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HOUSE OF REPRESENTATIVES
REPORT
107–563

# REASONABLE RIGHT-OF-WAY FEES ACT OF 2002

JULY 11, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources, submitted the following

# R E P O R T

[To accompany H.R. 3258]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3258) to amend the Federal Lands Policy and Management Act of 1976 to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of rights-of-way granted, issued, or renewed under such Act to prevent unreasonable increases in certain costs in connection with the deployment of communications and other critical infrastructure, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Reasonable Right-of-Way Fees Act of 2002".

**SEC. 2. CLARIFICATION OF FAIR MARKET RENTAL VALUE DETERMINATIONS FOR PUBLIC LANDS AND FOREST SERVICE RIGHTS-OF-WAY.**

(a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL LAND POLICY AND MANAGEMENT ACT.—Section 504 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764) is amended by adding at the end the following new subsection:

"(k) DETERMINATION OF FAIR MARKET VALUE OF LINEAR RIGHTS-OF-WAY.—(1) Effective upon the issuance of the rules required by paragraph (2), for purposes of subsection (g), the Secretary concerned shall determine the fair market rental for the use of land encumbered by a linear right-of-way granted, issued, or renewed under this title using the valuation method described in paragraphs (2), (3), and (4).

"(2) Not later than one year after the date of enactment of the Reasonable Right-of-Way Fees Act of 2002, and in accordance with subsection (k), the Secretary of the Interior shall amend section 2803.1–2 of title 43, Code of Federal Regulations, as in effect on the date of enactment of such Act, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone. The Secretary of Agriculture shall make the same

revisions for linear rights-of-way granted, issued, or renewed under this title on National Forest System lands.

"(3) The Secretary concerned shall update annually the schedule revised under paragraph (2) by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30) in the Gross National Product Implicit Price Deflator Index published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

"(4) Whenever the cumulative change in the index referred to in paragraph (3) exceeds 30 percent, or the change in the 3-year average of the 1-year Treasury interest rate used to determine per acre rental fee zone values exceeds plus or minus 50 percent, the Secretary concerned shall conduct a review of the zones and rental per acre figures to determine whether the value of Federal land has differed sufficiently from the index referred to in paragraph (3) to warrant a revision in the base zones and rental per acre figures. If, as a result of the review, the Secretary concerned determines that such a revision is warranted, the Secretary concerned shall revise the base zones and rental per acre figures accordingly.".

(b) RIGHTS-OF-WAY UNDER MINERAL LEASING ACT.—Section 28(l) of the Mineral Leasing Act (30 U.S.C. 185(l)) is amended by inserting before the period at the end the following: "using the valuation method described in section 2803.1–2 of title 43, Code of Federal Regulations, as revised pursuant to section 504(k) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(k))".

Amend the title so as to read:

A bill to amend the Federal Land Policy and Management Act of 1976 and the Mineral Leasing Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of certain rights-of-way granted, issued, or renewed under these Acts.

## PURPOSE OF THE BILL

The purpose of H.R. 3258, as ordered reported, is to amend the Federal Land Policy and Management Act of 1976 and the Minerals Leasing Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of certain rights-of-way granted, issued, or renewed under these Acts.

## BACKGROUND AND NEED FOR LEGISLATION

Rights-of-way (ROW), similar to long term leases, are grants conveying the right to construct, operate, maintain, remove, and terminate facilities used for the generation, transmission and distribution of electric energy and electric signals, communication services, and oil and gas lines crossing Federal lands. Section 501 of the Federal Land Policy and Management Act (FLPMA) authorizes the Bureau of Land Management (BLM) to issue and renew rights-of-way under, over, and through lands under its jurisdiction while Section 505 of FLPMA authorizes the BLM to recover the reasonable costs of processing and monitoring rights-of-way issued under the Act.

Prior to 1986, the BLM and the USFS used various market approaches (appraisals, negotiations, percentage of land estimated value, and permittee investment percentages) to determine the fair market valuation of lands. Both agencies, however, found these methods inconsistent, unpredictable, and subject to appeal, which slowed the process of permit authorization. Starting in 1986, both the BLM and United States Forest Service (USFS) decided to utilize a system of ROW valuation known as the "linear fee rent method." This method requires the two agencies to evaluate the fair market value (as defined in the 1973 Interagency Land Acqui-

sition Conference) based upon a rent schedule taking into account inflation determined by the GDP-deflator.

