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# H. R. 767

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IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 2007

Received; read twice and referred to the Committee on Energy and Natural  
Resources

NOVEMBER 8, 2007

Committee discharged; referred to the Committee on Environment and Public  
Works

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## AN ACT

To protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative species, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Refuge Ecology Pro-  
3 tection, Assistance, and Immediate Response Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) The National Wildlife Refuge System is the  
7 premier land conservation system in the world.

8 (2) Harmful nonnative species are the leading  
9 cause of habitat destruction in national wildlife ref-  
10 uges.

11 (3) More than 675 known harmful nonnative  
12 species are found in the National Wildlife Refuge  
13 System.

14 (4) Nearly 8 million acres of the National Wild-  
15 life Refuge System contain harmful nonnative spe-  
16 cies.

17 (5) The cost of early identification and removal  
18 of harmful nonnative species is dramatically lower  
19 than removing an established invasive population.

20 (6) The cost of the backlog of harmful non-  
21 native species control projects that need to be car-  
22 ried out in the National Wildlife Refuge System is  
23 over \$361,000,000, and the failure to carry out such  
24 projects threatens the ability of the System to fulfill  
25 its basic mission.

1 (b) PURPOSE.—The purpose of this Act is to encour-  
2 age partnerships among the United States Fish and Wild-  
3 life Service, other Federal agencies, States, Indian tribes,  
4 and other interests for the following objectives:

5 (1) To protect, enhance, restore, and manage a  
6 diversity of habitats for native fish and wildlife re-  
7 sources within the National Wildlife Refuge System  
8 through control of harmful nonnative species.

9 (2) To promote the development of voluntary  
10 State assessments to establish priorities for control-  
11 ling harmful nonnative species that threaten or neg-  
12 atively impact refuge resources.

13 (3) To promote greater cooperation among Fed-  
14 eral, State, and local land and water managers, and  
15 owners of private land, water rights, or other inter-  
16 ests, to implement ecologically based strategies to  
17 eradicate, mitigate, and control harmful nonnative  
18 species that threaten or negatively impact refuge re-  
19 sources through a voluntary and incentive-based fi-  
20 nancial assistance grant program.

21 (4) To establish an immediate response capa-  
22 bility to combat incipient harmful nonnative species  
23 invasions.

24 **SEC. 3. DEFINITIONS.**

25 For the purposes of this Act:

1           (1) **ADVISORY COMMITTEE.**—The term “Advi-  
2           sory Committee” means the Invasive Species Advi-  
3           sory Committee established by section 3 of Executive  
4           Order No. 13112, dated February 3, 1999.

5           (2) **APPROPRIATE COMMITTEES.**—The term  
6           “appropriate Committees” means the Committee on  
7           Natural Resources of the House of Representatives  
8           and the Committee on Environment and Public  
9           Works of the Senate.

10          (3) **CONTROL.**—The term “control” means, as  
11          appropriate, eradicating, suppressing, reducing, or  
12          managing harmful nonnative species from areas  
13          where they are present; taking steps to detect early  
14          infestations on at-risk native habitats; and restoring  
15          native species and habitats to reduce the effects of  
16          harmful nonnative species.

17          (4) **ENVIRONMENTAL SOUNDNESS.**—The term  
18          “environmental soundness” means the extent of in-  
19          clusion of methods, efforts, actions, or programs to  
20          prevent or control infestations of harmful nonnative  
21          species, that—

22                 (A) minimize adverse impacts to the struc-  
23                 ture and function of an ecosystem and adverse  
24                 effects on nontarget species and ecosystems;  
25                 and

1 (B) emphasize integrated management  
2 techniques.

3 (5) HARMFUL NONNATIVE SPECIES.—The term  
4 “harmful nonnative species” means, with respect to  
5 a particular ecosystem in a particular region, any  
6 species, including its seeds, eggs, spores, or other bi-  
7 ological material capable of propagating that species,  
8 that is not native to that ecosystem and has a de-  
9 monstrable or potentially demonstrable negative en-  
10 vironmental or economic impact in that region.

11 (6) INDIAN TRIBE.—The term “Indian tribe”  
12 has the meaning given that term in section 4 of the  
13 Indian Self-Determination and Education Assistance  
14 Act (25 U.S.C. 450b).

