

TO REAUTHORIZE THE NATIONAL ESTUARY PROGRAM,
AND FOR OTHER PURPOSES

MAY 8, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 944]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 944) to reauthorize the National Estuary Program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE OF THE LEGISLATION

The purpose of H.R. 944 is to amend section 320 of the Federal Water Pollution Control Act (the Clean Water Act) to reauthorize the National Estuary Program within the Environmental Protection Agency (EPA).

BACKGROUND AND NEED FOR THE LEGISLATION

Estuaries, which are partially enclosed waterbodies where freshwater from land drainage through rivers or streams flows into an open sea or the ocean, are unique and highly productive waters that are important to the ecological and economic bases of our nation. In particular, fisheries, wildlife, recreation, and tourism are heavily dependent on healthy estuarine systems. Yet, despite their value, most estuaries in the United States are experiencing stress from physical alteration and pollution, often resulting from development and rapid population growth in coastal cities and counties. In the mid-1980s, Congress recognized the importance of, and the need to protect the natural functions of, estuaries. As a result, in 1987, as part of P.L. 100-4, Congress added section 320 to the Clean Water Act to establish the National Estuary Program (NEP).

The NEP is designed to promote comprehensive planning for long-term protection of nationally significant estuaries in the United States that are deemed to be threatened by pollution, development, or overuse, through collaborative voluntary efforts of federal, state, local, non-profit, and private interests. The NEP aims to address water quality problems in, and promote the ecological integrity of, estuaries. The NEP coordinates and provides funding for long-term planning and management activities to address the complex factors that contribute to the degradation of estuaries.

Once a governor nominates an estuary for inclusion in the NEP, and if the EPA determines the estuary is "nationally significant," it is accepted, and becomes eligible for technical assistance and grant funding. Then a collaborative decision-making process begins where stakeholders develop and implement long-term management plans, called "Comprehensive Conservation and Management Plans" (CCMPs). A CCMP is a long-term plan that contains specific targeted actions designed to address water quality and ecological challenges in the estuary's watershed. A CCMP is to recommend priority actions and schedules to protect the estuary, restore and maintain its chemical, physical, and biological integrity, and control pollution sources.

Each estuary program in the NEP has a Management Conference (MC) made up of diverse stakeholders. Using a consensus-building approach and collaborative decision-making process instead of a regulatory approach, each MC works closely together to implement the CCMP. The MC ensures that the CCMP is uniquely tailored to the local environmental conditions, is based on local input, and supports local priorities.

Stakeholders may include citizens, state and local governments, federal agencies, private and non-profit interests, industrial, recreational, or other user groups, and academic or scientific experts. The goal is for the stakeholders to be partners in developing and implementing the CCMPs.

There are approximately 130 estuaries in the United States. Twenty-eight of these estuaries, located along the Atlantic, Gulf, and Pacific coasts and in Puerto Rico, have been incorporated into the NEP. Once the EPA has accepted an estuary into the NEP, the EPA supports the effort with technical assistance and grants. Each estuary program in the NEP has completed its planning process and is implementing its CCMP.

In 2004, in P.L. 108–399, Congress reauthorized section 320 of the CWA through fiscal year 2010. Section 320 of the Clean Water Act most recently authorized the NEP at \$35 million per year.

HEARINGS

No hearings were held on H.R. 944 in the 114th Congress.

LEGISLATIVE HISTORY AND CONSIDERATION

On February 12, 2015, Representative Frank LoBiondo of New Jersey introduced H.R. 944, a bill to reauthorize the National Estuary Program.

On April 15, 2015, the Committee on Transportation and Infrastructure met in open session to consider H.R. 944, and ordered the bill reported favorably to the House by voice vote with a quorum present.

In the 113th Congress, the Committee on Transportation and Infrastructure ordered a virtually identical bill (H.R. 5266) reported favorably to the House by voice vote with a quorum present. H.R. 5266 passed the House of Representatives under suspension of the rules by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 944, or ordering the bill reported. A motion to order H.R. 944 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 944 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 22, 2015.

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 944, a bill to reauthorize the National Estuary Programs, and for other purposes.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

*H.R. 944—A bill to reauthorize the National Estuary Programs,
and for other purposes*

Summary: H.R. 944 would authorize the appropriation of \$27 million annually over the 2016–2020 period for the Environmental Protection Agency’s (EPA’s) National Estuary Program. The legislation also would amend the Clean Water Act to require that grants awarded to state, local, and private entities by EPA are awarded in a competitive manner. CBO estimates that implementing this legislation would cost \$116 million over the 2016–2020 period, assuming appropriation of the authorized amounts.

Enacting H.R. 944 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 944 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), and any costs incurred by state, local, or tribal governments, including matching contributions, would result from participation in a voluntary federal program.

Estimated cost to the Federal Government: The estimated budgetary effect of this legislation 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—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	27	27	27	27	27	135
Estimated Outlays	12	23	27	27	27	116

Basis of estimate: CBO assumes that H.R. 944 will be enacted near the start of 2016 and that the amounts authorized will be appropriated each fiscal year. Estimated outlays are based on histor-

ical spending patterns for the National Estuary Program. The authorization for this program expired in 2010, but \$26 million was appropriated for the program in 2015. Under the National Estuary Program, EPA develops plans for attaining or maintaining water quality in an estuary.

Intergovernmental and private-sector impact: H.R. 944 contains no intergovernmental or private-sector mandates as defined in UMRA, and any costs incurred by state, local, or tribal governments, including matching contributions, would result from participation in a voluntary federal program.

