fiscal year in which the Commission is in existence, on a nonreimbursable basis, 2 employees of the Department of the Interior to enable the Commission to carry out the duties of the Commission.

(2) CIVIL SERVICE STATUS.—The detail of an employee under paragraph (1) shall be without interruption or loss of civil service status or privilege.

SEC. 7. RELATIONSHIP TO OTHER FEDERAL AGENCIES.

(a) IN GENERAL.—Nothing in this Act affects the authority of a Federal agency to provide technical or financial assistance under any other law.

(b) CONSULTATION AND COORDINATION.—The head of any Federal agency planning to conduct activities that may have an impact on the Heritage Area is encouraged to consult and coordinate the activities with the Secretary and the local coordinating entity to the maximum extent practicable.

(c) OTHER FEDERAL AGENCIES.—Nothing in this Act—

(1) modifies, alters, or amends any law or regulation authorizing a Federal agency to manage Federal land under the jurisdiction of the Federal agency;

(2) limits the discretion of a Federal land manager to implement an approved land use plan within the boundaries of the Heritage Area; or

(3) modifies, alters, or amends any authorized use of Federal land under the jurisdiction of a Federal agency.

SEC. 8. PRIVATE PROPERTY AND REGULATORY PROTECTIONS.

Nothing in this Act—

(1) abridges the rights of any property owner (whether public or private), including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(2) requires any property owner to permit public access (including access by Federal, State, or local agencies) to the property of the property owner, or to modify public access or use of property of the property owner under any other Federal, State, or local law;

(3) alters any duly adopted land use regulation, approved land use plan, or other regulatory authority of any Federal, State, or local agency, or conveys any land use or other regulatory authority to the local coordinating entity;

- (4) authorizes or implies the reservation or appropriation of water or water rights;
- (5) diminishes the authority of the State to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or
- (6) creates any liability, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

SEC. 9. EVALUATION; REPORT.

(a) IN GENERAL.—Not later than 3 years before the date on which authority for Federal funding terminates for the Heritage Area, the Secretary shall—

- (1) conduct an evaluation of the accomplishments of the Heritage Area; and
- (2) prepare a report in accordance with subsection (c).

(b) EVALUATION.—An evaluation conducted under subsection (a)(1) shall—

- (1) assess the progress of the local coordinating entity with respect to—
 - (A) accomplishing the purposes of this Act for the Heritage Area; and
 - (B) achieving the goals and objectives of the approved management plan for the Heritage Area;
- (2) analyze the Federal, State, local, and private investments in the Heritage Area to determine the leverage and impact of the investments; and
- (3) review the management structure, partnership relationships, and funding of the Heritage Area for purposes of identifying the critical components for sustainability of the Heritage Area.

(c) REPORT.—

(1) IN GENERAL.—Based on the evaluation conducted under subsection (a)(1), the Secretary shall prepare a report that includes recommendations for the future role of the National Park Service, if any, with respect to the Heritage Area.

(2) REQUIRED ANALYSIS.—If the report prepared under paragraph (1) recommends that Federal funding for the Heritage Area be reauthorized, the report shall include an analysis of—

- (A) ways in which Federal funding for the Heritage Area may be reduced or eliminated; and
- (B) the appropriate time period necessary to achieve the recommended reduction or elimination.

(3) SUBMISSION TO CONGRESS.—On completion of the report, the Secretary shall submit the report to—

- (A) the Committee on Energy and Natural Resources of the Senate; and
- (B) the Committee on Natural Resources of the House of Representatives.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act \$10,000,000, of which not more than \$1,000,000 may be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the cost of any activity carried out using any assistance made available under this Act shall be not more than 50 percent.

SEC. 11. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide financial assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

PURPOSE

The purpose of S. 800 is to establish the Niagara Falls National Heritage Area in the State of New York.

BACKGROUND AND NEED

The Niagara River flows for 35 miles between Lake Erie and Lake Ontario and includes the rapids, Niagara Falls, and the Niagara River Gorge. Eight parks operated by the State of New York are located along the river and within the gorge. The river forms a boundary between the United States and Canada.

