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SENATE

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### FEDERAL LAND AVALANCHE PROTECTION 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. 2907]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2907) to establish a coordinated avalanche protection program, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Land Avalanche Protection Act of 2010”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) COMMITTEE.—The term “Committee” means the Avalanche Artillery Users of North America Committee.

(2) PROGRAM.—The term “program” means the avalanche protection program established under section 3(a).

(3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

#### SEC. 3. AVALANCHE PROTECTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish an avalanche protection program to provide information and assistance to users of avalanche-prone National Forest System land.

(b) OBJECTIVES.—The objectives of the program include—

(1) to inform and educate the public about the risks posed by avalanches to reduce the potential for injury, death, or property damage;

(2) to provide avalanche forecasts for avalanche-prone areas of the National Forest System that are frequented by recreational or other users;

(3) to provide oversight of activities relating to the prevention and control of avalanches by ski area and other special use permit holders on National Forest System land, including the procurement, control, and use of artillery; and

- (4) to facilitate research on the objectives of the program, including research on the development of alternatives to military artillery.
- (c) COORDINATION.—In carrying out this section, the Secretary shall—
  - (1) use the resources of—
    - (A) the National Avalanche Center of the Forest Service; and
    - (B) other partners; and
  - (2) work with the Committee and other partners to improve—
    - (A) coordination among users of artillery used to prevent and control avalanches; and
    - (B) access to, and the control and use of, artillery and other methods to prevent and control avalanches.
- (d) GRANTS.—
  - (1) IN GENERAL.—The Secretary may make grants to any person to further the objectives of the program.
  - (2) PRIORITY.—The Secretary shall give priority to grants under paragraph (1) that enhance public safety.
  - (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$4,000,000 for each of fiscal years 2010 through 2014.

#### PURPOSE

The purpose of S. 2907 is to provide for a coordinated avalanche protection program and to authorize the Secretary of Agriculture to make grants for public safety as part of the program.

#### BACKGROUND AND NEED

Each year, thousands of avalanches fall from steep mountain slopes. When avalanches occur in areas frequented by people, they can be very dangerous and destructive. Over the last 10 winters, 266 people died in avalanches each year in the United States, 98% of whom were snowmobiling, skiing, snowboarding, climbing, or otherwise recreating. Most of these fatalities occurred in Colorado (20%), Montana (15%), Utah (14%), Alaska (14%), Wyoming (11%) and Idaho (8%).

Over the past 50 years, the vast majority of avalanche fatalities have occurred on National Forest System land, and the Forest Service has played an important role in avalanche coordination and safety since the 1930s. In the early 1990s, the Forest Service established the National Avalanche Center. The Forest Service also manages a network of sixteen regional Avalanche Centers in the West, Alaska, and New Hampshire and coordinates with the Colorado Avalanche Center.

The purpose of the network is to coordinate among backcountry avalanche education advisory centers, transfer avalanche technology to the advisory centers, facilitate avalanche research, and develop and distribute avalanche forecasts, training, and safety programs. The centers also work to procure, store, distribute, and deploy military artillery that is used for avalanche control (i.e. where ordinance is used to trigger avalanches under more controlled conditions, thus reducing the risks to the public from spontaneous avalanches).

Legislation is needed to provide a specific statutory foundation for the Forest Service's existing avalanche program and to authorize the Forest Service to make grants to further the objectives of the program.

## LEGISLATIVE HISTORY

S. 2907 was introduced by Senators Murkowski, Begich, and Mark Udall on December 18, 2009. The Subcommittee on Public Lands and Forests held a hearing on the bill on March 10, 2010. The Committee on Energy and Natural Resources considered the bill and adopted an amendment in the nature of a substitute at its business meeting on June 16, 2010. The Committee ordered S. 2907 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. 2907, if amended as described herein.

## COMMITTEE AMENDMENT

During its consideration of S. 2907, the Committee adopted an amendment in the nature of a substitute. The amendment makes several modifications to the bill, including a number of changes in response to concerns raised by the Administration. The amendment refines the description of the objectives of the program, recognizing that actual avalanche protection activities like using ordinance are carried out separately from the program. The Committee amendment does not include the language in S. 2907, as introduced, that would require the Secretary of Agriculture to establish a central depository for military artillery for use in avalanche control, that would authorize the Administrator of General Services to transfer surplus artillery ordinance to a State agency or Tribe, or that would create an advisory committee to assist in the development and implementation of the avalanche protection program. The amendment does encourage the Secretary to work with the existing Avalanche Artillery Users of North American Committee and other partners to improve coordination among various users of artillery for avalanche control. The amendment is explained in detail in the section-by-section analysis below.

## SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title.

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

*Section 3(a)* directs the Secretary of Agriculture to establish an avalanche protection program.

Subsection (b) describes the objectives of the program, which are to educate the public about the risks posed by avalanches, to provide avalanche forecasts, to provide oversight of activities relating to the prevention of avalanches by special use permit holders on National Forest System land, and to facilitate research on the program's objectives.

Subsection (c) requires the Secretary to use the resources of the National Avalanche Center of the Forest Service in carrying out the program. The Secretary must also work with the Avalanche Artillery Users of North America Committee and other partners to improve coordination among users of avalanche artillery and to improve access to avalanche prevention and control methods.

Subsection (d) authorizes \$4 million to be appropriated for each fiscal year from 2010 through 2014 for the Secretary to make grants to further the objectives of the program, giving priority to those grants that enhance public safety.

#### COST AND BUDGETARY CONSIDERATIONS

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

##### *S. 2907—Federal Land Avalanche Protection Act of 2010*

Summary: S. 2907 would authorize the appropriation of \$16 million over the 2011–2014 period for the Forest Service to provide grants to reduce the risk of avalanches on public land. Assuming appropriation of the authorized amounts, CBO estimates that implementing the legislation would cost \$16 million over the 2011–2015 period. Enacting S. 2907 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 2907 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 2907 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

|                                              | By fiscal year in millions of dollars— |      |      |      |      |           |
|----------------------------------------------|----------------------------------------|------|------|------|------|-----------|
|                                              | 2011                                   | 2012 | 2013 | 2014 | 2015 | 2011–2015 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION |                                        |      |      |      |      |           |
| Authorization Level .....                    | 4                                      | 4    | 4    | 4    | 0    | 16        |
| Estimated Outlays .....                      | 3                                      | 4    | 4    | 4    | 1    | 16        |

Basis of Estimate: For this estimate, CBO assumes that the legislation will be enacted in 2010 and that the authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar Forest Service programs.

S. 2907 would authorize the appropriation of \$4 million a year over the 2011–2014 period for the Forest Service to provide grants to reduce the risk of avalanches on public land. Under current law, the agency, in coordination with other public and private entities, conducts an avalanche protection program in recreation areas on federal lands. In 2010, the agency spent about \$1 million to carry out activities related to that program. The grants authorized under the bill would provide additional support for those activities. Assuming appropriation of the authorized amounts, CBO estimates that implementing the legislation would cost \$16 million over the 2011–2015 period.

Pay-as-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact: S. 2907 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate Prepared by: Federal Costs: Jeff LaFave, Impact on State, Local, and Tribal Governments: Melissa Merrell, Impact on the Private Sector: Amy Petz.

Estimate Approved by: Sam Papenfuss, Unit Chief for Income Security and Education Cost Estimates Unit, Budget Analysis Division.

#### 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. 2907.

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. 2907, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2907, 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 views of the Administration were included in testimony received by the Committee at the hearing on S. 2907 on March 10, 2010, which is printed below:

#### STATEMENT OF HARRIS SHERMAN, UNDER SECRETARY, NATURAL RESOURCES AND THE ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Members of the Committee, I am Harris Sherman, Under Secretary of Agriculture for Natural Resources and the Environment. Thank you for the opportunity to share the Department's views on S. 2907, the Federal Land Avalanche Protection Act of 2009.

S. 2907 directs the Secretary of Agriculture to establish a coordinated avalanche protection program to identify the potential for avalanches on Federal lands and inform the public about the hazard; to carry out research related to avalanches to improve forecasting; and to reduce the risk and mitigate the effects of avalanches on Federal lands. S. 2907 also requires the Secretary to establish an advisory committee to assist in the development and implementation of the avalanche protection program. The bill would require the establishment of a central repository for weapons for avalanche control purposes, and would authorize the Secretary to make grants to carry out projects and activities under the avalanche control program.

I would like to thank the sponsors of this legislation and the committee for recognizing the importance of the Forest

Service avalanche program. The Forest Service supports the general concept of S. 2907, but asks the committee to consider revising Section 3 to clarify intent and to reflect changes to the Forest Service avalanche program that have occurred in the last several years. We would like to work with the committee and the sponsors in this regard.

#### BACKGROUND

The Forest Service was the first agency to initiate avalanche control and forecasting in the United States. When the first ski areas began operating on National Forest System lands in the 1930s, the Forest Service began using explosives for avalanche control work to protect visitors. In 1948, the agency worked with the U.S. Army and pioneered the use of artillery for avalanche control. In the years since, the Forest Service has gradually transferred day-to-day responsibilities for avalanche control work to ski areas, though it supervises and manages the artillery program at the resorts. This is the case because the Department of Defense prohibits acquisition of artillery by private entities and because the Bureau of Alcohol, Tobacco, and Firearms requires that artillery programs be under federal "dominion and control" at ski areas.

