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SENATE

{ REPORT  
{ 111-263

### NATIONAL LIBERTY MEMORIAL ACT

AUGUST 5, 2010.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2738]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2738) to authorize National Mall Liberty Fund D.C. to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, strike lines 3 through 5.
2. On page 2, strike line 1 and insert the following:

#### SECTION 1. FINDING.

3. On page 2, line 7, strike “3” and insert “2”.
4. On page 2, strike line 14 and insert the following: 869/86501B and dated June 24, 2003.
5. On page 2, line 21, strike “4(a)” and insert “3(a)”.
6. On page 2, strike line 22 and insert the following:

#### SEC. 3. MEMORIAL AUTHORIZATION.

7. On page 3, line 10, strike “5” and insert “4”.

#### PURPOSE

The purpose of S. 2738 is to authorize the National Mall Liberty Fund D.C., a non-profit organization based in the District of Columbia, to construct a memorial on Federal land in the District of Columbia to honor the 5,000 slaves and free Black persons who served as soldiers or provided civilian assistance during the American Revolution.

## BACKGROUND AND NEED

The Commemorative Works Act (40 U.S.C. 8901 et seq.) establishes the requirements for the construction of commemorative works (statues, monuments, sculptures, memorials, etc.) on Federal land in the District of Columbia. In general, the Act requires that a private entity wishing to construct a memorial must first be authorized by Congress. The entity is then required to raise all of the funds necessary for the commemorative work, with an extra 10 percent to be used to offset maintenance costs. Before receiving a construction permit, the sponsoring entity must receive site and design approvals from the Secretary of the Interior, the Commission of Fine Arts, and the National Capital Planning Commission.

If a memorial is proposed to be located within the monumental core area of the District of Columbia, the Secretary of the Interior is required to make a finding that “the subject of the commemorative work is of preeminent historical and lasting significance to the United States.” If the Secretary makes that determination, then Congress must enact a joint resolution approving the location of the commemorative work within the monumental core area.

In 2003 Congress amended the Commemorative Works Act to provide that no new commemorative works could be located within an area designated as the Reserve, essentially the cross-axis of the National Mall, running from the Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial, including the land south of Independence Avenue between the Potomac River and the Tidal Basin.

In 1986 Congress authorized the Black Revolutionary War Patriots Memorial Foundation to establish the Black Revolutionary War Patriots Memorial to honor the 5,000 courageous slaves and free Black persons who served as soldiers or provided civilian assistance during the American Revolution.

In 1987 Congress enacted a second law, Public Law 100–265, authorizing placement of that memorial within the monumental core area as it was then defined by the Commemorative Works Act. In 1988, the National Park Service, the Commission of Fine Arts, and the National Capital Planning Commission approved a site in Constitution Gardens for the Black Revolutionary War Patriots Memorial and, in 1996, approved the final design. Despite four extensions of the memorial’s legislative authorization over 21 years, the Foundation was unable to raise sufficient funds for construction, the authority (and associated site and design approvals) finally lapsed in October 2005, and the Foundation disbanded with numerous outstanding debts and unpaid creditors.

S. 2738 would authorize a new non-profit organization, National Mall Liberty Fund D.C., to construct a commemorative work honoring the same individuals as proposed by the original Black Revolutionary War Patriots Memorial.

## LEGISLATIVE HISTORY

S. 2738 was introduced by Senators Dodd and Grassley November 5, 2009. The Subcommittee on National Parks held a hearing on the bill on December 3, 2009. The Committee on Energy and Natural Resources considered the bill and adopted amendments at its business meeting on June 16, 2010. The Committee further

modified the amendments and ordered S. 2738 favorably reported, as amended, at its business meeting on June 21, 2010.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 2738, if amended as described herein.

#### COMMITTEE AMENDMENTS

During the consideration of S. 2738, the Committee adopted amendments that deleted the bill's short title, made several conforming changes to the bill, and corrected a map reference.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains a Congressional finding that subject matter of the proposed memorial—the contributions of free persons and slaves who fought during the American Revolution—were of pre-eminent historical and lasting significance, as required under the Commemorative Works Act.

*Section 2* defines key terms used in the bill.

*Section 3(a)* authorizes the establishment of a memorial on federal land in the District of Columbia to recognize and commemorate the contributions of 5,000 African Americans who served as soldiers and sailors or provided civilian assistance during the Revolutionary War.

Subsection (b) prohibits the use of federal funds to establish the memorial.

Subsection (c) directs that the memorial be established according to the Commemorative Works Act.

*Section 4* repeals two laws for the authorization and site selection of the previously authorized Black Revolutionary War Patriots Memorial, the legislative authority for which has expired.

#### COST AND BUDGETARY CONSIDERATIONS

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

*S. 2738—A bill to authorize National Mall Liberty Fund D.C. to establish a memorial on federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution*

S. 2738 would authorize a nonprofit organization to establish a commemorative work honoring African-American Revolutionary War soldiers and others. The bill would affect direct spending; therefore, pay-as-you-go procedures would apply to the legislation. However, CBO estimates that the net effect on the budget of enacting the legislation would be insignificant in any year.

S. 2738 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

S. 2738 would authorize the National Mall Liberty Fund D.C. to establish a memorial to honor slaves and free persons who fought

for or provided other assistance to the American war effort during the American Revolution. The legislation would be subject to the requirements of the Commemorative Works Act (CWA) and would prohibit the use of federal funds for the memorial. Under the CWA, any entity that receives a permit to construct a memorial in the District of Columbia or its environs must deposit in the Treasury an amount equal to 10 percent of the memorial's estimated construction cost. Based on similar commemorative projects, CBO expects that the deposit would not be received for several years, and that spending of the amounts received would be minimal in any fiscal year.