In 1995, the Office of the Inspector General for the Department of the Interior and the Government Accounting Office (GAO) in 1996 evaluated the rent schedule and found that the two agencies were not receiving fair market rent. In 1999, both agencies announced that they would begin developing policies to change the manner in which they determined rent of right-of-way access across Federal lands. Specifically, the agencies would abandon the traditional linear fee rent method, where rent is calculated based on the area of the right-of-way times the market value of the land, in favor of a method where the rent would be based on the value of the throughput. This method became known as fiberent. In affect, this meant that fiber optic telecommunication lines would be charged separate ROW value for each strand of cable, instead of the whole cable as a single ROW. Concerns were raised that this new valuation method would slow the expansion of telecommunications in rural areas, and that rents charged for ROW permits would become unreasonable.

For example, the current National Energy Policy indicates that approximately 38,000 miles of additional gas and oil pipeline is needed to meet current and projected energy demand. These pipelines will need to pass through vast areas of public lands. If throughput valuation methods are used on these pipelines, the ROW rates could increase by as much as 1000% over the current linear fee method.

To address these concerns, Congress included in the 2001 Interior and Related Agencies Appropriations Act, a provision requiring that any changes made in ROW rent policies must be completed through a formal rulemaking process.

H.R. 3258 would end the need for the rulemaking process by codifying existing regulations for linear rights-of-way, while at the same time, requiring the Secretaries of the Interior and Agriculture to revise the per acre rental fee zone value schedule to reflect current values of land in each zone.

## COMMITTEE ACTION

H.R. 3258 was introduced on November 8, 2001, by Congresswoman Barbara Cubin (R–WY), and was referred to the Committee on Resources. On November 13, 2001, the bill was referred within the Committee to the Subcommittee on National Parks, Recreation, and Public Lands, and the Subcommittee on Forests and Forest Health. On April 11, 2002, the Subcommittee on National Parks, Recreation, and Public Lands held a hearing on the bill. On June 26, 2002, the Full Resources Committee met to consider the bill. The Subcommittee on National Parks, Recreation, and Public Lands, and the Subcommittee on Forests and Forest Health were discharged from further consideration of H.R. 3258 by unanimous consent. Congresswoman Cubin offered an amendment in the nature of a substitute that changed the original text as follows: (1) eliminated the concept of multiple appraisals; (2) required the Secretary to update the rental fee schedule to reflect current land values, and (3) codified the regulations under the Federal Land Management and Policy Act and the Minerals Leasing Act relating to the rental fee schedule. The amendment was adopted by unani-

mous consent. There were no further amendments and the bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this legislation would result in a $14 million net reduction in direct spending.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 3, 2002*

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3258, the Reasonable Right-of-Way Fees Act of 2002.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 3258—Reasonable Right-of-Way Fees Act of 2002*

Summary: The Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act (MLA) direct the Secretary of the Interior and the Secretary of Agriculture to charge fees for linear rights-of-way across federal lands. H.R. 3258 would amend current law to require the two agencies to revise the rates used to establish those fees.

CBO expects that enacting H.R. 3258 would increase offsetting receipts (a credit against direct spending) from fees for rights-of-way. We also expect that the bill would increase direct spending for payments to share a portion of those increased receipts with the counties in which the fees are collected. On balance, CBO estimates that the bill would reduce direct spending by $14 million in 2005. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 3258 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 3258 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 800 (general government).

| | By fiscal year, in millions of dollars— | | | | |
|---|---|---|---|---|---|
| | 2003 | 2004 | 2005 | 2006 | 2007 |
| CHANGES IN DIRECT SPENDING | | | | | |
| Estimated Budget Authority | 0 | 0 | −14 | 0 | 0 |
| Estimated Outlays | 0 | 0 | −14 | 0 | 0 |

Basis of Estimate: The Forest Service (within the Department of Agriculture) and the Bureau of Land Management (BLM, within the Department of the Interior) issue linear rights-of-way across federal land for infrastructure such as pipelines, electric and telephone lines, and other uses. FLPMA and the MLA authorizes the agencies to charge fair market value for such rights-of-way. The fees that the agencies charge are based in part on estimates of the value of the federal lands where the rights-of-way are located. Those land values are based on an assessment that was completed in 1986 and has not since been updated except to account for inflation. H.R. 3258 would require the agencies to update those estimates of land values and establish a revised fee schedule for linear rights-of-way within one year of enactment.

