

Calendar No. 22

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109–11

FEDERAL LAND RECREATIONAL VISITOR PROTECTION ACT OF 2005

FEBRUARY 23, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of February 17, 2005

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

R E P O R T

[To accompany S. 225]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 225) to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. 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 “Federal Land Recreational Visitor Protection Act of 2005”.

SEC. 2. DEFINITIONS.

In this Act:

(1) PROGRAM.—The term “program” means the avalanche protection program established under section 3(a).

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

SEC. 3. AVALANCHE PROTECTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of the Interior, shall establish a coordinated avalanche protection program—

(1) to provide early identification of the potential for avalanches that could endanger the safety of recreational users of public land, including skiers, backpackers, snowboarders, and campers and visitors to units of the National Park System; and

(2) to reduce the risks and mitigate the effects of avalanches on visitors, recreational users, neighboring communities, and transportation corridors.

(b) COORDINATION.—

(1) IN GENERAL.—In developing and implementing the program, the Secretary shall consult with the Secretary of the Interior, and coordinate the program, to ensure adequate levels of protection for recreational users of public land under the jurisdiction of the Secretary of the Interior, including units of the National Park System, National Recreation Areas, wilderness and backcountry areas, components of the National Wild and Scenic Rivers System, and other areas that are subject to the potential threat of avalanches.

(2) RESOURCES.—In carrying out this section, the Secretary and the Secretary of the Interior—

(A) shall, to the maximum extent practicable, use the resources of the National Avalanche Center of the Forest Service; and

(B) may use such other resources as the Secretary has available in the development and implementation of the program.

(c) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Secretary and the Secretary of the Interior shall jointly establish an advisory committee to assist in the development and implementation of the program.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Committee shall consist of 11 members, appointed by the Secretaries, who represent authorized users of artillery, other military weapons, or weapons alternatives used for avalanche control.

(B) REPRESENTATIVES.—The membership of the Advisory Committee shall include representatives of—

(i) Federal land management agencies and concessionaires or permittees that are exposed to the threat of avalanches;

(ii) State departments of transportation that have experience in dealing with the effects of avalanches; and

(iii) Federal- or State-owned railroads that have experience in dealing with the effects of avalanches.

(d) CENTRAL DEPOSITORY.—The Secretary, the Secretary of the Interior, and the Secretary of the Army shall establish a central depository for weapons, ammunition, and parts for avalanche control purposes, including an inventory that can be made available to Federal and non-Federal entities for avalanche control purposes under the program.

(e) GRANTS.—

(1) IN GENERAL.—The Secretary and the Secretary of the Interior may make grants to carry out projects and activities under the program—

(A) to assist in the prevention, forecasting, detection, and mitigation of avalanches for the safety and protection of persons, property, and at-risk communities;

(B) to maintain essential transportation and communications affected or potentially affected by avalanches;

(C) to assist avalanche artillery users to ensure the availability of adequate supplies of artillery and other unique explosives required for avalanche control in or affecting—

(i) units of the National Park System; and

(ii) other Federal land used for recreation purposes; and

(iii) adjacent communities, and essential transportation corridors, that are at risk of avalanches; and

(D) to assist public or private persons and entities in conducting research and development activities for cost-effective and reliable alternatives to minimize reliance on military weapons for avalanche control.

(2) PRIORITY.—For each fiscal year for which funds are made available under section 4, the Secretary shall give priority to projects and activities carried out in avalanche zones—

(A) with a high frequency or severity of avalanches; or

(B) in which deaths or serious injuries to individuals, or loss or damage to public facilities and communities, have occurred or are likely to occur.

(f) SURPLUS ORDINANCE.—Section 549(c)(3) of title 40, United States Code, is amended—

(1) in subparagraph (A), by striking “or” after the semicolon at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(C) in the case of surplus artillery ordinance that is suitable for avalanche control purposes, to a user of such ordinance.”.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act \$15,000,000 for each of fiscal years 2006 through 2010.

2. Amend the title so as to read: “A bill to direct the Secretary of Agriculture to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land.”.

PURPOSE OF THE MEASURE

The purpose of S. 225 is to direct the Secretary of Agriculture to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land.