15 (7) NATIONAL MANAGEMENT PLAN.—The term  
16 “National Management Plan” means the manage-  
17 ment plan referred to in section 5 of Executive  
18 Order No. 13112 of February 3, 1999, and entitled  
19 “Meeting the Invasive Species Challenge”.

20 (8) REFUGE RESOURCES.—The term “refuge  
21 resources” means all lands and waters, including the  
22 fish and wildlife species and the ecosystems and  
23 habitats therein, that are owned and managed by  
24 the Federal Government through the United States  
25 Fish and Wildlife Service and located within the Na-

1 tional Wildlife Refuge System administered under  
2 the National Wildlife Refuge Administration Act of  
3 1966 (16 U.S.C. 668dd et seq.), including any wa-  
4 terfowl production area.

5 (9) SECRETARY.—The term “Secretary” means  
6 the Secretary of the Interior, acting through the Di-  
7 rector of the United States Fish and Wildlife Serv-  
8 ice.

9 (10) STATE.—The term “State” means each of  
10 the several States of the United States, the District  
11 of Columbia, the Commonwealth of Puerto Rico, the  
12 Virgin Islands, Guam, American Samoa, the Com-  
13 monwealth of the Northern Mariana Islands, any  
14 other territory or possession of the United States,  
15 and any Indian tribe.

16 **SEC. 4. REFUGE ECOLOGY PROTECTION, ASSISTANCE, AND**  
17 **IMMEDIATE RESPONSE (REPAIR) GRANT PRO-**  
18 **GRAM.**

19 (a) IN GENERAL.—The Secretary may provide—

20 (1) a grant to any eligible applicant to carry  
21 out a qualified control project in accordance with  
22 this section; and

23 (2) a grant to any State to carry out an assess-  
24 ment project consistent with relevant State plans  
25 that have been developed in whole or in part for the

1 conservation of native fish, wildlife, and their habi-  
2 tats, and in accordance with this section, to—

3 (A) identify harmful nonnative species that  
4 occur in the State that threaten or negatively  
5 impact refuge resources;

6 (B) assess the needs to restore, manage, or  
7 enhance native fish and wildlife and their nat-  
8 ural habitats and processes in the State to com-  
9 pliment activities to control, mitigate, or eradi-  
10 cate harmful nonnative species negatively im-  
11 pacting refuge resources;

12 (C) identify priorities for actions to ad-  
13 dress such needs;

14 (D) identify mechanisms to increase capac-  
15 ity building in a State or across State lines to  
16 conserve and protect native fish and wildlife  
17 and their habitats and to detect and control  
18 harmful nonnative species that might threaten  
19 or negatively impact refuge resources within the  
20 State; and

21 (E) incorporate, where applicable, the  
22 guidelines of the National Management Plan.

23 The grant program under this section shall be known as  
24 the “Refuge Ecology Protection, Assistance, and Imme-

1 diate Response Grant Program” or the “REPAIR Pro-  
2 gram”.

3 (b) FUNCTIONS OF THE SECRETARY.—

4 (1) IN GENERAL.—The Secretary shall—

5 (A) publish guidelines for and solicit appli-  
6 cations for grants under this section not later  
7 than 6 months after the date of enactment of  
8 this Act;

9 (B) receive, review, evaluate, and approve  
10 applications for grants under this section;

11 (C) consult with the Advisory Committee  
12 on the projects proposed for grants under this  
13 section, including regarding the scientific merit,  
14 technical merit, feasibility, and priority of pro-  
15 posed projects for such grants; and

16 (D) consult with the Advisory Committee  
17 regarding the development of the database re-  
18 quired under subsection (j).

19 (2) DELEGATION OF AUTHORITY.—The Sec-  
20 retary may delegate to another Federal instrumen-  
21 tality the authority of the Secretary under this sec-  
22 tion, other than the authority to approve applica-  
23 tions for grants and make grants.

24 (c) FUNCTIONS OF THE ADVISORY COMMITTEE.—

25 The Advisory Committee shall—

1           (1) consult with the Secretary to create criteria  
2 and guidelines for grants under this section;

3           (2) consult with the Secretary regarding wheth-  
4 er proposed control projects are qualified control  
5 projects; and

6           (3) carry out functions relating to monitoring  
7 control projects under subsection (j).

