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LIMESTONE HILLS TRAINING AREA WITHDRAWAL

MAY 14, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1169]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1169) to withdraw and reserve certain public land in the State of Montana for the Limestone Hills Training Area, 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 “Limestone Hills Training Area Withdrawal Act of 2013”.

SEC. 2. WITHDRAWAL AND RESERVATION OF PUBLIC LANDS FOR LIMESTONE HILLS TRAINING AREA, MONTANA.

(a) **WITHDRAWAL.**—Subject to valid existing rights and except as provided in this Act, the public lands and interests in lands described in subsection (c), and all other areas within the boundaries of such lands as depicted on the map provided for by subsection (d) that may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws.

(b) **RESERVATION; PURPOSE.**—Subject to the limitations and restrictions contained in section 4, the public lands withdrawn by subsection (a) are reserved for use by the Secretary of the Army for the following purposes:

(1) The conduct of training for active and reserve components of the Armed Forces.

(2) The construction, operation, and maintenance of organizational support and maintenance facilities for component units conducting training.

(3) The conduct of training by the Montana Department of Military Affairs, except that any such use may not interfere with purposes specified in paragraphs (1) and (2).

(4) The conduct of training by State and local law enforcement agencies, civil defense organizations, and public education institutions, except that any such use may not interfere with military training activities.

(5) Other defense-related purposes consistent with the purposes specified in the preceding paragraphs.

(c) **LAND DESCRIPTION.**—The public lands and interests in lands withdrawn and reserved by this section comprise approximately 18,644 acres in Broadwater County, Montana, as generally depicted as “Proposed Land Withdrawal” on the map titled “Limestone Hills Training Area Land Withdrawal”, dated April 10, 2013.

(d) **LEGAL DESCRIPTION AND MAP.**—

(1) **IN GENERAL.**—As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior shall publish in the Federal Register a legal description of the public land withdrawn under subsection (a) and a copy of a map depicting the legal description of the withdrawn land.

(2) **FORCE OF LAW.**—The legal description and map published under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may correct errors in the legal description.

(3) **REIMBURSEMENT OF COSTS.**—The Secretary of the Army shall reimburse the Secretary of the Interior for any costs incurred by the Secretary of the Interior in implementing this subsection.

(e) **INDIAN TRIBES.**—Nothing in this Act shall be construed as altering any rights reserved for an Indian tribe for tribal use of lands within the military land withdrawal by treaty or Federal law. The Secretary of the Army shall consult with any Indian tribes in the vicinity of the military land withdrawal before taking action within the military land withdrawal affecting tribal rights or cultural resources protected by treaty or Federal law.

SEC. 3. MANAGEMENT OF WITHDRAWN AND RESERVED LANDS.

During the period of the withdrawal and reservation specified in section 6, the Secretary of the Army shall manage the public lands withdrawn by section 2 for the purposes specified in subsection (b) of such section, subject to the limitations and restrictions contained in section 4.

SEC. 4. SPECIAL RULES GOVERNING MINERALS MANAGEMENT.

(a) **INDIAN CREEK MINE.**—

(1) **IN GENERAL.**—Of the lands withdrawn by section 2, locatable mineral activities in the approved Indian Creek Mine plan of operations, MTM–78300, shall be regulated pursuant to subparts 3715 and 3809 of title 43, Code of Federal Regulations.

(2) **RESTRICTIONS ON SECRETARY OF THE ARMY.**—The Secretary of the Army shall make no determination that the disposition of or exploration for minerals as provided for in the approved plan of operations is inconsistent with the defense-related uses of the lands covered by the military land withdrawal. The coordination of such disposition of and exploration for minerals with defense-related uses of such lands shall be determined pursuant to procedures in an agreement provided for under subsection (c).

(b) **REMOVAL OF UNEXPLODED ORDNANCE ON LANDS TO BE MINED.**—

(1) **REMOVAL ACTIVITIES.**—Subject to the availability of funds appropriated for such purpose, the Secretary of the Army shall remove unexploded ordnance on lands withdrawn by section 2 that are subject to mining under subsection (a), consistent with applicable Federal and State law. The Secretary of the Army may engage in such removal of unexploded ordnance in phases to accommodate the development of the Indian Creek Mine pursuant to subsection (a).

(2) **REPORT ON REMOVAL ACTIVITIES.**—The Secretary of the Army shall annually submit to the Secretary of the Interior a report regarding the unexploded ordnance removal activities for the previous fiscal year performed pursuant to this subsection. The report shall include—

(A) the amounts of funding expended for unexploded ordnance removal on the lands withdrawn by section 2; and

(B) the identification of the lands cleared of unexploded ordnance and approved for mining activities by the Secretary of the Interior.

(c) **IMPLEMENTATION AGREEMENT FOR MINING ACTIVITIES.**—The Secretary of the Interior and the Secretary of the Army shall enter into an agreement to implement this section with regard to coordination of defense-related uses and mining and the ongoing removal of unexploded ordnance. The duration of the agreement shall be the same as the period of the withdrawal under section 2, but may be amended from time to time. The agreement shall provide the following:

(1) That Graymont Western US, Inc., or any successor or assign of the approved Indian Creek Mine mining plan of operations, MTM–78300, is invited to be a party to the agreement.

(2) Provisions regarding the day-to-day joint-use of the Limestone Hills Training Area.

(3) Provisions addressing when military and other authorized uses of the withdrawn lands will occur.

(4) Provisions regarding when and where military use or training with explosive material will occur.

(5) Provisions regarding the scheduling of training activities conducted within the withdrawn area that restrict mining activities and procedures for deconfliction with mining operations, including parameters for notification and resolution of anticipated changes to the schedule.

(6) Procedures for access through mining operations covered by this section to training areas within the boundaries of the Limestone Hills Training Area.

(7) Procedures for scheduling of the removal of unexploded ordnance.

