

PUBLIC FORESTS EMERGENCY ACT OF 1999

OCTOBER 31, 2000.—Committed to the Committee of the White House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1524]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1524) to authorize the continued use on public lands of the expedited processes successfully used for windstorm-damaged national forests and grasslands in Texas, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1524 is to authorize the continued use of public lands of the expedited processes successfully used for windstorm-damaged national forests and grasslands in Texas.

BACKGROUND AND NEED FOR LEGISLATION

On February 10, 1998, an exceptionally strong windstorm damaged 103,000 acres of Forest Service land in the Sabine, Angelina and Sam Houston National Forests. This windstorm damaged 297 million board feet of timber. Some of the damaged areas were home to the red-cockaded woodpecker, a federally-listed endangered species.

The National Forests and Grasslands in Texas (NFGT) is the U.S. Forest Service branch office responsible for management of the three national forests damaged in the windstorm. NFGT wanted to clear away the damaged timber, an action which triggered an

environmental review under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.). NFGT consulted with the federal Council on Environmental Quality (CEQ), which implements NEPA, for an alternative arrangement. Existing federal regulations at 40 CFR 1506.11 provide for such an alternative in emergency situations. The NFGT believed that the time period needed for a traditional NEPA analysis of the environmental impacts of the proposed federal action would negatively affect the forests, wildlife and private property. Specifically, NFGT feared that failure to act expeditiously would result in severe wildfires, bark beetle infestations, and the loss of a sub-population of red-cockaded woodpeckers. CEQ agreed that these conditions qualified as an emergency. As a result, CEQ required the U.S. Forest Service to prepare an environmental assessment, consult with the U.S. Fish and Wildlife Service under the Endangered Species Act, hold some form of a public involvement process, and then remove only downed, dead or severely root-sprung trees. This process allowed removal activities to begin months sooner than would have been possible under the normal NEPA process.

It should be noted that CEQ does not have consistent requirements for the use of alternative arrangements under 40 CFR 1506.11. It has granted alternative arrangements 30 times since 1980. Of those 30 cases, CEQ has granted only three alternative arrangements to the U.S. Forest Service. The majority of these alternative arrangements were granted for immediate public safety or public health concerns. The Texas situation is the only alternative arrangement ever granted which allowed for the removal of timber.

Several other national forests should be granted similar treatment. For example, at the time H.R. 1524 was introduced, there were approximately 3,900 acres of spruce beetle-infested lands within the Kenai Quadrangle in Alaska, approximately 30,000 acres of spruce-beetle-infested lands in the Chugach National Forest in Alaska, approximately 100,000 acres of ice storm-damaged and Douglas fir bark beetle-infested lands in the Colville National Forest in the State of Washington and the Idaho-Panhandle National Forest in Idaho, and approximately 50,000 acres of fire-damaged and spruce budworm-infested lands in the Malheur National Forest in Oregon.

Other forests listed in the bill that have had similar catastrophic events recently are the Black Hills National Forest in South Dakota; the National Forest System lands in the Tahoe Basin of California; the Allegheny National Forest in Pennsylvania; the Homochitto, Desoto and Tombigbee National Forests in Mississippi; George Washington and Jefferson National Forests in Virginia; the Ouachita National Forest in the State of Arkansas; the Kisatchie National Forest in Louisiana; the Croatan National Forest in North Carolina; the Daniel Boone National Forest in Kentucky; the Bankhead National Forest in Alabama; the Cherokee National Forest in Tennessee; and the National Forest System lands in Florida. In these areas, forest managers are concerned about the possibility of insect infestations spreading to adjacent forests, wildlife and additional loss of wildlife habitat.

H.R. 1524 would require the Secretary of the Interior and the Secretary of Agriculture to consider certain federal areas for re-

removal of dead, downed or severely root-sprung trees under the expedited processes granted for the national forests and grasslands in Texas in March 1998; grant the Secretaries 90 days to either approval or disapprove expedited processes; and require the Secretaries to submit a report to Congress describing the specific reasons for approval or disapproval.

