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SENATE

{ REPORT
{ 113-295

PUBLIC ACCESS TO PUBLIC LAND GUARANTEE ACT

DECEMBER 10, 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. 1750]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1750) to authorize the Secretary of the Interior or the Secretary of Agriculture to enter into agreements with States and political subdivisions of States providing for the continued operation, in whole or in part, of public land, units of the National Park System, units of the National Wildlife Refuge System, and units of the National Forest System in the State during any period in which the Secretary of the Interior or the Secretary of Agriculture is unable to maintain normal level of operations at the units due to a lapse in appropriations, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1750 is to authorize the Secretary of the Interior and the Secretary of Agriculture to enter into agreements with States and political subdivisions of States providing for the continued operation of public land, units of the National Park System, units of the National Wildlife Refuge System, and units of the National Forest System in the State during any period in which the Secretary of the Interior or the Secretary of Agriculture is unable to maintain normal level of operations at the units due to a lapse in appropriations.

BACKGROUND AND NEED

The Anti-Deficiency Act, 31 U.S.C. 1341, prohibits Federal agencies and their officers and employees administering public lands from making or authorizing any expenditure or obligation before Congress appropriates sufficient funds for the expenditure or obligation. As a result, Federal agencies have had to suspend most non-essential functions when Congress has failed to appropriate the funds needed to pay for those functions. During past lapses of appropriations in 1995–1996 and 2013, partial government shutdowns have required Federal agencies managing public lands to close national parks, national forests, national wildlife refuges, and other public lands to the public. The closure of these sites hurt communities near these Federal lands that rely on visitor spending.

In both the 1995–1996 and 2013 shutdowns, the National Park Service entered into individual agreements with certain states, at the States' request, to temporarily reopen several National Park sites with funds donated by the States. The agreements did not allow for reimbursement as that would create an obligation to pay money prior to Congressional appropriation.

In 1996, Congress appropriated funds before the National Park Service spent the States' money. The parks were reopened using Federal funds and the National Park Service was able to return the unspent donated funds to the States. In 2013, however, the National Park Service spent the States' money to reopen parks before Congress appropriated Federal funds. The National Park Service has been unable to reimburse the States because it has no legal authority to do so.

S. 1750 will give the public land management agencies authority to enter into agreements with States allowing the agencies to reimburse the States for State funds donated to the agencies to keep Federal lands open to the public during future appropriation lapses.

LEGISLATIVE HISTORY

S. 1750 was introduced by Senator Flake on November 20, 2013. Senators Hatch, McCain, and Lee are original cosponsors. The Subcommittee on National Parks held a hearing on S. 1750 on July 23, 2014. A similar bill (H.R. 3661) has been introduced in the House by Representative Gosar with four cosponsors.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 13, 2014, by a majority vote of a quorum present, recommends that the Senate pass S. 1750.

The rollcall vote on reporting the measure was 12 yeas, 10 nays as follows:

Yeas	Nays
Ms. Murkowski	Ms. Landrieu
Mr. Barrasso*	Mr. Wyden
Mr. Risch*	Mr. Johnson
Mr. Lee*	Ms. Cantwell
Mr. Heller*	Mr. Sanders
Mr. Flake	Ms. Stabenow*
Mr. Scott*	Mr. Udall
Mr. Alexander*	Mr. Franken
Mr. Portman	Mr. Schatz
Mr. Hoeven*	Ms. Baldwin
Mr. Manchin	
Mr. Heinrich	

* Indicates vote by proxy

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Public Access to Public Land Guarantee Act”.

Section 2 contains Congressional findings.

Section 3 defines key terms used in the bill.

Section 4 requires the Secretary of the Interior and the Secretary of Agriculture to enter into agreements in which they may use funds from a State or public subdivision of the State to reopen.

Subsection (b) limits the authority of the agreement to periods in which the Secretary is unable to operate covered Federal lands at normal levels.

Subsection (c) requires the Secretary to refund to the State or political subdivision of the State funds either on the date that funds are appropriated to return the covered unit to normal operating levels, or on the date on which the State or political subdivision of the State establishes, and fees for entrance or use of the covered unit are collected.

Subsection (d) authorizes the Secretary, if appropriations allow, to reimburse the State or political subdivision of the State if the requirements of subsection (c) are not met.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at www.cbo.gov.

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. 1750.