8           (d) ELIGIBLE APPLICANT.—To be an eligible appli-  
9 cant for purposes of subsection (a)(1), an applicant  
10 shall—

11           (1) be a State, local government, interstate or  
12 regional agency, university, or private person;

13           (2) have adequate personnel, funding, and au-  
14 thority to carry out and monitor or maintain a con-  
15 trol project; and

16           (3) have entered into an agreement with the  
17 Secretary or a designee of the Secretary, for a na-  
18 tional wildlife refuge or refuge complex.

19           (e) QUALIFIED CONTROL PROJECT.—

20           (1) IN GENERAL.—To be a qualified control  
21 project under this section, a project shall—

22           (A) control harmful nonnative species on  
23 the lands or waters on which it is conducted;

24           (B) include a plan for monitoring the  
25 project area and maintaining effective control of

1 harmful nonnative species after the completion  
2 of the project, that is consistent with standards  
3 for monitoring developed under subsection (j);

4 (C) be conducted in partnership with a na-  
5 tional wildlife refuge or refuge complex;

6 (D) be conducted on lands or waters, other  
7 than national wildlife refuge lands or waters,  
8 that, for purposes of carrying out the project,  
9 are under the control of the eligible applicant  
10 applying for the grant under this section and on  
11 adjacent national wildlife refuge lands or waters  
12 administered by the United States Fish and  
13 Wildlife Service referred to in subparagraph  
14 (C), that are—

15 (i) administered for the long-term  
16 conservation of such lands and waters and  
17 the native fish and wildlife dependent  
18 thereon; and

19 (ii) managed to prevent the future re-  
20 introduction or dispersal of harmful non-  
21 native species from the lands and waters  
22 on which the project is carried out; and

23 (E) encourage public notice and outreach  
24 on control project activities in the affected com-  
25 munity.

1           (2) OTHER FACTORS FOR SELECTION OF  
2 PROJECTS.—In ranking qualified control projects,  
3 the Director may consider the following:

4           (A) The extent to which a project would  
5 address the operational and maintenance back-  
6 log attributed to harmful nonnative species on  
7 refuge resources.

8           (B) Whether a project will encourage in-  
9 creased coordination and cooperation among  
10 one or more Federal agencies and State or local  
11 government agencies or nongovernmental or  
12 other private entities to control harmful non-  
13 native species threatening or negatively impact-  
14 ing refuge resources.

15           (C) Whether a project fosters public-pri-  
16 vate partnerships and uses Federal resources to  
17 encourage increased private sector involvement,  
18 including consideration of the amount of private  
19 funds or in-kind contributions to control harm-  
20 ful nonnative species or national wildlife refuge  
21 lands or non-Federal lands in proximity to ref-  
22 uge resources.

23           (D) The extent to which a project would  
24 aid the conservation of species that are listed

1 under the Endangered Species Act of 1973 (16  
2 U.S.C. 1531 et seq.).

3 (E) Whether a project includes pilot test-  
4 ing or a demonstration of an innovative tech-  
5 nology having the potential for improved cost-  
6 effectiveness in controlling harmful nonnative  
7 species.

8 (F) The extent to which a project con-  
9 siders the potential for unintended con-  
10 sequences of control methods on ecosystems and  
11 includes contingency measures.

12 (f) DISTRIBUTION OF CONTROL GRANT AWARDS.—  
13 In making grants for control projects under this section  
14 the Secretary shall, to the greatest extent practicable, en-  
15 sure—

16 (1) a balance of smaller and larger projects  
17 conducted with grants under this section; and

18 (2) an equitable geographic distribution of  
19 projects carried out with grants under this section,  
20 among all regions and States within which such  
21 projects are proposed to be conducted.

22 (g) GRANT DURATION.—

23 (1) IN GENERAL.—Each grant under this sec-  
24 tion shall be to provide funding for the Federal

1 share of the cost of a project carried out with the  
2 grant for up to 2 fiscal years.

