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SKI AREA RECREATIONAL OPPORTUNITY ENHANCEMENT ACT

AUGUST 30 (legislative day, AUGUST 2), 2011.—Ordered to be printed

Filed under authority of the order of the Senate of August 2, 2011

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

R E P O R T

[To accompany S. 382]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 382) to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that is subject to ski area permits, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 382 is to amend the National Forest Ski Area Permit Act of 1986 to authorize the Secretary of Agriculture to permit additional recreational activities and associated facilities on National Forest System land that is subject to a ski area permit.

BACKGROUND AND NEED

The National Forest Ski Area Permit Act of 1986 (Public Law 99-522) authorizes the Secretary of Agriculture “to issue permits . . . for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes.” 16 U.S.C. 497b. The Forest Service’s regulations implementing that Act define a “ski area” as “a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated by the sale of lift tickets and fees for ski rentals, for skiing instruction and

trail passes for the use of permittee-maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.” 36 C.F.R. 251.51 (2009).

The Forest Service has permitted more than 120 ski areas on National Forest System land in 13 States. Many of these areas provide for uses other than nordic and alpine skiing, such as snowboarding and sledding, and some have been permitted to provide for summer activities such as mountain biking, disc-golf (or “frisbee golf”) courses, and zip lines. The interest in such non-skiing activities by the permit holders and the public has grown significantly over the years, and the interest in expanding summer uses is expected to grow in the future.

S. 382 would provide clear authority for the Secretary to issue ski area permits that authorize a broader range of winter and summer activities for the public at ski areas on National Forest System land, along with some general direction regarding which activities would be appropriate.

LEGISLATIVE HISTORY

S. 382 was introduced by Senators Udall of Colorado and Barasso on February 17, 2011, and is cosponsored by 10 other Senators. The Subcommittee on Public Lands and Forests held a hearing on the bill on May 18, 2011 (S. Hrg. 112–39). At its business meeting on July 14, 2011, the Committee on Energy and Natural Resources ordered S. 382 favorably reported without amendment. In the 111th Congress, the Committee reported an identical bill (S. 607; S. Rept. 111–304) and the House of Representatives passed a similar bill (H.R. 2476, by voice vote on July 30, 2010).

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 14, 2011, by a voice vote of a quorum present, recommends that the Senate pass S. 382.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 provides the purpose for the bill.

Section 3 of the bill amends section 3 of the National Forest Ski Area Permit Act of 1986 (“Ski Area Act”) (16 U.S.C. 497b).

Paragraphs (1) and (2) of section 3 of the bill amend subsections (a) and (b) of section 3 of the Ski Area Act to provide the Secretary of Agriculture with general authority to issue permits for ski areas and associated facilities on National Forest System land not only for nordic and alpine skiing, but also for skiing and other snow sports and recreational uses.

Paragraphs (3) and (4) provide for the addition of a new subsection (c) in section 3 of the Ski Area Act. The new subsection (c) provides specific authority to the Secretary to authorize ski area permittees to provide to the public certain seasonal and year-round natural resource-based recreational activities and associated facilities on National Forest System land. Each activity authorized under the new subsection would have to meet specified requirements designed to ensure that the new activities are appropriate for National Forest System land, that they do not expand the de-

veloped footprint of the ski area, and that they remain an ancillary use under the permit. The amendment includes illustrative lists of activities that may—and would not—be permissible. For example, the Secretary is precluded from permitting amusement parks, but may, in appropriate circumstances that meet the requirements of the amendment, permit a collection of features such as zip lines, mountain-bike trails, and other recreational activities. The new subsection also includes a provision clarifying that it does not affect any activities or facilities authorized in a current ski area permit during the term of that permit. For example, an activity that currently is authorized in a ski area permit but that would not be permissible under the proposed amendment would not be precluded by the amendment from continuing for the remainder of the term of that permit.

Paragraph (5) amends section 3 of the Ski Area Act to direct the Secretary to promulgate regulations for ski area permits.

Paragraph (6) makes conforming changes to a number of citations of existing laws in the Ski Area Act.

Section 4 of the bill clarifies that that the new authority provided to the Secretary to permit additional recreational activities under the new subsection (c) of the Ski Area Act does not create a legal preference for the permittee to provide those activities to the public on the National Forest System land subject to the permit.

COST AND BUDGETARY CONSIDERATIONS

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

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S. 382 would expand the authority of the Forest Service to allow ski concessioners to offer additional recreational services on public lands. Based on information provided by the agency, CBO estimates that enacting the legislation would have no significant impact on the federal budget. The Forest Service already has authority to allow its concessioners to provide certain off-season and other recreational services at ski resorts. Expanding that authority could increase the agency's collection of fees from ski concessioners (currently yielding offsetting receipts to the Treasury of about \$30 million a year), but CBO estimates that any increase would total less than \$500,000 a year.

Because enacting the legislation could result in additional offsetting receipts (a credit against direct spending), pay-as-you-go procedures apply. Enacting S. 382 would not affect revenues.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On June 27, 2011, CBO transmitted a cost estimate for H.R. 765, the Ski Area Recreational Opportunity Enhancement Act of 2011, as ordered reported by the House Committee on Natural Resources on June 15, 2011. The two pieces of legislation are similar, and CBO's estimate of their budgetary impact is the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, 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. 382.

The bill is not a regulatory measure in the sense of imposing 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. 382, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 382, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Forest Service at the May 18, 2011, hearing on S. 382 follows.

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, FOREST SERVICE DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee, I am Mary Wagner, Associate Chief for the U.S. Forest Service. Thank you for the opportunity to appear before you to provide the views of the U.S. Department of Agriculture (USDA) on S. 382, the Ski Area Recreational Opportunity Enhancement Act of 2011.