(d) **EXISTING MEMORANDUM OF AGREEMENT.**—Until such time as the agreement required under subsection (c) becomes effective, the compatible joint use of the lands withdrawn and reserved by section 2 shall be governed, to the extent compatible, by the terms of the 2005 Memorandum of Agreement among the Montana Army National Guard, Graymont Western US, Inc., and the Bureau of Land Management.

SEC. 5. GRAZING.

(a) **ISSUANCE AND ADMINISTRATION OF PERMITS AND LEASES.**—The issuance and administration of grazing permits and leases, including their renewal, on the public lands withdrawn by section 2 shall be managed by the Secretary of the Interior consistent with all applicable laws, regulations, and policies of the Secretary of the Interior relating to such permits and leases.

(b) **SAFETY REQUIREMENTS.**—With respect to any grazing permit or lease issued after the date of the enactment of this Act for lands withdrawn by section 2, the Secretary of the Interior and the Secretary of the Army shall jointly establish procedures that are consistent with Department of the Army explosive and range safety standards and that provide for the safe use of any such lands.

(c) **ASSIGNMENT.**—The Secretary of the Interior may, with the agreement of the Secretary of the Army, assign the authority to issue and to administer grazing permits and leases to the Secretary of the Army, except that such an assignment may not include the authority to discontinue grazing on the lands withdrawn by section 2.

SEC. 6. DURATION OF WITHDRAWAL AND RESERVATION.

The military land withdrawal made by section 2 shall terminate on March 31, 2039.

SEC. 7. HUNTING, FISHING AND TRAPPING.

All hunting, fishing and trapping on the lands withdrawn by section 2 shall be conducted in accordance with section 2671 of title 10, United States Code.

SEC. 8. WATER RIGHTS.

(a) **WATER RIGHTS.**—Nothing in this Act shall be construed—

(1) to establish a reservation in favor of the United States with respect to any water or water right on lands withdrawn by section 2; or

(2) to authorize the appropriation of water on lands withdrawn by section 2, except in accordance with applicable State law.

(b) **EFFECT ON PREVIOUSLY ACQUIRED OR RESERVED WATER RIGHTS.**—This section shall not be construed to affect any water rights acquired or reserved by the United States before the date of the enactment of this Act.

SEC. 9. BRUSH AND RANGE FIRE PREVENTION AND SUPPRESSION.

(a) **REQUIRED ACTIVITIES.**—The Secretary of the Army shall, consistent with any applicable land management plan, take necessary precautions to prevent, and actions to suppress, brush and range fires occurring as a result of military activities on the lands withdrawn and reserved by section 2, including fires outside those lands that spread from the withdrawn land and which occurred as a result of such activities.

(b) **COOPERATION OF SECRETARY OF THE INTERIOR.**—At the request of the Secretary of the Army, the Secretary of the Interior shall provide assistance in the suppression of such fires and shall be reimbursed for such assistance by the Secretary of the Army. Notwithstanding section 2215 of title 10, United States Code, the Secretary of the Army may transfer to the Secretary of the Interior, in advance, funds to reimburse the costs of the Department of the Interior in providing such assistance.

SEC. 10. ON-GOING DECONTAMINATION.

During the withdrawal and reservation authorized by section 2, the Secretary of the Army shall maintain, to the extent funds are available for such purpose, a program of decontamination of contamination caused by defense-related uses on such lands consistent with applicable Federal and State law. The Secretary of Defense shall include a description of such decontamination activities in the annual report required by section 2711 of title 10, United States Code.

SEC. 11. APPLICATION FOR RENEWAL OF A WITHDRAWAL AND RESERVATION.

(a) NOTICE.—To the extent practicable, no later than five years before the termination of the withdrawal and reservation made by section 2, the Secretary of the Army shall notify the Secretary of the Interior whether the Secretary of the Army will have a continuing defense-related need for any of the lands withdrawn and reserved by section 2 after the termination date of such withdrawal and reservation. The Secretary of the Army shall provide a copy of the notice to the Committee on Armed Services and the Committee on Energy and Natural Resources of the Senate and the Committee on Armed Services and the Committee on Natural Resources of the House of Representatives.

(b) FILING FOR EXTENSION.—If the Secretary of the Army concludes that there will be a continuing defense-related need for any of the withdrawn and reserved lands after the termination date, the Secretary of the Army shall file an application for extension of the withdrawal and reservation of such needed lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals and reservations.

SEC. 12. LIMITATION ON SUBSEQUENT AVAILABILITY OF LANDS FOR APPROPRIATION.

At the time of termination of a withdrawal and reservation made by section 2, the previously withdrawn lands shall not be open to any form of appropriation under the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws, until the Secretary of the Interior publishes in the Federal Register an appropriate order specifying the date upon which such lands shall be restored to the public domain and opened for such purposes.

SEC. 13. RELINQUISHMENT.

(a) NOTICE OF INTENTION TO RELINQUISH.—If, during the period of withdrawal and reservation under section 2, the Secretary of the Army decides to relinquish any or all of the lands withdrawn and reserved, the Secretary of the Army shall file a notice of intention to relinquish with the Secretary of the Interior.

(b) DETERMINATION OF CONTAMINATION.—As a part of the notice under subsection (a), the Secretary of the Army shall include a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive materials or toxic or hazardous substances.

(c) PUBLIC NOTICE.—The Secretary of the Interior shall publish in the Federal Register the notice of intention to relinquish, including the determination concerning the contaminated state of the lands.

(d) DECONTAMINATION OF LANDS TO BE RELINQUISHED.—

(1) CONDITIONS REQUIRING DECONTAMINATION.—If land subject of a notice of intention to relinquish pursuant to subsection (a) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the Army, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that, upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws, the Secretary of the Army shall decontaminate the land to the extent that funds are appropriated for such purpose.

