

Calendar No. 38

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109-26

NATIONAL HERITAGE PARTNERSHIP ACT

MARCH 9, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 243]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 243) to establish a program and criteria for National Heritage Areas in the United States, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 243 is to establish a program and criteria for National Heritage Areas in the United States.

BACKGROUND AND NEED

The National Park Service has defined a Natural Heritage Area as a “place designated by the United States Congress where natural, cultural, historic and recreational resources combine to form a cohesive nationally distinctive landscape arising from patterns of human activity shaped by geography.” Heritage Areas are established to commemorate, conserve and promote important areas that include natural, scenic, historic, cultural or recreational resources. Unlike areas that are under the sole jurisdiction of the National Park Service, such as national parks or monuments, heritage areas typically remain in non-Federal ownership and are managed by local communities and partners. To date, Congress has designated 27 National Heritage Areas.

National Heritage Areas receive financial and technical assistance through cooperative agreements with the National Park Service. They also receive funds from other agencies and non-Federal sources. Most heritage areas are authorized to receive appropria-

tions of up to \$1 million each year, with a maximum total appropriation of \$10 to \$15 million. Generally, the authorizing legislation for each heritage area includes a requirement that Federal funds must be matched equally by non-Federal funds. For fiscal years 1997 through 2002 National Heritage Areas received \$310 million in funding. Of this total, approximately \$154 million came from State and local governments and private sources and \$156 million came from the Federal Government.

Although the National Park Service has developed criteria for assessing whether an area may qualify as a National Heritage Area, there are currently no statutory criteria, no systematic process for identifying or evaluating potential heritage areas and no formal program for managing them. Of the 27 existing heritage areas, ten have been designated by Congress without a thorough National Park Service review. Of those ten, six, a quarter of the existing heritage areas, were designated by Congress despite the agency's recommendation that designation be deferred. Not surprisingly, the opportunity for Federal funding has resulted in an increase in proposals for new heritage areas, with more than 30 heritage areas proposed during the 108th Congress. The sizable number of new proposals before Congress has raised some concern regarding the most effective means to manage the program in the future.

The Government Accountability Office (GAO) recently published a report that examined heritage areas and suggested ways to improve their accountability (GAO04-593T, March 30, 2004). The report recommends that standardized criteria be adopted for evaluating potential National Heritage Areas. The GAO report also suggests, given the magnitude of funds appropriated, that certain key management controls be instituted to ensure accountability and program consistency. S. 243 will establish program requirements and criteria for evaluating potential National Heritage Areas, as well as place limitations on Federal funding for the program.

LEGISLATIVE HISTORY

S. 243 was introduced by Senator Thomas on February 1, 2005. During the 108th Congress, the Committee considered identical legislation, S. 2543. Senators Thomas and Burns introduced S. 2543 on June 17, 2004. The Senate Subcommittee on National Parks held a hearing on S. 2543 on June 21, 2004. The Committee on Energy and Natural Resources ordered S. 2543, as amended, favorably reported on July 14, 2004 (S. Rept. 108-329). S. 2543 was passed by the Senate by unanimous consent on September 15, 2004. The bill was not considered by the House of Representatives.

At its business meeting on February 9, 2005, the Committee on Energy and Natural Resources ordered S. 243 favorably reported.

COMMITTEE RECOMMENDATION

The Senate 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. 243.

SECTION-BY-SECTION ANALYSIS

Section 1(a) entitles this Act the "National Heritage Partnership Act".

Subsection (b) contains the table of contents.

Section 2 contains definitions of key terms used in the Act.

Section 3 directs the Secretary of the Interior (Secretary) to establish a National Heritage Area (NHA) program and to provide technical and financial assistance to local coordinating entities.

Subsection (b) describes the duties of the Secretary under the program.

Section 4(a) describes the criteria to be used by the Secretary to determine the feasibility and suitability of a proposed NHA. This section also describes the administrative process for the transmittal, approval and disapproval of the feasibility study. Designation of NHA's shall be contingent upon the completion of the feasibility study and approval of that study by the Secretary.

Section 5 describes the requirements for a heritage area's management plan. This section also includes procedural requirements for the submission, approval, disapproval and amendment of the plan.

Section 6 describes the duties and responsibilities of the local coordinating entity for a heritage area. This section also describes the purposes under which the coordinating entity is authorized to expend Federal funds and prohibits the entity from using Federal funds to acquire real property.

Section 7 states that nothing in this Act affects the authority of a Federal agency to provide technical or financial assistance to a NHA. Other Federal agencies are encouraged to consult with the Secretary on issues concerning the NHA to the extent practicable. Nothing in this Act limits, modifies, alters or amends any authorized use of Federal land.