Niagara Falls is an internationally significant natural resource that attracts from 8 to 10 million visitors a year. It is one of the most well-known destination attractions in the United States and Canada. The Niagara River Gorge is an exceptionally scenic corridor, carved by the movement of the falls from its original location

near Lewiston, New York (10,000 to 15,000 years ago), to its present location 10 miles upstream at the City of Niagara Falls. Besides its scenic values, the gorge has been cited as a world-class location of fossils from the Upper Ordovician and Silurian periods.

The Niagara River region contains a wide variety of flora and fauna. Recent inventories identified 1,623 plant species including unique miniature old growth eastern white cedars. Fauna inventories also include 50 mammal species, 17 amphibian species, 99 fish species, and 17 species of reptiles. Bird inventories identify 342 species, including 19 separate species of gulls. One-day counts of gull populations have reached over 100,000 individuals. In recognition of this important habitat, the National Audubon Society has designated the Niagara River as a Globally Important Bird Area.

The region is also rich in cultural resources related to the history of the United States and Canada. It has significant associations with Native American habitation and early European contact, the French and Indian War, the American Revolution, and the War of 1812. It was also a major link in the Underground Railroad for African Americans escaping slavery to enter Canada. The existence of ample water made it an early site for hydroelectric power and it remains an important source to this day.

Three National Historic Landmarks have been designated along the Niagara River. The Adams Power Transformer House, built in 1895, is the only surviving structure of a hydroelectric facility that has been called “the birthplace of the modern hydroelectric power station.” The Niagara Reservation, which includes the American Falls, was originally designed by noted landscape architect Frederick Law Olmsted. The Colonial Niagara Historic District, within the communities of Lewiston and Youngstown, was a key portage route linking interior North America and the Atlantic seaboard until the late 1700s. It also contains extant resources associated with Native American occupation and early European contact. Historic Fort Niagara on the shore of Lake Ontario is an important component of the district. Within the City of Niagara Falls and the communities of Lewiston and Youngstown, there are 14 sites listed on the National Register of Historic Places.

Despite the richness of the natural and cultural resources in the area, there is widespread belief that the United States side of the falls has never fully achieved its tremendous potential for visitors and for the local communities. A heritage partnership framework has been advocated as a way for the many partners in the region to protect its precious resources and further the contribution of the Niagara Falls region to the United States and to the people of New York.

In 2006, the National Park Service completed a national heritage area feasibility study of the Niagara Falls region pursuant to Public Law 107-256, the “Niagara Falls National Heritage Area Study Act.” The study concluded that the region met all of the criteria for designation as a national heritage area including the existence of significant levels of public support and local commitments necessary for successful planning and implementation of a heritage area.

S. 800 provides for the establishment of a limited term Federal commission to undertake the heritage management plan and to identify a successor local coordinating entity representing the var-

ied interests of the region. It includes the opportunity for a limited number of heritage area related resources, outside of the designated heritage area boundary, to participate in heritage area programs if they are identified as eligible through the heritage area management planning process. These provisions are consistent with the preferred alternative of the National Park Service national heritage area feasibility study.

LEGISLATIVE HISTORY

S. 800 was introduced by Senator Schumer on March 7, 2007. Senator Clinton is a cosponsor. The Subcommittee on National Parks held a hearing on the bill on May 15, 2007. At its business meeting on July 25, 2007, the Committee on Energy and Natural Resources ordered S. 800 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 25, 2007, by a voice vote of a quorum present, recommends that the Senate pass S. 800, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 800, the Committee adopted an amendment in the nature of a substitute. The amendment deletes the Congressional findings, and modifies the management language for the heritage area to make it consistent with the authorities provided for other national heritage areas. The amendment also adds a requirement that the Secretary of the Interior conduct an evaluation of the heritage area not later than three years before the date authority for Federal funding terminates, to assess the progress of the management entity in accomplishing the purposes for which the heritage area was established and whether the goals and objectives of the management plan for the heritage area were achieved. The Secretary is required to submit a report of the findings of the evaluation to the Congressional authorizing committees.