(2) DISCRETION IF CONDITIONS NOT MET.—If the Secretary of the Interior, after consultation with the Secretary of the Army, concludes that decontamination of land subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, or if Congress does not appropriate sufficient funds for the decontamination of such land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(3) RESPONSE.—If the Secretary of the Interior declines to accept the lands that have been proposed for relinquishment because of their contaminated state, or if at the expiration of the withdrawal and reservation made by section 2 the Secretary of the Interior determines that some of the lands withdrawn and reserved are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(A) the Secretary of the Army shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(B) after the expiration of the withdrawal and reservation, the Secretary of the Army shall undertake no activities on such lands except in connection with decontamination of such lands; and

(C) the Secretary of the Army shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of this paragraph.

(e) REVOCATION AUTHORITY.—Upon deciding that it is in the public interest to accept the lands proposed for relinquishment pursuant to subsection (a), the Secretary of the Interior may order the revocation of the withdrawal and reservation made by section 2 as it applies to such lands. The Secretary of the Interior shall publish in the Federal Register the revocation order, which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of some or all of the public land laws, including the mining laws.

(f) ACCEPTANCE BY SECRETARY OF THE INTERIOR.—Nothing in this section shall be construed to require the Secretary of the Interior to accept the lands proposed for relinquishment if the Secretary determines that such lands are not suitable for return to the public domain. If the Secretary makes such a determination, the Secretary shall provide notice of the determination to Congress.

PURPOSE

The purpose of S. 1169 is to withdraw and reserve for use by the Secretary of the Army approximately 18,644 acres at the Limestone Hills Training Area in Montana.

BACKGROUND AND NEED

The Limestone Hills are a small sub-range of the Big Belt Mountains, on the east side of the Continental Divide, southeast of Helena, in Broadwater County, Montana. The Montana Army National Guard has used the Limestone Hills area west of the Missouri River near the town of Townsend, Montana, as a training ground since 1952. Most of the nearly 20,000-acre training area is on public land managed by the Bureau of Land Management. In 1984, the Bureau of Land Management issued the Montana Army National Guard a right-of-way to use the area for military purposes for 30 years. The right-of-way expires on March 26, 2014.

In 1986, following issuance of the right-of-way, the Interior Board of Land Appeals ruled in an unrelated case that use of the public lands for military maneuvers may not be authorized by a right-of-way. *Department of the Army*, 95 IBLA 52 (1986). Accordingly, in 1993, the Bureau of Land Management advised the Montana Army National Guard that the right-of-way would not be renewed and requested that the Guard apply for a land withdrawal if it wished to continue using the area after the right-of-way expires. The Montana Army National Guard asked to withdraw the training area in 2002.

The Department of the Army seeks the withdrawal of 18,644 acres of public land within the Limestone Hills Training Area for the continued use of the Montana Army National Guard. Under the Engle Act, 43 U.S.C. 156, legislation is required to withdraw more than 5,000 acres for military purposes.

LEGISLATIVE HISTORY

S. 1169 was introduced by Senators Baucus and Tester on June 13, 2013. The Subcommittee on Public Lands, Forests, and Mining held a hearing on the bill on July 30, 2013 (S. Hrg. 113–85). At its business meeting on November 14, 2013, the Committee ordered S. 1169 favorably reported.

Similar legislation was included as section 202 of S. 1309, the Military Land Withdrawals Act of 2013, which was also ordered reported by the Committee on November 14, 2013.

In addition, similar legislation was subsequently incorporated as subtitle B of title XXIX of H.R. 3304, the National Defense Authorization Act for Fiscal Year 2014, which was enacted as Public Law 113–66 on December 26, 2013.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on November 14, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 1169, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1169 on November 14, 2013, the Committee adopted an amendment in the nature of a substitute. The amendment strikes: (1) section 4(a)(3) from the bill as introduced, which would have given certain mining claimants the opportunity to amend or relocate mining claims and reinstate expired claims; (2) paragraphs (6) and (7) of section 4(c) of the bill as introduced, which would have required the memorandum of understanding between the Secretary of the Interior and the Secretary of the Army to contain provisions regarding liability and compensation and for periodic review; and (3) section 7 of the bill as introduced, which would have made the withdrawn lands eligible for payment in lieu of taxes under section 6901 of title 31 of the United States Code. The amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title “Limestone Hills Training Area Withdrawal Act of 2013”.

Section 2(a) withdraws approximately 18,644 acres in Broadwater County, Montana depicted on the map “Limestone Hills Training Area Land Withdrawal”.

Subsection (b) reserves the lands withdrawn by subsection (a) for use by the Secretary of the Army for the training of active and reserve components of the Armed Forces, the Montana Department of Military Affairs, State and local law enforcement agencies, civil defense organizations, and public education institutions, and other, consistent defense-related purposes.

Subsection (c) provides the description of the lands and interests withdrawn and reserved by the bill.

Subsection (d)(1) instructs the Secretary of the Interior to publish in the Federal Register a legal description of the public land withdrawn and a copy of a map depicting the withdrawn land.

Paragraph (2) provides the map and the legal description shall have the same force of law as if it were included in this Act. It also authorizes the Secretary to correct errors in the legal description.

Paragraph (3) authorizes the Secretary of the Army to reimburse the Secretary of the Interior for any costs incurred in implementing Subsection (d).

Subsection (e) protects any rights reserved for an Indian Tribe for tribal use within the military land withdrawal by treaty or Federal law. It authorizes the Secretary of the Army to consult with any Indian Tribe in the vicinity of the military land withdrawal affecting protected tribal rights or resources before taking action within the military land withdrawal.

Section (3) requires the Secretary of the Army to manage the withdrawn lands subject to the limitations and restrictions in section 4.

Section (4)(a)(1) provides that the Indian Creek Mine plan of operations shall be regulated pursuant subparts 3715 and 3809 of title 43, Code of Federal Regulations.