In recent years, the Forest Service and BLM began to pursue a revised fee schedule for linear rights-of-way. Based on information from the agencies, CBO expects that, under current law, they would complete the revisions and impose new fees in 2006. According to the Forest Service and BLM, the revisions to fees that they would make under H.R. 3258 would be similar to those that the agencies are pursuing administratively under current law. The bill would require the agencies to revise the fees within one year of enactment, but based on information from the agencies about the length of time typically required to complete such a revision, CBO expects that the agencies would not impose the revised fees until 2005, one year sooner than under current law.

According to the Forest Service and BLM, the agencies currently collect about $20 million a year in fees for linear rights-of-way. Although the agencies are uncertain about how much land values have changed, preliminary information suggests that collections under the revised schedule may increase by between 50 percent and 100 percent. Based on information from the agencies, we estimate that H.R. 3258 would increase offsetting receipts by at least $15 million in 2005. Of that amount, about $1 million would be required to be paid to the counties where the fees are generated; hence, the net increase in offsetting receipts would be $14 million.

Pay-as-you-go Considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table.

| | By fiscal year, in millions of dollars— | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Changes in outlays | 0 | 0 | 0 | −14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Changes in receipts | Not applicable | | | | | | | | | | |

Intergovernmental and Private-Sector Impact: H.R. 3258 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments. Enacting this legislation would benefit some county governments because they currently receive a portion of these fees and would share in the increase brought about by this bill. CBO estimates that the counties where fees are generated would receive additional payments totaling about $1 million in 2005.

Estimate Prepared by: Federal Costs: Megan Carroll. Impact on State, Local, and Tribal Governments: Majorie Miller. Impact on the Private Sector: Lauren Marks.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

## SECTION 504 OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERAL PROVISIONS

SEC. 504. (a) * * *

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*(k) DETERMINATION OF FAIR MARKET VALUE OF LINEAR RIGHTS-OF-WAY.—(1) Effective upon the issuance of the rules required by paragraph (2), for purposes of subsection (g), the Secretary concerned shall determine the fair market rental for the use of land encumbered by a linear right-of-way granted, issued, or renewed under this title using the valuation method described in paragraphs (2), (3), and (4).*

*(2) Not later than one year after the date of enactment of the Reasonable Right-of-Way Fees Act of 2002, and in accordance with subsection (k), the Secretary of the Interior shall amend section 2803.1–2 of title 43, Code of Federal Regulations, as in effect on the date of enactment of such Act, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone. The Secretary of Agriculture shall make the same revisions for linear rights-of-way granted, issued, or renewed under this title on National Forest System lands.*

*(3) The Secretary concerned shall update annually the schedule revised under paragraph (2) by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30) in the Gross National Product Implicit Price Deflator Index published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.*

*(4) Whenever the cumulative change in the index referred to in paragraph (3) exceeds 30 percent, or the change in the 3-year average of the 1-year Treasury interest rate used to determine per acre rental fee zone values exceeds plus or minus 50 percent, the Secretary concerned shall conduct a review of the zones and rental per acre figures to determine whether the value of Federal land has differed sufficiently from the index referred to in paragraph (3) to warrant a revision in the base zones and rental per acre figures. If, as a result of the review, the Secretary concerned determines that such a revision is warranted, the Secretary concerned shall revise the base zones and rental per acre figures accordingly.*

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## SECTION 28 OF THE MINERAL LEASING ACT

GRANT OF AUTHORITY

SEC. 28. (a) * * *

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REIMBURSEMENT OF COSTS

(l) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in moni-

toring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance for the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head *using the valuation method described in section 2803.1–2 of title 43, Code of Federal Regulations, as revised pursuant to section 504(k) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(k))*.

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