3 (2) RENEWAL.—(A) If the Secretary, after re-  
4 viewing the reports under subsection (h) regarding a  
5 control project, finds that the project is making sat-  
6 isfactory progress, the Secretary may renew a grant  
7 under this section for the project for an additional  
8 3 fiscal years.

9 (B) The Secretary may renew a grant under  
10 this section to implement the monitoring and main-  
11 tenance plan required for a control project under  
12 subsection (e)(1)(B) for up to 5 fiscal years after  
13 the project is otherwise completed.

14 (h) REPORTING BY GRANTEE.—

15 (1) IN GENERAL.—(A) A grantee carrying out  
16 a control project with a grant under this section  
17 shall report to the Secretary every 24 months or at  
18 the expiration of the grant, whichever is of shorter  
19 duration.

20 (B) A State carrying out an assessment project  
21 with a grant under this section shall submit the as-  
22 sessment pursuant to subsection (a)(2) to the Sec-  
23 retary no later than 24 months after the date on  
24 which the grant is awarded.

1           (2) REPORT CONTENTS.—Each report under  
2 this subsection shall include the following informa-  
3 tion with respect to each project covered by the re-  
4 port:

5           (A) In the case of a control project—

6                 (i) the information described in sub-  
7 paragraphs (B), (D), and (F) of subsection  
8 (k)(2);

9                 (ii) specific information on the meth-  
10 ods and techniques used to control harmful  
11 nonnative species in the project area; and

12                 (iii) specific information on the meth-  
13 ods and techniques used to restore native  
14 fish, wildlife, or their habitats in the  
15 project area.

16           (B) A detailed report of the funding for  
17 the grant and the expenditures made.

18           (3) INTERIM UPDATE.—Each grantee under  
19 subsection (h)(1)(A) of this section shall also submit  
20 annually a brief synopsis to the Secretary, either  
21 electronically or in writing, that includes—

22                 (A) a chronological list of project progress;

23                 and

24                 (B) use of awarded funds.

25           (i) COST SHARING FOR PROJECTS.—

1           (1) FEDERAL SHARE.—Except as provided in  
2 paragraphs (2) and (3), the Federal share of the  
3 cost of a project carried out with a grant under this  
4 section shall not exceed 75 percent of such cost.

5           (2) INNOVATIVE TECHNOLOGY COSTS.—The  
6 Federal share of the incremental additional cost of  
7 including in a control project any pilot testing or a  
8 demonstration of an innovative technology described  
9 in subsection (e)(2)(E) shall be 85 percent.

10          (3) PROJECTS ON REFUGE LANDS OR WA-  
11 TERS.—The Federal share of the cost of the portion  
12 of a control project funded with a grant under this  
13 section that is carried out on national wildlife refuge  
14 lands or waters, including the cost of acquisition by  
15 the Federal Government of lands or waters for use  
16 for such a project, shall be 100 percent.

17          (4) APPLICATION OF IN-KIND CONTRIBU-  
18 TIONS.—The Secretary may apply to the non-Fed-  
19 eral share of costs of a control project carried out  
20 with a grant under this section the fair market value  
21 of services or any other form of in-kind contribution  
22 to the project made by non-Federal interests that  
23 the Secretary determines to be an appropriate con-  
24 tribution equivalent to the monetary amount re-  
25 quired for the non-Federal share of the activity.

1           (5) DERIVATION OF NON-FEDERAL SHARE.—

2           The non-Federal share of the cost of a control  
3           project carried out with a grant under this section  
4           may not be derived from a Federal grant program  
5           or other Federal funds.

6           (j) MONITORING AND MAINTENANCE OF CONTROL  
7 GRANT PROJECTS.—

8           (1) REQUIREMENTS.—The Secretary, in con-  
9           sultation with the Advisory Committee, shall develop  
10          requirements for the monitoring and maintenance of  
11          a control project to ensure that the requirements  
12          under subsections (e)(1)(A) and (B) are achieved.

13          (2) DATABASE OF GRANT PROJECT INFORMA-  
14          TION.—The Secretary shall develop and maintain an  
15          appropriate database of information concerning con-  
16          trol projects carried out with grants under this sub-  
17          section, including information on project techniques,  
18          project completion, monitoring data, and other rel-  
19          evant information.