The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Niagara Falls National Heritage Area Act.”

Section 2 defines key terms used in the bill.

Section 3(a) establishes the Niagara Falls National Heritage Area (“heritage area”) in the State of New York.

Subsection (b) describes the boundaries of the heritage area.

Subsection (c) states that the boundary map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

Subsection (d)(1) provides that, for the five-year period beginning on the date of enactment, the local coordinating entity for the heritage area shall be the Niagara Falls National Heritage Area Commission (“Commission”) established in section 4(a). Thereafter, the

local coordinating entity shall be a non-profit or governmental organization designated by the Commission.

Paragraphs (2) and (3) list the authorities and duties of the Commission.

Section 4(a) establishes the Niagara Falls National Heritage Area Commission within the Department of the Interior.

Subsection (b) provides that the Commission is to be composed of 17 members, and lists the criteria the Secretary of the Interior (“Secretary”) is to use in appointing Commission members.

Subsection (c) states that Commission members shall be appointed for a five-year term.

Subsections (d), (e), and (f) provide for the selection of a Commission Chairman and Vice Chairman, establish quorum requirements, and detail the Commission meeting requirements, respectively.

Subsection (g) describes the powers of the Commission.

Subsection (h) describes the duties of the Commission.

Subsection (i) provides that Commission members shall serve without pay, but may receive per diem expenses while on official Commission business.

Subsection (j) allows for gifts to the Commission to be deducted for income tax purposes the same as a gift to the United States.

Subsection (k) prohibits the Commission from using Federal funds to acquire real property.

Section 5(a) requires the management entity to prepare and submit for review a management plan to the Secretary no later than three years after the date on which the funds are made available to carry out this Act.

Subsection (b) provides the requirements for the contents of the management plan.

Subsection (c) states that if the management plan is not submitted within the three-year period, Federal funding is suspended until the plan is submitted to the Secretary.

Subsection (d) requires the Secretary to approve or disapprove the management plan within six months after receiving the plan and lists the criteria the Secretary is to consider in determining whether to approve or disapprove the plan.

Subsection (e) requires that the Secretary review and approve or disapprove any amendment that would make a substantial change to the management plan.

Section 6 describes the duties and authorities of the Secretary of the Interior. Subsection (a) authorizes the Secretary to provide technical assistance and enter into cooperative agreements with the heritage area.

Subsection (b) authorizes the Secretary to detail up to two employees of the Department of the Interior to the Commission, on a non-reimbursable basis.

Section 7 describes the relationship of other Federal agencies to the heritage area.

Subsection (a) clarifies that nothing in this Act affects the authority of a Federal agency to provide technical or financial assistance under any other law.

Subsection (b) encourages the head of a Federal agency planning to conduct activities that may have an impact on the heritage area

to consult and coordinate the activities with the Secretary and the management entity to the maximum extent practicable.

Subsection (c) clarifies that nothing in this Act modifies authorities of Federal agencies to manage Federal land, limits the discretion of a Federal agency to implement an approved land use plan, or modifies or alters any authorized use of Federal land.

Section 8 contains several savings provisions to clarify that the designation of the national heritage area will not affect private property rights, affect governmental land use regulation, reserve or appropriate water rights, diminish the authority of the State to manage fish and wildlife, or create any liability for property owners within the heritage area.

Section 9(a) requires the Secretary to conduct an evaluation of the accomplishments of the national heritage area not later than three years before the date Federal funding authority terminates.

Subsection (b) provides that the evaluation shall assess the progress of the management entity with respect to accomplishing the purposes of this Act for the heritage area and whether the management entity achieved the goals and objectives of the approved management plan for the heritage area. The evaluation is also required to analyze governmental investments in the heritage area to determine the leverage and impact of the investments.