Section 8 contains several savings provisions.

Paragraph (1) states that nothing in this Act shall affect the rights of any private property owner.

Paragraph (2) states that nothing in this Act requires a private property owner to permit public access.

Paragraph (3) states that nothing in this Act affects any existing land use regulation or alters any land use or provides regulatory authority to the coordinating entity.

Paragraph (4) states that nothing in this Act authorizes or implies the reservation or appropriation of water, or water rights.

Paragraph (5) provides that nothing in this Act diminishes the authority of a State to manage fish and wildlife.

Paragraph (6) states that nothing in this Act shall affect the liability of any private property owner.

Section 9(a) authorizes the appropriation of \$750,000, for each fiscal year, to conduct and review feasibility studies for potential heritage areas. Not more than \$250,000 is authorized for any individual study for any given fiscal year.

Subsection (b) authorizes and limits annual appropriations for heritage areas to \$15,000,000 with not more than \$1,000,000 annually for any individual heritage area. A total appropriation of \$10,000,000 may be made for an individual heritage area over all fiscal years. The Secretary's authority to provide technical and financial assistance to each heritage area is limited to 15 years, but the area is authorized to retain the designation of National Heritage Area after Federal funding has terminated. The Secretary may extend up to five percent of the annual authorized appropriation of

\$15,000,000 for the purposes of technical assistance and oversight and administration of the program.

Subsection (c) requires the recipient of any grant made under this Act to provide, through non-Federal sources, an amount equal to the Federal grant. The non-Federal contribution may include in-kind contributions of goods and services.

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 report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

S. 243—National Heritage Partnership Act

S. 243 would provide a framework for establishing new national heritage areas (NHAs). The procedures established by S. 243 could affect how many and how quickly new NHAs could be established in the future, but none of the activities authorized by the bill could be carried out without further authorizing legislation. As a result, CBO estimates that enacting S. 243—by itself—would have no effect on the federal budget.

This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 243 would establish criteria and mechanisms for assessing, planning, designating, and developing new national heritage areas. For each proposed new NHA, Congressional action would be required to authorize both the first step, a feasibility study, and the final step, a formal NHA designation.

Under the bill, once a feasibility study of a potential NHA has been authorized by the Congress, the NPS would either conduct the study itself or allow one to be undertaken by an interested local entity. Completed and assessed studies would then be submitted to the Congress. If legislation to designate the NHA is enacted and funds are made available, the chosen local coordinating entity for the area would have three years to submit a general management plan to the Secretary of the Interior for approval.

The bill would authorize the appropriation of up to \$250,000 annually for individual feasibility studies (up to a total of \$750,000 a year). Finally, the bill would authorize the appropriation of up to \$1 million per NHA per year (up to a total of \$15 million annually) for financial and technical assistance to local coordinating entities. Such funds (up to 15-year total of \$10 million per NHA) would be used to develop and implement management plans and administer the area.

Because the authority to appropriate funds provided in S. 243 would depend on subsequent acts of Congress to authorize feasibility studies and designate new NHAs, CBO estimates that enacting this legislation alone would have no effect on the federal budget.

The CBO staff contact for this estimate is Deborah Reis. The estimate was reviewed 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. 243.

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. 243.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior and the Government Accountability Office at the Subcommittee hearing on S. 2543 in the 108th Congress follows:

STATEMENT OF A. DURAND JONES, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, it is my pleasure to appear before you today to testify on behalf of the Department of the Interior on S. 2543, the National Heritage Partnership Act. The Department strongly supports this bill, but has a few concerns about some of the provisions.

The Department strongly supports legislation to establish a national heritage areas program. We would like to thank Chairman Thomas for his leadership over the last year in evaluating programmatic issues, identifying areas for legislative action, and introducing this bill based on the Administration's legislative proposal. This legislation was developed through a year-long process of Congressional oversight hearings, outside evaluations of the program (such as the March 2004 report by the General Accounting Office) and meetings among many of the groups interested in this issue.

S. 2543 provides a much-needed framework for evaluating proposed national heritage area designations, offers guidelines for successful planning, clarifies the roles and responsibilities of all parties, and standardizes timeframes and funding for designated areas.

The Department supports the national heritage areas approach to resource conservation through partnerships with communities. National heritage areas are intended to preserve nationally important natural, cultural, historic, and recreational resources through the creation of partnerships among Federal, State and local entities. National heritage areas are locally driven, initiated and managed by the people who live there and do not impose Federal zoning, land use controls nor do they require land acquisition. At its best, the collaborative approach of this program embodies Secretary of the Interior Gale Norton's "Four Cs"—

Communication, Consultation and Cooperation, all in the service of Conservation.