BACKGROUND AND NEED

Each year thousands of snow avalanches fall from steep mountain slopes. Most of these avalanches occur in remote mountain areas in Alaska, the West and the Northeast, and go unnoticed. When avalanches do occur in areas of human activity, their cost can be dire. An average of 30 avalanche-related deaths occur each year in the United States. Between 1996–2003 the highest number of these fatalities occurred in the State of Alaska, followed by Colorado and Montana.

The Forest Service is responsible for coordinating the majority of the avalanche mitigation activities that occur in the United States. Sixteen regional avalanche centers provide a myriad of services, including avalanche forecasting, mitigation, search and rescue, and education. Many of these centers are managed and funded cooperatively, with help from the National Park Service, State agencies, and other organizations. In 2001 the Forest Service contributed approximately \$492,000 to the operation of the regional avalanche centers. In comparison, the National Park Service contributed \$27,000, other Federal agencies contributed \$312,000 and State agencies contributed \$558,000.

In addition to the cost of human life, avalanches can cause considerable property damage and result in direct and indirect economic loss for both the private and public sectors. While comprehensive economic data is not available for all regional avalanche centers, the benefits of avalanche mitigation, particularly for transportation corridors, appear to outweigh the costs of operation. For example, the Northwest Weather and Avalanche Center (NWAC) located in Washington State provides services for Washington, Oregon and British Columbia. NWAC is cooperatively funded by the Washington State Department of Transportation (WSDOT), the State snowmobile and snowpark programs of Washington and Oregon, the National Weather Service, the National Park Service, the British Columbia Ministry of Highways and Transportation, and others. In 2001, the annual operating costs of NWAC were \$249,000, with an estimated \$150,000 in indirect (in-kind) contributions. In comparison, the WSDOT estimates that a two-hour closure on avalanche prone Snoqualmie Pass costs the economy of Washington State over \$1,000,000.

As ordered reported, S. 225 directs the Secretary of Agriculture, in consultation with the Secretary of the Interior, to establish a coordinated national avalanche protection program to provide for

early identification of avalanche hazards and to mitigate their effect on users of public lands, neighboring communities and transportation corridors. The bill authorizes grants for avalanche protection activities and establishes an advisory committee to assist in the development and implementation of the program. S. 225 also establishes a central repository for surplus weapons and munitions to make these munitions more readily available to states and agencies for avalanche control.

LEGISLATIVE HISTORY

S. 225 was introduced by Senators Stevens, Murkowski, and Inouye on February 1, 2005. At the business meeting on February 9, 2005, the Committee on Energy and Natural Resources ordered S. 225, as amended, favorably reported. During the 108th Congress, a similar bill, S. 931, was introduced by Senator Stevens and others on April 29, 2003. The Committee on Energy and Natural Resources' Subcommittee on National Parks held a hearing on S. 931 on June 8, 2004, (S. Hrg. 108-638). At the business meeting on July 14, 2004, the Committee on Energy and Natural Resources ordered S. 931, as amended, favorably reported (S. Rept. 108-320). S. 931, as amended, passed the Senate by unanimous consent on September 15, 2004. The House of Representatives did not consider the bill prior to the *sine die* adjournment of the 108th Congress.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on February 9, 2005, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 225, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 225, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The substitute amendment places the avalanche program under the Department of Agriculture instead of the Department of the Interior and specifies an annual funding limit of \$15 million, for the grant program for the years 2006 through 2010. The substitute amendment is described in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles this bill the "Federal Land Recreational Visitor Protection Act of 2005."

Section 2 defines key terms used in the Act.

Section 3(a) directs the Secretary of Agriculture (Secretary), in consultation with the Secretary of the Interior, to establish a coordinated avalanche protection program (Program) to provide for early identification of avalanche hazards and to mitigate their effect on recreational users of public lands and visitors to units of the National Park System. The other goal of the Program is to reduce the risk of avalanche on neighboring communities and within transportation corridors.

Subsection (b)(1) directs the Secretary to coordinate and consult with the Secretary of the Interior to ensure that the Program adequately protects visitors to all public lands from avalanches.

Paragraph (2) directs the Secretary and the Secretary of the Interior to use to the maximum extent possible the National Avalanche Center of the Forest Service as well as other available resources to develop and implement the Program.