COMMITTEE ACTION

Congressman Helen Chenoweth introduced H.R. 1524 on April 22, 1999. The bill was referred to the Committee on Resources and within the Committee to the Subcommittee on Forests and Forest Health. The Subcommittee had held a hearing on a draft version of the bill on March 23, 1999 (Printed Hearing 106–19). On April 27, 1999, the Subcommittee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by a rollcall vote of 8 to 6, as follows:

Republicans	Yea	Nay	Present	Democrats	Nay	Yea	Present
Chenoweth	X	.....	.....	Smith	X	.....	.....
Duncan	X	.....	.....	Kildee	X	.....	.....
Doolittle	X	.....	.....	Picket .....	.....	.....	.....
Gilchrest .....	.....	.....	.....	Kind .....	.....	.....	.....
Peterson	X	.....	.....	Napolitano	X	.....	.....
Hill	X	.....	.....	Tom Udall	X	.....	.....
Schaffer	X	.....	.....	Mark Udall	X	.....	.....
Sherwood	X	.....	.....	Crowley	X	.....	.....
Hayes	X	.....	.....		
Total Republicans	8	.....	.....	Total Democrats	6	.....	.....

On June 9, 1999, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by a rollcall vote of 21 to 8, as follows:

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 6-9-99Roll No. 1Bill No. H.R. 1524 Short Title Public Forests Emergency ActAmendment or matter voted on: FINAL PASSAGE

Member	Yea	Nay	Present	Member	Yea	Nay	Present
Mr. Young (Chairman)	X			Mr. Miller			
Mr. Tauzin				Mr. Rahall			
Mr. Hansen	X			Mr. Vento		X	
Mr. Saxton	X			Mr. Kildee			
Mr. Gallegly	X			Mr. DeFazio			
Mr. Duncan				Mr. Faleomavaega			
Mr. Hefley	X			Mr. Abercrombie			
Mr. Doolittle	X			Mr. Ortiz			
Mr. Gilchrest	X			Mr. Pickett			
Mr. Calvert	X			Mr. Pallone			
Mr. Pombo	X			Mr. Dooley			
Mrs. Cubin	X			Mr. Romero-Barcelo		X	
Mrs. Chenoweth	X			Mr. Underwood			
Mr. Radanovich				Mr. Kennedy			
Mr. Jones	X			Mr. Smith		X	
Mr. Thornberry	X			Mr. John			
Mr. Cannon	X			Mrs. Christensen			
Mr. Brady				Mr. Kind		X	
Mr. Peterson	X			Mr. Inslee			
Mr. Hill				Mrs. Napolitano		X	
Mr. Schaffer				Mr. Tom Udall		X	
Mr. Gibbons	X			Mr. Mark Udall		X	
Mr. Souder				Mr. Crowley		X	
Mr. Walden	X			Mr. Holt			
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			TOTAL	21	8	

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, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill could affect direct spending by changing offsetting receipts, but "CBO does not expect that enacting the bill would lead to a significant change in the amount or timing of offsetting receipts."

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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, June 22, 1999.

Hon. DON YOUNG,
*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. 1524, the Public Forests Emergency Act of 1999.

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

Sincerely,

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

Enclosure.

H.R. 1524—Public Forests Emergency Act of 1999

CBO estimates that H.R. 1524 would have no significant effect on the federal budget. The bill would require the Secretaries of Agriculture and the Interior to request from the appropriate officials in the executive branch the authority to remove in an expedited manner dead or damaged trees on about 247,000 acres of federal land. The bill would require the officials considering the Secretaries' requests to consider them promptly and either approve or disapprove them. H.R. 1524 would require the officials to report to the Congress on the reasons for their decision within 90 days of receiving a request from the Secretaries.

According to the Departments of Agriculture and the Interior, the Secretaries can request the authority to remove dead or damaged trees in an expedited manner under current law, but they have chosen not to do so because they do not believe the expedited removal authority is warranted for the land specified in the bill. Requiring the Secretaries to request expedited removal authority would impose additional administrative costs on the agencies, but if expedited authority were granted it also could reduce the agencies' costs for environmental reviews. CBO estimates that the net change in administrative costs would be negligible. Once the Secretaries request expedited removal authority as required by the bill, the appropriate officials (such as the head of the Council on Environmental Quality) may or may not decide to grant such authority. If they do, implementing H.R. 1524 could increase the amount or change the timing of offsetting receipts generated from the removal of dead or dying trees. Because H.R. 1524 could affect direct spending (by changing offsetting receipts), pay-as-you-go procedures would apply. However, CBO does not expect that enacting the bill would lead to a significant change in the amount or timing of offsetting receipts.