S. 382 would amend the National Forest Ski Area Permit Act of 1986 to authorize the Secretary to permit seasonal or year-round natural resource-based recreational activities and associated facilities at ski areas, in addition to those that support Nordic and alpine skiing and other snow sports that are currently authorized by the Act.

The Department supports S. 382 and wishes to thank the Members of the Committee for addressing the concerns expressed when we testified last Congress on S. 607. Like its predecessor, S. 382 would promote seasonal or year-round recreation opportunities at ski resorts on National Forest System lands and, by doing so, would expand the opportunities for ski areas to attract visitors during all four seasons.

The additional seasonal or year-round recreational activities and associated facilities authorized by the bill would have to encourage outdoor recreation and enjoyment of nature and, to the extent practicable, would have to harmonize with the natural environment. The bill specifies certain recreational activities and facilities that could, under appropriate circumstances, be authorized and those that would be excluded from authorization. The bill would make clear that the primary purpose of the authorized use

and occupancy would continue to be skiing and other snow sports.

There are 122 ski areas operating under permit on National Forest System lands. These ski areas occupy less than 1 percent of all National Forest System lands. Nevertheless, about one-fifth of all recreation in national forests occurs at these ski areas. The ski areas are some of the most developed sites in the national forests. However, for many Americans, ski areas are portals to the national forests and a means to greater appreciation of the natural world.

Focusing more of developed outdoor recreational activities within ski areas is appropriate and would reduce impacts on less developed areas in the national forests. If S. 382 is enacted, we would develop criteria for the types of seasonal or year-round activities that would be appropriate at ski areas to provide a basis for case-specific proposals at the local level in accordance with established law, regulations, and procedures including the Secretary's duties to involve the public in his decision-making and planning for the national forests.

In summary, this legislation would encourage greater recreational use of the national forests and would concentrate highly developed recreation in areas that are currently among the most developed sites in national forests. In addition, the legislation would enhance the long-term viability of the ski areas on National Forest System lands and the adjoining rural economies.

Mr. Chairman and Members of the Subcommittee, this concludes my testimony. I'll be happy to answer any of your questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 382 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL FOREST SKI AREA PERMIT ACT OF 1986

(Public Law 99-522; Approved October 22, 1986)

[16 U.S.C. 497b]

AN ACT To establish a ski area permit system on national forest lands, and for other purposes

* * * * *

SEC. 3. SKI AREA PERMITS.

(a) **LAW APPLICABLE TO PERMITS.**—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of [nordic and alpine ski areas and facilities] *ski areas and associated facilities* on National Forest

System lands shall henceforth be governed by this Act and other applicable law.

(b) **AUTHORITY.**—The Secretary of Agriculture (hereinafter referred to as “the Secretary”) is authorized to issue permits (hereinafter referred to as “ski area permits”) for the use and occupancy of suitable lands within the National Forest System for [nordic and alpine skiing operations and purposes] *skiing and other snow sports and recreational uses authorized by this Act*. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation), or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee’s needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be cancelled by the Secretary in whole or in part for any violation of the permit terms or conditions, for non-payment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes;

(6) may be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law;

(7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate; and

(8) shall be subject to a permit fee based on fair market value in accordance with applicable law.

(c) **OTHER RECREATIONAL USES.**—

(1) **AUTHORITY OF SECRETARY.**—*Subject to the terms of a ski area permit issued pursuant to subsection (b), the Secretary may authorize a ski area permittee to provide such other seasonal or year-round natural resource-based recreational activities and associated facilities (in addition to skiing and other snow-sports) on National Forest System land subject to a ski area permit as the Secretary determines to be appropriate.*

(2) **REQUIREMENTS.**—*Each activity and facility authorized by the Secretary under paragraph (1) shall—*

(A) *encourage outdoor recreation and enjoyment of nature;*

(B) *to the extent practicable—*

(i) *harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and*

(ii) *be located within the developed portions of the ski area;*

(C) *be subject to such terms and conditions as the Secretary determines to be appropriate; and*

(D) *be authorized in accordance with—*

(i) *the applicable land and resource management plan; and*

(ii) *applicable laws (including regulations).*

(3) *INCLUSIONS.—Activities and facilities that may, in appropriate circumstances, be authorized under paragraph (1) include—*

- (A) *zip lines;*
- (B) *mountain bike terrain parks and trails;*
- (C) *frisbee golf courses; and*
- (D) *ropes courses.*

(4) *EXCLUSIONS.—Activities and facilities that are prohibited under paragraph (1) include—*

- (A) *tennis courts;*
- (B) *water slides and water parks;*
- (C) *swimming pools;*
- (D) *golf courses; and*
- (E) *amusement parks.*

(5) *LIMITATION.—The Secretary may not authorize any activity or facility under paragraph (1) if the Secretary determines that the authorization of the activity or facility would result in the primary recreational purpose of the ski area permit to be a purpose other than skiing and other snow-sports.*

(6) *BOUNDARY DETERMINATION.—In determining the acreage encompassed by a ski area permit under subsection (b)(3), the Secretary shall not consider the acreage necessary for activities and facilities authorized under paragraph (1).*

(7) *EFFECT ON EXISTING AUTHORIZED ACTIVITIES AND FACILITIES.—Nothing in this subsection affects any activity or facility authorized by a ski area permit in effect on the date of enactment of this subsection during the term of the permit.*

[(c) RULES AND REGULATIONS.—Within one year after the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this Act within 3 years of the date of enactment of this Act.]

(d) *REGULATIONS.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall promulgate regulations to implement this section.*

[(d)] (e) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under [the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act] *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.),* including his duties to involve the public in his decisionmaking and planning for the national forests.