Paragraph (2) restricts the Secretary of the Army's authority to restrict the disposition of and exploration for minerals in the withdrawn lands.

Subsection (b)(1) instructs the Secretary of the Army to remove unexploded ordnance on the Indian Creek Mine lands that are subject to mining. It also allows the Secretary of the Army to conduct this removal in phases to accommodate the development of the Indian Creek Mine.

Paragraph (2) instructs the Secretary of the Army to submit a report regarding unexploded ordnance removal activities for the previous fiscal year performed to the Secretary of the Interior. This report will include: (A) the amounts of funding used for unexploded ordnance removal on the lands withdrawn; and (B) the identification of the lands cleared of unexploded ordnance and approved for mining activities by the Secretary of the Interior.

Subsection (c) requires the Secretary of the Interior and the Secretary of the Army to enter into an agreement to implement defense-related uses and mining, and the ongoing removal of unexploded ordnance.

Subsection (d) provides that until subsection (c) becomes effective, the lands withdrawn under section 2 will be governed by the terms of the 2005 Memorandum of Agreement among the Montana Army National Guard, Graymont Western US, Inc., and the Bureau of Land Management.

Section 5(a) authorizes the Secretary of the Interior to manage the issuance and administration of grazing permits and leases, including their renewal, on the public lands withdrawn by section 2.

Subsection (b) instructs the Secretary of the Army and the Secretary of the Interior to jointly establish safety procedures with respect to any grazing permit or lease issued that are consistent with Department of the Army explosive and range safety standards and that provide for the safe use of any such lands.

Subsection (c) authorizes the Secretary of the Interior, with the agreement of the Secretary of the Army, to assign the authority to issue and administer grazing permits and leases to the Secretary of the Army, except that such an assignment may not include the

authority to discontinue grazing on the lands withdrawn by section 2.

Section 6 terminates the military land withdrawal on March 31, 2039.

Section 7 clarifies all hunting, fishing and trapping on the lands withdrawn by section 2 will be conducted in accordance with Federal law.

Section 8(a)(1) clarifies that the legislation does not establish a federal water reservation in any water or water right on the withdrawn lands or authorize the appropriation of water on the withdrawn lands, except in accordance with applicable State law.

Subsection (b) further clarifies that subsection (a) does not affect federal water rights acquired or reserved before the date of the enactment.

Section 9 requires the Secretary of the Army to take necessary precautions to prevent, and actions to suppress, brush and range fires occurring as a result of military activities on the lands withdrawn and reserved.

Subsection (b) authorizes the Secretary of the Interior to assist in the suppression of fires at the request of the Secretary of the Army. The Secretary of the Army may transfer in advance funds to reimburse the costs of the Department of the Interior in providing assistance.

Section 10 requires the Secretary of the Army to maintain a decontamination program of contaminated lands caused by defense-related uses. The Secretary of Defense shall include a description of such decontamination activities in the annual report required by Federal law.

Section 11(a) authorizes the Secretary of the Army to notify, no later than five years before the termination of the withdrawal, the Secretary of the Interior whether the Secretary of the Army will have a continuing defense-related need for any of the lands withdrawn after March 31, 2039. The Secretary of the Army is required to provide a copy of the notice to the Committee on Armed Services and the Committee on Energy and Natural Resources of the Senate and the Committee on Armed Services and the Committee on Natural Resources of the House of Representatives.

Subsection (b) authorizes the Secretary of the Army to file an application for extension of the withdrawal and reservation if the Secretary of the Army concludes that there is a defense-related need for any of the withdrawn and reserved lands after the termination date.

Section 12 clarifies that at the time of termination of the withdrawal, the previously withdrawn lands will not be open to any form of appropriation until the Secretary of the Interior publishes in the Federal Register an order specifying the date which the lands will be restored to the public domain.

Section 13(a) requires the Secretary of the Army to file a notice of intention to relinquish with the Secretary of the Interior if the Secretary of the Army decides to relinquish any or all lands withdrawn and reserved before the March 31, 2039, termination.

Subsection (b) requires the Secretary of the Army to include a written determination concerning whether and to what extent the relinquished lands are contaminated with explosive, hazardous, or toxic substances.

Subsection (c) requires the Secretary of the Interior to publish in the Federal Register the notice of intention to relinquish, including the determination concerning the contaminated state of the lands.

Subsection (d)(1) requires the Secretary of the Army to decontaminate relinquished lands if decontamination is practicable and economically feasible. Paragraph (2) authorizes the Secretary of the Interior to decline to accept contaminated lands proposed to be relinquished if decontamination is not practicable or economically feasible. Paragraph (3) provides for contaminated lands that the Secretary of the Interior has declined to accept.

Subsection (e) authorizes the Secretary of the Interior to revoke the withdrawal and reservation if in the public interest.

Subsection (f) preserves the Secretary of the Interior's authority to decline to accept the relinquished lands if the Secretary determines that such lands are not suitable for return to public domain.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1169—Limestone Hills Training Area Withdrawal Act of 2013

S. 1169 would withdraw roughly 19,000 acres of federal lands in Montana from programs to develop geothermal and mineral resources. The Army would manage the withdrawn lands and use them for military training purposes. Based on information provided by the Bureau of Land Management (BLM), CBO estimates that implementing the bill would have no significant impact on the federal budget. Enacting S. 1169 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, the affected lands are subject to a temporary right-of-way that allows the Army to use them for military training purposes. S. 1169 would prohibit certain activities that could generate receipts on the affected lands in the future (such receipts are accounted for in the budget as decreases in direct spending); however, because CBO expects that those lands would not generate any receipts over the next 10 years, we estimate that enacting the bill would not affect direct spending.

In addition, because the affected lands are already managed by the federal government, we estimate that implementing the legislation would not affect the costs of managing those lands. Finally, CBO estimates that any additional costs to prepare the legal description of the affected lands, as required under the bill, would total less than \$5,000, subject to the availability of appropriated funds.