S. 2543 supports a conservative strategy that recognizes that the people who live in a heritage area are uniquely qualified to preserve it. Being designated as a national heritage area can benefit visitors, community residents, existing National Park units located in the area, and other federal lands by expanding the opportunity to interpret and protect resources over a larger landscape and by telling our shared national story.

There are three provisions in S. 2543 that we wish to discuss in more detail and to offer suggestions for improvements.

CRITERIA FOR EVALUATION

The standards for evaluating areas proposed for national designation are an essential element in establishing a national heritage areas program. While many places in this nation have special meaning to the people that live there, for many places designation as a State or local heritage area may be most appropriate. The National Park Service should be the lead partner only when the resource within a proposed heritage area are of national importance.

The Department has some concerns about the use of the term “national significance” and the definition provided in S. 2543. We recommend replacing the term “national significance” with the term “national importance” to avoid confusion. The National Park Service specifically uses the term “national significance” in suitability and feasibility studies for new National Park System units. For this reason, the term “national importance” has been informally used by the National Park Service to describe the assessment of national heritage area resources.

In addition, having a concise, appropriate, and practical definition for “national significance” or “national importance” is critical. We would suggest a revised definition as applied in practice to existing and proposed national heritage areas:

“The term ‘National Importance’ is ascribed to a proposed heritage area that illustrates major historic, cultural, natural or social themes important to the history of the United States and contains resources that are outstanding examples of natural and cultural features that contribute to the theme, and which possess a high degree of integrity, and are compatible with continued community development, public enjoyment, and use.”

SUITABILITY/FEASIBILITY STUDY

The Department believes that a study should be required for every proposed national heritage area and the study should be evaluated against legislatively established criteria before designation. S. 2543 requires that such a study be prepared that demonstrates evidence of place-based resources that tell a nationally significant story, which has the support and involvement of the local com-

munity. This requirement has been field-tested and has been shown to increase the future success of the heritage area.

The Department recommends a modification to the terminology used for studies. In order to be consistent with terminology used in past study and designation bills for national heritage areas, we recommend that the studies be called "feasibility studies" instead of "suitability/feasibility studies." This would also lessen any confusion with studies for new units of the National Park System that are called suitability and feasibility studies. We recommend that this change in terminology be used throughout the bill when referring to these studies.

FUNDING AND TIMEFRAMES

When the first national heritage corridors were designated twenty years ago, a Federal commission provided management for the areas and the National Park Service provided most of the staff. The national heritage corridor or area was conceived as a less expensive alternative to the acquisition and operation costs of creating a new unit of the National Park System. These areas were originally authorized for five years with a five-year extension; over time, the corridors have been reauthorized for additional periods.

For the 18 national heritage areas established after 1995, the National Park Service encouraged management with greater involvement by local entities as a more cost-effective use of Federal resources. Most of these newer areas are managed by a non-profit entity or a State government and include a funding formula of not more than \$10 million Federal dollars over a fifteen-year period. Our legislative proposal recommends codifying this approach and for the first time requires that a business plan be developed as part of the management planning for proposed new areas. This would ensure that from the beginning, national heritage areas are working towards and have an established plan for self-sufficiency. So far, no existing areas has "graduated" from the program, even after 20 years and in some cases, and nearly \$100 million invested overall. For this reason, we recognize the need to work with existing areas to assist them in a transition strategy as they reach the end of their funding authorization. As areas become self-sufficient, available resources could be reallocated to newly designated areas or other priorities.

The Department is concerned with the new provision in section 9 of S. 2543 that caps the heritage areas program at \$15 million per year. The Administration did not propose a cap on the program because we believe it is more appropriate to cap the amount of appropriations each area is authorized to receive, and to limit the authorized period for appropriations. Currently, there are 15 new national heritage areas pending for designation in Congress. In addition, there are 24 designated national heritage areas, many of which are authorized to receive appropriations of

\$1 million per year. However, we would expect to allocate funding among these areas within the levels of funds appropriated, which might require providing less than the individual authorized ceilings in some instances.

CONCLUSION

Recent studies and our own experiences have shown that the national heritage area approach links people and place, nature and culture, and the present with the past. National heritage areas capitalize on the unique role local communities play in preserving their heritage and telling their stories. S. 2543 respects these principles. It assigns the appropriate roles and responsibilities to the key partners that must work together to make the program successful. It also recognizes the need to target our assistance to those areas where there is a national interest and where the local partners meet established criteria for success. We look forward to working with the committee to enact this important legislation.

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 S. 243 as ordered reported.