Departments of transportation in Alaska, California, Colorado, Utah, and Washington also use artillery to control the avalanche danger in a number of transportation corridors in those States.

In these areas, artillery is fired into avalanche starting zones on National Forest System lands. This effort is usually authorized and monitored by the Forest Service under a special use permit issued to the respective transportation department.

As the Forest Service gradually moved into more of an oversight role for avalanche control work, the agency increasingly focused on providing forest visitors the education and information necessary to avoid or minimize avalanche hazards in the mountain backcountry. In the early 1970s, the Forest Service established the Colorado Avalanche Information Center. Through the 1980s the agency created a number of other backcountry avalanche centers around the country. Today, there are a total of 15 avalanche forecast centers operating in nine States, providing avalanche training and regular backcountry avalanche hazard forecasts throughout the winter.

Were it not for these avalanche centers and the information they provide, the number of avalanche-related fatalities would be much greater than the 28 that have occurred each year on average over the past 15 years. Nearly all of these avalanche-related fatalities were on National Forest System lands and involved backcountry recreationists, including snowmobilers, skiers, and others. As populations increase and technology supports easier access to avalanche-prone areas, public exposure to this hazard has been heightened.

We are convinced the avalanche forecast and education programs literally save lives. We are fortunate that others, including States and local community non-profit organizations, have joined with us to provide these services.

#### COMMENTS ON SECTIONS 3(a) AND 3(b)

We are concerned that parts of subsections 3(a) and 3(b) may be interpreted to require the Forest Service to move beyond its traditional role of informing and educating backcountry users, into active avalanche control work. This concern is heightened if the intent is to have the Forest Service assume responsibilities on both National Forest System lands and federal lands managed by agencies in the Department of the Interior or others such as the Department of Defense. We would like to work with the Committee to clarify and limit the scope of Forest Service responsibilities under this legislation.

#### COMMENTS ON SECTIONS 3(c) AND 3(d)

Presently, the Forest Service avalanche program has three main components. The first is avalanche backcountry forecasting, public education and information distribution, and research and technology transfer to avalanche forecast centers. The second is oversight of permitted ski areas and their avalanche control programs. The third component is oversight of the military weapons used for avalanche control.

Section 3(c) mandates that the Secretary establish a 15-member advisory committee to assist in the development and implementation of the avalanche protection program. As it concerns the avalanche forecast centers and their information and education programs, we do not believe an advisory committee is necessary. As it concerns civilian use of military weapons for avalanche control, the Avalanche Artillery Users of North America Committee (AAUNAC) was formed in 1987 and encompasses all of the users of avalanche artillery in Canada and the U.S., as well as the U.S. Army. AAUNAC is an ad hoc consensus-based working group established to address the need for an informal coordination body for civilian use of military weapons for avalanche control. AAUNAC has proven to be an effective organization to establish standard operating procedures, conduct training, and provide a central point of contact for U.S. Army. We feel it would be helpful if AAUNAC could be formally recognized as the coordinating body for using military weapons for avalanche control purposes. We look forward to working with this Committee to determine the best approach for providing this designation.

Section 3(d) requires the establishment of a central Depository for weapons for avalanche control purposes. A central depository has already been established by AAUNAC, working with the Department of Defense. The facility is located at the Sierra Army Depot in Herlong, California and contains an estimated 20-year supply of artillery and

parts. The Army has assured AAUNAC that the Army will reserve at least a 20-year supply of ordnance for AAUNAC users. Additionally, ski areas operating under a permit issued by the Forest Service can obtain ordnance for future use in their programs and store that ordnance at other Army Depots. Consequently, section 3(d) is not necessary.

#### COMMENTS ON SECTION 3(e)

We request removal of the grant program. This subsection also identifies two criteria for awarding grants. If a grant program is retained in S. 2907, we ask the committee to consider recognizing the avalanche centers, and their forecasting and education work, as the first priority, and public safety the primary criteria for any grants.

#### COMMENTS ON SUBSECTION 3(f)

This section amends Section 549(c)(3) of title 40, United States Code to provide that, when a state agency selects surplus artillery ordnance suitable for avalanche control for distribution through donation within the state, the Administrator of the General Services administration shall transfer the ordnance to the user of the ordnance. Currently, munitions are purchased by the various entities in the military weapons program. We defer to the Department of Defense and the General Services Administration on this proposed change.

In closing, I want to thank the Committee for the opportunity to be with you today to provide testimony on this legislation and we look forward to working with you on refinements to S. 2970.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2907, as ordered reported.