20          (3) USE OF EXISTING PROGRAMS.—The Sec-  
21          retary shall use existing programs within the De-  
22          partment of the Interior to create and maintain the  
23          database required under this subsection.

1           (4) PUBLIC AVAILABILITY.—The Secretary  
2 shall make the information collected and maintained  
3 under this subsection available to the public.

4           (k) REPORTING BY THE SECRETARY.—

5           (1) IN GENERAL.—The Secretary shall, by not  
6 later than 3 years after the date of the enactment  
7 of this Act and biennially thereafter in the report  
8 under section 8, report to the appropriate Commit-  
9 tees on the implementation of this section.

10           (2) REPORT CONTENTS.—A report under para-  
11 graph (1) shall include an assessment of—

12           (A) trends in the population size and dis-  
13 tribution of harmful nonnative species in the  
14 project area for each control project carried out  
15 with a grant under this section, and in the ad-  
16 jacent areas as defined by the Secretary;

17           (B) data on the number of acres of refuge  
18 resources and native fish and wildlife habitat  
19 restored, protected, or enhanced under this sec-  
20 tion, including descriptions of, and partners in-  
21 volved with, control projects selected, in  
22 progress, and completed under this section;

23           (C) trends in the population size and dis-  
24 tribution in the project areas of native species  
25 targeted for restoration, and in areas in prox-

1           imity to refuge resources as defined by the Sec-  
2           retary;

3           (D) an estimate of the long-term success of  
4           varying conservation techniques used in car-  
5           rying out control projects with grants under  
6           this section;

7           (E) an assessment of the status of control  
8           projects carried out with grants under this sec-  
9           tion, including an accounting of expenditures by  
10          the United States Fish and Wildlife Service,  
11          State, regional, and local government agencies,  
12          and other entities to carry out such projects;

13          (F) a review of the environmental sound-  
14          ness of the control projects carried out with  
15          grants under this section;

16          (G) a review of efforts made to maintain  
17          an appropriate database of grants under this  
18          section; and

19          (H) a review of the geographical distribu-  
20          tion of Federal money, matching funds, and in-  
21          kind contributions for control projects carried  
22          out with grants under this section.

23          (I) COOPERATION OF NON-FEDERAL INTERESTS.—  
24          The Secretary may not make a grant under this section  
25          for a control project on national wildlife refuge lands or

1 lands in proximity to refuge resources before a non-Fed-  
2 eral interest has entered into a written agreement with  
3 a national wildlife refuge or refuge complex under which  
4 the non-Federal interest agrees to—

5           (1) monitor and maintain the control project in  
6           accordance with the plan required under subsection  
7           (e)(1)(B); and

8           (2) provide any other items of cooperation the  
9           Secretary considers necessary to carry out the  
10          project.

11 **SEC. 5. CREATION OF AN IMMEDIATE RESPONSE CAPA-**  
12 **BILITY TO HARMFUL NONNATIVE SPECIES.**

13          (a) **ESTABLISHMENT.**—The Secretary may provide fi-  
14 nancial assistance for a period of one fiscal year to enable  
15 an immediate response to outbreaks of harmful nonnative  
16 species that threaten or may negatively impact refuge re-  
17 sources that are at a stage at which rapid eradication or  
18 control is possible, and ensure eradication or immediate  
19 control of the harmful nonnative species.

20          (b) **REQUIREMENTS FOR ASSISTANCE.**—The Sec-  
21 retary shall provide assistance under this section, with the  
22 concurrence of the Governor of a State, to local and State  
23 agencies, universities, or nongovernmental entities for the  
24 eradication of an immediate harmful nonnative species  
25 threat only if—

1           (1) there is a demonstrated need for the assist-  
2           ance;

3           (2) the harmful nonnative species is considered  
4           to be an immediate threat to refuge resources, as de-  
5           termined by the Secretary; and

6           (3) the proposed response to such threat—

7                   (A) is technically feasible; and

8                   (B) minimizes adverse impacts to the  
9                   structure and function of national wildlife ref-  
10                  uge ecosystems and adverse effects on nontar-  
11                  get species.