S. 1169 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 11, 2013, CBO transmitted a cost estimate for H.R. 1672, the Limestone Hills Training Area Withdrawal Act, as ordered reported by the House Committee on Natural Resources on May 15, 2013. The two bills are similar, and the CBO cost estimates are 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. 1169.

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. 1169, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1169, as 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 Department of the Army and Bureau of Land Management at the July 30, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 1169 follows:

STATEMENT OF THE HONORABLE KATHERINE G. HAMMACK,
ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY, AND ENVIRONMENT)

Thank you, Chairman Manchin, Ranking Member Barrasso and other distinguished Members of the Committee for the opportunity to provide comments on S. 1169, legislation to withdraw public lands in Montana for use by the Army, and S. 753, legislation to withdraw public lands in New Mexico.

LIMESTONE HILLS TRAINING AREA WITHDRAWAL ACT OF 2013

Senate Bill 1169, the Limestone Hills Training Area Withdrawal Act, would withdraw and reserve approximately 18,644 acres of federal land that comprises the Limestone Hills Training Area (LHTA) for use by the Army, and assign primary management of the property from the Department of the Interior to the Department of the Army for a 25-year period.

The lands comprising the LHTA are public domain lands, currently under the control of the Bureau of Land Management (BLM). The legislation would enable continued training on the land by the Montana National Guard (MTNG) and other active and reserve components of the armed forces that have used the property for training purposes for several decades. In order for the Army to continue occupying the property, the land must be "withdrawn from the public domain," which can only be accomplished by an Act of Congress. Unless legislation is passed, the Army's current authority to use the property will end in March 2014.

The LHTA is operated by the MTNG and is their only large-scale live fire and maneuver training area. It is a critically important training asset for the MTNG, used by approximately 3,800 Guardsmen annually, for diverse training involving small arms, crew-served weapons, mortars, and demolition activities. The LHTA represents a realistic, open training environment within a reasonable travel distance for most Guardsmen and for equipment, which is maintained off site. This regional training asset allows us to avoid the expenditures of time, money, and fuel that would result if training had to be located elsewhere.

The LHTA is also used by the active and reserve components of the other branches of the military and is made available in some cases for use by other federal, state, and local agencies. Some 10,000 personnel from other services use the site each year. Many of those personnel are from special operations units who are preparing for rotations in Afghanistan and other forward locations. The LHTA is especially valuable because of the variety of training conducted there, which is reflected in the number and diversity of organizations that train there.

There are a number of other, non-federal activities that occur at the LHTA, and the Army is respectful of the multiple uses of the property. We are particularly proud of the collaborative relationship among the MTNG, the BLM, and the other stakeholders in the area. The Army closely coordinates with the operators of an active limestone mine within the withdrawal area. The Army firmly supports allowing existing mining claims to proceed to development in accordance with previously approved plans of operations, and we are confident this can occur. The MTNG plans meticulously to ensure that training and mining operations are held at a safe distance, and that any unexploded ordnance (UXO) is removed from the mining area. Training activities are also deconflicted with grazing operations, wildlife habitat, and use of two public roads that traverse the property. There is a proven track record of accommodating multiple uses of the property while fulfilling military training and mission needs.

The MTNG is party to an existing agreement with the BLM and with Graymont Western US, Inc., the current mine operator. This agreement specifies the procedures that the parties follow to coordinate and deconflict their respective activities. As provided for in the legislation, the Army is prepared to enter into a new agreement to update those procedures during the withdrawal period. We do not foresee any difficulty in maintaining procedures to ensure that training and readiness are maintained while accommodating the needs of other parties.

While the Army supports withdrawal of the property to enable its continued use for military training, the Army has significant concerns with certain language in the bill that would legislatively expand certain rights for mineral disposition or exploration. The Army opposes inclusion of

Subsection 4(a)(3), which would provide an opportunity for certain mining claimants to amend or relocate mining claims and to reinstate expired claims. This provision would give unprecedented latitude to these claimants, which could impact land required for military training—including live fire impact areas. This would severely limit the ability of the Army to plan and conduct training on the property. The Army supports allowing existing mining claims to proceed to development in accordance with previously approved plans of operations and in accordance with applicable law and regulation. However, the Army strongly objects to this Subsection as it would grant particular mining claimants the ability to operate without regard for the withdrawal and reservation. There is no clear precedent for this provision, which stands in opposition to the normal purpose and effect of military land withdrawals. By granting unique privileges to certain mining claimants, this provision is also contrary to the normal operation of mining laws and regulations, which provide equal treatment for all claimants who are similarly situated.

The LHTA is an important asset for the readiness of the armed forces. If the land is not withdrawn, Limestone Hills will be returned to the BLM and the MTNG would be forced to conduct its primary training events at other locations. Changing training venues could markedly increase the costs to the MTNG over current expenditures. Additionally, UXO contamination would need to be mitigated if the range were closed. Since funding for UXO removal from active ranges is controlled and prioritized differently from funding for cleanup of closed ranges, if the range is closed, Army priorities and schedules for UXO removal would be affected. We appreciate the effort to keep this important training asset open and available.

Noting the strong objection to Subsection 4(a)(3), we support S. 1169 with the exclusion of that provision. The Department of Defense has submitted a legislative proposal to the Congress for consideration that would also address the withdrawal requirements for LHTA. The proposal, introduced as S. 1309, is fully coordinated and agreed to within the Administration, and would provide urgent and necessary authority to continue training and operations.

S. 753, A BILL TO PROVIDE FOR NATIONAL SECURITY BENEFITS
FOR WHITE SANDS MISSILE RANGE AND FORT BLISS

The other legislation I would like to discuss is S. 753, which involves the withdrawal of 42,700 acres of public lands in New Mexico and reservation of 5,100 of those acres for use by the Department of the Army. The bill would also transfer administration of 2,050 acres from the Army to the Department of Interior. These lands are directly adjacent to Fort Bliss and the White Sands Missile Range (WSMR). As the two largest military installations in the United States, Fort Bliss and WSMR consist of

nearly 5,000 square miles of land that accommodates military training, research, development, and test and evaluation. In addition to Army test activities, WSMR hosts several other federal tenants, including NASA and the National Reconnaissance Office (NRO).

