

## Calendar No. 280

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 112-118

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### ESTABLISHMENT OF A MEMORIAL TO HONOR CONTRIBUTIONS OF FREE PERSONS AND SLAVES DURING THE AMERICAN REVOLUTION

JANUARY 13, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of December 17, 2011

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

### R E P O R T

[To accompany S. 883]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 883) 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 without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 883 is to authorize the National Mall Liberty Fund D.C., 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 on Federal land in the District of Columbia. In general, the Act requires that a private entity wishing to construct a memorial must first get authorization from Congress. In 1986, Congress authorized the Black Revolutionary War Patriots Memorial Founda-

tion 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 (Public Law 99–558).

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. 883 would authorize another non-profit organization, the National Mall Liberty Fund D.C., to construct a commemorative work honoring the same individuals as proposed by the Black Revolutionary War Patriots Memorial Foundation, subject to the requirements of the Commemorative Works Act.

#### LEGISLATIVE HISTORY

S. 883 was introduced by Senators Lieberman and Grassley on May 4, 2011. The Subcommittee on National Parks held a hearing on S. 883 on July 28, 2011. At its business meeting on November 10, 2011, the Committee on Energy and Natural Resources ordered S. 883 favorably reported without amendment.

A similar bill, S. 2738, was introduced by Senators Dodd and Grassley in the 111th Congress. The Subcommittee on National Parks held a hearing on the bill on December 3, 2009 (S. Hrg. 111–318). S. 2738 was favorably reported with amendments by the Committee at its business meeting on June 21, 2010 (S. Rept. 111–263).

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 10, 2011, by voice vote of a quorum present recommends that the Senate pass S. 883.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains a Congressional finding that the subject matter of the proposed memorial—the contributions of free persons and slaves who fought during the American Revolution—is of pre-eminent historical and lasting significance, as required under the Commemorative Works Act. The effect of this provision is that the memorial can be located within the monumental core area (Area I) referenced in the Commemorative Works Act without the need for a subsequent Act and Congress approving such location.

*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. (40 U.S.C. 8901 et seq.).

*Section 4* repeals the two laws relating to 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. 883—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. 883 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 apply. However, CBO estimates that the net effect on the budget of enacting the legislation would be insignificant in any year.

S. 883 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 donate 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.

S. 883 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.

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. 883.

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. 883, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 883, 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 July 28, 2011, Subcommittee on National Parks hearing on S. 883 follows:

#### STATEMENT OF PEGGY O'DELL, DEPUTY DIRECTOR, 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. 883, 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. 883 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 Nation's Capital since it was enacted in 1986 and as amended since that time.

The bill would authorize the establishment of a memorial on federal land in Area I 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 have already lapsed by operation of law.

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 located, designed and erected in a manner that is worthy of their historically significant subjects. The act was amended in 2003 to, among other things, provide for establishment of the Reserve where no additional memorials may be located.

While S. 883 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-authorizing the memorial to be located within Area I. In effect, the bill directs that the

memorial be located within Area I without benefit of public participation or the participation of the Secretary of the Interior, circumventing the process Congress has adhered to since 1986. This preempts the Secretary's responsibility to recommend Area I designations to Congress for Congress to consider and act upon, and it curtails the roles of the National Capital Planning Commission and the Commission of Fine Arts.

The Commemorative Works Act, as amended, designates federal land in two areas in the District of Columbia and environs on which memorials could be sited within the District of Columbia, and one area, known as the Reserve, where no additional memorials can be located. These areas are depicted on the attached map which is designated in the Act. All memorials authorized to be located on this federal land in the District of Columbia and environs are authorized to seek sites within the portion of the map designated as Area II. However, 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 if the Congress agrees with the Secretary's determination by passing legislation to this effect within 150 days. Area I is within the Monumental Core of the Nation's Capital extending from Third Street, N.W. to the eastern boundary of Arlington National Cemetery and along the shoreline on the Virginia side of the Potomac River.

The Department's position regarding adherence to the Commemorative Works Act process for Area I designation is consistent with the position taken by the National Capital Memorial Advisory Commission, which reviewed S. 883 at its public meeting on June 23, 2011. The Commission recommended support for S. 883 if brought into conformance with the Commemorative Works Act by deleting the word "preeminent" in Section 1, and the reference to Area I in Section 2(A)(i).

In the Department's view, following the Commemorative Works Act would not hinder the Liberty Memorial Foundation in its ability to establish this memorial. In fact, if the Foundation obtains an Area I designation through the Commemorative Works Act process, the Foundation's 7-year statutory period to establish the memorial is automatically extended seven more years, beginning on the enactment of the Area I designation, instead of expiring at the 7-year point. This change to give sponsors seven more years for a memorial when seeking an Area I designation, was made by Congress when it amended the Commemorative Works Act in 2003, and as a result, sponsors no longer need to factor into their goals that seeking an Area I designation would reduce the time available to them to locate, fund and design their memorials.

We also would point out that S. 883 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 lapse. The Department recommends that the bill be amended to clarify the disposition of these funds.

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 bill S. 883 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):

#### PUBLIC LAW 99-558—OCT. 27, 1986

\* \* \* \* \*

JOINT RESOLUTION 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.

*[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.]

## PUBLIC LAW 100-265—MAR. 25, 1988

\* \* \* \* \*

## JOINT RESOLUTION Approving the location of the Black Revolutionary War Patriots Memorial.

[[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, 3651, 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.】