12          (c) AMOUNT OF FINANCIAL ASSISTANCE.—The Sec-  
13          retary shall determine the amount of financial assistance  
14          to be provided under this section with respect to an out-  
15          break of a harmful nonnative species, subject to the avail-  
16          ability of appropriations.

17          (d) COST SHARE.—The Federal share of the cost of  
18          any activity carried out with assistance under this section  
19          may be up to 100 percent.

20          (e) MONITORING AND REPORTING.—The Secretary  
21          shall require that persons receiving assistance under this  
22          section monitor and report on activities carried out with  
23          assistance under this section in accordance with the re-  
24          quirements that apply with respect to control projects car-  
25          ried out with assistance under section 4.

1 **SEC. 6. COOPERATIVE VOLUNTEER HARMFUL NON-NATIVE**  
2 **SPECIES MONITORING AND CONTROL PRO-**  
3 **GRAM.**

4 (a) **IN GENERAL.**—Consistent with the National  
5 Wildlife Refuge System Volunteer and Community Part-  
6 nership Enhancement Act of 1998 (Public Law 105–242),  
7 the Secretary shall establish a cooperative volunteer harm-  
8 ful non-native species monitoring and control program to  
9 administer and coordinate projects implemented by part-  
10 ner organizations concerned with national wildlife refuges  
11 to address harmful non-native species that threaten na-  
12 tional wildlife refuges or adjacent lands.

13 (b) **ELIGIBLE ACTIVITIES.**—Each project adminis-  
14 tered and coordinated under this section shall include one  
15 of the following activities:

16 (1) Habitat surveys.

17 (2) Detection and identification of new intro-  
18 ductions or infestations of harmful nonnative spe-  
19 cies.

20 (3) Harmful non-native species control projects.

21 (4) Public education and outreach to increase  
22 awareness concerning harmful non-native species  
23 and their threat to the refuge system.

1 **SEC. 7. RELATIONSHIP TO OTHER AUTHORITIES.**

2 (a) **AUTHORITIES, ETC. OF SECRETARY.**—Nothing in  
3 this Act affects authorities, responsibilities, obligations, or  
4 powers of the Secretary under any other statute.

5 (b) **STATE AUTHORITY.**—Nothing in this Act pre-  
6 empts any provision or enforcement of State statute or  
7 regulation relating to the management of fish and wildlife  
8 resources within such State.

9 **SEC. 8. BIENNIAL REPORT.**

10 The Secretary shall prepare and submit to the Con-  
11 gress by not later than 2 years after the date of the enact-  
12 ment of this Act and biennially thereafter—

13 (1) a comprehensive report summarizing all  
14 grant activities relating to invasive species initiated  
15 under this Act including—

16 (A) State assessment projects;

17 (B) qualified control projects;

18 (C) immediate response activities; and

19 (D) projects identified in the Refuge Oper-  
20 ations Needs database or the Service Asset and  
21 Maintenance Management System database of  
22 the United States Fish and Wildlife Service.

23 (2) a list of grant priorities, ranked in high,  
24 medium, and low categories, for future grant activi-  
25 ties in the areas of—

26 (A) early detection and rapid response;

- 1 (B) control, management, and restoration;  
2 (C) research and monitoring;  
3 (D) information management; and  
4 (E) public outreach and partnership ef-  
5 forts; and  
6 (3) information required to be included under  
7 section 4(k).

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) IN GENERAL.—There are authorized to be appro-  
10 priated to carry out this Act such sums as may be nec-  
11 essary.

12 (b) ALLOWANCE FOR IMMEDIATE RESPONSE.—Of  
13 the amounts appropriated to carry out this Act no more  
14 than 25 percent shall be available in any fiscal year for  
15 financial assistance under section 5.

16 (c) CONTINUING AVAILABILITY.—Amounts appro-  
17 priated under this Act may remain available until ex-  
18 pended.

19 (d) ADMINISTRATIVE EXPENSES.—Of amounts avail-  
20 able each fiscal year to carry out this Act, the Secretary  
21 may expend not more than 3 percent or up to \$100,000,

1 whichever is greater, to pay the administrative expenses  
2 necessary to carry out this Act.

Passed the House of Representatives October 22,  
2007.

Attest:                      LORRAINE C. MILLER,  
*Clerk.*