A portion of the withdrawal, totaling 37,600 acres, is adjacent to the Dona Ana tank gunnery and artillery range complex at Fort Bliss. Training in this location can generate significant noise, vibration, and dust, which can all migrate off the installation. Army analysis has determined that noise levels occurring in the area to be withdrawn are higher than is recommended for various categories of use and development. The Army is concerned that residential and commercial development may occur in that area. The legislation would ensure that incompatible development does not occur in that area. In doing so, the legislation would establish an enduring buffer for the live-fire ranges in the Dona Ana training area.

A separate 5,100 acre portion of the land that would be withdrawn by this legislation is adjacent to tenant operations at WSMR: the NASA White Sands Test Facility; the NASA Goddard Space Flight Center Tracking and Data Relay Satellite Systems facility; and the NRO Aerospace Data Facility—Southwest. These operations are co-located and have special security and safety requirements. The land set aside for their use, while large enough to handle the mission, no longer resides in a remote location. As with many locations in the southwest, this area has seen a large increase in population in recent years. The facilities sit close to the border of a public access area, and a number of security incidents in the area have highlighted the value of having a controlled stand-off area. This legislation would reserve for military control a one-mile stand-off area between those tenant activities and the public access area, which would improve the security for these facilities.

The bill would also return administration of a small area at Fort Bliss from the Department of the Army to the Department of the Interior. The 2,050 acre parcel, previously withdrawn for military use, would be transferred to the BLM. This parcel has relatively limited training value for Fort Bliss due to its limited access from the installation. The Army does not object to the return of this land to BLM, but we offer one technical comment on the provision. Since the parcel was originally withdrawn by Public Land Order 833, a partial legislative revocation of that Public Land Order would ensure a clear interpretation of congressional intent.

The Army has worked cooperatively with the Bureau of Land Management and other neighbors and stakeholders in addressing land use issues in this area. We appreciate the cooperation and interest of all parties who support the various missions at Fort Bliss and WSMR. The Army supports this legislation, which would protect those important national security missions.

Thank you for the opportunity to discuss these topics, I look forward to any questions you have.

STATEMENT OF NED FARQUHAR, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present testimony on three public land withdrawal bills, S. 753, S. 1169, and S. 1309. S. 753 seeks to achieve boundary solutions at White Sands Missile Range (WSMR) and Fort Bliss in New Mexico. The Administration supports S. 753, but would like to work with the Subcommittee and the sponsor on technical modifications to the bill. S. 1169, the Limestone Hills Training Area Withdrawal Act, would withdraw approximately 18,644 acres of public land for use by the Department of the Army (Army) in Montana. The Administration supports the continued use of the lands identified in S. 1169 by the Army, but has concerns with the provision related to the location and maintenance of mining claims. We look forward to working with the Subcommittee and the sponsor on modifications to address these concerns. S. 1309, the Military Land Withdrawals Act, was introduced at the Administration's request. The bill reflects the Administration's FY 2014 National Defense Authorization Act (NDAA) legislative proposal for three public land withdrawals in California and one in Montana. The Administration urges the Senate to pass S. 1309 to support military use of the lands at Chocolate Mountain Aerial Gunnery Range (CMAGR), Naval Air Weapons Station (NAWS) China Lake, Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, and Limestone Hills Training Area.

BACKGROUND

Public lands are managed by the Department of the Interior (DOI) through the Bureau of Land Management (BLM). Public land withdrawals are formal lands actions that set aside, withhold, or reserve public land by statute or administrative order for public purposes. Withdrawals are established for a wide variety of purposes, e.g., power site reserves, military reservations, administrative sites, recreation sites, national parks, reclamation projects, and wilderness areas. Withdrawals are most often used to preserve sensitive environmental values and major Federal investments in facilities or other improvements, to support national security, and to provide for public health and safety. Withdrawals of public lands for military use require joint actions by DOI and the Department of Defense (DOD). DOD has a number of installations, training areas, and ranges that are located partially or wholly on temporarily or permanently withdrawn public lands. Many of these withdrawals support installations that are critical to the nation's ability to provide for the readiness of the

Armed Forces. Approximately 16 million acres of public lands are withdrawn for military purposes.

There was no limit on the amount of public land that could be withdrawn administratively at a single location for military use until 1958 when the Engle Act (P.L. 85–337) became law. The Engle Act requires an Act of Congress to authorize military land withdrawals aggregating 5,000 acres or more for any one defense project or facility. Similarly, there was no limit on the time period of administrative withdrawals until 1976 when the Federal Land Policy and Management Act (FLPMA) (P.L. 94–579) became law. FLPMA allows the Secretary of the Interior to administratively make withdrawals aggregating 5,000 acres or more for purposes other than military use, for a period of not more than 20 years. Legislative military withdrawals have traditionally included time limits, with renewal required every 15, 20, or 25 years, depending on the terms in the legislation.

DOI appreciates the importance of military installations for the security of the Nation and supports the multiple missions of our Armed Forces. We are proud to be able to offer public lands to support military readiness, training, and testing, and are proud to be able to assist the military in meeting its mission needs. Throughout the country we have established productive partnerships and other working arrangements with the military and we intend to continue these mutually beneficial arrangements. We are especially appreciative of the military's stewardship of the withdrawn lands they manage. These arrangements have worked out well for all concerned and should continue.

