

WASHINGTON CHANNEL PUBLIC ACCESS ACT

MAY 28, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1765]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1765) to prohibit the Secretary of the Army from implementing a proposed rule relating to restricted access to the Washington Channel in Washington, D.C., and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 1765, the “Washington Channel Public Access Act,” introduced by Delegate Eleanor Holmes Norton (D-DC),

would prohibit the Secretary of the Army and the U.S. Army Corps of Engineers (Corps) from finalizing, implementing, or enforcing a proposed rule that restricts public access to the Washington Channel in Washington, D.C., including the portion that abuts Fort Lesley J. McNair.

#### BACKGROUND AND NEED FOR LEGISLATION

##### *Washington Channel and Vicinity*

The Washington Channel is a channel that parallels the Potomac River in Washington, D.C., between the Southwest Waterfront on the east side and East Potomac Park on the west side. The channel is approximately two miles long, receives outflow from the Tidal Basin at its north end, and empties into the Anacostia River between Hains Point and Greenleaf Point at its south end.

Fort Lesley J. McNair is a United States Army post located in Washington, D.C. on the tip of Greenleaf Point, the peninsula that lies at the confluence of the Potomac River and the east shore of the Anacostia River. To the peninsula's west is the Washington Channel, while the Anacostia River is on its south side. Fort McNair, a part of the Joint Base Myer-Henderson Hall based in Virginia, is the headquarters of the U.S. Army's Military District of Washington and home of the National Defense University, as well as the official residence of the Vice Chief of Staff of the U.S. Army.

##### *Corps Proposal to Create Restricted Area Within the Washington Channel*

On August 8, 2019, the Corps published in the *Federal Register* a notice of proposed rulemaking to establish a permanent restricted area in the Washington Channel adjacent to Fort McNair.<sup>1</sup> The stated purpose of the restricted area is to “fulfill Joint Base Myer-Henderson Hall (JBM-HH) security needs . . . including protection of VIP quarters,” as well as to “protect public health by preventing vessels from disturbing a planned environmental remediation area located near the Fort.”<sup>2</sup>

On October 13, 2020, the Corps published in the *Federal Register* a second notice of proposed rulemaking, noting that “after evaluating the comments received to the [August 2019] proposed rule, the proposal has been revised and the Corps is inviting public comment on the revised proposed rule text.”<sup>3</sup> The revised rule would also establish a permanent restricted area within the Washington Channel, outlined by buoys and warning signs, and would prohibit all persons or vessels from entering the restricted areas during certain national security events, and from “anchoring, mooring, or loitering” within the restricted area at all other times.<sup>4</sup>

On December 29, 2020, the Corps published in the *Federal Register* a notice that the Corps was reopening the public comment period on the October 13, 2020, proposed rulemaking.<sup>5</sup> The new public comment period was extended until January 28, 2021.

<sup>1</sup>84 Fed. Reg. 38893.

<sup>2</sup>*Id.*

<sup>3</sup>85 Fed. Reg. 64434.

<sup>4</sup>*Id.*

<sup>5</sup>85 Fed. Reg. 85570.

In response to the proposed rules, several businesses, residents, and stakeholders that utilize the Washington Channel have expressed their opposition to the proposed restrictions. For example, on November 5, 2019, the Mayor of the District of Columbia submitted objections stating that these restrictions “would create a permanent restricted zone and narrow the navigable portion of the Washington Channel,” and that this restriction “generates a significant, negative, permanent impact on access to public waterways at a time when interest in, access to, and development along, the District’s multiple river waterfronts are undergoing a massive renaissance.”<sup>6</sup>

In January 2021, Delegate Norton hosted a public meeting on the proposed rule to restrict public access to the Washington Channel.<sup>7</sup> Representatives from the U.S. Army and the Corps attended the meeting and discussed some of the security concerns prompting the proposed restrictions. Stakeholders have suggested that the U.S. Army and the Corps should first consider other security measures, such as constructing a fence along the Washington Channel, before imposing restrictions on the navigable portions of the river.<sup>8</sup>

On February 2, 2021, Delegate Norton wrote to the Secretary of Defense, Lloyd J. Austin, III, requesting him to direct the Corps to withdraw the proposed rule restricting public access to the Washington Channel while the Department of Defense, the Department of the Army, and the Corps explore appropriate security options for Fort McNair.<sup>9</sup>

While there have been media reports sourced to U.S. intelligence officials about recent specific threats made against the base, U.S. Army officials have stated that the efforts to upgrade security were not based on these reported threats but are part of ongoing efforts since 9/11 and the shootings at the Washington Navy Yard to bolster security.<sup>10</sup>

#### HEARINGS

For the purposes of rule XIII, clause 3(c)6(A) of the 117th Congress, no hearings were held to develop or consider H.R. 1765 in the 117th Congress.

#### LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 1765 was introduced in the House on March 10, 2021, by Ms. Norton and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 1765 was referred to the Subcommittee on Water Resources and Environment.

The Subcommittee on Water Resources and Environment was discharged from further consideration of H.R. 1765 on March 24, 2021.

<sup>6</sup> See <https://www.regulations.gov/comment/COE-2019-0010-0049>.

<sup>7</sup> See <https://norton.house.gov/media-center/press-releases/norton-announces-details-on-washington-channel-public-meeting>.

<sup>8</sup> *Id.*

<sup>9</sup> See <https://norton.house.gov/media-center/press-releases/norton-calls-on-defense-secretary-to-withdraw-proposed-rule-restricting>.

<sup>10</sup> Luz Lazo, *Fort McNair officials say plan for water restrictions are not directly linked to recent reports of Iran threats*, WASH. POST, (Mar. 29, 2021) available at [https://www.washingtonpost.com/local/trafficandcommuting/fort-mcnair-officials-say-plan-for-water-restrictions-are-not-directly-linked-to-recent-reports-of-iran-threats/2021/03/29/cc6b0b34-9097-11eb-a74e-1f4cf89fd948\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/fort-mcnair-officials-say-plan-for-water-restrictions-are-not-directly-linked-to-recent-reports-of-iran-threats/2021/03/29/cc6b0b34-9097-11eb-a74e-1f4cf89fd948_story.html).

The Full Committee considered H.R. 1765 on March 24, 2021, and ordered the measure to be reported to the House with a favorable recommendation, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

No record votes were requested during consideration of H.R. 1765.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 1765 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 21, 2021.*

Hon. PETER A. DEFAZIO,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1765, the Washington Channel Public Access Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>H.R. 1765, Washington Channel Public Access Act</b>			
As ordered reported by the House Committee on Transportation and Infrastructure on March 24, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	*
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1765 would prohibit the Army Corps of Engineers from finalizing and implementing a proposed rule, "Washington Channel, Fort McNair, Washington, D.C.; Restricted Area," which was published in the *Federal Register* on December 29, 2020.

The rule would permanently establish a restricted area that would allow watercraft to pass through the channel but not to remain in the area except with prior approval from the Commander of Fort McNair. Using information from the Corps, CBO estimates that discontinuing the rulemaking would have no significant effect on spending subject to appropriation.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide the Corps with Congressional direction on proposed public access restrictions to the Washington Channel in Washington, District of Columbia.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1765 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 1765 does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section provides that this bill may be cited as the “Washington Channel Public Access Act”.

##### *Sec. 2. Prohibition on implementation of rule*

This section prohibits the Secretary of the Army and the Corps from finalizing, implementing, or enforcing the proposed rule, published by the Department of the Army on December 29, 2020, that restricts public access to the Washington Channel in Washington, D.C.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported by the Committee, H.R. 1765 makes no changes in existing law.