

### At a Glance

## H.R. 5552, Migratory Bird Protection Act of 2020

As ordered reported by the House Committee on Natural Resources on January 15, 2020

By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	<b>0</b>	<b>-126</b>	<b>-251</b>
Revenues	<b>0</b>	*	*
Increase or Decrease (-) in the Deficit	<b>0</b>	<b>-126</b>	<b>-251</b>
Spending Subject to Appropriation (Outlays)	*	<b>56</b>	<b>106</b>
Statutory pay-as-you-go procedures apply?	<b>Yes</b>	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	<b>No</b>	Contains intergovernmental mandate?	<b>Yes, Over Threshold</b>
		Contains private-sector mandate?	<b>Yes, Over Threshold</b>

\* = between zero and \$500,000.

#### The bill would

- Prohibit the incidental killing or taking of migratory birds by commercial activities without a permit
- Authorize the appropriation of \$10 million annually for the U.S. Fish and Wildlife Service to develop a permitting program
- Establish fees for those permits and for migratory bird habitat restoration
- Establish a civil penalty for related violations

#### Estimated budgetary effects would primarily stem from

- Collection of the new fees
- Spending of the authorized amounts

#### Areas of significant uncertainty include

- Projecting the number of entities that would be required to obtain a permit under the bill
- Predicting how the permit program and fees would be structured

**Detailed estimate begins on the next page.**



## Bill Summary

H.R. 5552 would prohibit the incidental take of migratory birds by commercial activities without a permit. (Incidental take means the killing or taking of migratory birds as the indirect result of, but not for the purpose of, commercial activity.) The bill would create a permitting program, establish fees for permit holders, and authorize annual appropriations of \$10 million each year for the U.S. Fish and Wildlife Service (USFWS) to develop the program. In addition, the bill would establish a civil penalty for violations of the terms of a permit issued by USFWS.

## Estimated Federal Cost

The estimated budgetary effect of H.R. 5552 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

**Table 1.**  
**Estimated Budgetary Effects of H.R. 5552**

	By Fiscal Year, Millions of Dollars											2020-2025	2020-2030
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030		
<b>Decreases in Direct Spending</b>													
Estimated Budget Authority	0	-25	-25	-25	-25	-26	-25	-25	-25	-25	-25	-126	-251
Estimated Outlays	0	-25	-25	-25	-25	-26	-25	-25	-25	-25	-25	-126	-251
<b>Increases in Spending Subject to Appropriation</b>													
Authorization	10	10	10	10	10	10	10	10	10	10	10	60	110
Estimated Outlays	*	16	10	10	10	10	10	10	10	10	10	56	106

CBO estimates that enacting H.R. 5552 would increase revenues by an insignificant amount over the 2020-2030 period.

\* = between zero and \$500,000.

## Basis of Estimate

For this estimate, CBO assumes that the legislation will be enacted late in fiscal year 2020 and that the authorized amounts will be appropriated in each year. Under that assumption, the agency could incur some costs in 2020, but CBO expects that most of the costs would be incurred in 2021 and later.



## **Direct Spending and Revenues**

CBO estimates that enacting H.R. 5552 would reduce direct spending by \$251 million over the 2020-2030 period and increase revenues by an insignificant amount.

**Permit and Mitigation Fees.** H.R. 5552 would direct USFWS to establish two fees: a permit fee to cover the cost to administer the incidental take permit program, and an annual mitigation fee for the incidental take of migratory birds. Those fees would be classified as offsetting receipts and recorded in the budget as reductions in direct spending. Under the bill, fees would be deposited into existing funds for North American and neotropical bird habitat conservation. Spending of those fees would be subject to appropriation.

The bill would focus on certain industries for permitting, including oil and gas extraction, electric power transmission and distribution, wind and solar power generation, and communication towers. Using information from the 2017 Economic Census and from USFWS, CBO estimates that between several thousand and 15,000 entities would seek incidental take permits under the bill. Based on other USFWS fees, CBO estimates that each entity would pay \$100 per permit. H.R. 5552 would direct USFWS to issue permits within five years of enactment; thus, we expect that the agency would collect most of the permit fees, which would total about \$1 million, in 2025.

Using information from USFWS and industry experts on the typical costs for habitat restoration, and based on similar fees for the take of eagles, CBO estimates that each permitted entity would pay, on average, several thousand dollars annually in mitigation fees starting in 2021. We estimate that the federal government would collect about \$25 million annually starting in 2021 and, in total, \$251 million over the 2020-2030 period.

**Penalties.** H.R. 5552 would establish a civil penalty, which would be recorded in the budget as a revenue, for violations of the terms of an incidental take permit issued by USFWS. The bill also would expand the application of existing penalties under the Migratory Bird Treaty Act (MBTA). CBO estimates that violations would occur infrequently; thus, the increase in revenues would be insignificant over the 2020-2030 period.

Under current law, fines and penalties collected under the MBTA are available for USFWS to spend without further appropriation for bird habitat conservation. CBO estimates that the spending of additional penalties collected under the bill would be insignificant over the 2020-2030 period.

## **Spending Subject to Appropriation**

H.R. 5552 would authorize the annual appropriation of \$10 million for USFWS to develop a permitting program for the incidental take of migratory birds and to conduct related research. Based on historical spending patterns for similar activities, CBO estimates that implementing H.R. 5552 would cost \$56 million over the 2020-2025 period.



## Uncertainty

The estimate of fee collections is uncertain and could be higher or lower than CBO estimates. CBO cannot predict with certainty the number of entities that would apply for an incidental take permit under the bill. CBO also cannot foresee how USFWS would structure the program or set the amount of mitigation fees, leading to a wide range of estimates.

## Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 2. The increase in revenues would be insignificant.

**Table 2.**  
**CBO's Estimate of the Statutory Pay-As-You-Go Effects of H.R. 5552, the Migratory Bird Protection Act of 2020, as Ordered Reported by the House Committee on Natural Resources on January 15, 2020**

	By Fiscal Year, Millions of Dollars											2020- 2025	2020- 2030	
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030			
	<b>Net Decrease in the Deficit</b>													
Pay-As-You-Go Effect	0	-25	-25	-25	-25	-26	-25	-25	-25	-25	-25	-25	-126	-251

**Increase in Long-Term Deficits:** None.

## Mandates

H.R. 5552 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates of \$84 million and \$168 million, respectively, in 2020 (adjusted annually for inflation).

By prohibiting the incidental take of migratory birds, H.R. 5552 would impose mandates on industries where incidental takings are high such as communication and wind-generation towers. The bill would establish a permitting program to regulate the newly prohibited activities. To take advantage of a permit, affected entities would be required to pay a permit fee and an annual mitigation fee, implement best practices to reduce or avoid incidental take, and meet new reporting requirements.



CBO estimates that approximately 7,500 entities, both public and private, would participate in the permitting process and pay the required fees, which would total about \$25 million per year in the first five years the mandate would be in effect.

Participating entities also would be required to use best practices to minimize or avoid incidental take of migratory birds. According to USFWS and environmental law experts, some of the mandated entities already implement such practices either voluntarily or in meeting other legal requirements. Because the MBTA protects over one thousand species of birds, and the mandated entities implement thousands of projects each year, CBO estimates enacting the bill would result in a substantial cost for both private and public entities.

### **Estimate Prepared By**

Federal Costs: Janani Shankaran

Mandates: Lilia Ledezma

### **Estimate Reviewed By**

Susan Willie

Chief, Natural and Physical Resources Cost Estimates Unit

H. Samuel Papenfuss

Deputy Director of Budget Analysis

Theresa Gullo

Director of Budget Analysis