GLOBAL WAR ON TERRORISM MEMORIAL LOCATION ACT

DECEMBER 16, 2021.—Ordered to be printed

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

REPORT

[To accompany S. 535]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 535) to authorize the location of a memorial on the National Mall to commemorate and honor the members of the Armed Forces that served on active duty in support of the Global War on Terrorism, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike section 2 and insert the following:

SEC. 2. NATIONAL GLOBAL WAR ON TERRORISM MEMORIAL.

(a) SITE.—Notwithstanding section 8908(c) of title 40, United States Code, the National Global War on Terrorism Memorial authorized by section 2(a) of the Global War on Terrorism War Memorial Act (40 U.S.C. 8903 note; Public Law 115–51; 131 Stat. 1003) (referred to in this section as the “Memorial”) shall be located within the Reserve (as defined in section 8902(a) of title 40, United States Code).

(b) APPLICABILITY OF COMMEMORATIVE WORKS ACT.—Except as provided in subsection (a), chapter 89 of title 40, United States Code (commonly known as the “Commemorative Works Act”), shall apply to the Memorial.

PURPOSE

The purpose of S. 535 is to require the previously authorized Global War on Terrorism Memorial to be located within the Reserve notwithstanding the prohibition in the Commemorative Works Act from siting the Memorial within the Reserve.
BACKGROUND AND NEED

In 2017, Congress enacted Public Law 115–51, which authorized the Global War on Terror Memorial Foundation to build a commemorative work in Washington, D.C., to commemorate and honor the members of the Armed Forces that served on active duty in support of the Global War on Terrorism. The law required that the memorial be established in accordance with chapter 89 of title 40, United States Code (commonly known as the Commemorative Works Act), except that the law waived provisions in the Act which authorized military commemorative works only to commemorate a war or similar major military conflict, and only after the 25th anniversary of the event.

In 2003 Congress enacted Public Law 108–126, the Commemorative Works Clarification and Revision Act. That law included a finding recommended by the National Park Service that the great cross axis of the National Mall is a substantially completed work of civic art where the siting of new commemorative works is prohibited. The law designated the area as the “Reserve,” and prohibited new commemorative works or visitor centers from being located in the Reserve.

As ordered reported, S. 535 requires the memorial to be located within the Reserve, but otherwise provides that the Commemorative Works Act shall apply to the memorial.

LEGISLATIVE HISTORY

Senators Ernst, Hassan, Braun, Cramer, Feinstein, Risch, Crapo, Boozman, and Shaheen introduced S. 535 on March 3, 2021. The bill is cosponsored by 48 other Senators. The Subcommittee on National Parks held a hearing on the bill on June 23, 2021. Senators Ernst and Hassan introduced a similar bill in the 116th Congress, S. 4564, although no action was taken on the bill.

On December 7, 2021, the House included language identical to the Committee-reported version of S. 535 in S. 1605, the National Defense Authorization Act.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 18, 2021, by a majority voice vote of a quorum present, recommends that the Senate pass S. 535, as amended.

COMMITTEE AMENDMENT

During its consideration of S. 535, the Committee adopted an amendment that requires the Global War on Terrorism Memorial to be located within the Reserve, but removes the provision in the bill as introduced that would have required the memorial to be located at one of three identified locations within the Reserve. The amendment requires that except for the requirement to locate the memorial within the Reserve, the Commemorative Works Act shall apply to the memorial.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Global War on Terrorism Memorial Location Act.”
Section 2(a) provides that notwithstanding section 8908(c) of title 40, United States Code, which prohibits the siting of new commemorative works within the Reserve, the Global War on Terrorism Memorial shall be located within the Reserve.

Subsection (b) states that except as provided in subsection (a), the Commemorative Works Act of 1986 (40 U.S.C. 89 et seq.) shall apply to the memorial.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office has not estimated the costs of S. 535 as passed by the Senate. The Committee has requested, but has not yet received, the Congressional Budget Office’s estimate of the cost of S. 535 as ordered reported. 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. 535. 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. 535, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 535, 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 Department of the Interior at the June 23, 2021, hearing on S. 535 follows:

STATEMENT OF MICHAEL A. CALDWELL, ACTING ASSOCIATE DIRECTOR, PARK PLANNING, FACILITIES AND LANDS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR.