Subsection (c) requires the Secretary and the Secretary of the Interior to establish an advisory committee and describes the composition and tenure of the committee. The committee is to include 11 members who represent users of artillery or other weapons for avalanche control and will consist of appointees from Federal land management agencies, State departments of transportation and Federal or State owned railroads.

Subsection (d) directs the Secretary, the Secretary of the Interior and the Secretary of the Army to establish a central repository for munitions and weapons to be used for avalanche control purposes. This section also requires that an inventory of these munitions be made available to Federal and non-Federal entities.

Subsection (e) provides authority to the Secretary and the Secretary of the Interior to make grants available to fund projects and other activities under the program. The types of activities and projects appropriate for grant funding are listed and the process for prioritizing those projects is described.

Subsection (f) amends title 40 of section 549(c)(3) United States Code, to allow for the transfer of surplus military ordinance, suitable for avalanche control, to state agencies.

Section 4 authorizes \$15 million to be appropriated, for each of fiscal years 2006 through 2010, to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

FEBRUARY 11, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 225, the Federal Land Recreational Visitor Protection Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll and Deborah Reis.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 225—Federal Land Recreational Visitor Protection Act of 2005

Summary: S. 225 would direct the Secretary of Agriculture, in consultation with the Secretary of the Interior, to establish a program to reduce the risk of avalanches on certain federal lands used for recreation. To facilitate the development and execution of the

new program, the bill would require the secretaries to establish an advisory committee and would authorize them to provide grants to public or private entities. For those programs, the bill would authorize the appropriation of \$15 million a year over the 2006–2010 period for grants to nonfederal parties to support that program.

CBO estimates that implementing S. 225 would cost \$4 million in 2006 and \$65 million through 2010, assuming appropriation of the authorized amounts. Enacting the bill would not affect direct spending or receipts. S. 225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. States may benefit from grants authorized by this bill.

Estimated cost to the Federal Government: For this estimate, CBO assumes that S. 225 will be enacted in fiscal year 2005 and that funds will be provided as specified in the bill. Estimates of outlays are based on historical spending patterns for similar activities. The estimated budgetary impact of S. 225 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	15	15	15	15	15
Estimated Outlays	4	11	17	17	16

Intergovernmental and private-sector impact: S. 225 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. States may benefit from grants authorized by this bill.

Estimate prepared by: Federal Costs: Megan Carroll and Deborah Reis; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, 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. 225.

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. 225.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior and the Department of Agriculture at the Subcommittee hearing on S. 931 in the 108th Congress follows:

STATEMENT OF JANET SNYDER MATTHEWS, ASSOCIATE DIRECTOR FOR CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to appear before you today to present the views of the Department of the Interior on S. 931, a bill that would direct the Secretary of the Interior to establish a coordinated avalanche protection program that would provide early identification of the potential for avalanches, and reduce the risks and mitigate the effects of avalanches on visitors, recreational users, neighboring communities, and transportation corridors.

The Department supports the concepts contained in S. 931. However, the Department cannot support the bill unless amended to (1) delete the formation of a new grants program, and (2) designate the Secretary of Agriculture as the lead for this bill. At a time when we are trying to reduce backlogs and maintain what we already own, we cannot afford to take on the new funding responsibilities under this grants program.

The history of avalanches influencing visitor safety on public lands is significant and well-documented. Three hundred and ninety-two people have perished in avalanches on public lands in the past twenty years and as winter sport activities continue to rise, so will avalanche incidents. Avalanche fatalities on National Park Service (NPS) managed lands account for about six percent, whereas avalanche fatalities on National Forest lands account for about ninety percent of the total. Avalanches kill more people on public lands than any other natural event.

The National Park Service and United States Forest Service have actively managed a coordinated aggressive avalanche protection program since the late 1930's. Although the National Park Service provides limited funding and extensive data collection to the Forest Service, it should be noted that the Forest Service is the lead agency with regard to avalanche awareness and mitigation efforts. The Forest Service program includes managing the National Avalanche Center in Ketchum, Idaho, as well as fifteen regional backcountry avalanche centers. These avalanche centers issue avalanche danger advisories for limited and specified geographic areas throughout the west, the northeast, and Alaska.