Subsection (c) requires the Secretary to prepare a report, based on the evaluation, that includes recommendations for the future role of the National Park Service, if any, for the heritage area. If the report recommends that Federal funding for the area be reauthorized, it is required to include an analysis of ways Federal funding may be reduced or eliminated. The report is to be submitted to the House and Senate authorizing committees.

Section 10(a) authorizes total appropriations of \$10 million, with not more than \$1 million authorized to be appropriated for any fiscal year.

Subsection (b) requires Federal funding to be matched on a 50:50 basis with funds from non-Federal sources.

Section 11 provides that the authority of the Secretary to provide assistance under this Act terminates 15 years after the date of enactment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

JULY 30, 2007.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 800, the Niagara Falls National Heritage Area Act.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 800—Niagara Falls National Heritage Area Act

Summary: S. 800 would establish the Niagara Falls National Heritage Area (NHA) in the state of New York. The bill would create a 17-member commission to serve as the first local coordinating entity for the proposed NHA. The commission would be responsible for developing a management plan for the NHA and assisting local governments and nonprofit agencies with implementation of the plan. In addition, the legislation would require the Department of the Interior to report to the Congress on the work of the NHA.

The legislation would authorize the appropriation of \$10 million, not to exceed \$1 million annually, for financial assistance to the commission or other eligible entities over the next 15 years. CBO estimates that implementing S. 800 would cost \$5 million over the 2008–2012 period, with additional amounts spent after 2012. Enacting S. 800 would not affect direct spending or revenues.

S. 800 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 S. 800 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
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

Basis of estimate: Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 800 would cost \$5 million over the 2008–2012 period and \$5 million over the following five to 10 years. Such amounts would be used to cover a portion of the costs of reporting, planning, establishing, operating, and interpreting the heritage area.

Intergovernmental and private-sector impact: S. 800 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On May 9, 2007, CBO provided a cost estimate for H.R. 713, the Niagara Falls National Heritage Act, as ordered reported by the House Committee on Natural Resources on April 25, 2007. The two versions of the legislation are similar, and the estimated costs are the same.

Estimate prepared by: Federal Costs: Deborah Reis and Matthew Pickford; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Craig Cammarata.

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 800. The bill is not a regulatory measure in the sense of impos-

ing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 800, as ordered reported.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the May 15, 2007, Subcommittee hearing on S. 800 follows:

STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to appear before your committee to present the views of the Department of the Interior on S. 800, a bill to establish the Niagara Falls National Heritage Area in the State of New York.

While a feasibility study has found the Niagara Falls region appropriate for designation, we recommend that the committee defer action on S. 800 and all other proposed heritage area designations until program legislation is enacted that establishes guidelines and a process for the designation of national heritage areas. Last year, the Administration sent to Congress a legislative proposal to establish such guidelines and a process for designation. Bills were introduced in the 109th Congress (S. 243, H.R. 760 and H.R. 6287) that incorporated the majority of the provisions of the Administration's proposal, and S. 243 passed the Senate. During the 110th Congress, a similar heritage area program bill, S. 278, has been introduced, and we look forward to continuing to work with Congress on this very important issue.

With 37 national heritage areas designated across 27 states, and more heritage area legislative proposals in the pipeline, the Administration believes it is critical at this juncture for Congress to enact national heritage area program legislation. This legislation would provide a much-needed framework for evaluating proposed national heritage areas, offering guidelines for successful planning and management, clarifying the roles and responsibilities of all parties, and standardizing timeframes and funding for designated areas. Program legislation also would clarify the expectation that heritage areas would work toward self-sufficiency by outlining the necessary steps, including appropriate planning, to achieve that shared goal.

In 2006, the National Park Service completed a national heritage area feasibility study of the Niagara Falls region pursuant to Public Law 107-256, the "Niagara Falls National Heritage Area Study Act." The study concluded that the region met all of the criteria for designation as a national heritage area including the existence of significant levels of public support and local commitments necessary

for successful planning and implementation of a heritage area.

The Niagara River flows for 35 miles between Lake Erie and Lake Ontario and includes the rapids, Niagara Falls, and the Niagara River Gorge. Eight parks operated by the State of New York are located along the river and within the gorge. The river forms a boundary between the United States and Canada.