Chairman King, Ranking Member Daines, and members of the Subcommittee, thank you for the opportunity to present the Department of the Interior’s views on S. 535, to authorize the location of a memorial on the National Mall to commemorate and honor the members of the Armed Forces that served on active duty support of the Global War on Terrorism, and for other purposes.

The Department has the highest regard for all those who served in our armed forces during the last two decades, a period of continuous overseas military conflicts that followed the attacks on the United States on September 11, 2001. We believe that it was appropriate for Congress to authorize the Global War on Terrorism Memorial Founda-
tion to construct a memorial in the nation's capital to honor the brave men and women who fought for our country during this period, and who continue to do so. While we understand the desire to build this memorial in a specific location, we do not support constructing it within the Reserve, and therefore we do not support S. 535 as it is currently drafted.

S. 535 would allow the Global War on Terrorism Memorial to be located in the area identified as the “Reserve” under the Commemorative Works Act of 1986 (40 USC 89 et seq.) (the Act), and would require the memorial to be located on one of three sites within the Reserve: Constitution Gardens, the JFK Hockey Fields, or West Potomac Park. The Act was enacted to ensure that proper consideration is given to authorization, location, and design of new memorials within Washington, D.C. Congress amended the Act in 2003, establishing the “Reserve” and declaring it a completed work of civic art where “the siting of new commemorative works is prohibited.” The Act identifies the Reserve as “the great cross-axis of the Mall” which extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Thomas Jefferson Memorial.

The Act also established the National Capital Memorial Advisory Commission (Commission) to advise the Secretary of the Interior and the Administrator of General Services (as appropriate) on policy and procedures for the establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs. The Act states that Congress shall solicit the views of the Commission in considering legislation authorizing commemorative works within the District of Columbia and its environs.

On February 11, 2020, the Commission reviewed H.R. 5046 from the 116th Congress, a bill identical to S. 535. The Commission shared its views on the legislation in letters to the Senate Energy and Natural Resources Committee on December 8, 2020, and the House Natural Resources Committee on March 20, 2020. The Commission did not support legislation that would locate the Global War on Terrorism Memorial on one of three sites in the Reserve as it was inconsistent with the prohibition on new commemorative works within the Reserve.

The Department notes that there have been other efforts to persuade Congress to grant an exception to the Act’s prohibition on the establishment of new memorials in the Reserve, including the World War I Memorial and the National Desert Storm and Desert Shield Memorial. None of these efforts have been successful.

In 2013, legislation was introduced to authorize the establishment of a World War I Memorial on a site within the Reserve. This legislation followed an unsuccessful effort to authorize the augmentation of the District of Columbia War Memorial, also located in the Reserve, for the same purpose. Congress declined both proposals, opting in-
stead in 2014 to authorize the establishment of the World War I Memorial in historic Pershing Park within Area I. The World War I Memorial opened to the public in April 2021 to the appreciation and admiration of veterans and visitors alike.

After the Desert Storm and Desert Shield Memorial was authorized in 2014, the Memorial’s sponsors approached the NPS about the possibility of an exception to the Reserve and made initial inquiries among their Congressional supporters. After some investigation, the sponsors elected instead to seek authorization to locate within Area I, which was granted by the Congress in 2017. Pleased with their approved site at 23rd Street and Constitution Avenue, NW, just outside the Reserve, the memorial sponsors are moving forward with the design approval process.

Further, the Commission noted that the scale and time involved with the Global War on Terrorism (September 11, 2001 to date not yet known) presents the possibility that more location-specific memorials for a similar purpose will be proposed. Future memorial legislation might be introduced to commemorate military conflicts in Iraq, Afghanistan, Syria, and possibly elsewhere, potentially leading to their placement in proximity to the Global War on Terror Memorial. The Commission recommended that careful consideration be given to the potential for future memorials to military conflicts, their relationship to each other, and how memorials to these conflicts can be accommodated within the limited range of sites in Washington DC and its environs. The Department concurs with the Commission’s views.

The Commission also recommended that if Congress determines that the Global War on Terrorism Memorial warrants establishment in the Reserve, that other locations besides the three named in S. 535 be explored. The Department agrees with this recommendation. Therefore, if the Committee moves forward with S. 535, we would like to work with the Committee on amendments for that purpose.

Chairman King, this concludes my statement. I would be happy to answer any questions that you or the other members of the Subcommittee 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 the bill as ordered reported.