Currently these programs include snow pack and climate analysis, provide avalanche awareness information via publications, visitor centers, weather radio, and internet sites, teach avalanche awareness classes to the public, and develop and provide avalanche control work using explosives and passive control devices. It is recognized that these centers only exist in and serve a limited number of geographic areas, and all have limited resources. However, they continue to provide information to millions of recreation users and to other government and private agencies.

The primary avalanche control method includes hand and aerial projected explosive charges. However, many areas are using passive control measures such as the spreading of charcoal on avalanche prone slopes and manually triggered releases. Although the bill prescribes the use of artillery, the National Park Service is prohibited from using this method in congressionally designated wilderness areas, where the majority of avalanche hazard zones exist in the National Park System. The artillery systems that are used in NPS areas were not designed to trigger avalanches or to be used in very cold environments. In 1999, Yellowstone National Park experienced several difficulties with unexploded ordnance resulting in risk to park visitors and our employees. Military systems other than the ones currently employed have been carefully analyzed and none appear to be applicable as avalanche control systems.

To further complicate this issue the U.S. military recently requested the return of five howitzers that cooperators were using to prevent avalanches, including the one at Yellowstone, to be used for active military service. Of the many benefits of the bill, developing alternatives to military artillery for avalanche control would be very desirable.

We recognize that there is much room for improvement in avalanche management methods, and the Department respectfully urges this committee to consider the following suggestions for strengthening S. 931 and making its implementation more efficient and effective.

First, we recommend that the bill designate the Secretary of Agriculture to lead the establishment of a coordinated avalanche program. The U.S. Forest Service has considerable experience in avalanche control and data gathering, oversight of National Avalanche Centers, and a greater percentage of incidents that warrant the designation of the Department of Agriculture as the best department to develop and manage the program.

Secondly, we recommend that the formation of a new grants program under section 3(e) be deleted from the bill. The Departments of Agriculture and the Interior must focus existing funding on effectively managing Federal lands, including avalanche awareness and protection. Creating a new responsibility to fund grants could divert available funds away from these operational needs.

We believe that this bill will provide the appropriate Federal support for services such as avalanche forecasting, munitions management, and public information to ensure visitor protection on public lands.

Mr. Chairman, this concludes my remarks. Thank you for the opportunity to provide our perspective. I would be happy to answer any questions you may have.

STATEMENT OF TOM L. THOMPSON, DEPUTY CHIEF,
NATIONAL FOREST SYSTEM, USDA FOREST SERVICE

Mr. Chairman, I want to thank you for the opportunity to appear before this committee to present the views of the administration on S. 931, Federal Lands Recreational Visitor Protection Act of 2003, a bill to establish a program to reduce the risks from and mitigate the effects of avalanches on recreational users of and other visitors to public lands. The USDA Forest Service supports the concepts contained in this bill. However, we cannot support S. 931 unless amended to (1) delete the formation of a grants program and (2) designate the Secretary of Agriculture as the lead for this bill. At a time when we are trying to reduce backlogs and maintain National Forest System lands, we cannot afford to take on the new funding responsibilities under this grants program.

S. 931 describes several goals that would be favorable to the public. These include improved program coordination and development to reduce the risk of avalanche to visitors of public lands, the creation of an advisory committee to assist in development and implementation of an avalanche protection program, and the establishment of a central depository for ordnance used for avalanche control purposes. We support a coordinated and improved avalanche protection program on public lands.

Visitors to public lands that are threatened by avalanches fall roughly into three categories: people driving on mountain highways; people visiting developed sites like ski areas; and people going into the backcountry to cross country ski or ride a snowmobile.

Much of the backcountry and developed winter recreation that takes place in avalanche terrain occurs on National Forests. Over the past 50 years, the vast majority of avalanche fatalities have occurred on National Forest System lands.