Niagara Falls is an internationally significant natural resource that attracts from 8 to 10 million visitors a year. It is one of the most well-known destination attractions in the United States and Canada. The Niagara River Gorge is an exceptionally scenic corridor, carved by the movement of the falls from its original location near Lewiston, New York (10,000 to 15,000 years ago) to its present location 10 miles upstream at the City of Niagara Falls. Besides its scenic values, the gorge has been cited as a world-class location of fossils from the Upper Ordovician and Silurian periods.

The Niagara River region contains a wide variety of flora and fauna. Recent inventories identified 1,623 plant species including unique miniature old growth eastern white cedars. Fauna inventories also include 50 mammal species, 17 amphibian species, 99 fish species, and 17 species of reptiles. Bird inventories identify 342 species including 19 separate species of gulls. One-day counts of gull populations have reached over 100,000 individuals. In recognition of this critical habitat, the National Audubon Society has designated the Niagara River as a Globally Important Bird Area.

The region is also rich in cultural resources related to the history of the United States and Canada. It has significant associations with Native American habitation and early European contact, the French and Indian War, the American Revolution, and the War of 1812. It was also a major link in the Underground Railroad for African Americans escaping slavery to enter Canada. The existence of ample water made it an early site for hydroelectric power and it remains an important source to this day.

Three National Historic Landmarks have been designated along the Niagara River. The Adams Power Transformer House, built in 1895, is the only surviving structure of a hydroelectric facility that has been called "the birthplace of the modern hydroelectric power station." The Niagara Reservation, which includes the American Falls, was the first state park in the nation created under eminent domain and originally designed by Frederick Law Olmsted. The Colonial Niagara Historic District, within the communities of Lewiston and Youngstown, was a key portage route linking interior North America and the Atlantic seaboard until the late 1700s. It also contains extant resources associated with Native American occupation and early European contact. Historic Fort Niagara on the shore of Lake Ontario is an important component of the district. Within the City of Niagara Falls and the communities of

Lewiston and Youngstown, there are 14 sites listed on the National Register of Historic Places.

Despite the richness of the natural and cultural resources in the area, there is widespread belief that the United States side of the falls has never fully achieved its tremendous potential for visitors and for the local communities. A heritage partnership framework has been advocated as a way for the many partners in the region to protect its precious resources and further the contribution of the Niagara Falls region to the United States and to the people of New York. We have found considerable support for this proposal during the feasibility study.

S. 800 provides for the establishment of a limited term (5-year) federal commission to undertake the heritage management plan and to identify a successor local coordinating entity representing the varied interests of the region. It includes the opportunity for a limited number of heritage area related resources, outside of the designated heritage area boundary, to participate in heritage area programs if they are identified as eligible through the heritage area management planning process. These provisions are consistent with the preferred alternative of the National Park Service national heritage area feasibility study.

Mr. Chairman, while the proposed Niagara Falls National Heritage Area contains significant natural and cultural resources and meets the established criteria for congressional designation, we would again request that the committee defer action until national heritage area program legislation is enacted. However, if the committee chooses to move ahead with this bill, the Department would like to work with them to make some technical corrections to the bill. In addition, the Department would recommend that the bill be amended to include an additional requirement for an evaluation to be conducted by the Secretary, three years prior to the cessation of federal funding under this act. The evaluation would examine the accomplishments of the heritage area in meeting the goals of the management plan; analyze the leveraging and impact of investments to the heritage area; identify the critical components of the management structure and sustainability of the heritage area; and recommend what future role, if any, the National Park Service should have with respect to the heritage area.

We are also advised by the Department of Justice that the restrictions placed on the Secretary's authority to appoint the members of the Niagara Falls National Heritage Area Commission raise constitutional concerns. We, along with the Department of Justice, would like to work with the committee to address these concerns.

Thank you for the opportunity to comment. This concludes my prepared remarks. I would be glad to answer any questions that you or the members of the committee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 800, as ordered reported.

