

106TH CONGRESS  
1ST SESSION

# H. R. 1763

To amend the Endangered Species Act of 1973 to provide that the cost of mitigation required under that Act for a public construction project may not exceed 10 percent of the total project costs.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1999

Mr. CALVERT introduced the following bill; which was referred to the  
Committee on Resources

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## A BILL

To amend the Endangered Species Act of 1973 to provide that the cost of mitigation required under that Act for a public construction project may not exceed 10 percent of the total project costs.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Reasonable Mitigation  
5       Act of 1999”.

1 **SEC. 2. LIMITATION ON COST OF MITIGATION REQUIRED**  
2 **UNDER ENDANGERED SPECIES ACT OF 1973**  
3 **FOR PUBLIC PROJECTS.**

4 (a) MITIGATION REQUIRED WITH RESPECT TO FED-  
5 ERAL AGENCY ACTIONS.—Section 7 of the Endangered  
6 Species Act of 1973 (16 U.S.C. 1536) is amended by add-  
7 ing at the end the following:

8 “(q) LIMITATION ON REQUIRED MITIGATION.—

9 “(1) MITIGATION PURSUANT TO OPINION OF  
10 SECRETARY.—This section does not require mitiga-  
11 tion for any covered agency action, and the Sec-  
12 retary may not specify any measure under clause (ii)  
13 or (iii) of subsection (b)(4)(C) and may not require  
14 compliance with any term or condition under para-  
15 graph subsection (b)(4)(C)(iv) for any covered agen-  
16 cy action, if the aggregate of the cost of all such  
17 mitigation, implementing all such measures, and  
18 complying with all such terms and conditions, re-  
19 spectively, for the covered agency action will exceed  
20 10 percent of the total project costs of activities  
21 comprising or (in the case of a covered agency action  
22 consisting of issuance of a permit or license) author-  
23 ized by the covered agency action.

24 “(2) MITIGATION PURSUANT TO COMMITTEE  
25 EXEMPTION.—The Committee may not establish any  
26 mitigation and enhancement measures under sub-

1 section (h)(1)(B) for any covered agency action if  
2 the cost of implementing such measures will exceed  
3 10 percent of the total project costs of activities  
4 comprising or (in the case of a covered agency action  
5 involving a permit or license applicant) authorized  
6 by the covered agency action.

7 “(3) DEFINITIONS.—In this subsection—

8 (A) the term ‘covered agency action’  
9 means—

10 “(i) any construction project that is  
11 carried out or funded (in whole or in part)  
12 by a Federal agency; and

13 “(ii) the issuance by any Federal  
14 agency of a license or permit that would  
15 authorize any construction project that is  
16 carried out or funded (in whole or in part)  
17 by a State or local government agency; and

18 “(B) the term ‘total project costs’ means  
19 the aggregate costs of acquiring land and car-  
20 rying out construction.”.

21 (b) MITIGATION REQUIRED FOR INCIDENTAL TAKE  
22 PERMITS.—Section 10 of the Endangered Species Act of  
23 1973 (16 U.S.C. 1539) is amended by adding at the end  
24 the following:

25 “(k) LIMITATION ON REQUIRED MITIGATION.—

1           “(1) IN GENERAL.—Subsection (a)(2) does not  
2           require, and the Secretary may not require as a  
3           term or condition of a permit under subsection  
4           (a)(1)(B), that a permittee for a public project take  
5           any measures to minimize or mitigate impacts of a  
6           taking under the permit if the costs of implementing  
7           such measures will exceed 10 percent of the total  
8           project costs of the public project.

9           “(2) DEFINITIONS.—In this subsection—

10           “(A) the term ‘public project’ means any  
11           construction project that is carried out or fund-  
12           ed (in whole or in part) by a Federal, State, or  
13           local agency; and

14           “(B) the term ‘total project costs’ means  
15           the aggregate costs of acquiring land and car-  
16           rying out construction.”.

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