The Administration believes that the traditional, periodic review that is a part of the legislative withdrawal process is vital to promoting the highest quality stewardship and management of the public lands proposed for withdrawal in these bills. This process provides opportunities for DOD and the military branches to evaluate their continued use of the lands and obtain the participation and assistance of DOI in sound management, for DOT to ensure that the lands are being managed in ways that could allow their eventual return to the public domain for broader public use, and for the Congress and the public to provide input and oversight.

S. 753, BOUNDARY SOLUTIONS AT WHITE SANDS MISSILE RANGE (VWSMR) AND FORT BLISS

WSMR is a test range of approximately 2.2 million acres in parts of five counties in southern New Mexico, making it one of the largest military installations in the United States. WSMR is contiguous to Fort Bliss to the south, which is used for military training. The majority of the lands that comprise both WSMR and Fort Bliss, over 2.4 million acres, are public lands withdrawn and reserved for the use of the Army under Public Land Order (PLO) 833 and by Public Law 106–65.

S. 753 seeks to achieve boundary solutions at WSMR and Fort Bliss. First, the bill would withdraw and reserve approximately 5,100 additional acres for use by the Army at WSMR, to allow for an additional buffer area between the current public access areas and operations of several WSMR tenants, such as the NASA White Sands Test Facility and the NASA Goddard Space Flight Center Tracking and Data Relay Satellite Systems Facility. The Administration supports the goal of allowing the use of the lands by the Army. However, these lands receive significant public use, mainly in the form of hunting and livestock grazing. Because the introduced bill does not address grazing, the reduction in the existing grazing permit and removal of any authorized range improvements within these lands would be carried out in accordance with BLM's grazing regulations at 43 C.F.R. Part 4100.

S. 753 would also withdraw approximately 37,600 acres of public lands from the operation of certain public land laws, in order to establish a zone to buffer the noise, dust and vibrations from the live fire training activities on the adjoining Dona Ana tank gunnery and artillery range complex at Fort Bliss. These lands would remain under the full management of the Department of the Interior, but they would be withdrawn from the public land laws, the mining laws, and the mineral leasing, mineral materials, and geothermal leasing laws. The Administration supports the withdrawal of these lands, consistent with a similar provision included in the Administration's FY 2014 NDAA legislative proposal.

Additionally, S. 753 would transfer to the Secretary of the Interior administrative jurisdiction over approximately 2,050 acres of public lands previously withdrawn and reserved for the Army's use under PLO 833. The lands are part of an area known as Filmore Canyon, and are adjacent on two sides to the BLM's Organ Mountains Area of Critical of Environmental Concern (ACEC). Filmore Canyon is adjacent to the community of Las Cruces and includes hunting opportunities and scenic lands that are popular for year-round hiking. The BLM manages the Organ Mountains ACEC for significant scenic values and endangered wildlife species, and the ACEC contains cultural sites eligible for listing on the National Register of Historic Places. The Administration supports the return of these lands to full management by the Department of the Interior as part of a cohesive boundary solution at WSMR and Fort Bliss. We would like to work with the Subcommittee and the sponsor on technical modifications.

S. 1169, LIMESTONE HILLS TRAINING AREA WITHDRAWAL ACT

The Limestone Hills Training Area consists of 18,644 acres of public lands in Broadwater County, Montana that have been used for military training since the 1950s. In 1984, the BLM issued the Army a right-of-way formally permitting use of the training area for military purposes. The current right-of-way expires on March 26, 2014. The

Montana Army National Guard is the primary DOD user of the training area, which is also used by reserve and active components from all branches of the military services for live fire, mounted and dismounted maneuver training, and aviation training. The withdrawal of the Limestone Hills Training area is necessary because the BLM has determined that it no longer has the authority to permit the use of the lands for military maneuvers under a right-of-way instrument.

S. 1169 would withdraw and assign general management of the training area to the Army, but would keep management of grazing and mineral resources with the BLM. This arrangement is consistent with the Administration's FY 2014 NDAA legislative proposal, and the Administration supports the goal of allowing the use of the lands by the Army under a withdrawal and reservation. However, the introduced bill contains a provision related to the location and maintenance of mining claims that is at odds with the Administration's legislative proposal, and with which the Administration has concerns.

Section 4 of S. 1169 would legislatively expand certain rights for mineral disposition or exploration. It would set a new precedent for public land withdrawals by allowing the opportunity to cure discrepancies in the original location or the failure to maintain several hundred mining claims in the Indian Creek mine area for the duration of the withdrawal. The legislative language could be interpreted to allow mining claimants to take in new land under existing claims, which could impact land required for military training—including live fire impact areas. By granting unique privileges to certain mining claimants, this provision is contrary to the normal operation of mining laws and regulations, which provide equal treatment for all claimants who are similarly situated. The Administration looks forward to working with the Subcommittee and the sponsor on modifications to address these concerns and on more technical changes to incorporate general provisions from the FY 2014 NDAA legislative proposal.

S. 1309, THE MILITARY LAND WITHDRAWALS ACT

S. 1309, the Military Land Withdrawals Act, represents the Administration's legislative proposal to enact four public land withdrawals as part of the FY 2014 NDAA. This proposal was jointly prepared by DOD and DOI and represents extensive discussions and consensus building between the two agencies to achieve common goals. Presently, the two existing withdrawals for NAWS China Lake, California, and CMAGR, California, enacted in the California Military Lands Withdrawal and Overflights Act of 1994 (1994 California Act) (P.L. 103-433), will expire on October 31, 2014. Additionally, the Marine Corps seeks a new withdrawal of public lands at MCAGCC Twentynine Palms, California, to expand its training areas to support increased requirements. Finally, the Army needs to convert its use of public lands at the Montana Army National

Guard, Limestone Hills Training Area, from a BLM issued right-of-way to a legislative withdrawal.