The CBO staff contact for this estimate is Martin von Gnechten. 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. 2738.

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. 2738, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2738, 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 National Park Service at the December 3, 2009 Subcommittee hearing on S. 2738 follows:

##### STATEMENT OF KATHERINE H. STEVENSON, ASSISTANT DIRECTOR, BUSINESS SERVICES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 2738, a bill to authorize the National Mall Liberty Fund D.C. to establish a memorial on federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution.

The Department supports S. 2738 if amended to conform to the principles, processes, and requirements set forth in the Commemorative Works Act, which has successfully guided the process for establishing monuments in the Na-

tion's Capital since it was enacted in 1986 and as amended since that time. We also recommend that one technical correction be made to a map reference in the bill.

The bill would authorize the establishment of a memorial on federal land in the District of Columbia to recognize and commemorate the contributions of 5,000 African Americans who served as soldiers and sailors or provided civilian assistance during the American Revolutionary War. The bill prohibits the use of federal funds to establish the memorial, directs that the memorial be established according to the Commemorative Works Act, and repeals two laws for the authorization and site selection of a similar memorial proposal that expired.

In 1986, Congress enacted the Commemorative Works Act to guide the process for establishing memorials in the Nation's Capital. Since its enactment, the Act has played an important role in ensuring that memorials in the Nation's Capital are erected on the most appropriate sites and are of a caliber of design that is worthy of their historically significant subjects. The Act was amended in 2003 to, among other things, provide for establishment of a Reserve where no additional memorials may be located.

While S. 2738 states that the memorial shall be established in accordance with the Commemorative Works Act, the bill contravenes a critical requirement of the Commemorative Works Act by pre-selecting Area I as the site for this memorial.

Area I is located within the Monumental Core of the Nation's Capital extending around the Capitol Reflecting Pool to the eastern boundary of Arlington National Cemetery and along the Virginia shoreline. Area I excludes the Reserve, the great cross-axis of the Mall, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial. Congress, in the Commemorative Works Act, reserved Area I for subjects determined to be of preeminent and lasting historic significance to the Nation and it established a process for making this determination which has worked well for over 20 years. Through this process, a new memorial may be located in Area I only if the Secretary determines, after consulting with the National Capital Memorial Advisory Commission, which holds public meetings, that the memorial's subject warrants location in Area I and recommends it to Congress. If Congress agrees with the recommendation, it enacts a law within 150 days approving the location. As currently written, S. 2738 bypasses this important process.

Following the Commemorative Works Act, in the Department's view, would not hinder the Liberty Memorial Foundation in its ability to establish this memorial. In fact, if it obtains an Area I designation through this process, it would be granted an additional seven years to complete the memorial, for a total of 14 years. This change was made by Congress when it amended the Commemorative Works Act in 2003, and as a result sponsors no longer

need to fear that seeking an Area I designation might cost them their authority to establish the memorial at all.

We also would note out that S. 2738 makes no provisions for the disposition of monies raised in excess of funds needed for the establishment of the memorial or to hold in reserve the amount available should the authority to establish the memorial expire before completion. The Department recommends that the bill be amended to clarify the disposition of these funds.

The Department also notes that the bill references the 1986 map, which Congress amended in 2003 when it changed the boundaries of Area I and created the Reserve. The 1986 map is no longer valid. We recommend that the bill be amended to reference the revised map, numbered 869/86501B and dated June 24, 2003.

The Department reiterates our support of the establishment of a memorial in the Nation's Capital that recognizes and commemorates the contributions of African Americans who fought for independence, liberty and justice during the Revolutionary War. We look forward to the opportunity to work with the subcommittee to develop language that would provide for such authorization in a manner consistent with the principles, processes, and requirements set forth by existing authorities.

Mr. Chairman, that concludes my prepared testimony, I would be glad to answer any questions that you or other members of the subcommittee may have.

#### 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 Act S. 2738 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):

- A. AN ACT To authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

(Approved October 27, 1986, Public Law 99-558)

*[Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### 【AUTHORIZATION OF MEMORIAL

【SECTION 1. The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American

Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representative on September 29, 1986.

**【FUNDING**

**【SEC. 2. The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.】**

\* \* \* \* \*

**B. Joint Resolution approving the location of the Black Revolutionary War Patriots Memorial**

(Approved March 25, 1988; Public Law 100-265)

【Whereas section 6(a) of the Act entitled “An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes”, approved November 14, 1986 (100 Stat. 3650, 36511, provides that the location of a commemorative work in the area described therein as area I shall be deemed disapproved unless, not later than one hundred and fifty days after the Secretary of the Interior or the Administrator of General Services notifies the Congress of his determination that the commemorative work should be located in area I, the location is approved by law;

【Whereas the joint resolution approved October 27, 1986 (100 Stat. 31441, authorizes the Black Revolutionary War Patriots Foundation to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom; and

【Whereas the Secretary of the Interior has notified the Congress of his determination that the memorial authorized by the said joint resolution approved October 27, 1986, should be located in area I: Now, therefore, be it

*【Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the location of a commemorative work to honor the slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom, authorized by the joint resolution approved October 27, 1986 (100 Stat. 31441, in the area described in the Act approved November 14, 1986 (100 Stat. 36501, as area I, is hereby approved.】*

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