H.R. 1524 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact is Victoria Heid Hall. This estimate was approved by Robert A. Sunshine, 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

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

We share the Administration's strong opposition to this misguided and unnecessary legislation. H.R. 1524 would require that the Forest Service and the Bureau of Land Management (BLM) request that the Council on Environmental Quality (CEQ) consider approving expedited National Environmental Policy Act (NEPA) procedures for salvage logging on approximately 250,000 acres of national forest lands in 13 areas and one 3,900-acre BLM land area. Although the Majority misrepresents the bill as merely requiring the Secretaries to examine certain lands to consider whether expedited processes should be used—an authority they already have—the bill actually bypasses the local land managers and the Secretaries, and requires a decision by the White House. This bill would undercut the regular NEPA process and have the Congress substitute its judgment for that of the land management agencies about what salvage logging “emergencies” require CEQ micro-management. It is ironic indeed that the Republican sponsors propose to give such trust and responsibility to the White House.

This bill was introduced shortly before markup and contains a new set of “emergency” areas—nine new or revised areas—that have never been the subject of a hearing. Neither the majority nor the public have been provided a map of the areas in which acres are enumerated in the bill. Thus, the bill is too vague to implement. Even if it were clear where the areas are physically located, it is unclear how these acres were chosen. No testimony, report, or scientific argument serves as the basis for this seemingly random selection of acreage and forests. Furthermore, given that nearly a year and a half has passed between mark-up and the filing of the report, it is even less likely that these areas, assuming they could be identified, constitute “emergency” areas.

The bill is ill-advised and unnecessary, placing Congress in the position of choosing what national forest “emergencies” need to be referred to CEQ. It also overrides the expertise of on-the-ground land managers and local government officials who are consulted on the decision to refer emergency problems to CEQ. The system whereby land managers decide whether to seek expedited NEPA arrangements from CEQ is already in place and working for true emergencies. None of the land managers responsible for the areas listed in the bill have determined that the situations they confront rise to the level of emergency contemplated by NEPA to warrant bypassing public processes. The net effect of the bill will be fourteen CEQ reports to Congress explaining why expedited NEPA procedures are not necessary.

Over the past two decades, CEQ has approved alternative arrangements on only thirty occasions for all federal agencies. The Forest Service and CEQ have used the emergency provision on only three occasions since 1978 and only once to allow salvage logging.

With a limited staff and budget, CEQ is ill-equipped to routinely manage every situation that may justify salvage logging. This bill would place an unreasonable burden on CEQ and detract from resources better devoted to real environmental problems and true emergencies. It should be rejected by the House.

GEORGE MILLER.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, October 30, 2000.

Hon. LARRY COMBEST,
*Chairman, Committee on Agriculture, Longworth House Office
Building, Washington, DC.*

DEAR MR. CHAIRMAN: On June 9, 1999, the Committee on Resources ordered reported H.R. 1524, the Public Forests Emergency Act of 1999. This bill authorizes the continued use on public lands of the expedited environmental review processes under the National Environmental Policy Act successfully used for windstorm-damaged national forests and grasslands in Texas. Before the 106th Congress adjourns, I wish to file the report on this bill. Although it was referred only to the Committee on Resources, I believe the Committee on Agriculture has a jurisdictional interest in the bill. I request that we memorialize this through an exchange of letters rather than having you seek a sequential referral of the bill at this late date. Copies of our correspondence will be made part of the committee bill report, and I concur that the Committee on Agriculture's jurisdiction over the subject matter of the bill is not affected by its failure to seek a sequential referral.

Thank you once again for your extraordinary cooperation this Congress and the assistance of Lance Kotschwar and Dave Tenny of your staff. They have served you well and have made our work improving our national forests both efficient and effective.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, November 1, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for forwarding a draft copy of the Committee report to accompany H.R. 1524, a bill to authorize the continued use on public lands of the expedited processes successfully used for windstorm-damaged national forests and grasslands in Texas, as ordered reported by your Committee.

Under clause 1(a) of Rule X, the Committee on Agriculture has jurisdiction over bills relating to forestry in general and forest reserves other than those created from the public domain. In exercising this jurisdiction, the Committee on Agriculture has worked

cooperatively in the past with your Committee regarding general matters relating to forestry.

Knowing that we have only a few days at most remaining in the 106th Congress, the Committee on Agriculture will agree to waive jurisdiction and will not seek a sequential referral. In doing so, the Committee on Agriculture does not waive any future jurisdiction claim over this or similar measures, and reserves the right to seek appropriate representation in the event the measure should go to conference.

Once again, I greatly appreciate your cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

LARRY COMBEST,
Chairman.

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