The Act 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. 1750, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1750, 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 National Park Service at the July 23, 2014, Subcommittee on National Parks hearing on S. 1750 follows:

STATEMENT OF CHRISTINA GOLDFUSS, DEPUTY DIRECTOR,
CONGRESSIONAL AND EXTERNAL RELATIONS, NATIONAL
PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, thank you for the opportunity to provide the views of the Department on S. 1750, a bill to authorize the Secretary of the Interior or the Secretary of Agriculture to enter into agreements with States and political subdivisions of States providing for the continued operation, in whole or in part, of public land, units of the National Park System, units of the National Wildlife Refuge System, and units of the National Forest System in the State during any period in which the Secretary of the Interior or the Secretary of Agriculture, is unable to maintain normal level of operations at the units due to a lapse in appropriations, and for other purposes.

The Department strongly opposes S. 1750. We have a great deal of sympathy for the businesses and communities that experienced a disruption of activity and loss of revenue during last fall's government shutdown and that stand to lose more if there is another funding lapse in the future. However, we disagree generally with the idea of enacting laws to try to lessen the impact of a future government shutdown for a few select governmental activities rather than protecting all such activities by avoiding a lapse in appropriations. We also believe that this legislation specifically, with its mandate to enter into agreements to reopen public lands at the request of a state, would be very difficult to execute. Furthermore, we are concerned that agreements to have states provide funding for activities that are inherently Federal in nature, even for a short period of time, would undermine the longstanding framework established by Congress for the management of Federal lands under the stewardship of the Department.

S. 1750 would require the Secretary of the Interior and Secretary of Agriculture to enter into agreements with States or their political subdivisions, upon their request, to accept funds to open National Park units, National Wildlife Refuges, Bureau of Land Management lands, and National Forests. The authority would be in effect only during a period when the Secretary is unable to operate and manage the units at normal levels. The bill would also provide for reimbursement for the amounts provided to the Secretaries to reopen the sites when appropriations are en-

acted providing retroactive funding, or when the State or political subdivision establishes that entrance fees were collected for the period covered by the agreement. If those requirements are not met, the Secretary would have discretionary authority to provide reimbursement to the states, subject to the availability of appropriations.

The desire to avoid the kind of disappointment to the public and disruption of economic activity that results from a lapse in Federal appropriations is understandable. When the partial government shutdown occurred from October 1 through October 16, 2013, a lot of attention was focused on effects of closures of national parks, national wildlife refuges, public lands managed by the Bureau of Land Management, and national forests—all places that are highly valued by the public for their recreational offerings and that serve as economic engines for the communities in which they are located.

It was because of the critical importance of these sites that the Secretary of the Interior agreed to reopen several of them using donated funds during the partial shutdown. As the shutdown entered its second week, the National Park Service entered into donation agreements with six states to accept the donation of funds necessary to allow the National Park Service to temporarily reopen 13 national park units. In these cases, the states were concerned enough about the loss of economic activity associated with certain national parks to use their own funds to alleviate the impact of park closures.

These agreements did help a select number of businesses and communities. However, they should not be held up as a model of how the Federal government should do business. The national parks that were opened during the shutdown were fortunate to be located in states that had the resources and political will to fund them. The National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service, which all seek to treat the land units under their stewardship equitably, have grave concerns about enshrining in law a process that favors units located in states willing to donate funds to operate them over those located in other states.

Furthermore, the agreements were designed to be temporary, emergency measures for some individual situations, and would not necessarily work for operating all Federal lands. Even for those sites where agreements might work, the potential difficulty of executing agreements on the scale envisioned by S. 1570—every agreement that every state or political subdivision requests—at a time when most of the agencies' staff would be furloughed, cannot be overstated. During last October's partial shutdown, it was an enormous burden on the National Park Service and the Department, with their skeletal staffs, to execute just six agreements to reopen 13 park units. If a large number of states requested such agreements for a large number of sites in a future shutdown,

the agencies likely would not have the capacity to respond to all of the requests.

The 2013 Federal government shutdown had terrible impacts for American citizens, businesses, communities, states, and the economy as a whole. These impacts are summarized in the report released by the Office of Management and Budget entitled "Impacts and Costs of the October 2013 Federal Government Shutdown" (November 2013). The report makes clear that the economic effects and disruption to lives and activities from the shutdown were felt far and wide. Enacting a law to try to avoid the impact of a future shutdown on specified activities is not a responsible alternative to simply making the political commitment to avoid a shutdown in the future by providing appropriations for all the vital functions the Federal government performs.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or any 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, the Committee notes that no changes in existing law are made by S. 1750, as ordered reported.

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