Unlike prior legislative withdrawals which were uncodified, stand-alone provisions of law, the withdrawals made under S. 1309 would be codified in a new chapter of title 10, United States Code. This would make the withdrawal process substantially more efficient for both the Executive and Legislative branches by providing commonality among the withdrawal provisions, placing them in a location that is easy to find and refer to, and, if used for future withdrawals, reducing the need to reconsider and revise “boilerplate” provisions with each proposal. Also, this codification would allow changes to withdrawal provisions without having to wait the decades that might pass before the next withdrawal took place. This new flexibility would greatly aid the ability of DOD, DOI, and Congress to soundly manage withdrawn lands.

S. 1309 includes many general provisions applicable to all four of the withdrawals. Among these are provisions for: the development of maps and legal descriptions; access restrictions; changes in use; authorizations for non-defense-related uses; management of range and brush fire prevention and suppression; on-going decontamination; water rights; hunting, fishing, and trapping; limitations on extensions and renewals; application for renewal; limitation on subsequent availability of lands for appropriation; relinquishment; interchanges and transfers of Federal lands; delegability of certain responsibilities by the Secretary of the Interior; and immunity of the United States. Most of these general provisions are similar, if not identical, to previously applied provisions in existing withdrawal statutes.

The interchanges and transfers provision is included to address boundary management issues involving both withdrawn public lands and acquired real property. For example, there is a need for boundary adjustment on the northern side of CMAGR to address uncertainties and resource management conflicts associated with the BLM-managed Bradshaw Trail. The Bradshaw Trail is popular with off-highway vehicle users, and is, in part, maintained by the local government, in coordination with the BLM. However, the trailhead and some of the trail’s length currently crosses acquired real property administered by the Department of the Navy (Navy) and the Marine Corps. In the case of the expansion of MCAGCC Twentynine Palms, the Navy will likely seek to purchase various inholdings within the proposed withdrawal boundary. It could be beneficial to both departments if these inholdings could be converted, by interchange or transfer, to BLM public lands. In any case, the interchange provision is limited to acre-for-acre in order to avoid expanding the footprint of DOD lands. The transfer provision is limited to the Engle Act 5,000 acre limit (total) for any one installation over the 25-year life of the withdrawal. These provisions are designed to allow for small administrative adjustments to promote

sound land management without impinging upon the role of Congress in managing Federal lands.

Naval Air Weapons Station (NAWS) China Lake, California

NAWS China Lake consists of over 1.1 million acres of land in Inyo, Kern, and San Bernardino Counties, California, of which 92 percent are withdrawn public lands. Under a Memorandum of Understanding between the Navy and DOI, the Commanding Officer of NAWS China Lake is responsible for managing the withdrawn land. The installation is home to approximately 4,300 DOD personnel and its primary tenant is the Naval Air Warfare Center Weapons Division. The current 20-year legislative withdrawal expires on October 31, 2014.

The 25-year renewal included in S. 1309 is modeled on the current successful management scheme instituted as part of the 1994 California Act, which allows the DOD and DOI to combine their unique capabilities and assets for the benefit of the resources and the public by cooperatively managing natural and cultural resources, recreational resources, grazing, wild horses and burros, and geothermal resources. For example, the Navy manages the wild horses and burros on-the-ground at NAWS China Lake and the BLM manages the gathering, holding and adoption of the animals. In addition, the BLM and NAWS China Lake have a unique agreement to collaboratively produce geothermal energy at the installation, which currently produces over 150 megawatts of power.

Chocolate Mountain Aerial Gunnery Range (CMAGR), California

The CMAGR was established in 1941. The range consists of about 459,000 acres in Imperial and Riverside Counties, California, of which approximately 227,000 acres are withdrawn public lands under the co-management of the Marine Corps and the BLM. The remaining lands are under the administrative jurisdiction of the Department of the Navy. The two sets of lands form a checkerboard pattern of administrative jurisdiction. The Marine Corps primarily uses the lands for aviation weapons training, including precision guided munitions and Naval Special Warfare training. The current 20-year withdrawal is set to expire on October 31, 2014.

S. 1309 provides for a 25-year renewal and would allow the BLM and Navy to institute the same type of cooperative management that has been successful at China Lake. The Chocolate Mountain range is home to a number of species such as desert tortoise and big horn sheep, and contains a wide range of archeological resources.

Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, California

MCAGCC Twentynine Palms currently consists of 596,000 acres of land in San Bernardino County, Cali-

fornia. In 1959, approximately 443,000 of those total acres were administratively withdrawn and reserved for the use of the Navy under PLO 1860. DOD is now seeking to expand this installation with the withdrawal of approximately 154,000 acres of public lands adjacent to MCAGCC. The added training lands would create a training area of sufficient size with characteristics suitable for the Marine Corps to conduct Marine Expeditionary Brigade (MEB) level training. MEB training requires sustained, combined-arms, live-fire and maneuver training of three Marine battalions with all of their associated equipment moving simultaneously toward a single objective over a 72-hour period.

S. 1309 meets the important training needs of the Marines, and, recognizing that there will be impacts to public access, also includes a unique management structure to mitigate some of the loss of access to lands popularly used for off-highway vehicle (OHV) recreation. The bill provides for continued, year-round public access to the western third of the Johnson Valley OHV area. In addition, a shared use area of about 43,000 acres of the withdrawn lands would be available for OHV use for ten months out of the year, when there is no active military training.

Limestone Hills Training Area, Montana

As previously stated, the legislative withdrawal of the Limestone Hills Training area is necessary because the BLM has determined that it no longer has the authority to permit the use of the lands for military maneuvers under a right-of-way instrument. Under S. 1309, general management of the training area would be assigned to the Army, but the BLM would retain management of grazing and mineral resources for the lands withdrawn and reserved.

CONCLUSION

Thank you for inviting our testimony on S. 753, S. 1169, and S. 1309. The Department of the Interior, which has always been part of the Nation's national defense team, is committed to supporting military missions and training needs, while protecting natural resources and other traditional uses of the public lands. I would be happy to answer your questions.

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 S. 1169 as ordered reported.