Estimate prepared by: Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to reauthorize the National Estuary Program.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 944, as reported, establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that enacting H.R. 944, as reported, does not specifically direct the completion of any specific rulemakings within the meaning of section 551 of title 5, United States Code.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 944, as reported, does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO THE LEGISLATIVE BRANCH

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Competitive awards

Section 1 amends section 320(g) of the Clean Water Act to add a new paragraph (4). New paragraph (4) authorizes the EPA Administrator to make competitive awards to states, interstate, and regional water pollution control agencies and entities, state coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, and allocates a portion of available NEP funds for such competitive awards.

The EPA Administrator is to solicit applications for such awards, and select award recipients that are best able to address urgent and challenging issues that threaten the water quality, ecological, and economic well-being of coastal areas. Such issues are to include:

- (i) extensive seagrass habitat losses resulting in significant impacts on fisheries and water quality;
- (ii) recurring harmful algae blooms;
- (iii) unusual marine mammal mortalities;
- (iv) invasive exotic species that may threaten wastewater systems and cause other damage;
- (v) jellyfish proliferation limiting community access to water during peak tourism seasons;
- (vi) flooding that may be related to sea level rise or wetland degradation or loss; and
- (vii) low dissolved oxygen conditions in estuarine waters and related nutrient management.

Section 2. Authorization of appropriations

Section 2 strikes section 320(i) of the Clean Water Act (entitled “Authorization of Appropriations”) and replaces it with a new subsection (i) (entitled “Authorization of Appropriations”) that extends the authorization of appropriations for the NEP for each of fiscal years 2016 through 2020, at an amount of \$27 million per year.

New subsection (i) also allocates the funds that are made available in each fiscal year for section 320.

New subsection (i) authorizes appropriations for expenses relating to the administration of grants or awards by the EPA Administrator under section 320, including the award and oversight of grants and awards, and specifies that expenses relating to the administration of grants or awards shall not exceed 5 percent of the amount appropriated under new subsection (i).

In addition, new subsection (i) specifies that the EPA Administrator shall provide, for the development, implementation, and monitoring of each conservation and management plan eligible for grant assistance under subsection (g)(2) of section 320, not less than 80 percent of the amounts made available in each fiscal year for section 320.

Further, new subsection (i) specifies that the EPA Administrator shall provide not less than 15 percent of the amounts made available in each fiscal year for section 320 for making competitive awards described in subsection (g)(4) of section 320.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by H.R. 944, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * *

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) MANAGEMENT CONFERENCE.—

(1) **NOMINATION OF ESTUARIES.**—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) **CONVENING OF CONFERENCE.**—

(A) **IN GENERAL.**—In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and

propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albermarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.

(3) BOUNDARY DISPUTE EXCEPTION.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(b) PURPOSES OF CONFERENCE.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(6) monitor the effectiveness of actions taken pursuant to the plan; and

(7) review all Federal financial assistance programs and Federal development projects in accordance with the requirements

of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) MEMBERS OF CONFERENCE.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

(d) UTILIZATION OF EXISTING DATA.—In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

(g) GRANTS.—

(1) RECIPIENTS.—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(2) PURPOSES.—Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.

(3) FEDERAL SHARE.—The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year—

(A) shall not exceed—

(i) 75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and

(ii) 50 percent of the annual aggregate costs of the implementation of the plan; and

(B) shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.

(4) COMPETITIVE AWARDS.—

(A) *IN GENERAL.*—Using the amounts made available under subsection (i)(2)(B), the Administrator shall make competitive awards under this paragraph.

(B) *APPLICATION FOR AWARDS.*—The Administrator shall solicit applications for awards under this paragraph from State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(C) *SELECTION OF RECIPIENTS.*—In selecting award recipients under this paragraph, the Administrator shall select recipients that are best able to address urgent and challenging issues that threaten the ecological and economic well-being of coastal areas. Such issues shall include—

(i) *extensive seagrass habitat losses resulting in significant impacts on fisheries and water quality;*

(ii) *recurring harmful algae blooms;*

(iii) *unusual marine mammal mortalities;*

(iv) *invasive exotic species that may threaten wastewater systems and cause other damage;*

(v) *jellyfish proliferation limiting community access to water during peak tourism seasons;*

(vi) *flooding that may be related to sea level rise or wetland degradation or loss; and*

(vii) *low dissolved oxygen conditions in estuarine waters and related nutrient management.*

(h) GRANT REPORTING.—Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grants and biennially thereafter on the progress being made under this section.

[(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed \$35,000,000 for each of fiscal years 2001 through 2010 for—

[(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

[(2) making grants under subsection (g); and

[(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).】

(i) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—*There is authorized to be appropriated to the Administrator \$27,000,000 for each of fiscal years 2016 through 2020 for—*

(A) *expenses relating to the administration of grants or awards by the Administrator under this section, including the award and oversight of grants and awards, except that such expenses may not exceed 5 percent of the amount appropriated under this subsection for a fiscal year; and*

(B) *making grants and awards under subsection (g).*

(2) *ALLOCATIONS.*—

(A) *CONSERVATION AND MANAGEMENT PLANS.*—*Not less than 80 percent of the amount made available under this subsection for a fiscal year shall be used by the Administrator for the development, implementation, and monitoring of each of the conservation and management plans eligible for grant assistance under subsection (g)(2).*

(B) *COMPETITIVE AWARDS.*—*Not less than 15 percent of the amount made available under this subsection for a fiscal year shall be used by the Administrator for making competitive awards described in subsection (g)(4).*

(j) *RESEARCH.*—

(1) *PROGRAMS.*—*In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—*

(A) *a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;*

(B) *a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;*

(C) *a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine*

zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

(A) a listing of priority monitoring and research needs;

(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

(k) DEFINITIONS.—For purposes of this section, the terms “estuary” and “estuarine zone” have the meanings such terms have in section 104(n)(4) of this Act, except that the term “estuarine zone” shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

* * * * *