The Forest Service plays an important role in avalanche coordination and safety, and the expertise that the agency can bring to developing an avalanche program as envisioned in this legislation is significant. The Forest Service, working with the National Park Service, has a long history of addressing avalanche protection on all federal land. The Forest Service began permitting ski areas on the National Forests in the 1930s and soon recognized that avalanches threatened skiers' safety both traveling to and within permitted ski areas. To reduce the threat, the Forest Service established the Snow Ranger Program in 1938 to provide Forest Service winter sports personnel with rigorous snow science expertise, avalanche forecasting, and training in the use of explosives for avalanche control. Since the 1950s, the Forest Service has played a significant role in further research on avalanches.

To further public safety, the Forest Service established the National Avalanche Center in the early 1990s. The National Avalanche Center manages the military artillery

program for avalanche control, coordinates a network of backcountry avalanche education and advisory centers, transfers state of the art avalanche technology to the advisory centers, facilitates avalanche research, and develops and distributes avalanche safety products. There are 17 avalanche backcountry centers located in various locations in Alaska, Washington, California, Colorado, Utah, Idaho, Montana, Wyoming, and New Hampshire. The Forest Service manages 16 of the centers and the State of Colorado manages one. Many of these centers operate through volunteer efforts and donations. The Forest Service typically provides about 50 percent of the operating funds for each of their centers and community 'friends' organizations, and other agencies typically provide the other 50 percent.

In light of these past and ongoing efforts that the Forest Service has contributed towards avalanche awareness and protection, we recommend that the bill designate the Secretary of Agriculture to lead the establishment of a coordinated avalanche program in cooperation with the Secretary of the Interior. In addition, we recommend that the formation of a new grants program under section 3(e) be deleted from the bill. The Departments of Agriculture and the Interior must focus existing funding on effectively managing Federal lands, including avalanche awareness and protection. Creating a new responsibility to fund grants could divert available funds away from these operational needs.

S. 931 establishes a Central Depository for ordnance that is used for avalanche control. A Central Depository is important because all of the military artillery assets appropriate for avalanche control could be stored in a single location and could be better managed including assuring optimal climatic storage conditions. At the same time, we must be aware of the need to look for alternatives to military ordnance. It is estimated that there is a 10- to 15-year supply of usable assets remaining in the United States. The technology exists to develop a system that could replace and outperform military artillery.

We appreciate the efforts that the committee is extending to reduce the risk of avalanche hazards to the public. Thank you, for the opportunity to share our views on S. 931. I will be happy to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 931, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

* * * * *

CHAPTER 5—PROPERTY MANAGEMENT

* * * * *

Subchapter III—Disposing of Property

* * * * *

§ 549. Donation of personal property through state agencies

* * * * *

(c) ALLOCATION AND TRANSFER OF PROPERTY.—

(1) IN GENERAL.—The Administrator shall allocate and transfer property under this section in accordance with criteria that are based on need and use and that are established after consultation with state agencies to the extent feasible. The Administrator shall give fair consideration, consistent with the established criteria, to an expression of need and interest from a public agency or other eligible institution within a State. The Administrator shall give special consideration to an eligible recipient's request, transmitted through the state agency, for a specific item of property.

(2) ALLOCATION AMONG STATES.—The Administrator shall allocate property among the States on a fair and equitable basis, taking into account the condition of the property as well as the original acquisition cost of the property.

(3) RECIPIENTS AND PURPOSES.—The Administrator shall transfer to a state agency property the state agency selects for distribution through donation within the State—

(A) to a public agency for use in carrying out or promoting, for residents of a given political area, a public purpose, including conservation, economic development, education, parks and recreation, public health, and public safety; **[or]**

(B) for purposes of education or public health (including research), to a nonprofit educational or public health institution or organization that is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501), including—

(i) a medical institution, hospital, clinic, health center, or drug abuse treatment center;

(ii) a provider of assistance to homeless individuals or to families or individuals whose annual incomes are below the poverty line (as that term is defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902));

(iii) a school, college, or university;

(iv) a school for the mentally retarded or physically handicapped;

(v) a child care center;

(vi) a radio or television station licensed by the Federal Communications Commission as an educational radio or educational television station;

(vii) a museum attended by the public; or

(viii) a library serving free all residents of a community, district, State, or region[.]; or

(C) in the case of surplus artillery ordinance that is suitable for avalanche control purposes, to a user of such ordinance.

(4) EXCEPTION.—This subsection does not apply to property transferred under subsection (d).

* * * * *

